



LOBBYING AND RELATED ACTIVITIES

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HEARINGS
BEFORE THE
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS
FIRST SESSION
ON
H.R. 1180, H.R. 5578, and H.R. 5795
and Companion Bills
TO REGULATE LOBBYING AND RELATED ACTIVITIES

APRIL 4 AND 6, 1977

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*United States Congress, House, Committee
"on the Judiciary."*

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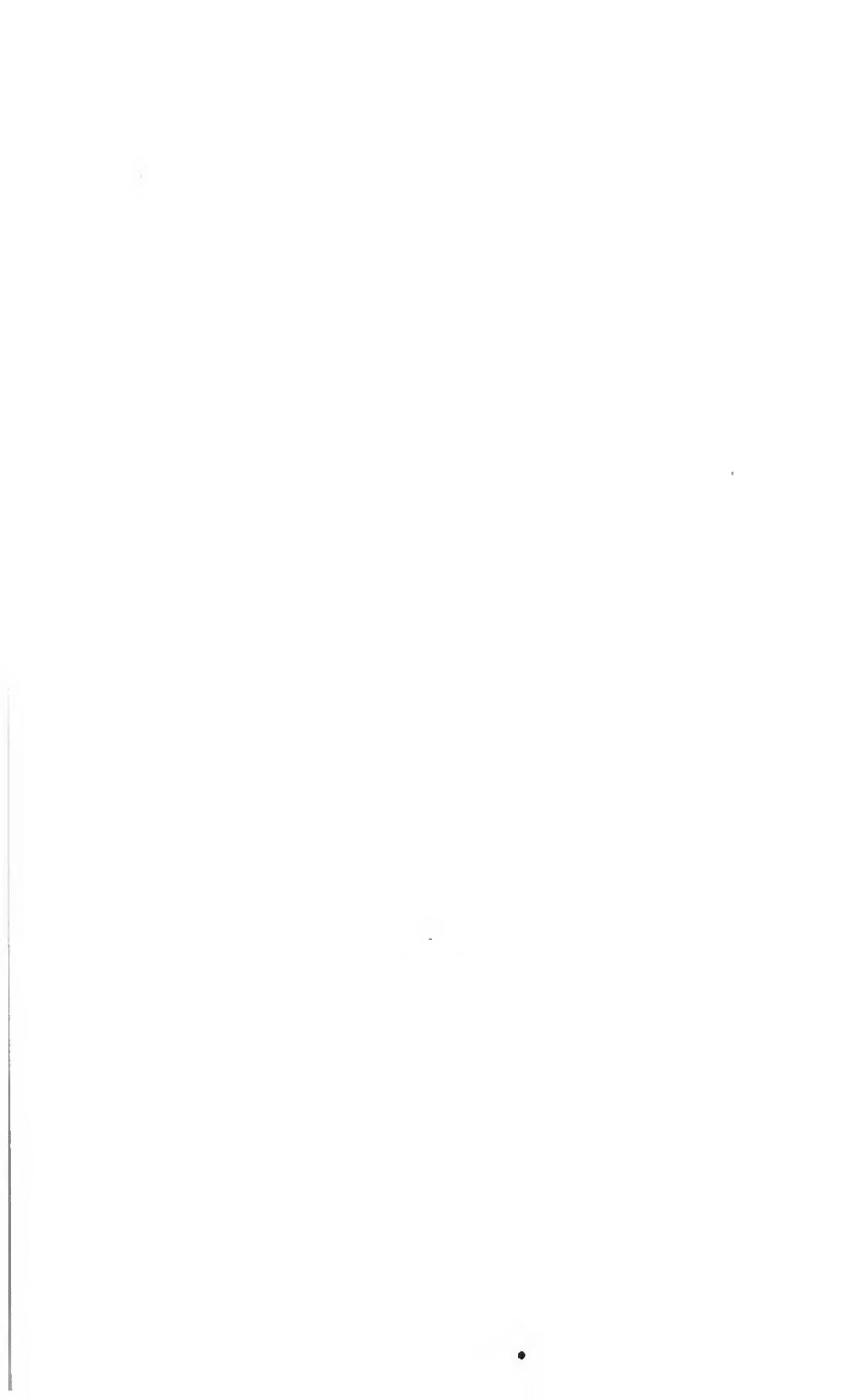
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LOBBYING AND RELATED ACTIVITIES

MONDAY, APRIL 4, 1977

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., in room 2141, Rayburn House Office Building, Hon. George E. Danielson [chairman of the subcommittee] presiding.

Present: Representatives Danielson, Flowers, Mazzoli, Harris, Moorhead, and Kindness.

Staff present: William P. Shattuck, counsel; Jay T. Turnipseed and Timothy J. Hart, assistant counsel; and Alan F. Coffey, Jr., associate counsel.

Mr. DANIELSON. The hour of 10 o'clock having arrived, and a quorum being present, the subcommittee will come to order.

We meet today to commence the consideration of legislation which is intended to reform the Federal lobbying laws. This commenced actually in the last Congress.

As we proceed with the work at hand, it is important that the various issues be kept in their proper prospective. The current trend in Government seems to be in the direction of opening the day-to-day operation of the Government to increased public scrutiny. However, as we proceed down the road to increased sunshine in the Government, we must be diligent to preserve the fundamental right of the people to petition their Government, which is guaranteed by the first amendment. Derogation of constitutionally protected rights cannot be condoned, even in the name of political reform.

The bills before us would repeal an existing lobbying disclosure law which has been heavily criticized as being ambiguous and unenforceable. Although the Supreme Court, in the case of *United States v. Harriss*, 347 U.S. 612 1954, upheld the validity of that law, it significantly had to restrict its scope in order to do so. The Court's construction of the current law is said to have resulted in several major loopholes which have permitted some categories of persons to escape coverage, even though they are engaged in the types of lobbying activities which many people feel should be regulated.

We must consider and evaluate these alleged loopholes and ascertain whether they in fact deprive the public and the Congress of information which should properly be disclosed. In doing so, we will consider all of the various legislative proposals which the committee has before it.

[Copies of H.R. 1180, H.R. 5795, and H.R. 5578 follow:]

1 of the organizations maintains actual control or has
2 the right of potential control of all or a part of the
3 activities of the other organization;

4 (B) units of a particular denomination of a
5 church or of a convention or association of churches,
6 and

7 (C) national membership organizations and
8 their State and local membership organizations or
9 units, national trade associations and their State and
10 local trade associations, national business leagues
11 and their State and local business leagues, national
12 federations of labor organizations and their State and
13 local federations, and national labor organizations
14 and their State and local labor organizations.

15 (2) The term "Comptroller General" means the
16 Comptroller General of the United States.

17 (3) The term "direct business contact" means any
18 relationship between an organization and any Federal
19 officer or employee in which—

20 (A) such Federal officer or employee is a part-
21 ner in such organization;

22 (B) such Federal officer or employee is a mem-
23 ber of the board of directors or similar governing
24 body of such organization, or is an officer or em-
25 ployee of such organization; or

1 (C) such organization and such Federal officer
2 or employee each hold a legal or beneficial interest
3 (exclusive of stock holdings in publicly traded corporations,
4 policies of insurance, and commercially
5 reasonable leases made in the ordinary course of
6 business) in the same business or joint venture, and
7 the value of each such interest exceeds \$1,000.

8 (4) The term "exempt travel expenses" means any
9 sum expended by any organization in payment or reimbursement
10 of the cost of any transportation for any
11 agent, employee, or other person engaging in activities
12 described in section 3 (a) , plus such amount of any sum
13 received by such agent, employee, or other person as
14 a per diem allowance for each such day as is not in
15 excess of the maximum applicable allowance payable
16 under section 5702.(a) of title 5, United States Code, to
17 Federal employees subject to such section.

18 (5) The term "expenditure" means—

19 (A) a payment, distribution (other than normal dividends and interest), salary, loan, advance,
20 deposit, or gift of money or other thing of value,
21 other than exempt travel expenses, made—
22

23 (i) to a Federal officer or employee; or

24 (ii) for mailing, printing, advertising, tele-
25 phones, consultant fees, or the like which are

1 attributable to activities described in section
2 3 (a), and for costs attributable partly to activi-
3 ties described in section 3 (a) where such costs,
4 with reasonable preciseness and ease, may be
5 directly allocated to those activities; or

6 (B) a contract, promise, or agreement, whether
7 or not legally enforceable, to make, disburse, or
8 furnish any item referred to in subparagraph (A).

9 (6) The term "Federal officer or employee"
10 means—

11 (A) any Member of the Senate or the House
12 of Representatives, any Delegate to the House of
13 Representatives, and the Resident Commissioner in
14 the House of Representatives;

15 (B) any officer or employee of the Senate or
16 the House of Representatives or any employee of
17 any Member, committee, or officer of the Congress;
18 and

19 (C) any officer of the executive branch of the
20 Government listed in sections 5312 through 5316
21 of title 5, United States Code.

22 (7) The term "identification" means—

23 (A) in the case of an individual, the name,
24 occupation, and business address of the individual
25 and the position held in such business; and

1 (B) in the case of an organization, the name
2 and address of the organization, the principal place
3 of business of the organization, the nature of its
4 business or activities, and the names of the execu-
5 tive officers and the directors of the organization,
6 regardless of whether such officers or directors are
7 paid.

8 (8) The term "organization" includes any corpora-
9 tion, company, foundation, association, labor organiza-
10 tion, firm, partnership, society, joint stock company,
11 national organization of State or local elected or ap-
12 pointed officials (excluding any Federal, State, or local
13 unit of government or Indian tribe, any national or
14 State political party and any organizational unit there-
15 of, and excluding any association comprised solely of
16 Members of Congress or Members of Congress and con-
17 gressional employees), group of organizations, or group
18 of individuals, which has paid officers, directors, or
19 employees.

20 (9) The term "quarterly filing period" means any
21 calendar quarter beginning on January 1, April 1,
22 July 1, or October 1.

23 (10) The term "solicitation" means any oral or
24 written communication directly urging, requesting, or
25 requiring another person to advocate a specific position

1 on a particular issue and to seek to influence a Federal
2 officer or employee with respect to such issue, but does
3 not mean such oral or written communications by one
4 organization registered under this Act to another
5 organization registered under this Act.

6 (11) The term "State" means any of the several
7 States, the District of Columbia, the Commonwealth of
8 Puerto Rico, the Virgin Islands, Guam, American Sa-
9 moa, and the Trust Territory of the Pacific Islands.

10 APPLICABILITY OF ACT

11 SEC. 3. (a) The provisions of this Act shall apply to
12 any organization which—

13 (1) makes an expenditure in excess of \$1,250 in
14 any quarterly filing period for the retention of another
15 person to make oral or written communications directed
16 to a Federal officer or employee to influence the content
17 or disposition of any bill, resolution, treaty, nomination,
18 hearing, report, investigation (excluding civil or crimi-
19 nal investigations or prosecutions by the Attorney Gen-
20 eral and any investigation by the Comptroller General
21 authorized by the provisions of this Act), rule (as de-
22 fined in section 551 (4) of title 5, United States Code),
23 rulemaking (as defined in section 551 (5) of title 5,
24 United States Code) or the award of Government con-
25 tracts (excluding the submission of bids), or for the

1 express purpose of preparing or drafting any such oral
2 or written communication; or

3 (2) employs at least one individual who spends 20
4 percent of his time or more in any quarterly filing period
5 engaged on behalf of that organization in those activities
6 described in paragraph (1),

7 except that this Act shall not apply to an affiliate of a regis-
8 tered organization if such affiliate engages in activities de-
9 scribed in paragraphs (1) and (2) of this subsection and
10 such activities are reported by the registered organization.

11 (b) This Act shall not apply to—

12 (1) a communication (A) made at the request of a
13 Federal officer or employee, (B) submitted for inclusion
14 in a report or in response to a published notice of oppor-
15 tunity to comment on a proposed agency action, or (C)
16 submitted for inclusion in the record, public docket, or
17 public file of a hearing or agency proceeding;

18 (2) a communication or solicitation made through
19 a speech or address, through a newspaper, book, periodi-
20 cal, or magazine published for distribution to the general
21 public, or through a radio or television broadcast, or
22 through a regular publication of a voluntary membership
23 organization published in substantial part for purposes
24 unrelated to engaging in activities described in para-
25 graphs (1) and (2) of subsection 3(a): *Provided,*

1 That this exemption shall not apply to an organization
2 responsible for the purchase of a paid advertisement in
3 a newspaper, magazine, book, periodical, or other publi-
4 cation distributed to the general public, or of a paid radio
5 or television advertisement;

6 (3) a communication by an individual, acting
7 solely on his own behalf, for redress of his personal
8 grievances, or to express his personal opinion;

9 (4) practices or activities regulated by the Federal
10 Election Campaign Act of 1971;

11 (5) a communication on any subject directly
12 affecting any organization to a Member of the Sen-
13 ate or of the House of Representatives, or to an in-
14 dividual on the personal staff of such Member, if such
15 organization's principal place of business is located in the
16 State, or in the congressional district within the State,
17 represented by such Member, so long as (A) that
18 organization acts (i) on its own initiative and not at
19 the suggestion, request, or direction of any other person,
20 or (ii) in response to a communication or solicitation
21 described in paragraph (2), and (B) the expenditures
22 made therefor are not paid by any other person; or

23 (6) activities of the National Academy of Sciences
24 conducted under section 3 of the Act of March 3, 1863
25 (36 U.S.C. 253).

REGISTRATION

1

2 SEC. 4. (a) Each organization shall register with the
3 Comptroller General not later than fifteen days after en-
4 gaging in activities described in section 3 (a).

5 (b) The registration shall be in such form as the Comp-
6 troller General shall prescribe by regulation, and shall
7 contain the following, which shall be regarded as material
8 for the purposes of this Act—

9 (1) an identification of the organization and a gen-
10 eral description of the methods by which such organiza-
11 tion arrives at its position with respect to any issue,
12 except that nothing in this paragraph shall be construed
13 to require the disclosure of the identity of the members
14 of an organization; and

15 (2) an identification of any person retained under
16 section 3 (a) (1) and of any employee described in sec-
17 tion 3 (a) (2).

18 (c) A registration filed under subsection (a) in any
19 calendar year shall be effective until January 15 of the
20 succeeding calendar year. Each organization required to
21 register under subsection (a) shall file a new registration
22 under such subsection within fifteen days after the expira-
23 tion of the previous registration, unless such organization
24 has ceased to engage in activities described in section 3 (a).

1 RECORDS

2 SEC. 5. (a) Each organization required to be registered
3 and each person retained by such organization shall maintain
4 such records for each quarterly filing period as may be neces-
5 sary to enable such organization to file the registrations and
6 reports required to be filed under this Act. Such records shall
7 be maintained in accordance with regulations prescribed by
8 the Comptroller General. Any officer, director, employee, or
9 retained person of any organization shall provide to such
10 organization such information as may be necessary to enable
11 such organization to comply with the recordkeeping and re-
12 porting requirements of this Act. Any organization which
13 shall rely in good faith on the information provided by any
14 such officer, director, employee, or retained person shall be
15 deemed to have complied with this subsection.

16 (b) The records required by subsection (a) shall be
17 preserved for a period of not less than five years after the
18 close of the quarterly filing period to which such records
19 relate.

20 REPORTS

21 SEC. 6. (a) Each organization shall, not later than
22 thirty days after the last day of each quarterly filing period,
23 file a report with the Comptroller General concerning any
24 activities described in section 3 (a) which are engaged in by
25 such organization during such period. Each such report shall

1 be in such form as the Comptroller General shall prescribe
2 by regulation.

3 (b) Each report required under subsection (a) shall
4 contain the following, which shall be regarded as material
5 for the purposes of this Act—

6 (1) an identification of the organization filing such
7 report;

8 (2) the total expenditures which such organization
9 made with respect to activities described in section 3 (a)
10 during such period, including an itemized listing of each
11 expenditure in excess of \$25 made to or for the benefit
12 of any Federal officer or employee and an identification
13 of such officer or employee: *Provided*, That the Comp-
14 troller General shall refer to the Committee on Stand-
15 ards of Official Conduct for investigation of any ex-
16 penditures by an organization reportable under this
17 subsection to or for the benefit of any Federal officer or
18 employee (under the jurisdiction of said committee) that
19 exceed \$100 in value in the aggregate in any calendar
20 year to determine if the receipt of such expenditure is
21 an acceptance of a gift of substantial value, directly or
22 indirectly, from an organization having a direct interest
23 in legislation before the Congress as prohibited under
24 the Rules of the House of Representatives; but such
25 expenditures shall not include any contribution to a

1 candidate as defined in section 301 (e) of the Federal
2 Election Campaign Act of 1971 (2 U.S.C. 431 (e)),
3 or any loan made on terms and conditions that are no
4 more favorable than those available to the general public;

5 (3) a disclosure of those expenditures for any re-
6 ception, dinner, or other similar event paid for, in whole
7 or in part, by the reporting organization for Federal
8 officers or employees regardless of the number of persons
9 invited or in attendance, where the total cost of the
10 event exceeds \$500;

11 (4) an identification of any person retained by the
12 organization filing such report under section 3 (a) (1)
13 and of any employee described in section 3 (a) (2)
14 and the expenditures made pursuant to such retention or
15 employment, except that in reporting expenditures for
16 the employment or retention of such persons, the organi-
17 zation filing such report shall—

18 (A) allocate, in a manner acceptable to the
19 Comptroller General, and disclose that portion of the
20 retained or employed person's income which is paid
21 by the reporting organization and which is attribut-
22 able to engaging in such activities for the organiza-
23 tion filing such report; or

24 (B) notwithstanding any other provision of

1 law, any retained or employed person by the orga-
2 nization filing such report;

3 (5) a description of the primary issues concern-
4 ing which the organization filing such report engaged
5 in activities described in section 3 (a) and upon which
6 the organization spent a significant amount of its efforts;

7 (6) a description of solicitations made or paid for
8 by such organization, and the subject matter with which
9 such solicitations were concerned, where such solicita-
10 tions reached or could be reasonably expected to reach,
11 in identical or similar form, five hundred or more per-
12 sons, or twenty-five or more officers or directors, one
13 hundred or more employees, or twelve or more affiliates
14 of such organization, except that this paragraph may be
15 satisfied, with respect to a written solicitation, at the dis-
16 cretion of the reporting organization, by filing a copy
17 of such solicitation;

18 (7) disclosure of each known direct business con-
19 tact by the organization involved with a Federal officer
20 or employee whom such organization has sought to in-
21 fluence during the quarterly filing period involved; and

22 (8) an identification of—

23 (A) each organization from which the report-
24 ing organization received income during such period,
25 including the amount of income provided by the

1 organization, where the income was expended in
2 whole or in part to engage in activities described
3 in section 3 (a), if the amount of income received
4 from the organization has totaled \$2,500 or more
5 in amount or value during the calendar year; and
6 (B) each individual from whom the reporting
7 organization received income during such period,
8 including the amount of income provided by the
9 individual, where the income was expended in
10 whole or part to engage in activities described in
11 section 3 (a), if the amount of income received
12 from the individual and his immediate family has
13 totaled \$2,500 or more in amount or value during
14 the calendar year. This paragraph shall not apply
15 to any income received by the organization in the
16 form of a return on an investment by the organi-
17 zation or a return on the capital of the organization.

18 As used in paragraph (8), the term "income" means a gift,
19 donation, contribution, payment, loan, advance, service, sal-
20 ary, or other thing of value received, and a contract, promise,
21 or agreement, whether or not legally enforceable, to receive
22 any such item, but does not include the value of any volun-
23 tary services provided by individuals without compensation
24 from the organization.

25 (c) If an organization which is required to register

1 under this Act directs an affiliate which is not required to
2 register to engage in a solicitation relating to an issue with
3 respect to which such organization is engaging in any activity
4 described in section 3 (a), or reimburses such an affiliate
5 for expenses incurred in such a solicitation, then such orga-
6 nization must report such solicitation as if it were initiated,
7 or paid for, by such organization.

8 POWERS OF COMPTROLLER GENERAL

9 SEC. 7. (a) The Comptroller General, in carrying out
10 the provisions of this Act, is authorized—

11 (1) to informally request or to require by subpoena
12 any individual or organization to submit in writing such
13 reports, records, correspondence, and answers to ques-
14 tions as the Comptroller General may consider necessary
15 to carry out the provisions of this Act, within such
16 reasonable period of time and under oath or such other
17 conditions as the Comptroller General may require;

18 (2) to administer oaths or affirmations;

19 (3) to require by subpoena the attendance and testi-
20 mony of witnesses and the production of documentary
21 evidence;

22 (4) in any proceeding or investigation, to order
23 testimony to be taken by deposition before any person
24 designated by the Comptroller General who has the
25 power to administer oaths and to compel testimony and

1 the production of evidence in any such proceeding or
2 investigation in the same manner as authorized under
3 paragraph (3);

4 (5) to pay witnesses the same fees and mileage as
5 are paid in like circumstances in the courts of the United
6 States; and

7 (6) to petition any United States district court
8 having jurisdiction for an order to enforce subpoenas
9 issued pursuant to paragraphs (1), (3), and (4) of
10 this subsection.

11 (b) No individual or organization shall be civilly liable
12 in any private suit brought by any other person for disclos-
13 ing information at the request of the Comptroller General
14 under this Act.

15 DUTIES OF THE COMPTROLLER GENERAL.

16 SEC. 8. (a) It shall be the duty of the Comptroller
17 General—

18 (1) to develop filing, coding, and cross-indexing
19 systems to carry out the purposes of this Act, including
20 (A) a cross-indexing system which, for any person iden-
21 tified in any registration or report filed under this Act,
22 discloses each organization identifying such person in
23 any such registration or report, and (B) a cross-index-
24 ing system, to be developed in cooperation with the Fed-
25 eral Election Commission, which discloses for any such

1 person each identification of such person in any report
2 filed under section 304 of the Federal Election Cam-
3 paign Act of 1971 (2 U.S.C. 434) ;

4 (2) to make copies of each registration and report
5 filed with him under this Act available for public in-
6 spection and copying, commencing as soon as practi-
7 cable after the date on which the registration or report
8 involved is received, but not later than the end of the
9 fifth working day following such date, and to permit
10 copying of such registration or report by hand or by
11 copying machine or, at the request of any individual
12 or organization, to furnish a copy of any such registra-
13 tion or report upon payment of the cost of making and
14 furnishing such copy; but no information contained in
15 any such registration or report shall be sold or utilized
16 by any individual or organization for the purpose of
17 soliciting contributions or business;

18 (3) to preserve the originals or accurate reproduc-
19 tions of such registrations and reports for a period of not
20 less than five years from the date on which the regis-
21 tration or report is received;

22 (4) to compile and summarize, with respect to each
23 quarterly filing period, the information contained in
24 registrations and reports filed during such period in a
25 manner which clearly presents the extent and nature of

1 the activities described in section 3 (a) which are en-
2 gaged in during such period;

3 (5) to make the information compiled and sum-
4 marized under paragraph (4) available to the public
5 within sixty days after the close of each quarterly filing
6 period, and to publish such information in the Federal
7 Register at the earliest practicable opportunity;

8 (6) to conduct investigations with respect to any
9 registration or report filed under this Act, with respect
10 to alleged failures to file any registration or report re-
11 quired under this Act, and with respect to alleged viola-
12 tions of any provision of this Act; and

13 (7) to prescribe such procedural rules and regula-
14 tions, and such forms as may be necessary to carry out
15 the provisions of this Act in an effective and efficient
16 manner.

17 (b) For purposes of this Act, the duties of the Comp-
18 troller General described in subsections (a) (6) and (a)
19 (7) of this section shall be carried out in conformity with
20 chapter 5 of title 5, United States Code, and any records
21 maintained by the Comptroller General under this Act shall
22 be subject to the provisions of sections 552 and 552a of
23 title 5.

ADVISORY OPINIONS

1

2 SEC. 9. (a) Upon written request to the Comptroller
3 General by any individual or organization, the Comptroller
4 General shall, within a reasonable time, render a written
5 advisory opinion with respect to the applicability of the
6 recordkeeping, registration, or reporting requirements of this
7 Act to any specific set of facts involving such individual
8 or organization, or other individuals or organizations simi-
9 larly situated.

10 (6) Notwithstanding any other provision of law, any
11 individual or organization with respect to whom an advisory
12 opinion is rendered under subsection (a) who acts in good
13 faith in accordance with the provisions and findings of such
14 advisory opinion shall be presumed to be in compliance with
15 the provisions of this Act to which such advisory opinion
16 relates. The Comptroller General may modify or revoke
17 any such advisory opinion, but any modification or revoca-
18 tion shall be effective only with respect to action taken after
19 such individual or organization has been notified, in writing,
20 of such modification or revocation.

21 (c) All requests for advisory opinions, all advisory
22 opinions, and all modifications or revocations of advisory
23 opinions shall be published by the Comptroller General in
24 the Federal Register.

1 (d) The Comptroller General shall, before rendering an
2 advisory opinion under this section, provide any interested
3 individual or organization with an opportunity, within such
4 reasonable period of time as the Comptroller General may
5 provide, to transmit written comments to the Comptroller
6 General with respect to such advisory opinion.

7 (e) Any individual or organization who has received
8 and is aggrieved by any advisory opinion from the Comp-
9 troller General may file a declaratory action in the United
10 States district court for the district in which such individual
11 resides or such organization maintains its principal place of
12 business.

13

ENFORCEMENT

14 SEC. 10. (a) If the Comptroller General has reason to
15 believe that any individual or organization has violated
16 any provision of this Act, the Comptroller General shall
17 notify such individual or organization of such apparent
18 violation, unless the Comptroller General determines that
19 such notice would interfere with effective enforcement of this
20 Act, and shall make such investigation of such apparent
21 violation as the Comptroller General considers appropriate.
22 Any such investigation shall be conducted expeditiously,
23 and with due regard for the rights and privacy of the indi-
24 vidual or organization involved.

25 (b) If the Comptroller General determines, after any

1 investigation under subsection (a), that there is reason to
2 believe that any individual or organization has engaged
3 in any acts or practices which constitute a civil violation of
4 this Act, he shall endeavor to correct such violation—

5 (1) by informal methods of conference or concilia-
6 tion; or

7 (2) if such methods fail, by referring such appar-
8 ent violation to the Attorney General.

9 (c) Upon a referral by the Comptroller General pur-
10 suant to subsection (b) (2), the Attorney General may
11 institute a civil action for relief, including a permanent or
12 temporary injunction, restraining order, or any other appro-
13 priate relief in the United States district court for the
14 district in which such individual or organization is found,
15 resides, or transacts business. The Attorney General shall
16 transmit a report to the Comptroller General describing any
17 action taken by the Attorney General regarding the appar-
18 ent violation involved.

19 (d) The Comptroller General shall refer apparent crim-
20 inal violations of this Act to the Attorney General. In any
21 case in which the Comptroller General refers such an appar-
22 ent violation to the Attorney General, the Attorney General
23 shall act upon such referral in as expeditious a manner as
24 possible, and shall transmit a report to the Comptroller

1 General describing any action taken by the Attorney General
2 regarding such apparent violation.

3 (e) The reports required by subsections (c) and (d)
4 shall be transmitted not later than sixty days after the date
5 the Comptroller General refers the apparent violation in-
6 volved, and at the close of every ninety-day period there-
7 after until there is final disposition of such apparent violation.

8 REPORTS BY THE COMPTROLLER GENERAL

9 SEC. 11. The Comptroller General shall transmit reports
10 to the President of the United States and to each House of
11 the Congress no later than March 31 of each year. Each
12 such report shall contain a detailed statement with respect
13 to the activities of the Comptroller General in carrying out
14 his duties and functions under this Act, together with recom-
15 mendations for such legislative or other action as the Comp-
16 troller General considers appropriate.

17 CONGRESSIONAL DISAPPROVAL OF REGULATIONS

18 SEC. 12. (a) Upon proposing to place any regulation in
19 effect under section 4, 5, or 6, the Comptroller General shall
20 transmit notice of such regulation to the Congress. The Comp-
21 troller General may place such regulation in effect as pro-
22 posed at any time after the expiration of ninety calendar days
23 of continuous session after the date on which such notice is
24 transmitted to the Congress unless, before the expiration of

1 such ninety days, either House of the Congress adopts a
2 resolution disapproving such regulation.

3 (b) For purposes of this section—

4 (1) continuity of session of the Congress is broken
5 only by an adjournment sine die; and

6 (2) the days on which either House is not in session
7 because of an adjournment of more than three days to a
8 day certain shall be excluded in the computation of the
9 ninety calendar days referred to in subsection (a).

10 SANCTIONS

11 SEC. 13. (a) Any individual or organization knowingly
12 violating section 4, 5, or 6 of this Act, or the regulations
13 promulgated thereunder, shall be subject to a civil penalty of
14 not more than \$5,000 for each such violation.

15 (b) Any individual or organization who knowingly and
16 willfully violates section 4, 5, or 6 of this Act, or the regula-
17 tions promulgated thereunder, or who, in any statement re-
18 quired to be filed, furnished or maintained pursuant to this
19 Act, knowingly and willfully makes any false statement of a
20 material fact, omits any material fact required to be dis-
21 closed, or omits any material fact necessary to make state-
22 ments made not misleading, shall be fined not more than
23 \$10,000 or imprisoned for not more than two years, or both,
24 for each such violation.

1 (c) Any individual or organization knowingly and will-
2 fully failing to provide or falsifying all or part of any
3 records required to be furnished to an employing or retaining
4 organization in violation of section 5 (a) shall be fined not
5 more than \$10,000, or imprisoned for not more than two
6 years, or both.

7 (d) Any individual or organization selling or utilizing
8 information contained in any registration or report in vio-
9 lation of section 8 (a) (2) of this Act shall be subject to a
10 civil penalty of not more than \$10,000.

11 REPEAL OF FEDERAL REGULATION OF LOBBYING ACT

12 SEC. 14. The Federal Regulation of Lobbying Act
13 (2 U.S.C. 261 et seq.), and that part of the table of con-
14 tents of the Legislative Reorganization Act of 1946 which
15 pertains to title III thereof, are repealed.

16 SEPARABILITY

17 SEC. 15. If any provision of this Act, or the application
18 thereof, is held invalid, the validity of the remainder of this
19 Act and the application of such provision to other persons
20 and circumstances shall not be affected thereby.

21 AUTHORIZATION OF APPROPRIATIONS

22 SEC. 16. There are authorized to be appropriated such
23 sums as may be necessary to carry out this Act.

EFFECTIVE DATES

1

2 SEC. 17. (a) Except as provided in subsection (b), the
3 provisions of this Act shall take effect on the date of
4 enactment.

5 (b) The authority of the Comptroller General to pre-
6 scribe regulations under sections 4, 5, and 6 shall take
7 effect on the date of the enactment of this Act. The remain-
8 ing provisions of sections 4, 5, and 6 and the provisions of
9 sections 10, 13, and 14 shall take effect on the first day
10 of the first calendar quarter beginning after the date on
11 which, in accordance with section 12, the first regulations so
12 prescribed take effect.

1 of the organizations maintains actual control or has
2 the right of potential control of all or a part of the
3 activities of the other organization;

4 (B) units of a particular denomination of a
5 church or of a convention or association of churches;
6 or

7 (C) national membership organizations and
8 their State and local membership organizations or
9 units, national trade associations and their State and
10 local trade associations, national business leagues
11 and their State and local business leagues, national
12 federations of labor organizations and their State
13 and local federations, and national labor organiza-
14 tions and their State and local labor organizations.

15 (2) The term "chief executive officer" means the
16 individual charged with ultimate managerial responsi-
17 bility for the conduct of an organization's affairs.

18 (3) The term "Comptroller General" means the
19 Comptroller General of the United States.

20 (4) The term "exempt travel expenses" means
21 any sum expended by any organization in payment or
22 reimbursement of the cost of any transportation for any
23 agent, employee, or other person engaging in activities
24 described in section 3 (a), plus such amount of any sum
25 received by such agent, employee, or other person as

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1 a per diem allowance for each day as is not in excess
2 of \$75.

3 (5) The term "expenditure" means—

4 (A) a payment, distribution (other than nor-
5 mal dividends and interest), salary, loan, advance,
6 deposit, or gift of money or other thing of value,
7 other than exempt travel expenses, made—

8 (i) to or on behalf of a Federal officer or
9 employee; or

10 (ii) for mailing, printing, advertising, tele-
11 phones, consultant fees, salary, or the like which
12 are attributable to activities described in section
13 3 (a), and for costs attributable partly to activi-
14 ties described in section 3 (a) where such costs,
15 with reasonable preciseness and ease, may be
16 directly allocated to those activities; or

17 (B) a contract, promise, or agreement, whether
18 or not legally enforceable, to make, disburse, or
19 furnish any item referred to in subparagraph (A).

20 (6) The term "Federal officer or employee"
21 means—

22 (A) any Member of the Senate or the House
23 of Representatives, any Delegate to the House of
24 Representatives, and the Resident Commissioner in
25 the House of Representatives;

1 (B) any officer or employee of the Senate or
2 the House of Representatives or any employee of
3 any Member, committee, or officer of the Congress;
4 and

5 (C) any officer of the executive branch of the
6 Government listed in sections 5312 through 5316
7 of title 5, United States Code, or holding a position
8 within the scope of the General Schedule for grades
9 15 and above (5 U.S.C. 5332) or holding a com-
10 mission within the scope of pay grade O-6 and above
11 (37 U.S.C. 1009), or whose principal responsibility
12 or job description includes the drafting, revising or
13 letting of Government contracts.

14 (7) The term "Government contract" means a
15 contract awarded by the United States involving an
16 obligation of \$1,000,000 or more, other than a contract
17 which would not be required to be disclosed under sec-
18 tion 552 of title 5, United States Code, by reason of the
19 exemption contained in subsection (b) (1) of such
20 section.

21 (8) The term "issue" means the whole or any part,
22 portion, or element of, or any amendment to or revision
23 of, any bill, resolution, treaty, nomination, hearing,
24 report, investigation (excluding civil or criminal in-
25 vestigations or prosecutions by the Attorney General and

1 any investigation by the Comptroller General authorized
2 by the provisions of this Act), rule (as defined in sec-
3 tion 551 (4) of title 5, United States Code), rulemaking
4 (as defined in section 551 (5) of title 5, United States
5 Code) or a Government contract (excluding the sub-
6 mission of bids).

7 (9) The term "identification" means—

8 (A) in the case of an individual, the name,
9 occupation, and business address of the individual
10 and the position held in such business; and

11 (B) in the case of an organization, the name
12 and address of the organization, the principal place
13 of business of the organization, the nature of its
14 business or activities, and the names of the execu-
15 tive officers and the directors of the organization,
16 regardless of whether such officers or directors are
17 paid.

18 (10) The term "lobbying communication" means
19 an oral or written communication directed to a Federal
20 officer or employee to influence the content or disposi-
21 tion of any issue.

22 (11) The term "lobbying solicitation" means any
23 oral or written communication urging, requesting, or
24 requiring another person to make a lobbying communica-
25 tion, but does not mean such oral or written communica-

1 tions by one organization registered under this Act to
2 another organization registered under this Act.

3 (12) The term "organization" includes any corpora-
4 tion, company, foundation, association, labor organiza-
5 tion, firm, partnership, society, joint stock company,
6 national organization of State or local elected or ap-
7 pointed officials (excluding any Federal, State, or local
8 unit of government or Indian tribe, any national or State
9 political party and any organizational unit thereof, and
10 excluding any association comprised solely of Members
11 of Congress or congressional employees), group of
12 organizations, or group of individuals, which has paid
13 officers, directors, or employees.

14 (13) The term "principal operating officers" means
15 the individuals (A) who are employed by an organiza-
16 tion on a full-time basis charged with managerial respon-
17 sibility for the conduct of the organization's affairs and
18 who report directly to the organization's chief executive
19 officer, or (B) who are members of the organization's
20 highest managerial policymaking body.

21 (14) The term "quarterly filing period" means any
22 calendar quarter beginning on January 1, April 1,
23 July 1, or October 1.

24 (15) The term "State" means any of the several
25 States, the District of Columbia, the Commonwealth of

1 Puerto Rico, the Virgin Islands, Guam, American Sa-
2 moa, and the Trust Territory of the Pacific Islands.

3 APPLICABILITY OF ACT

4 SEC. 3. (a) The provisions of the Act shall apply to
5 any organization—

6 (1) which makes expenditures in excess of \$1,250
7 in any quarterly filing period to retain another person,
8 to make a lobbying communication or solicitation or for
9 the express purpose of preparing or drafting any such
10 communication; or

11 (2) which employs (A) at least one individual
12 who spends thirty or more hours in any quarterly filing
13 period making lobbying communications or solicitations
14 on behalf of the organization or its members or (B) at
15 least two or more individuals, each of whom spends
16 fifteen or more hours in any such period making lobby-
17 ing communications or solicitations on behalf of the
18 organization or its members,

19 except that this Act shall not apply to an affiliate of a regis-
20 tered organization if such affiliate engages in activities
21 described in section 3(a) and such activities are reported
22 by the registered organization. In computing for purposes
23 of paragraph (2) the hours spent, the computation shall
24 operate prospectively after the position of the organization
25 has been decided, and shall apply to that employee or those

1 employees assigned the responsibility of making the lobbying
2 communication or solicitation which would implement the
3 decision, and shall include only the implementing activities
4 of those employees.

5 (b) This Act shall not apply to—

6 (1) a communication (A) made at the request of a
7 Federal officer or employee, (B) submitted for inclusion
8 in a report or in response to a published notice of oppor-
9 tunity to comment on a proposed agency action, or (C)
10 submitted for inclusion in the record, public docket, or
11 public file of a hearing or agency proceeding;

12 (2) a communication or solicitation made through
13 a speech or address, through a newspaper, book, periodi-
14 cal, or magazine published for distribution to the general
15 public, through a radio or television broadcast, or
16 through a regular publication of a membership or-
17 ganization published in substantial part for purposes un-
18 related to engaging in activities described in subsection

19 (a) : *Provided*, That this exemption shall not apply to
20 an organization responsible for the purchase of a paid
21 advertisement in a newspaper, magazine, book, periodi-
22 cal, or other publication distributed to the general public,
23 or of a paid radio or television advertisement;

24 (3) a communication by an individual, acting solely
25 on his own behalf, for redress of his personal grievances,

1 or to express his personal opinion (including any com-
2 munication made on organization's stationery, so long as
3 it does not purport to represent the position of the orga-
4 nization and was not requested by the organization) ;

5 (4) practices or activities regulated by the Federal
6 Election Campaign Act of 1971; or

7 (5) a communication on any subject directly affect-
8 ing any organization to a Member of the Senate or of the
9 House of Representatives, or to an individual on the
10 personal staff of such Member, if such organization's
11 principal place of business is located in the State, or in
12 the congressional district within the State, represented
13 by such Member, so long as (A) that organization (i)
14 acts on its own initiative and not at the request or direc-
15 tion of any other person, or (ii) in response to a com-
16 munication or solicitation described in paragraph (2),
17 and (B) the expenditures made therefor are not paid by
18 any other person.

19 **REGISTRATION**

20 **SEC. 4. (a)** Each organization shall register with
21 the Comptroller General not later than fifteen days after
22 engaging in activities described in section 3 (a).

23 (b) The registration shall be in such form as the Comp-
24 troller General shall prescribe by regulation, and shall

1 contain the following, which shall be regarded as material
2 for the purposes of this Act—

3 (1) an identification of the organization and a gen-
4 eral description of the methods by which such organiza-
5 tion arrives at its position with respect to any issue,
6 except that nothing in this paragraph shall be construed
7 to require the disclosure of the identity of the members
8 of an organization;

9 (2) an identification of any person employed or
10 retained under section 3 (a) ; and

11 (3) an identification of each organization or indi-
12 vidual from which the registered organization receives
13 income during the year preceding the year in which the
14 registration is filed and, if the amount received from such
15 organization or individual was \$3,000 or more in amount
16 or value during such period and was expended in whole
17 or in part by the registering organization for activities
18 described in section 3 (a), the amount of income provided
19 by such organization or individual stated in the following
20 categories: (A) amounts equal to or exceeding \$3,000,
21 but less than \$10,000; (B) amounts equal to or exceed-
22 ing \$10,000, but less than \$25,000; (C) amounts equal
23 to or exceeding \$25,000, but less than \$50,000; and
24 (D) amounts equal to or exceeding \$50,000.

25 (c) A registration filed under subsection (a) in any

1 calendar year shall be effective until January 15 of the
2 succeeding calendar year. Each organization required to
3 register under subsection (a) shall file a new registration
4 under such subsection within fifteen days after the expira-
5 tion of the previous registration, unless such organization
6 has ceased to engage in activities described in section 3 (a).

7 (d) The Comptroller General may, through the issuance
8 of an advisory opinion pursuant to section 9, waive the
9 requirements of subsection (b) (3) of this section, as to
10 contributions by an individual or organization that are equal
11 to less than 5 per centum of the organization's total annual
12 expenditures, if such organization demonstrates that disclo-
13 sure of such contributions would violate the privacy of the
14 contributor's religious beliefs or would otherwise impose an
15 undue hardship or harassment upon the contributor.

16

RECORDS

17 SEC. 5. (a) Each organization required to be registered
18 and each person retained by such organization shall maintain
19 such records for each quarterly filing period as may be neces-
20 sary to enable such organization to file the registrations and
21 reports required to be filed under this Act. Such records shall
22 be maintained in accordance with regulations prescribed by
23 the Comptroller General. Any officer, director, employee, or
24 retained person of any organization shall provide to such
25 organization such information as may be necessary to enable

1 such organization to comply with the recordkeeping and re-
2 porting requirements of this Act. Any organization which
3 shall rely in good faith on the information provided by any
4 such officer, director, employee, or retained person shall be
5 deemed to have complied with this subsection.

6 (b) The records required by subsection (a) shall be
7 preserved for a period of not less than five years after the
8 close of the quarterly filing period to which such records
9 relate.

10

REPORTS

11 SEC. 6. (a) Each organization shall, not later than
12 thirty days after the last day of each quarterly filing period,
13 file a report with the Comptroller General concerning any
14 activities described in section 3 (a) which are engaged in by
15 such organization during such period. Each such report shall
16 be in such form as the Comptroller General shall prescribe
17 by regulation.

18 (b) Each report required under subsection (a) shall
19 contain the following, which shall be regarded as material
20 for the purposes of this Act—

21 (1) an identification of the organization filing such
22 report;

23 (2) a disclosure of the total expenditures which
24 such organization made with respect to activities de-
25 scribed in section 3 (a) during such period, including

1 an itemized listing of each expenditure in excess of \$35
2 made to or for the benefit of any Federal officer or
3 employec and an identification of each such officer or
4 employec;

5 (3) a disclosure of those expenditures for any
6 reception, dinner or other similar event paid for, in
7 whole or in part, by the reporting organization for
8 Federal officers or employecs regardless of the number
9 of persons invited or in attendance, where the total cost
10 of the event exceeds \$500;

11 (4) an identification of any person employed or
12 retained for the purposes described in section 3 (a) and
13 a disclosure of the total expenditures made pursuant to
14 such employment or retention;

15 (5) as to any person identified under paragraph
16 (4), a description of each issue as to which that person
17 engaged in section 3 (a) activities on behalf of the orga-
18 nization;

19 (6) an identification of any chief executive officer
20 or principal operating officer who engaged in activities
21 described in section 3 (a), and, in the event that a
22 principal operating officer spends more than fifteen hours
23 on lobbying communications or solicitations, regardless
24 of whether he was compensated for such activities, the

1 organization shall identify each issue with which that
2 officer was concerned; and

3 (7) a description of any solicitation made or paid
4 for by such organization, and the subject matter with
5 which such solicitation was concerned, where such solicitation reached or could be reasonably expected to
6 reach, in identical or similar form, five hundred or more
7 persons, or twenty-five or more officers or directors,
8 one hundred or more employees, or twelve or more
9 affiliates of such organization, except that this para-
10 graph may be satisfied, with respect to a written solicitation, at the discretion of the reporting organization,
11 by filing a copy of such solicitation.

12 (c) Wherever an organization is required under this
13 section to describe an issue before Congress or the executive
14 branch the report shall include, where feasible, the bill number or other identifying number, and, in the case of any issue
15 involving communications with the executive branch, the
16 agency with which the organization communicated, and shall
17 be made in such detail as shall disclose the general subject
18 matter which is of interest to the organization and the general
19 position of the organization on such matter.

20 **POWERS OF COMPTROLLER GENERAL**

21 **SEC. 7. (a)** The Comptroller General, in carrying out
22 the provisions of this Act, is authorized—

1 (1) to informally request or to require by subpoena
2 any individual or organization to submit in writing such
3 reports, records, correspondence, and answers to ques-
4 tions as the Comptroller General may consider necessary
5 to carry out the provisions of this Act, within such
6 reasonable period of time and under oath or such other
7 conditions as the Comptroller General may require;

8 (2) to administer oaths or affirmations;

9 (3) to require by subpoena the attendance and testi-
10 mony of witnesses and the production of documentary
11 evidence;

12 (4) in any proceeding or investigation, to order
13 testimony to be taken by deposition before any person
14 designated by the Comptroller General who has the
15 power to administer oaths and to compel testimony and
16 the production of evidence in any such proceeding or
17 investigation in the same manner as authorized under
18 paragraph (3);

19 (5) to pay witnesses the same fees and mileage as
20 are paid in like circumstances in the courts of the United
21 States; and

22 (6) to petition any United States district court
23 having jurisdiction for an order to enforce subpoenas
24 issued pursuant to paragraphs (1), (3), and (4) of
25 this subsection.

1 (b) No individual or organization shall be civilly liable
2 in any private suit brought by any other person for disclos-
3 ing information at the request of the Comptroller General
4 under this Act.

5 **DUTIES OF THE COMPTROLLER GENERAL**

6 **SEC. 8. (a)** It shall be the duty of the Comptroller
7 General—

8 (1) to develop filing, coding, and cross-indexing
9 systems to carry out the purposes of this Act, including
10 but not limited to (A) a cross-indexing system which,
11 for any person identified in any registration or report
12 filed under this Act, other than those identified in section
13 4(b) (3), discloses (i) each organization identifying
14 such person in any such registration or report and (ii)
15 for any such person retained by two or more registered
16 organizations to make lobbying communications or solici-
17 tations, the information concerning such person stated by
18 such organization in sections 6(b) (4) and 6(b) (5) of
19 their reports; and (B) a cross-indexing system to be
20 developed in cooperation with the Federal Election Com-
21 mission which discloses for any person identified in any
22 registration or report filed under this Act, other than
23 those identified in section 4(b) (3), each identification
24 of such person in any report filed under section 304 of
25 the Federal Election Campaign Act of 1971 (2 U.S.C.

1 434), including the amounts and recipients of any cam-
2 paign contributions made by such person;

3 (2) to make copies of each registration and report
4 filed with him under this Act available for public in-
5 spection and copying, commencing as soon as practi-
6 cable after the date on which the registration or report
7 involved is received, but not later than the end of the
8 fifth working day following such date, and to permit
9 copying of such registration or report by hand or by
10 copying machine or, at the request of any individual
11 or organization, to furnish a copy of any such registra-
12 tion or report upon payment of the cost of making and
13 furnishing such copy; but no information contained in
14 any such registration or report shall be sold or utilized
15 by any individual or organization for the purpose of
16 soliciting contributions or business;

17 (3) to preserve the originals or accurate reproduc-
18 tions of such registrations and reports for a period of not
19 less than five years from the date on which the regis-
20 tration or report is received;

21 (4) to compile and summarize, with respect to each
22 quarterly filing period, the information contained in
23 registrations and reports filed during such period in a
24 manner which clearly presents the extent and nature of

1 the activities described in section 3 (a) which are
2 engaged in during such period;

3 (5) to make the information compiled and sum-
4 marized under paragraph (4) available to the public
5 within sixty days after the close of each quarterly filing
6 period, and to publish such information in the Federal
7 Register at the earliest practicable opportunity;

8 (6) to conduct investigations with respect to any
9 registration or report filed under this Act, with respect
10 to alleged failures to file any registration or report re-
11 quired under this Act, and with respect to alleged viola-
12 tions of any provision of this Act; and

13 (7) to prescribe such procedural rules and regula-
14 tions, and such forms as may be necessary to carry out
15 the provisions of this Act in an effective and efficient
16 manner.

17 (b) For purposes of this Act, the duties of the Comp-
18 troller General described in subsections (a) (6) and (a)
19 (7) of this section shall be carried out in conformity with
20 chapter 5 of title 5, United States Code, and any records
21 maintained by the Comptroller General under this Act shall
22 be subject to the provisions of sections 552 and 552a of such
23 title. The Comptroller General shall withhold from public dis-
24 closure, upon petition by any person, any information other-
25 wise required to be disclosed to the public pursuant to this

1 Act, upon a showing that disclosure of the information may
2 reasonably be expected to lead to the harassment of any per-
3 son, or lead to threats or reprisals against any person.

4 ADVISORY OPINIONS

5 SEC. 9. (a) Upon written request to the Comptroller
6 General by any individual or organization, the Comptroller
7 General shall, within a reasonable time, render a written
8 advisory opinion with respect to the applicability of the
9 recordkeeping, registration, or reporting requirements of this
10 Act to any specific set of facts involving such individual
11 or organization.

12 (b) Notwithstanding any other provision of law, any
13 individual or organization with respect to whom an advisory
14 opinion is rendered under subsection (a) who acts in good
15 faith in accordance with the provisions and findings of such
16 advisory opinion shall be presumed to be in compliance with
17 the provisions of this Act to which such advisory opinion
18 relates. The Comptroller General may modify or revoke
19 any such advisory opinion, but any modification or revoca-
20 tion shall be effective only with respect to action taken after
21 such individual or organization has been notified, in writing,
22 of such modification or revocation.

23 (c) All requests for advisory opinions, all advisory
24 opinions, and all modifications or revocations of advisory

1 opinions shall be published by the Comptroller General in
2 the Federal Register.

3 (d) The Comptroller General shall, before rendering an
4 advisory opinion under this section, provide any interested
5 individual or organization with an opportunity, within such
6 reasonable period of time as the Comptroller General may
7 provide, to transmit written comments to the Comptroller
8 General with respect to such advisory opinion.

9 (e) Any individual or organization who has received
10 and is aggrieved by any advisory opinion from the Com-
11 troller General may file a declaratory action in the United
12 States district court for the district in which such individual
13 resides or such organization maintains its principal place of
14 business.

15 ENFORCEMENT

16 SEC. 10. (a) If the Comptroller General has reason to
17 believe that any individual or organization has violated
18 any provision of this Act, the Comptroller General shall
19 notify such individual or organization of such apparent
20 violation, unless the Comptroller General determines that
21 such notice would interfere with effective enforcement of this
22 Act, and shall make such investigation of such apparent
23 violation as the Comptroller General considers appropriate.
24 Any such investigation shall be conducted expeditiously,

1 and with due regard for the rights and privacy of the indi-
2 vidual or organization involved.

3 (b) If the Comptroller General determines, after any
4 investigation under subsection (a), that there is reason to
5 believe that any individual or organization has engaged
6 in any acts or practices which constitute a civil violation
7 of this Act, he shall endeavor to correct such violation—

8 (1) by informal methods of conference or con-
9 ciliation; or

10 (2) if such methods fail, by referring such appar-
11 ent violation to the Attorney General.

12 (c) Upon a referral by the Comptroller General pur-
13 suant to subsection (b) (2), the Attorney General may
14 institute a civil action for relief, including a permanent or
15 temporary injunction, restraining order, or any other appro-
16 priate relief in the United States district court for the
17 district in which such individual or organization is found,
18 resides, or transacts business. The Attorney General shall
19 transmit a report to the Comptroller General describing any
20 action taken by the Attorney General regarding the appar-
21 ent violation involved.

22 (d) The Comptroller General shall refer apparent crim-
23 inal violations of this Act to the Attorney General. In any
24 case in which the Comptroller General refers such an appar-

1 ent violation to the Attorney General, the Attorney General
2 shall act upon such referral in as expeditious a manner as
3 possible, and shall transmit a report to the Comptroller
4 General describing any action taken by the Attorney General
5 regarding such apparent violation.

6 (e) The reports required by subsections (c) and (d)
7 shall be transmitted not later than sixty days after the date
8 the Comptroller General refers the apparent violation in-
9 volved, and at the close of every ninety-day period there-
10 after until there is final disposition of such apparent violation.

11 REPORTS BY THE COMPTROLLER GENERAL

12 SEC. 11. The Comptroller General shall transmit reports
13 to the President of the United States and to each House of
14 the Congress no later than March 31 of each year. Each
15 such report shall contain a detailed statement with respect
16 to the activities of the Comptroller General in carrying out
17 his duties and functions under this Act, together with recom-
18 mendations for such legislative or other action as the Comp-
19 troller General considers appropriate.

20 SANCTIONS

21 SEC. 12. (a) Any individual or organization violating
22 section 4, 5, or 6 of this Act, or the regulations promulgated
23 thereunder, shall be subject to a civil penalty of not more
24 than \$5,000 for each such violation.

25 (b) Any individual or organization who knowingly and

1 willfully violates section 4, 5, or 6 of this Act, or the regula-
2 tions promulgated thereunder, or who, in any statement re-
3 quired to be filed, furnished or maintained pursuant to this
4 Act, knowingly and willfully makes any false statement of a
5 material fact, omits any material fact required to be dis-
6 closed, or omits any material fact necessary to make state-
7 ments made not misleading, shall be fined not more than
8 \$10,000 or imprisoned for not more than one year, or both,
9 for each such violation.

10 (c) Any individual or organization knowingly and will-
11 fully failing to provide or falsifying all or part of any
12 records required to be furnished to an employing or retaining
13 organization in violation of section 5 (a) shall be fined not
14 more than \$10,000, or imprisoned for not more than one
15 year, or both.

16 (d) Any individual or organization selling or utilizing
17 information contained in any registration or report in vio-
18 lation of section 8 (a) (2) of this Act shall be subject to a
19 civil penalty of not more than \$10,000.

20 REPEAL OF FEDERAL REGULATION OF LOBBYING ACT

21 SEC. 13. The Federal Regulation of Lobbying Act
22 (2 U.S.C. 261 et seq.), and that part of the table of con-
23 tents of the Legislative Reorganization Act of 1946 which
24 pertains to title III thereof, are repealed.

1 **AUTHORIZATION OF APPROPRIATIONS**

2 **SEC. 14.** There are authorized to be appropriated such
3 sums as may be necessary to carry out this Act.

4 **EFFECTIVE DATES**

5 **SEC. 15. (a)** Except as provided in subsection (b), the
6 provisions of this Act shall take effect ninety days after the
7 date of enactment.

8 (b) Paragraph (7) of section 8 (a) shall take effect on
9 the date of enactment of this Act.

[The bills, H.R. 6800 by Mr. Whalen, and H.R. 6866, H.R. 6867, H.R. 6868, H.R. 7059, H.R. 7368, H.R. 7584, H.R. 7751, H.R. 7985 by Mr. Railsback, et al., which are identical to H.R. 5795, set out above, were also before the subcommittee.]

95TH CONGRESS
1ST SESSION

H. R. 5578

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1977

Mr. EDWARDS of California introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To regulate lobbying, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Lobbying Disclosure Act
4 of 1977".

FINDINGS AND PURPOSES

5
6 SEC. 2. (a) The Congress finds—
7 (1) that the enhancement of responsible represent-
8 ative government requires that the fullest opportunity
9 be afforded to the people of the United States to ex-
10 ercise their constitutional right to petition their Govern-
11 ment for a redress of grievances, to express their

1 opinions freely to their Government, and to provide
2 information to their Government; and

3 (2) that the identity and extent of the activities
4 of organizations which pay others, or engage on their
5 own behalf, in efforts to influence members of Congress
6 on issues through direct communications should be
7 publicly and timely disclosed in order to provide the
8 Congress and the public with an understanding of the
9 nature and source of such activities.

10 (b) It is the purpose of this Act to provide for the dis-
11 closure to the Congress and to all members of the public of
12 such efforts without interfering with the right to petition
13 the Government for a redress of grievances, and with other
14 constitutional rights.

15 DEFINITION

16 SEC. 3. As used in this Act—

17 (1) The term "affiliate" means organizations which
18 are associated with each other through a formal rela-
19 tionship based upon ownership or an agreement (in-
20 cluding a charter, franchise agreement, or bylaws) un-
21 der which (A) the governing instrument of one such
22 organization requires it to be bound by decisions of the
23 other organization on legislative issues, or (B) the
24 governing board of one such organization includes per-
25 sons who—

1 (i) are specifically designated representatives
2 of another such organization or are members of the
3 governing board, officers, or paid executive staff
4 members of such other organization, and

5 (ii) by aggregating their votes, have sufficient
6 voting power to cause or prevent action on legisla-
7 tive issues by the first such organization.

8 (2) The term "Comptroller General" means the
9 Comptroller General of the United States.

10 (3) The term "Director" means, with respect to
11 an organization other than a partnership, an individual
12 who is a member of a body containing fewer members
13 than the organization itself which constitutes the gov-
14 erning board of such organization, and, with respect to
15 a partnership, an individual who is a partner.

16 (4) The term "expenditure" means—

17 (A) a payment, distribution (other than nor-
18 mal dividends and interest), salary, loan, advance,
19 deposit, or gift of money or other thing of value in-
20 cluding the costs of mailing, printing, advertising,
21 telephones, consultant fees, or the like, made to or
22 by any person described in section 4 (a), but not
23 including—

24 (i) exempt travel expenses; or

25 (ii) the cost of general operating overhead

1 such as the costs of office equipment, basic util-
2 ities, and monthly rental or mortgage payments;

3 (B) a contract, promise, or agreement,
4 whether or not legally enforceable, to make, dis-
5 burse, or furnish any item referred to in subpara-
6 graph (A).

7 (5) The term "exempt travel expenses" means
8 any sum expended by any organization in payment or
9 reimbursement of the cost of any transportation for any
10 agent, employee, or other person plus such amount of
11 any sum received by such agent, employee, or other
12 person as a per diem allowance for each such day as is
13 not in excess of the maximum applicable allowance pay-
14 able under section 5702 (a) of title 5, United States
15 Code, to Federal employees subject to such section.

16 (6) The term "identification" means—

17 (A) in the case of an individual, the name,
18 occupation, and business address of the individual
19 and the position held in such business; and

20 (B) in the case of an organization, the name
21 and address of the organization, the principal place
22 of business of the organization and the nature of its
23 business or activities.

24 (7) The term "influence" means to affect, or at-
25 tempt to affect, through lobbying communications with

1 a member, officer, or employee of the Congress, the dis-
2 position of any issue whether by initiating, promoting,
3 opposing, delaying, altering, amending, withdrawing
4 from consideration, or otherwise.

5 (8) The term "issue before the Congress" means
6 the totality of all matter, both substantive and proce-
7 dural, relating to any pending or proposed bill resolution,
8 report, nomination, treaty, hearing, investigation,
9 or other similar matter in Congress (excluding any in-
10 vestigation by the Comptroller General authorized by
11 the provisions of this Act).

12 (9) The term "lobbying communication" means an
13 oral or written communication directed to a member, of-
14 ficer or employee of the Congress to influence an issue
15 before the Congress, but does not include—

16 (A) a communication by an individual, acting
17 solely on his own behalf, for redress of his personal
18 grievances or to express his own personal opinion;

19 (B) a communication which deals only with
20 the the existence or status of any issue;

21 (C) testimony given before a committee or
22 subcommittee or office of the Congress or submitted
23 to a committee or office of the Congress for inclu-
24 sion in the public record of a hearing conducted by
25 such committee or office;

1 (D) a communication made through a speech
2 or address through a newspaper, book, periodical,
3 or magazine published for distribution to the general
4 public or to the membership of an organization, or
5 through a radio or television broadcast;

6 (E) a communication by, or on behalf of, a
7 candidate, as defined in section 301 (b) of the Fed-
8 eral Election Campaign Act of 1971 (2 U.S.C.
9 431 (b)), or by, or on behalf of, a candidate for a
10 State or local office, including a communication by,
11 or on behalf of, an organization in its capacity as a
12 political committee, as defined in section 301 (d)
13 of such Act (2 U.S.C. 431 (d)).

14 (10) The term "Members, officer, or employee of
15 the Congress" means—

16 (A) any member of the Senate or the House
17 of Representatives, any Delegate to the House of
18 Representatives, and the Resident Commissioner
19 in the House of Representatives; or

20 (B) any officer or employee of the Senate
21 or the House of Representatives or any employee
22 of any Member, committee, or officer of the
23 Congress.

24 (11) The term "organization" means—

25 (A) any corporation, company, foundation,

1 association, labor organization, firm, partnership,
2 society, joint stock company, national organiza-
3 tion of State or local elected or appointed officials
4 and any organizational unit thereof, group of or-
5 ganizations, or group of individuals, which has one
6 or more paid officers, directors, or employees; or

7 (B) any agency or department of any State
8 including the executive office of any governor, or
9 of the United States, including the executive office
10 of the President.

11 (12) The term "paid officer, paid director, or paid
12 employee" means an officer, director, or employee
13 who received income for his services, other than
14 exempt travel expenses, at a rate in excess of standard
15 Federal minimum wage. An officer, director, or em-
16 ployee who is not employed on a full-time basis is
17 included within this definition if the effective hourly
18 rate at which such an individual is compensated ex-
19 ceeds the effective hourly rate of a full-time employee
20 who receives income at a rate in excess of standard
21 Federal minimum wage.

22 (13) The term "quarterly filing period" means
23 any calendar quarter beginning on January 1, April 1,
24 July 1 or October 1.

25 (14) The term "State" means any of the several

1 States, the District of Columbia, the Commonwealth
2 of Puerto Rico, the Virgin Islands, Guam, American
3 Samoa, and the Trust Territory of the Pacific Islands.

4 (15) The term "voluntary membership organi-
5 zation" means an organization composed of persons
6 who are members thereof on a voluntary basis, and
7 who, as a condition of membership, pay regular dues,
8 subscribe to one or more publications, or make con-
9 tributions to such organization.

10 **APPLICABILITY OF ACT**

11 **SEC. 4. (a)** The provisions of this Act shall apply to
12 any organization which—

13 (1) makes an expenditure in excess of \$2,500 in
14 any quarterly filing period for the retention of another
15 person or persons to make lobbying communications or
16 in the research or preparation thereof; or

17 (2) spends \$2,500 or more in any quarterly filing
18 period on lobbying communications or in the research
19 or preparation thereof and has one paid employee who
20 spends twenty percent of his or her time in any quarterly
21 filing period engaged on behalf of that organization in
22 making lobbying communications, or in the research or
23 preparation thereof,

24 except that a registered organization at its discretion shall
25 be permitted to report for an affiliate or other organization

1 if such affiliate or other organization is engaged in the activi-
 2 ties described in paragraphs (1) or (2) of this subsection.

3 (b) For the purposes of this section the term "lobbying
 4 communication" does not include a communication by an
 5 organization on any subject to a Member of the Senate or
 6 of the House of Representatives, or to an individual on the
 7 staff of such Member, if such organization's principal place
 8 of business is located—

9 (1) in the State or in the congressional district
 10 represented by such Member; or

11 (2) in a standard metropolitan statistical area
 12 within which the State or congressional district or any
 13 portion thereof of such Member is located.

14 REGISTRATION

15 SEC. 5. (a) Each organization shall register with the
 16 Comptroller General not later than thirty days after engag-
 17 ing in activities described in section 4 (a).

18 (b) The registration shall be in such form as the Comp-
 19 troller General shall prescribe by regulation, and shall con-
 20 tain the following, which shall be regarded as material for
 21 the purposes of this Act:

22 (1) an identification of the organization;

23 (2) a general description of the types of issues
 24 which the organization as of the date of filing intends to
 25 engage in lobbying communications;

1 ords as are essential to enable an organization to comply
2 with the provisions of this Act.

3 (b) The records required by subsection (a) shall be
4 preserved for a period of five years after the close of the
5 quarterly filing period to which such records related.

6 REPORTS BY REGISTERED ORGANIZATIONS

7 SEC. 7. (a) Each organization shall, not later than
8 thirty days after the last day of each quarterly filing period,
9 file a report with the Comptroller General concerning any
10 activities described in section 4 (a) which are engaged in
11 by such organization during such period.

12 (b) The report required by subsection (a) shall be in
13 such form as the Comptroller General shall prescribe by
14 regulation and shall contain the following, which shall be
15 regarded as material for the purposes of this Act:

16 (1) an identification of the organization filing such
17 report;

18 (2) the total expenditures which such organization
19 made with respect to lobbying communications during
20 such period including an itemized listing of cash expend-
21 itures in excess of \$25 made to or for the benefit of any
22 member, officer or employee of the Congress or to any
23 member of his or her immediate family: *Provided*, That
24 any organization which has elected to be treated under

1 the provisions of section 501 (i) of the Internal Revenue
2 Code of 1954 or the corresponding provision of any
3 future internal revenue law may file, in lieu of a state-
4 ment of the total expenditures on lobbying communica-
5 tions, a copy of the information which it disclosed pur-
6 suant to section 6033 (b) (8) of the Internal Revenue
7 Code of 1954, or the corresponding provisions of any
8 future internal revenue law, on the most recent annual
9 Federal tax return filed by such organization.

10 (3) an identification of any person retained under
11 section 4 (a) (1) by the organization filing such report
12 and of any employee described in section 4 (a) (2) and
13 the expenditures pursuant to such retention or employ-
14 ment, except that in reporting expenditures for the re-
15 tention or employment of such persons, the organization
16 filing such report shall—

17 (A) allocate, in a manner acceptable to the
18 Comptroller General, and disclose that portion of
19 the retained or employed person's income which is
20 paid by the reporting organization and which is
21 attributable to engaging in lobbying communication
22 for the organization filing such report; or

23 (B) disclose the total expenditures paid to the
24 retained or employed person by the organization
25 filing such report; and

1 (4) a description of the ten issues which the or-
2 ganization estimates accounted for the greatest propor-
3 tion of its lobbying communications.

4 (c) In each instance where the organization retains a
5 person under section 4 (a) (1), the report described in sub-
6 section (a) of this section shall also include the following
7 information with respect to each issue which was the subject
8 of one or more lobbying communications:

9 (1) a description of each such issue; and

10 (2) the expenditures by the retained person on the
11 organization's behalf in connection with each such issue.

12 **REPORTS ON GIFTS BY MEMBERS OF CONGRESS**

13 **SEC. 8.** Each member of the Congress as defined in sec-
14 tion 3 (10) (A) shall, not later than sixty days after the
15 information required to be reported in section 7 (b) (2) is
16 published in the Federal Register pursuant to section 10 (5)
17 of this Act, file a report with the Comptroller General. Each
18 report shall include an itemized list of cash expenditures in
19 excess of \$25 made to or for the benefit of the Member filing
20 such report and to any member of his or her immediate
21 family or to any member of such member's staff and his or
22 her immediate family, but not including any contributions to
23 a candidate as defined in section 301 (e) of the Federal
24 Election Campaign Act of 1971 (2 U.S.C. 431 (e)).

POWERS OF COMPTROLLER GENERAL

1
2 SEC. 9. (a) The Comptroller General, in carrying out
3 the provisions of this Act, is authorized—

4 (1) to informally request or to require by subpoena
5 any individual or organization to submit in writing such
6 reports, records, correspondence, and answer to ques-
7 tions as are essential to carry out the provisions of this
8 Act, within such reasonable period of time and under
9 oath or such other conditions as the Comptroller Gen-
10 eral may require;

11 (2) to require by subpoena the attendance and
12 testimony of witnesses and the production of documen-
13 tary evidence;

14 (3) in any proceeding or investigation, to order
15 testimony to be taken by deposition before any person
16 designated by the Comptroller General who has the
17 power to administer oaths and to compel testimony and
18 the production of evidence in any such proceeding or
19 investigation in the same manner as authorized under
20 paragraph (2);

21 (4) to pay witnesses the same fees and mileage as
22 are paid in like circumstances in the courts of the United
23 States; and

24 (5) to petition any United States district court
25 having jurisdiction for an order to enforce subpoenas

1 issued pursuant to paragraphs (1), (2), and (3) of
2 this subsection.

3 (b) The Comptroller General, in carrying out the pro-
4 visions of this Act, is not authorized to have access to, or
5 request or require disclosure of, in whole or in part, any
6 membership or contributor list of any voluntary member-
7 ship organization.

8 (c) No individual or organization shall be civilly liable
9 in any private suit brought by any other person for dis-
10 closing information at the request of the Comptroller Gen-
11 eral under this Act.

12 **DUTIES OF THE COMPTROLLER GENERAL**

13 **SEC. 10.** It shall be the duty of the Comptroller
14 General—

15 (1) to develop filing, coding, and cross-indexing
16 systems to carry out the purposes of this Act, includ-
17 ing (A) a cross-indexing system which, for any per-
18 son identified in any registration or report filed under
19 this Act, discloses each organization identifying such
20 person in any such registration or report, and (B)
21 a cross-indexing system, to be developed in coopera-
22 tion with the Federal Election Commission, which
23 discloses for any such person in any report filed under
24 section 304 of the Federal Election Campaign Act
25 of 1971 (2 U.S.C. 434);

1 (2) to make copies of each registration and re-
2 port filed with him under this Act available for public
3 inspection and copying, commencing as soon as prac-
4 ticable after the date on which the registration or re-
5 port involved is received, but not later than the end
6 of the fifth working day following such date, and to
7 permit copying of such registration or report by hand
8 or by copying machine, or, at the request of any indi-
9 vidual or organization, to furnish a copy of any such
10 registration or report upon payment of the cost of
11 making and furnishing such copy; but no information
12 contained in any such registration or report shall be
13 sold or utilized by any individual or organization for
14 the purpose of soliciting contributions or business;

15 (3) to preserve the originals or accurate repro-
16 ductions of such registrations and reports for a period
17 of not less than five years from the date on which the
18 registration or report is received;

19 (4) to compile and summarize, with respect to
20 each quarterly filing period, the information contained
21 in registrations and reports filed during such period in
22 a manner which clearly presents the extent and nature
23 of the activities described in section 4(a) which are
24 engaged in during such period;

25 (5) to make the information compiled and sum-

1 marized under paragraph (4) available to the public
2 within sixty days after the close of each quarterly filing
3 period, and to publish such information in the Federal
4 Register at the earliest practicable opportunity;

5 (6) to conduct investigations with respect to alleged
6 violations of any provision of this Act;

7 (7) to prescribe such procedural rules and regula-
8 tions, and such forms as may be necessary to carry out
9 the provisions of this Act in an effective and efficient
10 manner; and

11 (8) to furnish assistance, to the extent practicable,
12 to any person who requests assistance in the develop-
13 ment of appropriate activities, proceedings, and practices
14 to meet the recording and reporting requirements of
15 this Act.

16 ADVISORY OPINIONS

17 SEC. 11. (a) Upon written request to the Comptroller
18 General by any individual or organization, the Comptroller
19 General shall, within a reasonable time, render a written
20 advisory opinion with respect to the applicability of the
21 recordkeeping, registration, or reporting requirements of this
22 Act to any specific set of facts involving such individual or
23 organization, or other individuals or organizations similarly
24 situated.

25 (b) Notwithstanding any other provision of law, any

1 individual or organization with respect to whom an advisory
2 opinion is rendered under subsection (a) who acts in good
3 faith in accordance with the provisions and findings of such
4 advisory opinion shall be presumed to be in compliance with
5 the provisions of this Act to which such advisory opinion
6 related. The Comptroller General may modify or revoke any
7 such advisory opinion, but any modification or revocation
8 shall be effective only with respect to action taken after such
9 individual or organization has been notified, in writing, of
10 such modification or revocation.

11 (c) All requests for advisory opinions, all advisory opin-
12 ions, and all modifications or revocations of advisory opin-
13 ions shall be promptly published by the Comptroller General
14 in the Federal Register.

15 (d) The Comptroller General shall, before rendering an
16 advisory opinion under this section, provide any interested
17 individual or organization with an opportunity, within such
18 reasonable period of time as the Comptroller General may
19 provide, to transmit written comments to the Comptroller
20 General with respect to such advisory opinion.

21 (e) Any individual or organization who has received
22 and is aggrieved by any advisory opinion from the Comptrol-
23 ler General may file a declaratory action in the United States
24 district court for the district in which such individual resides
25 or such organization maintains its principal place of business.

ENFORCEMENT

1

2 SEC. 12. (a) If the Comptroller General has reason to
3 believe that any individual or organization has violated any
4 provision of this Act, the Comptroller General shall notify
5 such individual or organization of such apparent violation,
6 unless the Comptroller General determines that such notice
7 would interfere with effective enforcement of this Act, and
8 shall make such investigation of such apparent violation as
9 the Comptroller General considers appropriate. Any such
10 investigation shall be conducted expeditiously, and with due
11 regard for the rights and privacy of the individual or organi-
12 zation involved.

13 (b) If the Comptroller General determines, after any
14 investigation under subsection (a), that there is reason to
15 believe that any individual or organization has engaged in
16 any acts or practices which constitute a civil violation of
17 this Act, he shall endeavor to correct such violation—

18 (1) by informal methods of conference or concilia-
19 tion; or

20 (2) if such methods fail, by referring such apparent
21 violation to the Attorney General.

22 (e) Upon a referral by the Comptroller General pur-
23 suant to subsection (b) (2), the Attorney General may in-
24 stitute a civil action for relief, including a permanent or tem-
25 porary injunction restraining order, or any other appropriate

1 relief in the United States district court for the district in
2 which such individual or organization is found, resides, or
3 transacts business. The Attorney General shall transmit a
4 report to the Comptroller General describing any action
5 taken by the Attorney General regarding the apparent vio-
6 lation involved.

7 (d) The Comptroller General shall refer apparent crim-
8 inal violations of this Act to the Attorney General. In any
9 case in which the Comptroller General refers such an ap-
10 parent violation to the Attorney General, the Attorney Gen-
11 eral shall act upon such referral in as expeditious a manner
12 as possible, and shall transmit a report to the Comptroller
13 General describing any action taken by the Attorney Gen-
14 eral regarding such apparent violation.

15 (e) The reports required by subsections (c) and (d)
16 shall be transmitted not later than sixty days after the date
17 the Comptroller General refers the apparent violation in-
18 volved, and at the close of every ninety-day period there-
19 after until there is final disposition of such apparent viola-
20 tion.

21 **REPORTS BY THE COMPTROLLER GENERAL**

22 **SEC. 13.** The Comptroller General shall transmit reports
23 to the President of the United States and to each House of
24 the Congress no later than March 31 of each year. Each
25 such report shall contain a detailed statement with respect

1 to the activities of the Comptroller General in carrying out
2 his duties and functions under this Act, together with rec-
3 ommendations for such legislative or other action as the
4 Comptroller General considers appropriate.

5 **SANCTIONS**

6 **SEC. 14. (a)** Any individual or organization who
7 knowingly and willfully violates section 5, 6, or 7 of this
8 Act shall be subject to a civil penalty of not more than
9 \$5,000.

10 (b) Any individual or organization who knowingly
11 and willfully violates section 5, 6, or 7 of this Act shall
12 be fined not more than \$5,000 for each such violation,
13 not to exceed \$100,000, or be imprisoned for not more
14 than six months, or both.

15 (c) Any individual or organization knowingly and
16 willfully failing to provide or falsifying all or part of any
17 records required to be furnished to an employing or re-
18 taining organization in violation of section 7 (a) shall be
19 fined not more than \$5,000 for each such violation, not to
20 exceed \$100,000.

21 (d) Any individual or organization selling or utilizing
22 information contained in any registration or report in
23 violation of section 10 (2) of this Act shall be subject to
24 a civil penalty of not more than \$10,000.

1 REPEAL OF FEDERAL REGULATION OF LOBBYING ACT

2 SEC. 15. (a) The Federal Regulation of Lobbying Act
3 (60 Stat. 839; 2 U.S.C. 261 et seq.) is repealed.

4 (b) All documents, papers, and other information in
5 the custody or control of the Clerk of the House of Repre-
6 sentatives or the Secretary of the Senate obtained or pre-
7 pared pursuant to the provisions of the Federal Regulation
8 of Lobbying Act are hereby transferred to the custody and
9 control of the Comptroller General. The Senate and the
10 House of Representatives consent to the transfer of such
11 documents, paper, or other information.

12 EFFECT ON OTHER LAWS

13 SEC. 16. (a) An organization shall not be denied an
14 exemption under section 501 (a) of the Internal Revenue
15 Code of 1954 as an organization described in section 501 (c)
16 of such Code, and shall not be denied status as an organiza-
17 tion described in sections 170 (e) (2), 2055 (a) (2), 2106
18 (a) (2), and 2522 of such Code, solely because such orga-
19 nization complies with the requirements of sections 5, 6,
20 and 7 of this Act.

21 (b) The registration, reporting, and recordkeeping re-
22 quirements of the Act shall not relieve any person from
23 the registration, reporting, recordkeeping, or similar obliga-
24 tions of any other Act.

AUTHORIZATION OF APPROPRIATIONS

1

2 SEC. 17. There are authorized to be appropriated such
3 sums as may be necessary to carry out this Act.

4

EFFECTIVE DATES

5 SEC. 18. (a) Except as provided in subsection (b), the
6 provisions of this Act shall take effect on the first day of the
7 first calendar quarter which begins more than one hundred
8 and eighty days after enactment of this Act.

9 (b) The provisions of this Act requiring the issuance
10 of regulations to implement this Act shall become effective
11 upon enactment.

12

SEPARABILITY

13 SEC. 19. If any provision of this Act, or the application
14 thereof to any person or circumstance, is held invalid, the
15 validity of the remainder of the Act and the application of
16 such provision to other persons and circumstances shall not
17 be affected thereby.

Mr. DANIELSON. We do not want to fall into the same drafting pitfalls that were encountered with the current law. Let us proceed diligently and cautiously to insure that any resultant legislation will be both constitutionally sound and practical in its effects.

We have currently scheduled 4 days of hearings—today, Monday, April 4, in which we will be honored to have before us our colleagues, Robert W. Kastenmeier, of Wisconsin; Tom Railsback, of Illinois; Robert McClory of Illinois; and Don Edwards of California.

Statements have been received from other Members of the Congress.

On Wednesday next, April 6, we will hear from the General Accounting Office, from Common Cause, the ACLU, the American Automobile Association, and the Veterans of Foreign Wars.

In my opinion, that is an overly ambitious calendar for next Wednesday, and since we will adjourn our session precisely at 12 o'clock noon, if not earlier, those witnesses who cannot have been heard by that time will be carried over until the next meeting. We have another meeting scheduled for Thursday, April 21, at which time the scheduled witnesses will be the Justice Department, the National Security Industrial Association, National Association of Manufacturers, and the chamber of commerce. On Friday, April 22, we will hear from the AFL-CIO, Public Citizen, the Sierra Club, the National Newspaper Association, the League of Women Voters, and the Christian Science Committee on Publications.

As I mentioned before, due to the circumstances, if it is not possible to hear the scheduled witnesses as scheduled, they will be carried over to the subsequent meeting. It is also my belief that there will be others in the meantime who will wish to be heard, and we will accommodate them to the best of our abilities, bearing in mind that we intend to hear this subject and have our subcommittee action on it concluded at the earliest reasonable date.

That is all of the preliminaries and wish to welcome to the subcommittee as our leadoff witnesses, Hon. Robert W. Kastenmeier and Hon. Tom Railsback. Will you gentlemen both please come forward. You seem to be the coauthors of a great deal of this activity. We will be most pleased to hear from you.

I would like to state, since you are both highly experienced legislators and attorneys, we will, without objection, receive your prepared statements in the record. There being no objection, it is so ordered.

[The prepared statements of Hon. Robert W. Kastenmeier and Hon. Tom Railsback follow:]

SUMMARY STATEMENT OF HON. ROBERT W. KASTENMEIER

H.R. 5795 requires that any organization which (a) makes expenditures in excess of \$1,250 in any quarterly filing period to retain another person to make a lobbying communication or solicitation, or (b) employs at least one individual who spends 30 or more hours in any quarterly filing period or employs 2 or more individuals, each of whom spends 15 or more hours in any such period making lobbying communications or solicitations to influence the content or disposition of legislation, rulemaking, rule, or the awarding of a Government contract of \$1 million or more, to register with the Comptroller General.

The reporting organization must inform the Comptroller General of—the general description of the methods by which it arrived at its position with respect to any issue; the identification of any person it employs or retains to lobby; and the identification of each organization or individual from which it received \$3,000 or more which was expended in whole or in part for lobbying activities. The amounts can be stated

in a categories of value system. The Comptroller General can waive this requirement if contributions are equal to less than 5 percent of the organization's total annual expenditures and if such organization demonstrated that disclosure of such contributions would violate the privacy of the contributor's religious beliefs or lead to the possible harassment of the contributor.

The quarterly period report filed by the organization must disclose—the total expenditures associated with its lobbying activities; each expenditure in excess of \$35 made to any Federal officer or employee and such officer or employee must be identified; the cost of any reception or dinner for Federal officers or employees if the total cost exceeds \$500; any person hired or retained along with a listing of each issue with which such person was involved and the total expenditures made pursuant to such employment or retention; any chief executive officer or principal operating officer who engages in lobbying activities, and if such officer spends more than 15 hours on lobbying communications or solicitations, regardless of whether such officer was compensated or not, the organization shall identify each issue with which that officer was involved; and any solicitation made or paid by such organization and the subject matter if it reached or could reach 500 or more persons or 25 or more officers or directors, 100 or more employees or 12 or more affiliates of such organization. The reporting organization can file a copy of the written solicitation.

The Comptroller General will publish the quarterly reports in the Federal Register. The Comptroller General is given authority to withhold from public disclosure, upon petition by any person, any information required to be disclosed to the public upon a showing that such disclosure may reasonably be expected to lead to the harassment of any person, or lead to threats or reprisals against any person.

Our present lobbying law allows lobbying activities to be conducted in secrecy and provides no accountability for the large sums of money that are expended. Congress is on record as favoring the repeal of the 1946 lobbying act and replacing it with a new law which will provide for full public disclosure of lobbying activities.

STATEMENT OF HON. ROBERT W. KASTENMEIER, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF WISCONSIN

Mr. Chairman, I want to compliment you for scheduling this expeditious consideration of lobbying disclosure legislation.

In the 94th Congress, this Subcommittee, our full Judiciary Committee, the House and the Senate devoted considerable time and energy deliberating lobbying reform which, conceptually, is a difficult subject. Both the House and the Senate did overwhelmingly pass new lobbying legislation. I think we can all recall the marathon House session which began on September 28 and which ran into the early hours of the following day, before the House finally voted 307 to 34 for H.R. 15. This action came in the last days of the session and it was to late to reconcile the differences existing between the House and the Senate versions. However, the issue of lobbying reform had been thoroughly aired, and the Congress is on record as favoring the repeal of an ineffective and unenforceable lobbying act and replacing it with a law which will provide for much greater disclosure regarding the lobbying activities by organizations with the Congress and the Executive Branch.

The bill, H.R. 5795, which Congressman Tom Railsback and I have introduced is similar, in many respects to last year's H.R. 15. It does, however, contain some differences which we believe address themselves to the problems we faced last year.

H.R. 5795 requires that any organization which (a) makes expenditures in excess of \$1,250 in any quarterly filing period to retain another person to make a lobbying communications or (b) employs as least one individual who spends 30 or more hours in any quarterly filing period or employs 2 or more individuals, each of whom spends 15 or more hours in any such period, to make lobbying communications or solicitations, to influence the content or disposition of legislation, rulemaking, rule or the awarding of a Government contract of \$1 million or more, to register with the Comptroller General not later than 15 days after engaging in such activities.

Any organization which meets these threshold provisions must inform the Comptroller General of—the general description of the methods by which it arrived at its position with respect to any issue; the identification of any person it employs or retains to lobby; and the identification of each organization or individuals from which it received \$3,000 or more which was expended in whole or in part for lobbying activities.

The amount of income provided by such an organization or individual need not be stated in exact amounts but can be stated in a categories of value system, which is patterned after the categories system contained in our new House Rules on financial disclosure. The Comptroller General is given authority to waive this requirement if such contributions are equal to less than 5 percent of the organization's total annual

expenditures and if such organization demonstrated that disclosure of such contributions would violate the privacy of the contributor's religious beliefs or lead to the possible harassment of the contributor.

Thirty days following the close of each quarterly filing period, each lobbying organization must file a report with the Comptroller General concerning its lobbying activities in that period. The report requires that each organization disclose: The total expenditures associated with its lobbying activities; each expenditure in excess of \$35 made to any Federal officer or employee and such officer or employee must be identified; the cost of any reception or dinner for Federal officers or employees if the total cost exceeds \$500; any person hired or retained along with a listing of each issue with which such person was involved; the total expenditures made pursuant to such employment or retention; any chief executive officer or principal operating officer who engages in lobbying activities, and if such officer spends more than 15 hours on lobbying communications or solicitations, regardless of whether such officer was compensated or not, the organization shall identify each issue with which that officer was involved; and any solicitation made or paid by such organization along with the subject matter where such solicitation reached or could be reasonably expected to reach, in identical or similar form, 500 or more persons, or 25 or more officers or directors, 100 or more employees or 12 or more affiliates of such organization. This requirement may be satisfied with respect to a written solicitation, at the discretion of the reporting organization by filing a copy of such solicitation.

The Comptroller General will publish such information contained in the quarterly filing period in the Federal Register. However, the Comptroller General is given authority to withhold from public disclosure, upon petition by any person, any information required to be disclosed to the public upon a showing that such disclosure may reasonably be expected to lead to the harassment of any person, or lead to threats or reprisals against any person.

This legislation does not interfere with the constitutional rights of any citizen to communicate his views to government officials. In fact, H.R. 5795 contains the identical provision from H.R. 15 which excludes from the coverage any individual who acts solely on his own behalf for a redress of personal grievances or to express personal opinions. This measure, in no way, restricts lobbying activities by any organization with the Federal Government. Individuals who volunteer their time to lobbying organizations are not covered. Compliance with the requirements of this legislation is not burdensome for either large or small organizations.

Mr. Chairman, we all know that lobbyists do represent special interests, and it is well for the public to know that such types of interests are being represented in dealings with the Federal Government. Our present lobbying law allows lobbying activities to be conducted in secrecy and provides no accountability for the large sums of money that are expended in the conduct of lobbying activities. Full disclosure of lobbying will bring these activities under the scrutiny of the public eye. The public will better understand the nature of special interest pressures, and they will be better equipped to hold public officials accountable for their response to these pressures. In addition, public officials also will gain by lobbying reform since they will, with public disclosure, find it easier to evaluate lobbying pressures and put them in a better perspective.

The case for lobbying reform was made in the previous Congress, and the Congress is on record in support of greater disclosure of lobbying activities. As a result of these early hearings, I am confident that this Subcommittee, which spent so much time in the past 2 years on this issue, will be successful in resolving those differences which exist regarding the provisions of a lobbying bill and that you will report out a bill that we can all support.

SUMMARY STATEMENT OF HON. TOM RAILSBACK

Current law is in need of reform: Covers only those whose principal purpose is lobbying; does not cover grassroots lobbying campaigns; does not cover the executive branch; fails to provide adequate administrative and enforcement authority.

The 1975 GAO report is an indictment of the existing statute: of 184 reports submitted to the Clerk of the House, 143 were incomplete; of 1,920 reports, 61 percent were received late; enforcement by the Department of Justice is virtually nonexistent.

Filings fluctuate, often merely reflecting changes in the political atmosphere: Watergate, Bobby Baker, during investigations of lobby reform.

Any reform bill must balance constitutional rights with the accountability of those who seek to influence public policy.

Short summary of H.R. 5795: Requires filing and reports only by organizations (1) which make expenditures in excess of \$1,250 in a quarterly filing period to retain another person, to make a lobbying communication or solicitation or for the express purpose of preparing or drafting any such communication, or (2) which employs (a) at least one individual who spends thirty or more hours in any quarterly filing period making lobbying communications or solicitations on behalf of the organization or its members or (b) at least two or more individuals, each of whom spends fifteen or more hours in any such period making lobbying communications or solicitations on behalf of the organization or its members.

In computing the hours spent, the computation shall operate prospectively after the position of the organization has been decided, and shall be applicable only to that employee or those employees assigned the responsibility of implementing the decision. A home-state exemption is provided, and the comptroller general is provided discretionary authority in not requiring disclosure of certain contributors.

STATEMENT BY HON. TOM RAILSBACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, members of the subcommittee, I am pleased today to appear before you to discuss reform of the present Federal lobby disclosure law and to review with you the major policy points of a lobby disclosure bill I have introduced with my good friend and colleague Bob Kastenmeier.

Briefly, our bill is designed to replace the present loophole ridden law with a measure that provides meaningful disclosure of lobbyists' activities while protecting our citizens' rights to privacy, petition for redress of grievances, and while calling for the very minimum in the way of reporting information.

Before I discuss our bill in greater detail, I would like to take the opportunity to commend Chairman Danielson and former Chairman Flowers for their efforts regarding this important legislation. Walter Flowers worked long and tirelessly in the last session to bring together numerous viewpoints on this bill. His efforts resulted in overwhelming passage of H.R. 15 in the closing days of the 94th Congress. By promptly holding hearings this year, Chairman Danielson has expressed his willingness to consider affair and effective alternative to the present statute. I also want to thank the other members of the Subcommittee for their consideration, including Congressman Moorhead and Congressman Kindness who labored long and hard last year on lobby reform.

Mr. Chairman, the faults of the current disclosure statute have been well-documented over the years. There is virtually no argument over the fact the law is ineffective and unenforceable. It only covers those whose principal purpose is lobbying. It fails to cover "grass roots" lobbying campaigns. It fails to cover lobbying of executive branch agencies. And it fails to provide adequate administrative and enforcement authority necessary to insure effectiveness.

The most recent indictment of the law came in a 1975 GAO report which found in the course of its investigation, that of 184 reports submitted to the Clerk of the House, 143 were incomplete. Unfortunately, the Clerk does not have the authority under the Act to review registrations or reports for completeness or accuracy, or to require compliance with the act.

The GAO also found that of a sample of 1,920 reports, 61 percent, or 1,175, were received late. The GAO report concluded that: "We believe that although the act does not grant specific authority to reject incomplete quarterly financial reports or penalize late reporting, acceptance of such reports negates the reporting requirements."

The GAO also found that enforcement of the statute by the Department of Justice was virtually nonexistent. Investigations are undertaken only after a complaint has been made and justice has no specific written criteria on whether a complaint should be investigated.

The GAO recommended that, at the least, the problems of lack of investigative authority, enforcement power to determine whether the act should be strengthened, and the right to inspect records, should be the subject for Congressional attention.

In discussing the failures of the current law it is of interest to note that the number of those filing fluctuates, often merely reflecting changes in the political atmosphere, rather than the true number of lobbyists.

For example, Watergate was investigated by Congress from about early spring 1973 through the impeachment inquiry which ended in the summer of 1974. Available lobby registration figures disclose that for the period October 1972 through December 1973, 799 persons registered as lobbyists, as compared against 374 persons who registered during the time period December 1971 to October 1972. This was a more than two-fold increase in registrations.

Available compilations of current lobby registrations show that registrations jumped dramatically in 1976, when we again investigated reform of the lobby act.

There is no question that the current act is in need of drastic revision. The difficulty in such a reform measure involves a conflict between providing adequate accountability by those who seek to influence public policy, while at the same time safeguarding our treasured Constitutional freedoms of petition for redress of grievances and the right of privacy. Additionally, we must insure that no group be unduly burdened by onerous and costly reporting requirements.

Weighed against the need for disclosure must be such issues as the need to preserve and foster the role of voluntary associations; the need for even-handedness in application of the law; and the Constitutional problem of a possible "chilling effect" upon the exercise of First amendment rights by our citizens.

For several months, Representative Kastenmeier and I have been working to draft a measure that will meet these requirements. I have met extensively with groups and individuals to hear their thoughts on how such a disclosure bill should be constructed. Virtually all these meetings resulted in beneficial suggestions that I believe have helped to strengthen the bill both in terms of its coverage and its fairness.

We plan to remain flexible and open to suggestions for amendments to our bill. We believe that on an issue as important as this, a doctrinaire, rigid attachment to any single provision would not be in the best interest of meeting our goal of an effective and fair lobby disclosure law.

Our bill, H.R. 5795, addresses three major problems that have been the subject of debate since we first began our efforts in 1974.

We have attempted to alleviate problems involving the first amendment right to petition by including the so-called "home state" exemption, a feature included in both H.R. 15 as passed by the House and the Senate-passed S. 2477, and currently present in H.R. 1180. This exemption provides that an organization can without fear that it will trigger the lobby threshold test make unlimited communications with the Representative from the Congressional district in which the organization's principal place of business is located, and with the two senators from the state in which the organization's principal place of business is located.

We have sought to make compliance with the reporting provisions of the bill as easy and as least costly as possible. We have, for example, eliminated a requirement for detailed information on lobby solicitations and substituted a provision permitting the lobbyist to merely attach to his quarterly report a copy of the solicitation. We have eliminated the requirement for disclosure of so-called "direct business contacts" that was contained in H.R. 15, and our bill requires far less reporting information than called for in the Senate-passed S. 2477.

We are also very concerned about individuals' rights of privacy, and we made special considerations to assure that our bill in no way violated this cherished Constitutional freedom. Our registration provision which states that the identification of an organization and a general description of its methods should be disclosed, does not on the other hand, require the disclosure of the identity of the members of the organization. Additionally, we have changed the provision relating to disclosure of income received by an organization to require that such information be provided only in broad, general categories. We further provide that the Comptroller General, through the issuance of an advisory opinion, may waive the income-reporting requirements altogether if the organization can show that such disclosure "would violate the privacy of the contributor's religious beliefs or would otherwise impose an undue hardship or harassment upon the contributor."

We utilize two threshold tests to determine if an organization must register and file quarterly reports as a lobbyist. To be considered a lobbyist under our bill, an organization must make an expenditure in excess of \$1,250 in a quarterly filing period to retain another person to make a lobbying communication or solicitation. This threshold is essentially the same as H.R. 1180. An organization may also become a lobbyist if it employs at least one individual who spends thirty or more hours in a quarterly filing period making lobbying communications or solicitations on behalf of the organization, or the organization employs at least two or more individuals, each of whom spends fifteen or more hours making lobbying communications or solicitations.

We believe that a dollar expenditure and straight hour time test are superior to other threshold tests that have been suggested, such as an oral communications test or the time percentage test. We believe our definitional standard is precise, unambiguous, and can be more easily enforced than other threshold tests.

Our bill also provides coverage of the so-called "professional volunteer" . . . that individual who, though he may not be a paid employee of the lobbying organization,

nevertheless exerts a major influence on the group's public policy decision-making process and is active in lobbying activities of the organization.

Mr. Chairman, in the 94th Congress, the House clearly showed its intention to reform the current ineffective lobby disclosure act. Only the procedural difficulties inherent in trying to pass legislation in the closing days of a session prevented the House and Senate from reconciling the two bills and enacting a new disclosure law. I believe this year we will at last pass such a law.

I thank you for your time today, and hope H.R. 5795 will be included in your deliberations.

Mr. DANIELSON. We would much prefer for you to ad lib instead of reading your testimony.

Mr. KASTENMEIER. Mr. Chairman, if you have no objections, I would like to first yield to the gentleman from Illinois, Mr. Railsback, insofar as he is the principal sponsor, and I am his principal cosponsor of the measure, and I think in all fairness he should lead off.

TESTIMONY OF HON. TOM RAILSBACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RAILSBACK. Thank you.

Mr. Chairman, this subcommittee deserves a great deal of thanks for pursuing this legislation in the last session. My good friend and colleague Mr. Flowers was the chairman and Mr. Kindness was a member of the subcommittee, and their work was difficult—extremely difficult. The legislation is controversial, and it is significant that virtually every group that could be regarded as a special interest group has been in opposition to the bill. The groups span the gambit from Ralph Nader—at least his representatives—to the national chamber of commerce. Despite this fact I, along with some of you, have met with literally dozens of people who wanted to have an input into the bill. I get the feeling that there is a recognition and an awareness on the part of the various organizations or the so called lobbyists, or the people who are going to be affected by this act, that there is and should be something enacted into the law that would require registration, reporting, and recordkeeping.

I want to give credit to the different people with whom I have worked and who have had an input into my bill, H.R. 5795. I want to mention, Mr. Chairman, that H.R. 5795 really is in many respects similar to H.R. 15 that was passed at the end of the last session of Congress by the House, and which really was the work product of this subcommittee. Mr. Flowers, I remember so well, carried the ball on the floor and I honestly thought he did a masterful job in responding to questions. I have, in sponsoring this new legislation, incorporated many of the concepts and much of the philosophy that were part of H.R. 15, which was my original bill, which was substantially rewritten and improved by this subcommittee.

Recently I had a chance to address a group of primarily business people at the National Chamber of Commerce Building in Washington. At that time I had about half of a draft of a bill that had been worked on by the Senate staff and by some of the House staff, and by different persons who had been active in the field of lobbying reform, including representatives of Common Cause.

This particular draft would have had a two-tier approach. The two-tier approach would have provided for a short-form and a long-form, depending upon which threshold triggered the applicability of the act.

For instance, under that draft, if there were 25 contacts made by the organization—but that was the only lobbying activity—the contacts, would have triggered only a short-form report, not the long form.

To make a long story short, after trying to answer questions put to me by the people at the national chamber, and after studying the provisions of that draft more carefully, it seemed to me that the two-tier approach would be rather awkward. I also do not believe in the contact threshold anyway, because I think that contacts alone do not necessarily mean that the people who would be affected by lobbying reform legislation are professionals. The particular bill to which I would like to refer today, H.R. 5795, has been substantially changed from the two-tier draft that was circulated, passed around, and considered by all of the various multitudes interested in lobbying reforms.

What I have tried to do in H.R. 5795 is preserve the Flowers' organization concept. The bill deals with organizations and not individuals. The threshold, if I could call your attention to section 3 now on page 7, would be triggered only by an organization. For the purposes of lobbying, the bill defines organizations in two ways. The first organizations are those which make expenditures in excess of \$1,250 in any quarterly filing period to retain another person, to make a lobbying communication or solicitation or for the express purpose of preparing or drafting any such communication.

The second definition of organizations are those which employ at least one individual who spends 30 or more hours in any quarterly filing period making lobbying communications or solicitations on behalf of the organization or its members, or at least two or more individuals, each of whom, spends 15 or more hours in any such period making lobbying communications or solicitations on behalf of the organization or its members.

The significant changes that I made are contained in the next paragraph; and I want to explain why I made those changes.

In speaking before this group of 250 business people at the National Chamber of Commerce Building, I gathered that they were aware that something would be passed—most of them seemed to be very much aware of the practical facts of life. They all suggested that when we draft this legislation that we please make it as precise as possible, so that they know exactly what kind of activities we are talking about. I met with my own home company, the Deere Co., and they were concerned about who we are trying to reach?

Are we trying to reach the people with the Dccrc Co. who actually do the lobbying?

Are we going to require all of them to keep records?

Do we take into account research that goes into formulating a position?

Such questions that bothered me as well. Therefore, in computing for purposes of paragraph 2—I am reading from the bottom of page 7—this language was developed:

In computing for purposes of paragraph 2, the hours spent, the computation shall operate prospectively after the position of the organization has been decided, and shall apply to that employee or those employees assigned the responsibility of making the lobbying communication or solicitation which would implement the decision, and shall include only the implementing activities of those employees.

I should point out that when we are talking about 30 hours in a quarter, we are talking about a 6-percent threshold. By going to hours instead of percent, we are making an improvement because those who engage in lobbying, can log their hours and log their time much easier than trying to compute a percentage.

I would also like to call the subcommittee's attention to the exception on the bottom of page 8, subsection (3), which says:

A communication by an individual, acting solely on his own behalf, for redress of his personal grievances, or to express his personal opinion, including any communication made on organization's stationery, so long as it does not purport to represent the position of the organization and was not requested by the organization.

Now, that is an exception. That language was included in H.R. 5795 because we wanted to make it very clear that an individual, even though he writes on an organization's stationery, ought to be exempt.

Mr. DANIELSON. Would the gentlemen yield?

Mr. RAILSBACK. Yes, sir.

Mr. DANIELSON. I think what the gentlemen is referring to, and I think it is a very practical component in the legislation, is that we all know that every now and then someone who works in an organization and happens to have access to the letterhead will utilize that letterhead in writing a letter which is no part of the business of the employer, but it just simply happens to be expressed upon the stationery of the employing organization.

Mr. RAILSBACK. They zip off the letter and the policymakers have no idea they are doing so.

Mr. DANIELSON. I think we are familiar with that, and I thank both of you for including that in this bill. It is a good idea.

Mr. RAILSBACK. I would like to go to pages 10 and 11 where there are other significant changes that I think are an improvement over H.R. 15 the bill which passed the last session.

There was a great deal of controversy about what should be reported, so we tried to shorten the recordkeeping and the reporting under this new bill. However, one of the major issues, as you'll recall, around 3 o'clock in the morning, when H.R. 15 passed the House related to reporting contributors. We had a big debate but we did adopt my amendment that would have required reporting those who contributed more than \$1,250. We changed what I would refer to as the Flowers approach, which required before disclosure, that the contributor had to contribute 5 percent or more of the contributions to the organization. I thought that had too much latitude.

Anyway, after talking to many, many groups, including not just business groups, but groups like the Audubon Society, the Sierra Club, some religious groups, and the ACLU, it seems to me that we ought not to require a business to provide information that could reveal proprietary-type information. What we have done in H.R. 5795 is to establish a staggered reporting system, where organizations do not have to report the specific dollar amount, but would have to report contributions by category.

Now, that helps the businessman, but it did not do anything to alleviate the concerns of the religious groups or some of the groups like the Sierra Club or the Audubon Society. So, I set up a mechanism by which a person who contributes, if he wants to claim a hardship,

could go to the Comptroller General and then let the Comptroller General in his judgment waive the requirements of subsection B(3) if the contribution is equal to or less than 5 percent. If some individual contributes more than 5 percent of an organization's budget, that implies he may be exerting a great deal of influence and control. In that case we would require disclosure.

Now, the reason we have done this, Mr. Chairman, is that it was part of the Flowers bill. I think that all of the organizations affected recognize that the 5 percent is fair—that it is a fairly reasonable high figure. For an individual contributor to contribute more than 5 percent, involves a substantial sum of money, so we would require reports in those cases.

I think I have used up too much time, but I did want to mention some of the accommodations that we have made that are designed to make the bill more acceptable, to make it more reasonable and, hopefully, more passable.

Mr. DANIELSON. Thank you very much, Mr. Railsback.

[Additional views from Hon. Tom Railsback follow:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 16, 1977.

Hon. GEORGE DANIELSON,
Chairman, Judiciary Committee, Administrative Law and Governmental Relations Subcommittee, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In light of some of the tentative decisions made by your Subcommittee on H.R. 1180, the Lobby Reform Act, I feel compelled to write you and to supplement the testimony I gave before you this spring. I would greatly appreciate your taking these additional comments into account when you begin your second round of deliberations on the lobby legislation.

As you know, I have always believed an expenditure test for retained persons is a realistic test and easier to enforce because organizations already must keep accurate records of how their money is spent. I am concerned, however, that by raising last year's figure of \$1250 to \$2500 we may very well omit some organizations that should be covered. In addition, the new threshold of days which pertains to in-house persons was not that reported by the full Judiciary Committee last year. I am concerned that such a change may at the very least raise some questions at the full Committee level. For example, in light of the forcefulness of our colleague Mr. Flower's arguments in favor of last year's triggering mechanisms is it necessary to change both the retained and in-house person's mechanisms?

Finally, and perhaps most importantly in my opinion, an essential element in a lobby disclosure law is the need to provide some information about significant contributions to lobbying organizations. During consideration of H.R. 15 last year, I introduced an amendment on the House floor, which was subsequently adopted, that sought to disclose contributions in an effective but even-handed fashion. In the bill Bob Kastenmeier and I introduced this year, we provided even further safeguards to protect the individual's right of privacy by requiring disclosure only by board categories.

I sincerely believe that if we knock out contributions altogether, we will have such a watered down version of last year's bill that there will be no real lobby reform at all. Therefore, I especially urge the Subcommittee to reconsider its action pertaining to contributions.

I would, of course, be more than happy to discuss these issues with you further. As you know, I have long been interested in lobby reform, and, if there is some way I can be of help, I want to do so.

Thank you, Mr. Chairman.

Sincerely,

TOM RAILSBACK,
Member of Congress.

Mr. Kastenmeier?

**TESTIMONY OF HON. ROBERT W. KASTENMEIER, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN**

Mr. KASTENMEIER. Thank you, Mr. Chairman.

I will be very brief. I of course want to compliment you for scheduling this lobbying disclosure so early in the session. We certainly remember in the 94th Congress when our colleague Walter Flowers took the bill to the floor and we began that marathon House session on September 28. But whatever can be said about the final version, the fact was the House reported it by a vote of 307 to 34, and the bill we were not able to reconcile with the Senate in the last days of the session. Nonetheless, it seems to me it should serve as a good point of departure for the future.

It varied greatly from H.R. 15 as originally introduced by Tom Railsback and myself and by many others. It is, I think, in substance the same bill introduced in this session by our chairman, the gentleman from New Jersey, Mr. Rodino, and by others and, of course, the Senate has its version, and the bill just referred to, H.R. 5795, the one that Mr. Railsback and I have introduced, differs slightly from that.

Obviously, Mr. Railsback has just suggested the key differences, but it is based on the same frame of reference. Unless H.R. 15, which I think will remain a historic document, but is no longer precisely relevant, it seems to me that in the intervening time between, say October 1 and this moment, will give us some opportunity to improve upon the version the House produced and perhaps even make it more possible for us to get together with the Senate once it passes.

I think the vote suggests that the House and the country does expect and look forward to our subcommittee producing legislation in this field.

I support the changes basically suggested by the gentleman from Illinois as making the bill more feasible, more agreeable and more effective, and I wish to compliment him on the changes which I endorsed. I think this clearly, as the House has acted in other fields relating to so-called ethics and the disclosure, more recently suggests to us the overwhelming disposition on the part of the House to approve statutory machinery relating to various areas, and certainly this would be true in the field of lobbying disclosure.

I can only say that I think that a lot of Members, including Mr. Railsback and myself, stand to assist this committee in its work and we wish you the very best.

Mr. DANIELSON. Thank you very much, Mr. Kastenmeier, and I am glad that the two of you could appear here together.

The subcommittee will direct questions to you—either of you or both of you—as the individual members may choose. I am most pleased to be able to yield first to our distinguished colleague from Alabama, Walter Flowers, who was chairman of this subcommittee during the 94th Congress and who probably has done more work than anyone else in the House of Representatives on the subject now before us.

Having had the honor of serving with him 2 years ago, he has now left this subcommittee chairmanship to go on to a much more significant activity in exploring fossil fuels. But, nevertheless, I do

recall very well the day on the floor of the House—I think it was the longest session of the 94th Congress—starting just after noon and winding up somewhere around 2 to 3 o'clock the next morning.

Mr. FLOWERS. The gentleman has his hours correct.

Mr. DANIELSON. There were no substitutions. He was in the lineup all the way through and I am honored to yield to my colleague, Mr. Flowers.

Mr. FLOWERS. I thank my distinguished chairman for yielding and I remember well that he was there with me all during those long and tedious hours. And, you know, Mr. Chairman, my two colleagues sitting out here have been most modest in appraising their own contributions and most generous in appraising ours in the terms of this legislation in the last Congress. Tom, you and Bob—or Bob, you and Tom, had it not been for your efforts, your knowledge of the subject matter, your careful probing and aiding in the legislative process, I do not think we would have seen such an acclamation of the desire of most Members to achieve this legislation in the last Congress. I am delighted that our chairman, Mr. Danielson, has put this in the order of things that it deserves, and that it is an early order for action by this committee. I venture that we will have a bill reported to the full committee very shortly and reported out by the full committee to the House and passed. Hopefully, it will be a version that will not be too vastly different from what the Senate will pass, and we will be able to confer very shortly with them and have legislation on the books.

I think that you have all done a remarkable job in putting together this new bill.

It does incorporate many of the provisions of H.R. 15 as finally passed by the House, but you made some changes that I do not really have any fault with at all.

Let me ask you, in terms of your development of this bill, I know at one point you were considering a two-tier approach to the threshold. In other words, there would be one threshold for a small amount of lobbying activity that would require certain reporting, and then a more detailed reporting for greater lobbying activities.

Would one of you care to comment on how you arrived at choosing this approach?

Mr. RAILSBACK. Yes, I will be glad to comment.

As I may have mentioned, the draft which I am led to believe may very well be the bill introduced in the Senate, contained really a different threshold, and it involved three different triggering mechanisms.

Mr. FLOWERS. One being the amount paid, the \$1,250 a quarter.

Mr. RAILSBACK. Yes, that was in there.

Mr. FLOWERS. This is no different now than H.R. 15 as passed, so I think we can leave that aside and talk about the other.

Mr. RAILSBACK. That is correct. Let me just say the value in that one triggering mechanism requires the reporting of the people who are paid that money. Right now I am convinced we do not know what is going to happen with any of us—we may end up in Washington, practicing law—that there are many, many lawyers in law firms, particularly in the city of Washington, who are paid substantial sums of money to lobby, and because of the *Harriss* case, they are not

even required to be divulged or reported. That is ridiculous. They are highly paid lobbyists and yet they are not required to even be reported.

The second part of our bill, our triggering mechanism, relates to employee hours. Let me use an example that is close to home with me, and that is a large corporation in my district. They have a department in which there are people who track legislative activities. They are the ones who normally make the contact to express the position of the company representing certain legislation.

I get the feeling that that corporation would have no objection to registering, reporting, recordkeeping, but they really want to know with some precision exactly what activities, at what point in time, and what employees are to be covered. I think that most of our corporations and our unions would not object to having employees who are really engaged lobbying report, so that is the same as the Senate bill.

Those two provisions would be part of this Senate bill, I believe.

Mr. FLOWERS. The other tier was the contacts provision?

Mr. RAILSBACK. That is correct.

Mr. FLOWERS. And you have come away from that as a triggering device?

Let me ask you this, Tom. I know when I first read the language at the bottom of page 7 and the top of page 8, where you say the hours spent—the computation shall operate prospectively after the position of the organization has been decided—I was a little fuzzy on what that meant. There might be a better way of saying that. I understand what you are talking about now, but I think maybe we need to think about alternative language to make that more clear for the propose of our decision here. But that is just a matter of draftsmanship.

Mr. RAILSBACK. You may be right on that, but I think you do understand what I am trying to get at.

Mr. FLOWERS. Oh, yes. You do not talk about the preliminary discussion or formulating policy. You are talking about after the chairman of the board has said, hey, get out there and talk to the Illinois delegation and see if you can't get them to come around to support H.R. 5729.

Mr. RAILSBACK. Exactly.

Mr. FLOWERS. In terms of the type of activity that would be required to be assessed here, after the position has been adopted, would you be talking about purely clerical activity, or a combination of clerical and/or all lobbying communications, or—

Mr. RAILSBACK. This is what is meant. I drafted that language, which I will admit leaves some latitude. What I had in mind is not including secretaries' time. In other words, when a secretary types the letters or the draft of a brief, I do not think that should be included toward the threshold, but when an individual, we will call him John Doe, is told by the organization, "all right, here is our position, you take it from here," he should be covered. Lets say he engages in communicating, deciding to write letters to all members of the Illinois delegation. The time in implementing the decision, whether his contacts are oral, whether he dictates letters, whether he goes to Washington and makes personal contact with representa-

tives or not, all of his time in implementing that decision should be recognized. I sincerely believe that when a company or a union or a labor union, has people assigned to do this, they are going to be on our side, now that we have an adequate enforcement mechanism, and they are going to register, and they are going to report, and they are going to have there guys and women keep track of their time.

Mr. FLOWERS. You have got two problems. One is the computation involved in determining whether or not you ought to register, and then the computation that is involved in determining what you ought to report.

I think after one or two probes by the GAO, most people will probably end up, as you say, being on the safe side. That is the way it ought to be determined.

One last question, Mr. Chairman. I have used too much time, and I apologize, but I am extremely interested in this.

Did you give any consideration to restricting this only to oral communications?

There can be, I think, a good case made that this is in reality the kind of lobbying activity that is most effective and needs most to be disclosed, as opposed to letterwriting, or letterwriting campaigns of which there are generally a record, at least, because something is in writing somewhere.

The minds-eye picture of the problem is twisting somebody's arm or hotboxing somebody. To most people that is what lobbying is really all about. It is oral communication.

Did you give any thought to just restricting your bill to that?

Mr. RAILSBACK. If I can respond. We did, I think, give some thought to exactly who we wanted to cover and why we wanted to cover them.

I respectfully disagree, because a campaign of written communications can be very effective, although perhaps not as effective, as you suggest, as an oral communication. What really influenced us, Mr. Flowers, is that we felt we ought to cover the commercial-type activities. I would like to call to the attention of the committee, 517 Pacific Second—

Mr. DANIELSON. Will you repeat that? I did not hear the number, Mr. Railsback.

Mr. RAILSBACK. 517 Pacific Second. It is at or about page 930 of that volume. It dealt with indirect lobbying, and I think is a case that upholds the rights to indirectly lobby as long as what you are doing is a commercial-type lobbying activity and where there is a certain degree of specificity.

Mr. FLOWERS. Is that a California interpretation?

Mr. RAILSBACK. It is a Washington case.

Mr. FLOWERS. Well, I just suggested that as a point of discussion. I did not mean to imply it was my position that we should restrict it to oral communications alone. I think we will very definitely have a bill reported very soon, and that we ought to track it very carefully for a couple of years to see how it is working. We should have sufficient flexibility to change it if necessary to accommodate problems that might arise from the enforcement of the legislation, and I know that you both—having talked to you, do support that point of view.

Thank you very much, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Flowers.

I am now happy to recognize our ranking member, Mr. Carlos Moorhead of California.

Mr. MOORHEAD. On the item that was raised by Mr. Flowers, is it your intention, Mr. Railsback, to include any type of solicitation letter sent out to raise funds for the various activities of an organization, which happens to lobby?

Mr. RAILSBACK. It is defined under the definition of lobby solicitation. The word solicitation may be a misnomer. It means, really, to solicit others to try to influence legislation. In other words, it is not just soliciting money. It is to solicit others to try to influence.

I might just mention that one of the most effective lobby organizations, in my opinion, is the National Rifle Association. Very seldom have I had somebody from the NRA come by and lobby me, but boy, if I haven't got a pile of mail from people in my home district all very similar in language. In other words, has probably been motivated by an indirect mail campaign.

Mr. MOORHEAD. And all kinds of groups send out the same kind of thing. I wonder if it does not go just a bit too far when people are seriously interested in some special cause, and we know it, as Members of Congress, if you discourage them from having that kind of communication with their elected officials.

Last year, we amended the advisory opinions section, which would have permitted other individuals and organizations similarly situated to rely on decisions that were handed down. I noticed that you left that out of H.R. 5795 and yet it is most important that people know where they stand and can easily find out what the intention of the law is.

Don't you think—

Mr. RAILSBACK. I think you make a good point and, frankly, that was an oversight on my part.

Mr. MOORHEAD. That was my amendment to H.R. 15 last year.

Mr. RAILSBACK. I'll tell you the way I feel about it. If the circumstances of a particular organization are similar to or identical with another organization that has sought and received an advisory opinion, I see no reason in the world why that organization should not be permitted to rely on the advisory opinion.

Mr. MOORHEAD. Last year's version also contained a section giving Congress a legislative veto over regulations promulgated by the Comptroller General to implement the act. Your bill contains no such provision. I wondered why?

Mr. RAILSBACK. I do not personally have any big hangup about that either. In fact, I think I supported it.

Mr. MOORHEAD. One of the things in this bill is a requirement that all dues or contributions over \$3,000 be reported. You know, there are a lot of people belonging to churches, that pledge or tithe 10 percent of their income. That is more prevalent than you might think on a national basis. Virtually all churches participate to some small extent in lobbying of one kind or another.

I wonder whether it is a wise thing to deal with this first amendment problem through your escape clause. The provisions in 4(d) which are rather vague, and give very broad discretion to the Comptroller General.

Mr. RAILSBACK. To be honest, I probably would not favor any escape clause. In other words, I think I would require reporting. This is meant to be an accommodation, I think it is significant. If you read that last sentence there, you'll note it says "If such organization demonstrates that disclosure of such contributions would violate the privacy of the contributors religious beliefs." I would think that would be a virtual exclusion for religious purposes.

Mr. MOORHEAD. What purpose can be served? Say, someone contributes \$3,500 to the Plains Baptist Church and they have some little legislative interest—probably not a whole lot. What is gained by requiring that contributors to that kind of an organization be identified?

Mr. RAILSBACK. I do not think they would be required to be reported, under that exclusion.

Mr. MOORHEAD. You think the Comptroller General might issue a waiver there?

Mr. RAILSBACK. I think, without a doubt, under that religious exception, I think there would be no difficulty getting a waiver at all in that case.

Mr. MOORHEAD. But they have to go positively after a waiver?

Mr. RAILSBACK. Yes.

Mr. MOORHEAD. And other people under the same circumstances that may not understand the law, may not go after it. There may be one organization granted a waiver and one not.

Mr. RAILSBACK. Well, let me tell you how I feel about religious group lobbying.

Without belaboring it, you know, both you and I, Carlos, have been around. We have been around for a long time. I have been lobbied extensively—and I mean extensively—by religious groups, including everybody from the National Council of Churches to my own Church of Christ. Their organization in fact right now—my own church—is in the business of trying to determine what to do about the problems of unemployment. My opinion was sought about what should be our position on unemployment problems. I gave them my position. If the church wants to get in the business of lobbying, then I think they ought to be required to register, report, and keep records. But we are providing exceptions for contributors for the very reasons you are suggesting.

Mr. MOORHEAD. I just wonder whether that kind of religious lobbying is the kind of activity that we really are really interested in.

Mr. RAILSBACK. Churches are often vocal and they do take positions on issues that are the major issues of the day.

Mr. MOORHEAD. Well, I am glad the American people do so. It is just where there is any kind of misuse of their first amendment rights that I think we have got a problem.

Mr. RAILSBACK. Right.

Mr. MOORHEAD. I am not trying to be argumentative about this, but I do think that it is most important that citizens be encouraged to get involved, without the fear of a lot of redtape. I am afraid I have used up my 5 minutes, or close to it.

Mr. DANIELSON. Thank you very much Mr. Moorhead. I am trying to be reasonably flexible.

You two gentlemen can give us so much information that we want to get all we can, but we must pass the favor around. I recognize the gentleman from Kentucky, Mr. Mazzoli.

Mr. MAZZOLI. Thank you very much, Mr. Chairman, and thank you Congressman Railsback, and Congressman Kastenmeier. We appreciate your help and leadership and it is my pleasure to have sponsored these bills in the last Congress and to have worked for their passage on this subcommittee and then later in the full House, and I certainly share your hope that there will be a quick enactment of a much needed piece of legislation.

In this connection, Tom, do you have any fears about the fact that this bill in this form, or what will likely be its form, is going to contribute to the paperwork snarl around this country?

Mr. RAILSBACK. This is my belief. By taking out the third triggering mechanism that was contained in the original draft I have spoken about—the 25 contacts—I think we have taken a major step in eliminating a great deal of paperwork for organizations that are not engaged in commercial-type lobbying activities. I think that is very good.

I guess what I am saying is that the little guys do not retain anybody or they do not have employees who are spending individually as many as 30 hours or two who are spending 15 hours apiece. I think H.R. 5795 applies to only those organizations that are really involved in what I will refer to as commercial-type lobbying.

Mr. MAZZOLI. OK.

Let me ask you this followup question, Tom. I have not read the bill verbatim, but I would expect in there something that the rules and regulations will be written by some other organization, whether GAO or FEC or something, and so accordingly we are saying that we are not—it is not our intention to increase the paperwork burden on anybody, that the big ones, or certainly not the small ones—

Mr. RAILSBACK. I am not saying we are not increasing it, because I think there is some.

Mr. MAZZOLI. There is more paper to be filed, when we are talking about the paperwork snarl and the redtape machine.

Mr. RAILSBACK. Yes.

Mr. MAZZOLI. We are accepting the fact that reasonable paper will have to be filled out, but are we not also taking it on faith that that agency is going to be different than OSHA and different than EPA and all the rest that have had the same authority, and we now find that they sometimes misuse that authority innocently, with the most proper of instincts, but misuse it nonetheless?

Do you have any suggestion on how we can be sure that that does not happen here?

Mr. RAILSBACK. Well, I think that Mr. Moorhead suggested one thing that you may want to consider. I really have no objection to that. What he is suggesting is what was in the bill that passed at the end of the last session. He is saying where the GAO is given the latitude to promulgate rules and regulations, let them come back to the Congress and let the Congress look over the rules and regulations that they are promulgating. I think maybe that is a good idea.

Mr. MAZZOLI. I thank you for that suggestion, Tom, because that of course was the bill. We had the Administrative Rule Making

Reforms Act—two or three of them—pending before this subcommittee, and the genesis of the bill comes from the misuse or perhaps innocent overuse of the authority by the Government agencies, and it seems like the spirit would be to have the Congress have some oversight because we then might be able to see that perhaps an overzealous regulation writer is perhaps hauled in.

Bob, the \$1,250 threshold was our bill last year, and that is fine. The 30 hours was adopted for what reason, rather than the 20 percent?

Mr. KASTENMEIER. Well, I must say I think it was arbitrary. In terms of its genesis, As Tom Railsback suggested, it constitutes about 6 percent of one's time, and that seems like an amount of time over which any one individual in a quarter could make a significant lobbying impact and therefore ought to be covered by the bill.

So far as triggering the organization, I yield to my colleague for any further elaboration.

Mr. RAILSBACK. Thank you, Tom.

Bob did mention one of the major reasons. I think that requiring an employee who may be covered to keep track of every single minute and every single hour for the whole quarter, then to have to compute whether the lobbying activity constituted 20 percent or more, poses a real recordkeeping burden.

Mr. MAZZOLI. Let me ask you then—and I can accept the fact it would be easier to keep track of an elapsed time, rather than computing a percentage. Then why would not you have used the figure of 20 percent rather than 15 hours?

Mr. RAILSBACK. OK. What we have done is this. We have greatly limited the time that would have to be kept by any employee who may be triggering the operation.

We have said, don't keep track of any time until you have been assigned the job of implementing your organizations decision prospectively—not retroactively, no research, no secretarial time—just your activities, which I think would work. I think that most of them know who may trigger this thing. Let those people simply log their time, rather than compute percentages.

Mr. MAZZOLI. So, I gather, Tom, if you figure the time spent on lobbying prospectively from the point at which the organization has made its position, that that 6-percent figure would equal about the total 20-percent figure which started from the beginning. Is that basically the idea?

Mr. RAILSBACK. I do not know for certain, but I think it is—

Mr. MAZZOLI. Let me ask one last question, Mr. Chairman.

One of you gentlemen might help me. If one person spends 30 hours of his or her time on prospective work on the actual implementation of a position, why is it that two people have to each spend 15 rather than two—a combination of 30 hours—one person for instance 18 hours, and one 12?

Why would that not qualify, were both parties to have at least a total of 30. I would accept that a threshold number and, arguably, as a correct number. Why not any combination that reaches 30 hours?

Mr. RAILSBACK. I would say, in all candidness, it was not part of the draft that I worked from.

Mr. MAZZOLI. It is not a magic number.

Mr. RAILSBACK. I think you have raised a good point.

Mr. DANIELSON. Thank you very much, Mr. Mazzoli. Mr. Kindness.

Mr. KINDNESS. Thank you very much for your testimony this morning. I am concerned first with the question of coverage and what is included within the scope of the bill.

If I read it correctly, you have to determine first whether a lobbying communication has been made, I suppose, by an organization that meets one of the "threshold" tests. The term "lobbying communication" is defined on page 5 in terms of attempting to influence contents or disposition of any issue. And then on page 4 and 5, "issue" is defined, and it includes "any investigations."

But, while, it includes investigations, it does not appear to include adjudications. It does include Government contracts and regulatory rulemaking.

I am concerned about the appropriateness of a couple of those items. An adjudicatory proceeding, we will assume, is not covered by the language of this bill; but rulemaking proceedings and Government contracts would be. I have a great deal of difficulty in seeing the appropriateness of either being included here. The Administrative Procedure Act encourages comments on proposed rules. On the other hand, there is no "issue" involved with contracts, so to speak.

One further point, then I would like to ask both of you gentlemen to comment on it.

We are currently conducting hearings on legislation—H.R. 3361—that would provide for payment to be made by agencies of the Federal Government to organizations or individuals for their participation in administrative proceedings. Currently, under the Moss-Magnuson Act, the Federal Trade Commission does make such payments to organizations who are lobbying for the one position or another with respect to the outcome of a rulemaking proceeding. It is a means of encouraging various viewpoints to be heard.

Would, under your bill, the Federal Trade Commission be required to register and report as a lobbyist? Would not the organizations paid by the Federal Trade Commission to appear before the Commission itself, be influencing the outcome of those proceedings? Would such activity require them to register?

I would appreciate your opinions in those areas.

Mr. KASTENMEIER. I find it difficult to answer other than the fact that the Federal Trade Commission is of course an instrumentality of the Federal Government and would not qualify as an organization as such. It would exclude any Federal, State, or local unit of government. Therefore, an act by an officer of the Federal Government would not be included for purposes of lobbying. Therefore, I think the case you cite would not be covered.

Mr. RAILSBACK. I will try to address that, although frankly, I got lost about midway through.

As I understand it, criminal proceedings and investigations are specifically excluded on the bottom of page 4, from the investigation section. Second, I want to make clear here that the bill is not directed at all to contacts of the judicial branch or any part of the judicial branch. I know that you know that, but I just wanted to make it very clear on the record what we are talking about is the Congress as defined and the executive branch as defined.

Another thing, in the definition we do talk about hearings, not about adjudications—but about hearings. In my judgment, hearings

including hearings by the executive branch agencies, would be included and should be included.

What I think I would like to ask you to do is to maybe give that last example again about the FCC.

Mr. KINDNESS. Well, in regard to the Moss-Magnuson Act, the Federal Trade Commission is currently authorized to make payments for attorneys' fees and other costs to participants. It could be individuals or organizations—that take part in rulemaking proceedings before the Federal Trade Commission. These payments to individuals or organizations would appear to come under the concept of your bill. It is a matter of the Federal Government paying people to lobby. If communications with the executive branch are to be considered as lobbying—aren't these relevant activities?

I kind of have a problem there of reconciling the purposes of these two pieces of legislation.

Mr. RAILSBACK. Maybe I am in error, but if I could direct your attention to page 8, where there is language that the act shall not apply to a communication made at the request of a Federal officer or employee submitted for inclusion in a report or in response to a published notice of opportunity to comment on a proposed agency action. I am wondering if perhaps that would not cover your case.

Mr. KINDNESS. I think that may come close to covering it.

Mr. RAILSBACK. I would think that it would.

Mr. KINDNESS. Which would present then a constitutional question, I suppose, as to whether one organization may be paid by the Federal Government to lobby and another would be required to register and report on a periodic basis for carrying on the same activities, because they are not paid by the Federal Government to do it.

Strange, isn't it? We will have to reconcile those two approaches I suspect.

Mr. DANIELSON. Well, the gentleman's time has expired. I am very reluctant to cut anyone off, but we have two other excellent witnesses here this morning. Mr. Harris is recognized for 5 minutes.

Mr. HARRIS. Thank you, Mr. Chairman. I would like to join in the comments my colleagues passed on to both of you, and having been a cosponsor of the bill last year, I continue to support the concept of registration, which is certainly an improvement over what we have now.

I would like to ask you specifically why the GAO—why did we come down to the GAO and what does the GAO think about this idea?

Mr. KASTENMEIER. Well, as you know, in prior deliberations other entities were suggested, such as filing with the Clerk of the House, the Federal Election Commission, and it seems to me that the General Accounting Office has the most, let's say the most credibility in terms of the public. It has similar functions. Let's say it has sufficient neutrality. I think one could make a case for the Federal Elections Commission or some such commission in due course handling it, but at the present time they have plenty difficulties of their own.

We have determined in this case and in certain other cases, including legislation pending before you, in terms of financial disclosure, to make the General Accounting Office the repository and the administering agency for purposes of this statute.

I do not know, Mr. Chairman, whether they have a view or not about accepting these responsibilities. Of course, if we give them responsibilities, they indeed will accept them, but I think as far as I say, as a neutral agency, as an agency with credibility and as an agency that has performed well in the past in terms of such responsibilities, that it appeared to be the most logical choice.

Mr. HARRIS. How many additional staff would they need? Is this quite an increase in their operational responsibility and would they require an increase in staff as far as the GAO is concerned?

Mr. KASTENMEIER. I am sure it would cause an increase in their staff. Precisely what that agency or any other agency carrying out this act would require would depend in the final analysis on what you have in it, whether it is this bill or something like it.

Mr. HARRIS. A fairly heavy administrative job, I would assume, and it would be new to the GAO or, frankly, any other executive agency—noncongressional agency, whatever you want to call it, Mr. Railsback.

Mr. RAILSBACK. I think that your question is a good one and legitimate, and I must say it would affect any enforcing agency or any agency given the duty and responsibility to enforce it. It would require additional personnel, so I think the answer is yes. It would require additional personnel. I think it is significant that the GAO has conducted indepth investigations of the current lobbying act and found it to be grossly deficient, so they know something about the current law.

The other point I wanted to make is that they do conduct conciliation conferences, which I like very much. In other words, when somebody may be in violation, they are not penalized. This is not like some of the problems we had with OSHA. They are given a chance to comply and then only in a case that should be litigated is that matter referred to the Department of Justice. I like that. That was not in my original H.R. 15, but I think it was designed by the subcommittee. To me, it makes a great deal of sense to have advisory opinions, conciliation, and only then referral to the Department of Justice.

Mr. HARRIS. At least it is possible to have FEC to be considered for this. I guess it just seemed to me like the FEC is more in the business of accepting reports and placing monitoring reports than the GAO is.

Mr. RAILSBACK. That was my original bill, and frankly I like this better.

Mr. DANIELSON. Thank you. The time of the gentleman has expired. I am going to move very fast, and I will try to ask my questions quickly. I trust we can have a concise answer. Both of you gentlemen have indicated in your testimony in support of this legislation that something should be enacted.

What are the existing evils which you feel make this legislation necessary? I want to state that another way.

What are the existing evils which you seek to reach and hope to correct by this legislation?

Mr. RAILSBACK. OK. May I—

Mr. DANIELSON. Either of you.

Mr. RAILSBACK. No. 1, right now on the Federal level, despite the fact that there have been examples of abuses, I think, there is in all candor no law at all. In other words, absolutely no enforceable mechanism—

Mr. DANIELSON. Sir, agreeing that there is no enforceable law, that is not my question.

My question is what evil presently exists that makes a law necessary?

Mr. RAILSBACK. All right. My feeling is that there are many, many special interests that seek to exert, primarily through paid people, an inordinate or disproportionate influence on legislation, on rules, resolutions, and so forth.

The American public has no idea what special interests are doing. In other words, they have no idea that maybe right outside the Chamber on the House floor there are paid lobbyists giving us thumbs up or thumbs down as we walk through those doors. I think there are many abuses.

Mr. DANIELSON. Would Mr. Kastenmeier care to respond to that?

Mr. KASTENMEIER. Yes, I agree.

It is not a question of how many people should be going to jail, but the fact is that for many years the press has properly characterized the abuses as those that exist because there is no enforceable law, and, after all, this is not an outlawing of lobbying. It is merely a disclosure, so that the public can assess—as perhaps might be the case of financial disclosure—can assess the role of organizations in terms of influencing legislation which affects them.

Mr. DANIELSON. Well, then I take it—

Mr. KASTENMEIER. And presently that is not being done. That which is disclosed presently is ineffectual, as I think anyone can testify, not merely the two of us.

Mr. DANIELSON. Neither of you gentlemen is contending that these lobbyists—present day lobbyists—are transferring things of value to Members of Congress or to the members of the executive department to rulemaking agencies illegally?

In other words, I am talking about something which approaches bribery. You are not contending that that is the evil you are seeking to reach here?

Mr. KASTENMEIER. If that does exist, it will not be reached by this particular bill, but by others that we may—

Mr. DANIELSON. Well, we do have other laws, and we do have other bills which will provide other laws which would reach those evils.

Mr. KASTENMEIER. It might disclose, Mr. Chairman, this bill might disclose that type of activity if it exists, but I think rather that the various entities would fail to involve themselves of such activities if they were required by law and by penalties to disclose such.

Mr. DANIELSON. There are rules which have already been adopted by the House of Representatives. There is an ethics law which is presently being worked on by a special committee, all of which would bring very stringent controls over that sort of activity.

I want to go on to one more thing. Time is running out. I will have to rap myself out of order in a moment.

Referring to page 11 of your bill, section 4(b), the Comptroller General's waiver authority bothers me. You have stated there that

the Comptroller General can waive disclosure of the identity of a contributor who does not exceed 5 percent of the gross expenditures of an organization, provided it is demonstrated that the disclosure would violate the privacy of the contributor's religious belief or would impose an undue hardship or harassment upon the contributor.

Now, I am very much concerned here, if the Comptroller General can grant a waiver, it follows that he can deny a waiver. I just wonder how you can put a dollar sign on the first amendment right of freedom of religion. Would you address yourself to that, please?

Mr. RAILSBACK. I will try to. As I understand it, the dollar amount in the case of a disclosure of an individual's religious belief would play no part at all. In other words, it is the intent that if some person does not want his particular religious belief disclosed, which it perhaps would be if he contributed more than \$3,000 to the Baptist Church, he may not want somebody to know that he is a big contributor to the Baptist Church. I would say that the exclusion would relate to his belief, and his statement "if my contribution is reported, that is going to show my religious belief."

Mr. DANIELSON. I thank you. I want to let you know I have a very grave problem here. First of all, I question the validity of delegating the determination, in effect, of a constitutional right to the Comptroller General or anybody else, short of the Supreme Court of the United States.

I question further, if you are going to have a threshold, that you can have it at 5 percent. If the Comptroller General can grant this waiver, he can withhold the waiver, and I do not see anything in the first amendment to the Constitution that gives the Comptroller General or anybody else the right to measure somebody's exercise of his religion.

If he can grant it, he can withhold it, and then the Comptroller General is not given the right to grant or withhold a waiver if the contribution exceeds 5 percent.

Mr. RAILSBACK. Right.

Mr. DANIELSON. I think we have a serious problem, gentlemen. In fact, I implore you that if you or your legislative counsel can give me some help on that, I would be extremely grateful. I thank you very much. You have been very helpful here, and the importance of this measure I do not think can be diminished at all. We have got to do something here. I just hope to God we will do the correct thing.

Mr. RAILSBACK. Thank you.

Mr. KASTENMEIER. Thank you.

Mr. DANIELSON. I thank both of you gentlemen, and I am sorry that we cannot keep you here all day, because you certainly are fruitful witnesses. However, our quality is not going to be diminished. We have with us today Robert McClory of Illinois, an outstanding Member of Congress and a most distinguished member of the full committee, and I am inviting you to come forward.

You may bring your California assistant, if you wish. I might add, Bob, do you mind, we have with us Don Edwards, another member of our full committee. Don, would you be willing to share the table with Mr. McClory? I have in mind that we will keep going until there is a quorum call. You two gentlemen can give your formal presentation, and then the committee can question you jointly.

I would appreciate your cooperation.

First, without objection, the prepared statements of you gentlemen will be received in the record.

There is no objection, it is so ordered.

[The prepared statements of Hon. Robert McClory and Hon. Don Edwards follow:]

STATEMENT OF HON. ROBERT MCCLORY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, I appreciate this opportunity to appear this morning concerning proposed Lobbying Disclosure legislation.

My role is a somewhat different one than the other members of Congress testifying here today. For, I am not a sponsor or cosponsor of any of the bills pending before you. Nor am I here to endorse any particular version, although I recognize the meritorious intent of all the bills that have been introduced. Rather, my purpose in being here today is to share some of my thoughts and concerns about legislating to regulate lobbying. In particular, I want to discuss three potential problem areas: (1) contributions disclosure; (2) coverage of "professional volunteers"; and (3) Government contracts.

At the outset, I want to stress that I fully support the enactment of a strengthened lobbying law. We all know that the existing "Federal Regulation of Lobbying Act" (2 U.S.C. Secs. 261-270; 60 Stat. 839-849) is an unworkable and unenforceable sham. In a desperate balancing act in the *Harriss* case, the Supreme Court attempted to salvage the Constitutionality of the unfortunate 1946 law. But in doing so it laid to rest forever the possibility that that statute might ever be meaningful. *Harriss v. United States*, 347 U.S. (1954).

But, while I certainly support a stringent new law, I still believe that we as legislators have a responsibility to closely scrutinize any proposed replacement for the 1946 law. I don't need to tell the members of this distinguished Subcommittee, the difficulties in drafting effective legislation in this area. We deal here with basic First Amendment rights—the right "to petition the Government for a redress of grievances". We must be careful to insure that any new statute does not result in an unwarranted "chilling effect" on the rights of individual citizens to express themselves. Beyond that, organized lobbying has consistently been judicially recognized as a right protected by the First Amendment. See: *Harriss*, supra.; *Liberty Lobby v. Pearson*, 390 F. 2d 489(1968). *What this means is that every aspect and every dimension of a law which regulates, interferes with, or infringes upon this right, must be justified by a "compelling state interest"*.

This brings me to my first specific area of concern—contributions disclosure. Most of the bills pending before this Subcommittee would require some form of disclosure, by organizations which lobby, with respect to the amount of contributions or dues. Most versions also require the organization to supply the identity of the individuals making contributions above a certain level. Last year, the House-passed bill (H.R. 15) would have required the disclosure of any contribution in excess of \$2,500 and the identity of each individual contributor.

While, on its face, this seems to be a perfectly plausible and reasonable means of determining where large interest groups get their money, there is some serious Constitutional "fall-out" with such a provision. What, for example, will be the impact of this type of provision on a church or other large charitable organization? Will we be directly effecting their ability to raise funds for good causes? Most of these provisions contain no requirement that the contribution actually be used for lobbying purposes—only that it be given to an organization that sometimes or occasionally lobbies!

Further, if the disclosure threshold is easily reached, we might end up with a complete or partial membership list of an organization. What are the Constitutional implications of this? In a number of decisions the Supreme Court has found the requirement of disclosure of membership lists to violate the First Amendment rights of privacy and associational freedom. *NAACP v. Alabama*, 357 U.S. 499(1958); *Bates v. Little Rock*, 361 U.S. 526(1960); *NAACP v. Button*, 371 U.S. 415(1963); *Gibson v. Florida Legislative Committee*, 372 U.S. 539(1963). The test laid down by the Court is: whether or not there is a substantial relationship between the information sought (i.e. the list) and a compelling, overriding State interest, so as to justify such an intrusion into, and modification of, First Amendment rights.

I would urge this Subcommittee to tread very carefully in this area—so that the resulting law we will pass will not be Constitutionally questionable. An unnecessary

and unreasonable burden should not be placed on religious and other charitable organizations by such a reporting requirement.

My next area of concern has to do with insuring coverage of what I would describe as "professional volunteers". H.R. 15, the bill reported last year by this Committee and which passed the House, was applicable only to individuals employed or retained by organizations that lobby. So, for example, Congress Watch would register as a lobbyist and report on the lobbying activities of its salaried employees, paid officers, and directors. But the activities of Mr. Ralph Nader, the founder and principle spokesman for the organization, would not have been reflected in the "total expenditures" figure required in their quarterly report. Why? Because Mr. Nader receives no salary for his services to organizations such as Congress Watch or Public Citizen.

Now, none of us want to inhibit genuine volunteer activity of individuals who are exercising the right to petition without reference to a particular organizational policy or interest. But, if expenditures alone are the criterion for triggering coverage of an organization—we are oversimplifying and distorting how effective lobbying can be accomplished. A big salary or large expenditures are not always the best way to determine the quality or effectiveness of a lobbying effort. They are only one way of measuring such efforts. We must insure that individuals with financial resources independent of the organization or interest group they serve will be covered if they carry on sustained, continuous lobbying. Any individual, who, without pay, expends substantial amounts of time and effort to influence the legislative process should be covered provided he meets a reasonable threshold of substantive activity.

Perhaps the number of "contacts" test proposed by the Senate bill and by the Republican members of this Subcommittee in the past, is the best way to interject some semblance of balance into this legislation. I urge you to consider it or any other mechanism your inventiveness can devise, to get at what became the most notorious "loophole" in last year's bill.

Lastly, I want to comment briefly on the controversies surrounding whether or not Government contracting activity ought to be considered "lobbying" and included within the ambit of this bill. While I recognize that the process surrounding the awarding of Government contracts does involve attempts to influence Federal officials, I still feel that a rational argument can be made for separating the two activities. It seems to me, an organization which carries on legislative lobbying, would not rely on the same individuals to pursue its Government contract business. The fact of the matter is we are talking about different employees, with different job responsibilities, and who are located, more often than not, somewhere other than Washington.

In the case of a small businessman or a major Government contractor, compliance with the detailed recordkeeping and reporting requirements of H.R. 15 will be an expensive and burdensome process. They will have to monitor the activities of their entire sales force, as well as those technical employees who may communicate with a Federal officer or employee or a specific contract or future contract. Most companies will have to establish whole new reporting and accounting systems, to cover routine sales and marketing activities.

At the end of all this, it is highly questionable whether the public will be gaining any new or meaningful information. Mixing contract related activities with legislative lobbying may well result in a distorted picture of an organization's efforts to influence substantive public policies. Their quarterly total expenditure figure, for example, would include amounts spent on sales, marketing, and research activities related to contracts, and make it appear that far more money is being spent on lobbying than is really the case. Therefore, I would urge the Subcommittee to give careful consideration to those witnesses who will deal in detail with the Government contract question. Perhaps, the final answer will be to handle this subject in a separate title of the lobby disclosure bill—with different reporting requirements—or to handle the problem of Government contract influence in an entirely separate statute.

This concludes my formal testimony and, again, I appreciate the Subcommittee's courtesy.

SUMMARY STATEMENT BY HON. DON EDWARDS

Lobbying activity is a right protected by the First Amendment, and any effort to regulate such protected activity must be narrow in scope. H.R. 5578 requires disclosure of substantial lobbying activity but sets reasonable thresholds which will not discourage lobbying by small, low budget, grass roots organizations. The bill focuses on the most serious potential for corruption in the lobbying process by requiring disclosure of direct or indirect gifts to a Member of Congress. Unlike the other bills now before the Subcommittee, H.R. 5578 does not force organizations to disclose the names of

their members, a requirement which could discourage free association. Nor does the bill regulate solicitations by an organization to its members or to the public requesting that they contact the Congress because this activity is protected by the First Amendment.

H.R. 5578 does not address lobbying contacts with the Executive Branch because the different nature of lobbying contacts with that Branch necessitates a different standard for regulation.

STATEMENT OF HON. DON EDWARDS, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF CALIFORNIA

Mr. Chairman, I want to thank you and the members of the Administrative Law and Governmental Relations Subcommittee for the chance to appear before you and comment on the lobby disclosure bill I have introduced, H.R. 5578, as it relates to other bills you are considering.

Although often portrayed as an evil influence on the legislative process, the lobbyist is exercising the constitutionally protected right to petition the government for redress of grievances. The First Amendment, which forbids abridgment of this right, confers broad immunity upon the activities of persons and organizations who attempt to present their point of view to elected officials. Our constitutional system puts great faith in the competition of differing ideas as the ultimate cleansing tool.

The fact that the Constitution recognizes lobbying as a vital component of the democratic process does not mean that Congress is absolutely prevented from protecting itself against corrupting influences. However, because it seeks to regulate constitutionally protected activity, the efforts of Congress to protect itself must be as narrow as possible. I believe that these efforts must meet two principal tests:

First, the legislation must not be drawn so broadly that it sweeps within the scope of regulation efforts to educate the general public, or segments of the public, about pending legislation.

Second, it must not sweep in organizations which are too small or whose lobbying activities are not widespread enough to affect significantly the legislative process. Nor should it cover groups upon whom the burden of registration and reporting would fall so heavily that people would be frightened away from lobbying. Requirements which have this effect would directly abridge the right to petition the government for redress of grievances.

None of the proposals presently before the Congress, including both the Senate-passed and House-passed versions from the last Congress, conform adequately to these principles. H.R. 5578 fulfills them both. It regulates only direct contacts with Members, officers and employees of the Congress. Activities aimed at informing the general public are not within the scope of the bill. The thresholds for triggering the act's obligations require substantial expenditures of money and time in directly contacting legislators or their staffs. Thus, only those groups who significantly affect the legislative process by direct lobbying activities will be forced to register and report. For those whose activities meet the threshold, the registration and reporting provisions are straight forward. Compliance will be relative easy.

While my bill requires disclosure only of direct contacts with Congress, H.R. 1180 includes as one of its main elements a requirement that indirect contacts, known generically as "lobbying solicitations" be disclosed.

The term "lobbying solicitations" typically includes the efforts by organizations to require, encourage or solicit others to make direct contacts with Members of Congress or their staffs. Congress has never before regulated attempts by organizations to affect legislation through appeals to the public.

The Supreme Court has never permitted government regulation of such indirect efforts to influence the legislative or elective process. Decisions of the Court in both the Warren and Burger eras make it clear that the Court would strike down Congressional efforts to regulate lobbying solicitations to the public. Restricting disclosure to direct lobbying activity provides Congress with information which the Supreme Court has said the government may collect. Requiring disclosure of lobbying solicitations would cross over the boundary which now protects public advocacy of ideas from government regulation.

H.R. 5578 also contains a provision on disclosure of gifts. Indeed, this provision is at the heart of the bill. It is not vigorous advocacy of ideas which gives lobbying a bad name and which is perceived as corrupting. Rather, it is the favors which lobbyists can lavish on officials which raise suspicions in the mind of the public. It is no accident that the ethics proposal recently adopted by the House focuses on outside money as the chief corrupting influence. My proposal requires the disclosure of all gifts, direct or indirect, to a Member of Congress or his or her family. The

obligation to disclose is placed upon both the Member of Congress and upon the lobbying organization.

The level at which triggering thresholds are set is critical since it determines whether a lobbying disclosure bill will have a chilling effect on the activities of small, low budget, grass roots groups.

Under my bill, organizations would have to spend \$2,500 a quarter on lobbying activities and either retain an outside lobbyist or have at least one salaried employee who spent 20% of his or her time lobbying.

In contrast, H.R. 1180 utilizes low thresholds to trigger the reporting obligations. These thresholds would force registration and reporting requirements upon small local organizations with small budgets and already overburdened staffs, as well as large, loosely organized national grassroots organizations. For these groups, compliance would be so burdensome that many would be deterred from lobbying at all.

For example, under H.R. 1180 each registered organization would have to file quarterly reports including information on approximately 25 separate items. Moreover, every registered organization would have to maintain extensive records and institute intricate accounting and internal reporting procedures in order to prove compliance. The need to centralize record-keeping and to track expenditures on lobbying solicitations as they filter through the grassroots organizational structure will be too costly and too intimidating for many organizations. The threat of criminal sanctions is even more intimidating, especially to small or inexperienced citizens groups venturing into lobbying.

The low level of these thresholds, the burden of compliance, and the presence of criminal sanctions will deter many groups and individuals from entering the lobbying process. Congress will thus have caused citizens to forsake their constitutionally guaranteed right to petition the government for redress of grievances.

It is only where groups are large enough to engage in lobbying on a sustained or widespread basis that the interest of Congress is sufficient to meet this test. My bill which requires the quarterly expenditure of \$2,500 provides such a measure. Organizations of a size large enough to have one regularly salaried employee which then spends employee time or organization money in this amount are generally engaging in substantial lobbying and are well enough organized for the registration and reporting requirements not to be so bewildering, intimidating or costly what they would consider refraining from lobbying at all.

H.R. 1180 also requires that individuals contributing over \$2,500 in one year to lobbying organizations must either face public disclosure of their support or withhold their contributions. For many citizens, financial contributions may be the only means of participating in the organization. In addition, many charitable organizations under 501(c)(3) of the Internal Revenue Code such as churches and hospitals accept large contributions on the condition that the donor remain anonymous. The disclosure requirements under H.R. 1180 could cripple the fund raising efforts of any such groups which meet the thresholds of H.R. 1180.

It is my belief that no individual should be forced to disclose his or her associational ties. Disclosure of membership can have a significant deterrent effect on the free exercise of the right of association, especially for those individuals involved in unpopular causes. My bill does not require organizations to disclose the identity of their members and contributors and the amount of their contributions.

The members will note that H.R. 5578 does not include coverage for contacts with the Executive branch. While I am in favor of legislation requiring some disclosure of these contacts, it is my feeling that the entirely different nature of Executive branch contacts necessitates distinct requirements in a separate bill addressing that issue.

I want to close by thanking the members for allowing me the opportunity to comment on the lobbying disclosure bills which you have under consideration.

Mr DANIELSON. Mr. McClory.

TESTIMONY OF HON. ROBERT MCCLORY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. MCCLORY. Thank you, Mr. Chairman. I am delighted to be here this morning surrounded by able Californians. On my right is my distinguished colleague, Mr. Edwards of California and also with me is my legislative assistant, a very distinguished young lawyer from California, Miss Karen Cobb. California is especially well represented since the chairman is a Californian and the ranking member is also a Californian. I expect warm support.

Mr. Chairman, I think at the outset I might say that I think that a religious exemption—in some form—ought to be included in this measure.

I think that what we want to protect is not just the mere identity of the individual's religion, which I think should be protected when we have a religious organization which would otherwise be covered; but also I think the free exercise of religion must be carefully considered. I think we have to be very wary about enacting any legislation which would interfere, in any way, with a person's free exercise of religion, through the disclosure of his contributions or his actual participation.

I have three main points in my statement, which I want to briefly cover.

One, of course, relates to the already mentioned contributions disclosure, which is of great concern to religious and other charitable organizations. Another relates to the subject of professional volunteers, and the third with respect to the proposed coverage of Government contracts.

I might say that I feel that lobbying activities are extremely important to the quality of the legislative process. I find that lobbying activity frequently provides very useful information on both sides of an issue. Almost all lobbying groups or lobbying individuals are honorable. I think that this type of communication is something we want to preserve. We want to preserve it very emphatically.

So, where we have legislation which might impinge upon these validly exercised first amendment rights and might impair, somehow, the exercise of the right to petition the Government, we should be very, very careful.

I am pleased, however, to note that in the reporting section of this proposed legislation there would be a requirement to report those dinners and receptions that cost \$500 or more. If this could have the effect of reducing the number of those receptions and dinners, which I think to a large extent are a waste of the money to the organizations that are involved, it would certainly relieve Members of Congress from unessential activity.

The subject of coverage of professional volunteers is something that came up last year and in which I took an active part. Because I think if we are genuinely going to cover an organization such as Congress Watch, then the lobbying activities of its most noted agent should be reflected in their report. I am troubled by the fact that most of these bills presuppose that dollars are the best mechanism for measuring a lobbying effort. That is not always the case.

So that, I think, we must in the reporting and identification requirements be sure that we get at those mischievous—frequently mischievous—interests that operate without direct compensation. A lobbying report of a Nader-inspired organization, which does not reflect his actions is clearly defective. I urge the members of the subcommittee to do what they can to fill such a loophole.

Finally, I want to comment briefly on the controversy surrounding whether or not the Government contracting activity ought to be considered lobbying and included within the ambit of this bill.

I recognize the process surrounding the awarding of Government contracts does involve attempts to influence Federal officials. I still

feel that a rational argument can be made for separating the two activities. It seems to me, an organization which carries on legislative lobbying would not rely on the same individuals to pursue its Government contract business. The fact of the matter is we are talking about different employees, with different job responsibilities, and who are located more often than not some where other than Washington.

In the case of a small businessman or a major Government contractor, compliance with the detailed recordkeeping and reporting requirements will be an expensive and burdensome process. They will have to monitor the activities of their entire sales force, as well as those technical employees who may communicate with a Federal officer or employee on a specific contract or future contract. Most companies will have to establish whole new reporting and accounting systems, and so I think what we want to do is to protect ourselves and protect the American community from the burdens of this legislation while getting at the nub of the situation, which is to identify and to be sure that we have a full reporting of all of those interests that are involved that are undertaking to effect the legislative results.

So, I am pleased to be here and to make these suggestions, hoping that the end product of our legislative work here will contribute toward an improvement of the legislative process.

Mr. DANIELSON. Thank you, Mr. McClory, and I will now recognize the gentleman from California, Mr. Don Edwards. I hope you will stay, Mr. McClory because when he is done with his principal presentation, then you are wide open for questioning.

TESTIMONY OF HON. DON EDWARDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. EDWARDS. Thank you, Mr. Chairman, and it is nice to be here with my colleague, Bob McClory. I will just try to make a few points and then move on to the questioning.

But I think there are some very important points to be made, because I know the chairman and the other lawyers on the committee know that you are in dangerous country when you are legislating restrictions on the first amendment.

So I am going to suggest that—well, I presume that the evil that you are trying to get at is the improper influence of Government officials by lobbyists, although there has been no evidence to date, and very little evidence last year, as to what those particular evils were, and I think those ought to be identified. But you must not write legislation that will discourage local volunteer types of groups.

Now, these must be encouraged, as my colleague from Illinois points out, to exercise this constitutional right. Now, let me be specific on the various proposals you have in H.R. 1180 and H.R. 5795.

The last one as presented by Mr. Kastenmeier and Mr. Railsback, and the first, I believe will be presented by our chairman, Mr. Rodino.

Now, in all these bills and the bills last year, I was horror struck at the implications. The thresholds were much to low. They created—and these bills that you are considering now, with the exception of my own, create reporting requirements for local groups that bear no relation to preventing corruption in Government and that is apparently what you are trying to get at.

These people and lobbyists who exercise undue influence on the legislators—for example a group of citizens from Monterey Park, the Monterey Park Bird Watchers Society, decided to encourage a new wildlife refuge in your area, Mr. Chairman, so they hired—well, Mrs. John Smith is a woman in town and she gets \$25 per month. She writes letters for 4 weeks and she does spend 75 percent of her time and they disband.

Now, under H.R. 1180 and H.R. 5795, they would have to register; they would have to file periodically, all under the threat of criminal penalties. You are not trying to get at this kind of situation. You don't want to discourage this kind of activities. You want to encourage it.

Now, in my bill, the organization must spend \$2,500 a quarter on a lobbyist or have a salaried employee that spends 20 percent of the time lobbying. This gets at the professional lobbyist, the lobbys that you are trying to get at—not volunteers back home. You are talking about in a year \$10,000 and you are talking about 20 percent of the time doing professional lobby work, not the volunteer lobbyist.

Now, another subject that came up, the contributor disclosure. The other bills require disclosure of contributions to the organization over \$2,500 in one bill, \$3,000 in the other. Now, disclosure of membership, and especially disclosure of contributions to an organization has a significant deterrent effect on the freedom of the right of association. You have decision after decision that will reflect this, especially those who are involved in unpopular causes, and we all are involved from time to time in causes that are not recognized as happy causes by all of the population.

My bill would have no requirement whatsoever to disclose the identity of contributors or the amount of the contribution, and I do not see any reason why any case has been made to disclose a contribution or the identity of the membership.

Solicitation is an appeal to the public to effect legislation, where they encourage others to contact their Congresspeople indirectly. The other bills require a copy of—well, H.R. 1180 requires a copy of the solicitation be filed with the GAO, and Mr. Kastenmeier and Mr. Railsback go further and count the money and time toward triggering the bill. So, a group that never contacts a Member of Congress in any way could be subject to criminal penalties—never lobbys a Member of Congress. Just think, that is what that bill does.

My bill requires a disclosure only of direct contact with Members of Congress. It does not regulate lobby solicitation—indirect lobby solicitation should not be covered by any bill.

In Mr. Rodino's bill, the reporting requirement impacts heavily on many public charitable organizations that are tax exempt under section 501(C)(3). By law, they can not engage in substantial lobbying and that is the law presently. Also, they must file a full annual report with the Internal Revenue Service. My bill would just require the 501(C)(3) charities to submit their IRS forms in lieu of quarterly lobbying reports. These actually contain more information than these bills would require anyway.

Now, almost the last item, both these other bills cover lobbying contacts with executive branch and officials at levels 1 to 5. Since these contacts primarily are regarding contract and administrative rule-

making, rather than influencing legislation, there should be a completely different set of rules, a different bill on it, if you are going to get into the executive department. We just do not know enough about it, and my bill would make no provision for the regulation of executive branch contacts.

If you want to do that farther down the road, all right, but it really should not be a part of this bill.

The heart of my bill requires a disclosure of gifts—and the others do too—where real misbehavior takes place; free trips, parties, hotel rooms, hunting lodges, liquor. This is what we read about in the papers. This apparently is where the dangers exist, and under my bill each quarter the organization and the members must file a list of gifts over \$25 from any lobbying organization. We have a lower threshold than that in California, Mr. Chairman, and it works very well.

These are my concerns, Mr. Chairman. If we are going to legislate in this sensitive area, I trust the bill will be drawn very, very narrowly, with some of these dangers and limitations in mind. The particular bill that I have submitted, Mr. Chairman—

Mr. DANIELSON. No. 5578?

Mr. EDWARDS. No. 5578—has the endorsement of the Sierra Club, the ACLU, the Environmental Defense Fund, the National Wildlife Federation, the Audubon Society, and the National Health Council has recommended to its members that this type of bill be enacted.

Than you very much.

Mr. DANIELSON. Thank you, Mr. Edwards, I want to remind my colleagues on the subcommittee that we still have about 12 minutes before 12, and normally the first quorum call is at 20 minutes after. I do not want you to count on that. Sometimes some people ask to have the Journal approved, so try to restrain yourselves with the questions so we will all get one round at it. I will call time closely, and I will cut us down to about 4 minutes.

Mr. Moorhead, you are recognized.

Mr. MOORHEAD. Thank you Mr. Chairman, and thank you, Mr. Edwards for your testimony. It sounds as if you have made some very important improvements in this legislation. Mr. McClory, I want to commend you also, for the points that you have made so well.

I think in this field of religious contributions, especially, that we are very much on dangerous first amendment ground. When we require the disclosure of a large contribution to a church or other religious organization, we might be discouraging such contributions from being made. At the same time, while we are requiring extensive disclosure of various religious organizations, many people are concerned about equal coverage of the very effective volunteer organizations, with well-known leaders. How can we have their leaders exempted, because they are not on the payroll? You brought that point out very well in your testimony, Mr. McClory, that the head of one of the main lobbying organizations receives his money from speeches. He does not have to collect revenues directly from the organization, but it is actually his lobbying activity and his interest in public issues that gives him his money.

So, unless that volunteer activity is also covered, many people will think the bill is defective. I hate to go into too many of the details

in the short time that we have, but what I want to ask you about particularly—and either one of you could comment about this—is about the advisory opinions that may be handed down. I asked Mr. Railsback about this too—they would deal with one organization but should they not also be relied upon by members of other organizations in similar circumstances?

Mr. McCLORY. Well, I do not know the extent to which the GAO is involved in any similar type of activity. I think we want to be very wary about charging the GAO and the Comptroller General with a volume of work that could interfere with the very essential oversight work that the GAO presently performs for us, and I am almost to the point myself where I would say if we are going to have this kind of extensive reporting we ought to establish another agency, rather than to have the GAO and the Comptroller General handle it; or, in the alternative, we should simplify it so we do not burden them, and the subject of advisory opinions plus the fact that there would be judicial review could involve the GAO and the Comptroller General to the extent that I just think we would interfere with the GAO's other essential work, and we must not do it.

Mr. MOORHEAD. Mr. Edwards, does your bill cover both written and oral communications?

Mr. EDWARDS. Yes, I think the advisory committee's provision is just going to create an absolutely bureaucratic and paperwork nightmare, and I appreciate the questions asked by both Mr. Harris and Mr. Mazzoli. I can not imagine any organization doing any lobbying without getting in an advisory opinion, because here you have got criminal actions involved, and that is why the threshold in my bill makes the threshold very high, so you catch the Nader organization and the organizations of lobby lawyers downtown and all the other ones that apparently people have in mind catching, but not the neighborhood groups, and, of course, they are going to write to the GAO and try to get advisory opinions, and you are going to have, like we have in the EEOC, 160,000 backedup complaints. You are going to have 500,000 complaints under this legislation.

Mr. DANIELSON. The time of the gentleman has expired.

Mr. Mazzoli.

Mr. MAZZOLI. Thank you, Mr. Chairman. And thank you gentlemen for your help today and I really think you both have helped to crystalize the issues that are on my mind and in the minds of my colleagues and that is, Don, you have stated the question, because we are really trying to get at improper influence and not the influence from constituent letters that pile into our office by the thousands every day, and nobody on this committee would seek to prohibit that or impinge upon those freedoms.

We are looking for those examples you ticked off—the hunting lodges, the free transportation, the booze, the parties and, in that connection, I think certainly we have already got that. Would you, at the same time, believe that organizations like you mentioned—the Nader group—which we accept as not doing that kind of thing, ought to still be covered and would be covered by your bill, despite the fact that their kind of lobbying is not unduly—

Mr. EDWARDS. The kind of professional lobbyist that people who support this kind of legislation would like to include and yes, they

would be included very definitely, and Common Cause would be included and the big lawyers downtown and the like.

Mr. MAZZOLI. Tom, let me ask you this. You listened, maybe, when Bob Kastenmeier and Tom Railsback talked about their decision to go with a scheduled number of hours rather than the calculated percentage factor after computing hours.

Do you see any difficulty if this were to go to hours, or do you think the percentage is better?

Mr. EDWARDS. I think it would result in a low threshold again and you would start to pick up your neighborhood organizations and your volunteer organizations with a certain number of hours, yes. You want to keep a high threshold, like in my bill.

Mr. MAZZOLI. Did you listen when they were saying this is in a sense prospective, it starts from the point at which the organization has made a judgment and taken a position, and those hours are clicked off thereafter. Do you see any difficulties or problems if this committee were to adopt such a provision, rather than in the discussion phase of it?

Mr. EDWARDS. Yes. I do not think it would work. That is too much of a burden to put on volunteer local organizations, to start ticking off hours. I think you are aiming at the professional lobbyist, and I think you should limit your legislation to covering him.

Mr. MAZZOLI. And if I recall correctly, Bob, you were talking about eliminating charitable organizations just to eliminate them from your bill entirely. Is that basically your thought?

Mr. MCCLORY. I think so. As I said, I have not introduced any legislation, but after listening to the testimony of Mr. Edwards, I think I am going to be a cosponsor of his bill.

Mr. MAZZOLI. Let me wind up my questions by asking Congressman Edwards. You mention that the bill that you introduced in support of the Audubon Society, the Sierra Club, ACLU—I wonder whether the Monterey Park Bird Watchers Society is for the bill too?

Mr. EDWARDS. That is up to the chairman. They are his constituents.

Mr. DANIELSON. That is what you call an inside joke, and I am happy that the gentleman's time has expired. [Laughter.] Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman and thank both of you gentlemen, particularly, for the clarity of thought. I would like to solicit your comments on the coverage of Government contracts and executive branch coverage overall.

The law presently does not allow Government contractors direct access to court. There are agency boards of contract appeals, and procedures through which a Government contractor must go when there is a dispute on a Government contract. So, it is possible that Government contractors would have to register and report as lobbyists in order to pursue their legal rights and remedies in Government contract dispute cases, if this legislation is passed including the executive branch and Government contracts. And if the law is changed so as to allow direct access to Federal courts in Government contract disputes, then obviously every dispute would go the court route, so they would not have to register and report as lobbyists in order to pursue their rights.

Do you have any comments in this area with respect to Government contracts?

Have you looked into that aspect in particular?

Mr. McCLORY. I have not. I might say that throughout my legislative career I have always encouraged my constituents to find out ways to do business with the Government. I think the Government should do business with as many people as possible and that we should encourage people to sell their products and have their business activities with the Government, so I would just think that we should attack that in the same way as Mr. Edwards suggests. We attack that in the same way as Mr. Edwards suggests. We attack the lobbying. We should attack the wrongdoing, but I do not think to require reporting and regulating and all the financial data and whatnot that could be involved in the activities of those who do business with the Government. I think it would again involve us in all kinds of paperwork. It would certainly discourage small business from doing business with the Government, and I think they are the very ones we should encourage to get into that activity.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Kindness.

Mr. Harris of Virginia.

Mr. HARRIS. Thank you, Mr. Chairman. I would point out that the type of activities with regard to Government contracts my colleague has referred to expressly exclude from the application of the bill, on page 7 of the Rodino bill, on page 9 of the Kastenmeier bill—I was trying to visualize in my mind the overall application of all this legislation, and I have got a sneaking suspicion we are going to create a registration requirement for those organizations that are already registering under the current act—the chamber of commerce, the other general organizations. But, Mr. Edwards, if I may, I have got a notion we are going to miss the high-priced lawyers downtown by a mile.

As I understand the way the high-priced guys operate downtown—I have just been reading about this sort of thing. They sit in their offices and the clients come to them and they tell the clients what to do. Most of it is legal advice of course, but then they explain to them who they are supposed to see and where they are supposed to go and they never make a contact. At least that is what the folks tell me downtown, and since the key here is the contact work, I have got a notion that most of your high-priced superpowers downtown are not going to have to register.

Would you agree?

Mr. EDWARDS. I really do not know much about it, and I do not think the committee knows much about it because neither this year nor last year and, of course this year you have not had time yet—was there any testimony on this particular evil.

Now, I do know that sitting outside of certain committees and I read in the paper—like Ways and Means and the Ethics Committee—last year when they had a bill like this up, or a bill something like this up before it with some kind of jurisdiction, that the room was full of high-priced lawyers getting hundreds of thousands of dollars a year and lobbyists, they were lobbying very hard. But I would suggest, Mr. Harris, that you have testimony right on the subject

that you spoke about and then zero in the legislation on that if it turns out to be the evil that I suspect in many cases it is.

Mr. HARRIS. I think you have to reflect at least for a minute, when you find out who the big powers are in Washington, when you read the articles in magazines and what have you, where most of my knowledge comes from. These are not fellows you ever see out in the hall pointing their thumbs up or down. They have an office, you know, on the 12th floor of the executive building or something downtown and kind of call the shots from there. And the linchpin in every one of these bills is the fellow who makes the contact. And if the president of the corporation may be getting all his legal advice from these lawyers as to how he is supposed to do it, but he is not the one making the contact. Of course, he won't be sending that big a person or spending that much of his time lobbying, and I do not think we will get either one of those.

Mr. EDWARDS. I think you pick most of them up under my bill because they would be spending well over \$25 a quarter, and they would be spending at least that.

Mr. HARRIS. Who would not?

Mr. EDWARDS. I think these lawyers downtown would qualify.

Mr. HARRIS. Do you cover them if they do not make the direct contact?

Mr. EDWARDS. No, they do not have—they would not have to make the direct contact as long as they were spending 20 percent of their time in lobbying activities, which would include, I think, organizing for direct contact with other people. Although I say you are going to have to look into it.

Mr. HARRIS. Thank you, Mr. chairman.

Mr. DANIELSON. Thank you, Mr. Harris, and I thank both of you gentlemen.

I am going to wind this up really quickly. I have grave concerns on limiting the right of people to petition their Government. It is a first amendment right, just like the rights of freedom of speech, freedom of the press, freedom of religion, and I am certainly not going to be part of anything which is going to unnecessarily or unduly limit those important rights.

There seems to be a thread coming forward here that if we have legislation it should reach commercial lobbying, that is, the higher type of lobbying as opposed to the right of an individual to say what he wishes. I am concerned—I share the concern of many on the idea of sending the enforcement to the Government Accounting Office. We have a tendency in the Congress that if we have a Government agency that is working well—that has a good reputation—then we dump everything in it's hands. As a result we destroy it and have to look around for another one.

There are many items of legislation now pending or recently enacted which need some kind of a supervising office. The financial disclosure bills would do that. This bill, if passed, will require it.

The public participation laws will require it. I am going to talk with the appropriate people and see if it would not be wiser perhaps to set up a supervisory agency to handle all of these types of legislation without destroying our very reliable Accounting Office.

I am greatly concerned with the constitutional questions, and I am delighted that both of you gentlemen have expressed a similar concern, as have the members of the Committee. I think—I realize that constitutional liberties are not unqualified. There are even restrictions on freedom of speech. But when we narrow or limit or restrict a constitutional freedom, we must use the greatest possible restraint. We must respond only to compelling reasons to justify it and in our limitations we must be as narrow as we possibly can be to meet the problem and not go beyond that particular point.

I do not feel that there is a need to have a lobbying law just because we do not presently have a good lobbying law. There can be a need for a lobby law only if it meets an evil—something which tends to either corrupt or diminish or impair the legislative process. Then we have something that is wrong, and we have to try to reach it. But the fact that our present law is not good does not prove to me that we have need for another one. If we do have that need, I will try to get testimony, and then we will try to meet it. I think that the public perception of the need for a lobbying law, among those who stop to think it out rather than to just accept something they read somewhere, is that there must be some corruption going on—that the object of lobbying efforts are receiving gifts or favors or financial considerations, either directly or indirectly, such as trips.

I believe my colleague said hotel rooms, trips, hunting lodges, entertainment—you name it. If that is true, of course it should be stopped.

We have a lot of laws already on the books which tend to reach those evils. With the new House code of ethics which has been adopted, we certainly have reduced the scope of any possible influence of that sort, and we do have a Select Committee on Ethics which is now drafting a bill which is intended to reach them in a more refined manner with the impact of law.

I bring that up for this reason. If we are to place in this bill any restrictions on financial considerations of whatever kind—gifts, dinners, whatever—I think they should be in conformity with the same standards that we have adopted for the House of Representatives and which may be adopted by the other body, and which may become the body of our ethics law. If the same standards apply to the lobbyists as apply to the legislators, I do not think we are going to have too much confusion.

I have taken this opportunity to really express some thoughts in my mind rather than ask a question, but if you disagree with me, I would certainly like to hear from you.

Mr. McCLORY. I would make this comment. I think that the general public feels that this kind of wrongdoing is widespread. It is not widespread at all. I think very few Members of the Congress are involved in any kind of wrongdoing involving holiday trips or anything like that. I do not know anything about them. I do not have any experience in it. I do not—none of my colleagues with whom I have a close association are involved in any such wrongdoing at all. I think that, to a large extent, is a myth. I think that—I do not want to say it is nonexistent, but I say that it exists in a very limited way, and not in a widespread way.

Mr. DANIELSON. It is more apparent than real, you say.

Mr. McCLORY. I think the few grievous cases are the ones that have been publicized and people tend to equate it to all the Members, just like the wrongdoing like some of our colleagues in the last Congress. They are isolated cases. They are not general situations.

I would also say that not only the right of free speech is involved, but the right of freedom of speech is involved. Probably in this legislation freedom of the press may be involved—the right to freely petition, and there are a number of individual rights that are involved in this legislation which we want to be very careful about impinging upon, and I know that the committee will be taking those into consideration.

Mr. DANIELSON. Mr. Edwards, did you have any comments?

Mr. EDWARDS. Mr. Chairman, I was listening with great care to what the chairman said, and I agree with everything the chairman said in his closing remarks there.

I think you have to look at this legislation with great care, especially certain portions of it that are going to start an avalanche of paperwork such as we have never seen. Perhaps the use of the Federal Election Commission—if that is the name of the Commission—might be very useful and perhaps as far as you want to go would be to require Members of Congress and the lobbying organization to file quarterly reports about gifts of over \$25 in any particular quarter. That was one—well, they did further than that in California, but that was part of the California law that effectively stopped what ever behavior there might have been in the lobbying activities.

Mr. DANIELSON. I notice that Mr. Kastenmeier and Mr. Railsback earlier pointed out the importance of disclosure, especially with regard to commercial lobbying as opposed to individual effort. If the registration reporting requirements are not too onerous, disclosure would probably reach everything else that is subject to criticism.

Mr. EDWARDS. Not disclosure, Mr. Chairman, with a low threshold.

Mr. McCLORY. Not your birdwatchers.

On the subject of threshold, I know some of the religious leaders are not so concerned about the threshold. They are concerned about the large contributors, and those could certainly be discouraged from contributing to a worthwhile religious activity if there is any kind of a threshold involved as far as requiring the disclosure of contributors to religious organizations.

Mr. DANIELSON. We have had a complete round. Do you have an absolutely irresistible question, Mr. Moorhead?

Mr. MOORHEAD. Just to thank the witnesses for being here and for their contribution.

Mr. DANIELSON. Thank you very much for your help. It has been most useful to us. Before we adjourn, I would like to, without objection, recognize the statements which were filed by Congressman C. W. Bill Young of Florida, by the Honorable Charles E. Bennett of Florida, and by the Honorable John M. Murphy of New York which will be received as part of the record. There is no objection, and they are so received.

[The prepared statements of Hon. C. W. Bill Young, Hon. Charles E. Bennett, and Hon. John M. Murphy follow:]

STATEMENT OF HON. C. W. BILL YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF FLORIDA

Mr. Chairman, I appreciate the opportunity to address the Members of your Subcommittee today on H.R. 1180, The Public Disclosure of Lobbying Act. On March 21, 1977, I introduced H.R. 5275—my version of the Public Disclosure of Lobbying Act of 1977. My bill is slightly different from the bill being considered here today, because when the bill you are considering was discussed on the floor in great length at the end of the 94th Congress, several amendments which did not pass, were proposed which I feel should be an integral part of any legislation designed to show accountability of groups who professionally lobby for the purpose of influencing Members of Congress.

In addition to all of the provisions covered in H.R. 1180, The Public Disclosure of Lobbying Act of 1977, H.R. 5275, includes the following points:

(1) A requirement that all lobbying be restricted to a distance of fifty feet or more from the Chamber of either Body of Congress when it is in session.

(2) A requirement that certain employees of State and local governments be included within the definition of lobbying organizations.

(3) A requirement that lobbyists be required to wear identification tags if their lobbying activities are within 100 feet of any entrance to either Chamber of Congress while such Body is in session.

(4) A provision that Registration requirements include the identification of anyone who has contributed or expects to contribute \$2,500 to an organization and who spends or will spend 20 percent or more of his time in any filing quarter engaged in activities for the organization.

(5) A provision to include ex-Members, former Parliamentarians, former elected officers and elected majority or minority employees of the House as being subject to civil penalty when appearing on the House floor or in adjacent rooms as a representative of an organization required to register under the bill.

(6) A requirement for the reporting of any and all individuals lobbying within 100 feet of either Chamber of Congress, including their hours, and the purpose of their activity.

(7) A requirement for reporting the names of Federal officials or employees, contacted by lobbying organizations.

The right to petition Congress, by individuals or through professional lobbyists is guaranteed by the Constitution, however, professional lobbying organizations has become very structured and organized, and disclosure of the activities of these groups and their income and expenditures is justified. So are the requirements that their physical proximity to the Members of this body, when it is in session, be limited. We cannot afford to continue the "circus-like" atmosphere that we are sometimes subject to when we enter the Chambers of Congress past throngs of lobbyists attempting to inform us of what we are doing and how we should do it. I am not suggesting that they be "barred" from the building, just from the doorway. I am not suggesting that they be "branded", just clearly identified. I am suggesting that the privileged few who have access to these Chambers by reason of their former association with it, should not be allowed to abuse that privilege by gaining entry with a "product to sell" or an "ax to grind" for personal or professional profit. And I am suggesting that the public is entitled to know the identity of the people they try to influence.

Because it is important for Congress to pass the most comprehensive kind of Lobby Disclosure legislation, I urge this committee to take into full consideration the additional provisions of H.R. 5275, The Public Disclosure of Lobbying Act of 1977, and to provide for its expedient direction to the floor of the full House of Representatives for a vote.

STATEMENT OF HON. CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF FLORIDA

I certainly want to thank the distinguished committee for allowing me the opportunity to offer testimony on improvements to existing lobbying legislation. Mr. Chairman, you are to be congratulated for your efforts in this area and I am sincerely hopeful that meaningful and improved legislation will be the result of these hearings.

In truth, lobbying is a much misunderstood process. Sometimes abused and often carrying bad connotations, lobbying is nevertheless a vital part of the daily interchange between the people and their government. Lobbyists and the groups they represent outline and point out specific concerns to the legislative branch. They provide facts, figures and arguments for their position. They are a vital ingredient of democracy.

However, present law, which deals with lobbying regulation, is virtually unchanged since 1946 and is inadequate. The law is unclear and therefore open to wide interpretation by various lobby groups and individuals who can actually choose the degree to which they wish to comply with the law. Present law does not establish a system for accuracy and timeliness and provides for no real enforcement. GAO Reports indicate that both areas have been substantially abused in the past.

For many years I have introduced lobbying legislation which would strengthen and improve the present law. I firmly believe that the American people should know the extent of effort and money being spent to influence the federal decision making process. This year I have reintroduced my lobbying bill as H.R. 766. This bill clearly states who is covered by the legislation, when they are to report and what actions must be reported. Enforcement of the legislation would be vested with the Comptroller General. Unlike the present law, he would actively review all reports filed and would be able to request the Attorney General to institute a civil action against those failing to comply with the act.

Although my bill does not specifically cover lobbying of the Executive branch, I would certainly support such coverage. The regulatory power of Executive agencies is immense and I believe some regulation of this area is needed as well.

Mr. Chairman, I strongly believe that my bill would bring the lobbying business out in the open and put it in the eye of the public scrutiny where it should be. We should dispel the mysteries of lobbying. We need to know just who is lobbying and how much is being spent to do it.

There cannot be and I do not believe there is any motive to restrict any individual's right of redress to his elected representatives. This is a constitutional right and cannot be abridged. However, what I and the majority of Congress are interested in is the adequate reporting of these efforts once they pass a reasonable threshold of expense and effort. Nothing in my bill would prohibit contact with elected officials but it would require reporting—reports that would then allow the public and Congress to know who is spending what, for whom and to accomplish what.

In the last Congress we were successful in passing much needed reform in this vital area. I need not remind the members of this distinguished committee of the disappointment in the failure of a compromise bill to be worked out with the Senate before adjournment. I commend the committee for its efforts in the past and urge that we once again move forward rapidly to enact this much needed and long awaited legislation.

STATEMENT OF HON. JOHN M. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I wish to congratulate the Subcommittee for holding these hearings on lobby disclosure requirements so early in this session. Hopefully this will allow prompt action by the House and the full Congress on this very important issue.

I was, as were the vast majority of my colleagues, extremely disappointed that the 94th Congress was unable to approve a lobby disclosure measure. The lateness of the House passage of the bill preempted a resolution of the differences between our version and that of the Senate. However, as both bodies did successfully pass legislation to this effect during the last Congress, the basic groundwork has already been done for our work this year.

My colleague, Mr. Rodino, the Chairman of the House Judiciary Committee, has submitted H.R. 1180 which is identical to H.R. 15, the bill passed in the waning hours of the 94th Congress. As this measure will no doubt be the basis of the legislation reported by this Subcommittee, I will direct my remarks to the content of Mr. Rodino's bill.

While the need for this type of legislation was not critically realized until the Watergate era, the idea first surfaced soon after the turn of the century. In the early 1930's, Congress enacted the first registration and reporting requirements for lobbyists with the passage of three separate measures; the Utilities Holding Company Act, the Merchant Marine Act and the Foreign Agents Registration Act.

The first, and so far only, comprehensive legislation, the Federal Regulation of Lobbying Act, passed the Congress as a part of the Legislative Reorganization Act of 1946. While much more encompassing than prior attempts at lobby regulation, this legislation proved to be ineffective.

Ideally, there would be no need for this type of legislation if everyone exercised their first amendment rights in a legal and moral manner. But, regrettably, this is not always the case. For those few who would abuse this right, we must have regulations. As the events of recent times indicate, the people need to and have a right to know

what their government is doing. A part of this right is to know who is trying to influence the decisions of the federal government. While this legislation angers some groups who would prefer not to divulge their contacts with the federal government, its passage will make for more open and responsive executive and legislative branches.

One of the stickiest questions that has to be dealt with in the context of this legislation is the definition of a lobbyist. The basic requirement that has been agreed upon is that only an organization may qualify as a lobbyist. For an organization to be a lobbyist it must meet certain time and financial expenditure requirements. The levels in Mr. Rodino's bill of \$1,250 expended during a quarterly filing period to hire an individual to make oral or written communications with a federal officer in an attempt to influence legislation or an executive agency decision, or by employing one individual who spends 20 percent of his time during a quarterly period on behalf of the organization in lobbying activities, seem adequate.

The setting of such thresholds can only be done in an arbitrary manner. Is \$1,250 too high? Would \$2,000 be better, or maybe \$1,000? These are unanswerable questions so those of us who favor this legislation must rely on the experts, the members of this Subcommittee, to use their knowledge in setting equitable thresholds for qualification as a lobbyist.

I am most heartened that virtually all of the legislation introduced on this issue has included the same requirements for those who seek to lobby certain members of the executive branch as they do for those lobbying Members of Congress. The current law covers only lobby efforts directed at those in Congress. It is very important that this extension of coverage be included in any legislation as rulemaking, the awarding of contracts, the making of treaties, and every other aspect of executive agency decision making are equally as important as those legislative decisions of the Congress. The efforts to effect the outcome of such determinations must also be open to public scrutiny.

It is also important to include the activities of volunteers in the regulation of lobbying. To leave this group out would create a serious loophole in the law and open up the regulations to abuse. While it is difficult to set parameters for the definition of a paid lobbyist, it is twice as difficult to determine which volunteers should be considered lobbyists for the purposes of this measure. We must not infringe on the individual's right to express his views to his elected officials or other federal officials, but there are several classes of organizations which have volunteer forces which do extensive lobbying and which should be included in these reporting and registering requirements.

As the reporting requirements are just that—for information, not restriction—I do not believe that they are too stringent. We are not requiring lobbyists to end their activities, but we are requiring them to inform the public who in the federal government is being contacted and receiving gifts of substantial value from lobbyists. The acceptance of a gift does not in and of itself indicate any agreement of an official reciprocity. But those government officials who have a history of accepting such gifts and entertainment must be willing to undergo a careful scrutiny of the impact of such activity on their decisions.

We have long needed legislation to regulate and require reporting of lobby activities. This goal was almost achieved during the 94th Congress, but time proved to be our enemy. This Subcommittee has gotten an early start by holding this hearing so soon in this session. It is my sincere hope that the full Committee and the House will be as conscientious and expedite the passage of the legislation the Subcommittee will report.

Thank you.

Likewise I point out that on Wednesday next we will meet with witnesses from the GAO, Common cause, ACLU, Public Affairs Council, AAA, and BFW.

Those who cannot be heard will be heard on the next succeeding meeting.

There being no further business to come before the subcommittee, we will stand adjourned until 9:30 on Wednesday morning.

[Whereupon, at 12:20 p.m. the hearing was adjourned, to reconvene at 9:30 a.m. on Wednesday, April 6, 1977.]

ADDITIONAL STATEMENTS SUBMITTED FOR THE RECORD

STATEMENT BY HON. DANTE B. FASCELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman and members of the Subcommittee, I am pleased to have this opportunity to submit views on legislation to require the disclosure of lobbying activities.

As a co-sponsor of the Public Disclosure of Lobbying Act of 1977, I commend the Subcommittee for holding these hearings. Since similar legislation passed by the House and Senate in the last Congress did not achieve final enactment due to the lack of time, it is essential that we act as soon as possible in the current Congress to assure final approval.

The basic purpose of this legislation is to give the public full information about lobbying activities directed to the Federal government. The bill does not restrict lobbying, and it is carefully drafted so that the disclosure requirements do not affect individuals or otherwise interfere with the right to petition Congress or the Executive Branch of the government.

Lobbying disclosure is an important segment of the efforts we have made in recent years to reform the institutional processes of government and restore public trust. We have strengthened our Federal campaign financing laws, made more information on government activities available to the public, and adopted a stringent code of ethics for Members of Congress.

Legislation to provide the public with information on who is seeking to influence legislative and executive decisions, what the issues are, and how much money and time are being spent on such efforts is an essential step in our efforts to improve governmental accountability to citizens.

At the same time, we must not impose burdensome reporting requirements which would have the effect of restricting efforts by various organizations to submit their views to the government. The bill before you has requirements less onerous than those in the legislation passed by both houses of Congress in the last Congress.

The public rightfully insists that its elected and appointed officials serve the general interest rather than special interests. At the same time, the information provided by various organizations can be helpful to the Congress and Executive Branch in formulating policies which are in the public interest.

Lobbying disclosure legislation will provide that the public can know what pressures are being brought by special interests. Then the public can judge by the actions of their officials whether such officials are being responsive to the general cause or to special interests. Citizens will be better equipped to hold officials accountable for their actions.

In order to give the people full information on the contacts and other lobbying efforts directed at public officials, I urge that this legislation be approved as soon as possible.

STATEMENT OF ROBERT D. GORDON, SECRETARY-TREASURER, INTERNATIONAL CONFERENCE OF POLICE ASSOCIATIONS

Mr. Chairman, for the record my name is Robert D. Gordon and I am the secretary-treasurer of the International Conference of Police Associations which represents almost 200,000 law enforcement officers. On behalf of our president, Edward Kicman, I would like to present our views on H.R. 1180, a bill to provide disclosure by lobbyists.

Mr. Chairman, after reviewing several portions of this proposed legislation, our association finds that we must oppose H.R. 1180 for the following reasons. Longer than we care to remember, police officers have been and are still denied the right to participate in political activities or to hold elected positions to school boards, civic associations or political parties on the local state and national levels. Sixteen states presently fail to provide any meaningful collective bargaining representation for police officers and in many cases, the only voice a police officer has is his local, state and international union. While we can appreciate the concern some members of Congress have regarding this proposed legislation, we find that H.R. 1180 does not address itself to the issues intended by the sponsors. The achievements our members associations have made over the past years, through the lobbying efforts to their various police associations, would in our estimation, come to an abrupt end.

The ICPA has taken a stand on such controversial issues as the death penalty, gun control, drug abuse, collective bargaining, Fair Labor Standards Act, public pensions, social security, victims of crime legislation and many others. Our lobbying efforts are supported by our member associations and a great segment of the law abiding

citizens. For Congress to impose the provisions of this bill is, in our estimation, and intrusion on your right to represented. Our member associations are constantly harassed not only by self-interest groups, elected or appointed officials, chiefs of police, etc., but also by outside unions that would like nothing better than to sign up police officers. We can envision the elected officials in major cities having access to information on the financial status of a local association through the report that would be filed by this international. Needless to say, they would have a field day with this kind of a weapon at the bargaining table.

This legislation would create an undue hardship for our Association. We believe that we are already complying with more regulations than required; regulations, I might add, that do not apply to the local and state agencies that institute them. H.R. 1180, while it may be well intended, is viewed by this Association as another tool for management to curb the activities of unions, fraternal, civic or private associations. It is most disturbing that the Federal government wants to know what groups of people are petitioning their elected representatives in Congress for beneficial legislation.

It is also disturbing to see that the news media is excluded from this proposed legislation. I believe it goes without saying that the news media has indeed become one of the largest lobbying groups in history. We must share the belief that if the news media were included in this legislation, we would hear an outcry that would shatter the walls of Congress.

It has been held for over 200 years that every American has the right to petition Congress through their elected representatives. H.R. 1180 will indeed hamper that right and belief.

Thank you.

LOBBYING AND RELATED ACTIVITIES

WEDNESDAY, APRIL 6, 1977

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS, OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room 2141, Rayburn House Office Building, Hon. Herbert E. Harris II presiding.

Present: Representatives Harris, Kindness, and Moorhead.

Staff present: William P. Shattuck counsel; Jay T. Turnipseed, and Timothy J. Hart, assistant counsel, and Alan F. Coffey, Jr., associate counsel.

Mr. HARRIS. The subcommittee will come to order. We continue the hearings this morning on H.R. 1180 and other related bills—relating to lobbying activities.

The first witness we have this morning, the Honorable Robert Keller, the Deputy Comptroller General and witnesses accompanying him.

We would like to welcome you to the subcommittee meeting. We regret we were delayed with the starting, but we will be pleased to hear your testimony now, sir.

[The prepared statement of Robert F. Keller, Deputy Comptroller General of the United States follows:]

STATEMENT OF ROBERT F. KELLER, DEPUTY COMPTROLLER GENERAL OF THE UNITED STATES

Mr. Chairman and Members of the Committee, I appreciate the opportunity to present the views of the General Accounting Office on H.R. 1180 as requested in Chairman Rodino's letter to us.

As you may know, on April 2, 1975, GAO issued a report entitled "The Federal Regulation of Lobbying Act—Difficulties in Enforcement and Administration." Since its enactment in 1946, the Federal Regulation of Lobbying Act has been the subject of continual congressional scrutiny and generally has been judged to be ineffective. In our report, we confirmed this judgment. We found the enforcement and administration of the Act to be woefully inadequate and, in 1975, testified to this effect before this Subcommittee and the Senate Committee on Government Operations. I believe the necessity for change in the present law is now almost universally accepted.

H.R. 1180

Mr. Chairman, we believe that H.R. 1180 constitutes a marked improvement over the current lobbying act, and should eliminate most of the difficulties that have arisen under the present law. I would like to make some comments about suggested changes or areas of the legislation which we definitely believe should be retained.

SCOPE OF COVERAGE

Quarterly expenditures

The bill would apply to any "organization" that spends in excess of \$1,250 in any "quarterly filing period" to retain another person to engage in certain lobbying activities on its behalf.

Although we have no opinion on the appropriate minimum expenditure that should be required before an organization must register and report under a new lobbying law, a minimum quarterly expenditure threshold does seem desirable.

Quarterly expenditures are comparatively easy for organizations that lobby to determine and for the administering agency to verify. A quarterly expenditure threshold is also preferable, in our view, to an annual expenditure requirement. With only an annual expenditure requirement, an organization could delay registration for 1 year simply by delaying payment to the person retained to engage in lobbying. Disclosure of lobbying activities to Congress and the public must be timely to be effective. We think the quarterly expenditure threshold in H.R. 1180 would accomplish this objective.

The disclosure provisions of the bill also apply to an organization that employs "at least one individual who spends 20 percent of his time or more in any quarterly filing period * * * " engaged in prescribed lobbying activities. As indicated earlier, other provisions of the bill establish a quarterly expenditure threshold for organizations that retain rather than employ lobbyists.

It should be recognized, however, that it may be difficult for an organization to determine and for the administering agency to verify when an employee has spent 20 percent or more of his time engaged in lobbying. Further, an organization could employ 20 individuals to spend 19 percent of their time lobbying and escape the bill's registration and reporting requirements. If just one individual, however, were to spend 20 percent of his time lobbying, the employer organization would be required to register and file lobbying reports.

Executive branch coverage

H.R. 1180 would also require lobbying organizations subject to the bill to register and report as lobbyists when they attempt to influence high-level executive branch officials with respect to any report, investigation, or rule, with certain exceptions, as well as when they attempt to influence the outcome of legislation. The present law only applies to lobbying that is directed toward the Congress. We think it especially wise that the disclosure provisions of the bill currently cover lobbying directed at activities of the executive branch which, like legislation, directly affects the public. As we testified before this Subcommittee on September 12, 1975, we see no convincing reason why the executive branch is less susceptible than the legislative branch to the pressure of special interest groups seeking favored treatment.

On this point, the bill does not cover lobbying of legislative branch agencies such as the General Accounting Office, Cost Accounting Standards Board, Office of Technology Assessment, Congressional Budget Office, and others. I cannot speak for others but insofar as the General Accounting Office and the Cost Accounting Standards Board are concerned we recommend that they be covered by the bill.

The provisions of the bill also apply to communications made to influence the award of Government contracts. In our opinion, these provisions need clarification. As presently drafted, they arguably could be construed to require that a company keep track of routine sales contacts where the communication involved merely relates to a company's performance capabilities.

Grassroots lobbying

The disclosure provisions of the bill do not, however, extend coverage to organizations whose sole lobbying activity is indirect or grassroots lobbying. Indirect or grassroots lobbying generally means encouraging the general public to communicate to Congress or executive branch policymakers by, for example, mass mailings.

We suggest that this Subcommittee consider extending the bill's coverage to indirect or grassroots lobbying when the total direct expenses of the lobbying exceed a specified dollar amount.

Exempt lobbying communications

Certain communications are specifically excluded from H.R. 1180's coverage. For example, communications "made at the request" of a Congressman are exempt from disclosure. Presumably, this exemption is intended to be limited to communications not only made at the request of but also made to the requesting Congressman. If this is correct, we recommend the provision be amended to remove the possibility that an organization that lobbies Congressmen at the request of another Congressman might escape the bill's disclosure requirements.

LOBBYING RECORDS

H.R. 1180 would require lobbying organizations and persons retained by lobbying organizations to maintain records relating to their lobbying activities. The fact that persons retained by a lobbying organization will also be required to maintain and

preserve records should facilitate verification of the lobbying organization's registration and reports, as well as investigations of the organization's lobbying activities. Regulations governing the maintenance of records would be issued by the Comptroller General. And the records would be preserved for a period of at least 5 years. The authority to issue regulations governing the maintenance of records is essential, in our opinion, to establish fair, realistic and necessary recordkeeping requirements as experience is acquired in administering a new lobbying disclosure law.

REPORTS

H.R. 1180 would require lobbyists to file quarterly reports with the Comptroller General and the information required in those reports would be considerably more detailed than the information required for registration.

A report filed under H.R. 1180 would contain a description of the "primary issues" on which the organization spent a "significant amount" of its lobbying efforts. Another bill pending in the Congress would require a description of the 25 issues on which the organization spent the greatest portion of its lobbying efforts and a general description of any other lobbied issues.

None of the bills, however, require lobbyists to report their total expenditure for each issue they sought to influence. The amount of money expended by a lobbyist on a particular issue may be of interest to Congress and the public, at least where the amount expended exceeds a certain dollar minimum. For example, if a lobbyist organization spent a total of \$50,000 lobbying on 10 separate issues during a quarterly filing period, but \$40,000 was spent on one issue, it seems, in our opinion, that the Congress and the public should be aware that \$40,000 was expended to influence the outcome of just one of the 10 lobbied issues.

POWERS AND DUTIES OF THE COMPTROLLER GENERAL

H.R. 1180 would designate the Comptroller General as the official with primary responsibility for administering the bill's lobbying disclosure requirements.

The duties imposed on the Comptroller General would include maintaining and making available to the public, for inspection and copying, lobbyist registration statements and reports, and compiling and summarizing the information contained in these reports in a meaningful and useful way. In addition, the Comptroller General would be empowered to conduct investigations; administer oaths and affirmations; take testimony by deposition; issue subpoenas; initiate civil actions for the sole purpose of compelling compliance with a subpoena; and render advisory opinions concerning the bill's registration, recordkeeping, and reporting requirements.

These administrative powers and procedures should significantly improve the effectiveness of lobbying disclosure and eliminate many of the weaknesses of the current law identified in our report. We do have a reservation, however, about one of the duties the bill would impose on the Comptroller General.

H.R. 1180 only authorizes the Comptroller General to prescribe "procedural rules and regulations." This "procedural" limitation could affect the timely implementation and effectiveness of a new lobbying disclosure law.

If, for example, a general principle concerning H.R. 1180's applicability evolved in a series of advisory opinions and the Comptroller General promulgated a rule embodying this principle, would a court enforce the rule on the theory that it was "procedural" or would the court hold that the Comptroller General had exceeded his authority because the rule had substantive characteristics?

We do not know precisely what effect the "procedural" limitation may have on the Comptroller General's ability to effectively implement a new lobbying disclosure law. Thus, we recommend that the "procedural" limitation be deleted from the bill.

There is one other limitation on the Comptroller General's rule-making authority that we wish to mention. All proposed rules must be transmitted to the Congress before they may take effect. The bill provides that either House of the Congress may veto the regulation within a prescribed time period. These veto provisions could prevent the timely implementation of the bill as well as the issuance of urgently needed regulations.

ENFORCEMENT

Finally, we would like to discuss the enforcement provisions in H.R. 1180. The methods of enforcement contemplated by H.R. 1180 should eliminate many of the enforcement weaknesses identified in our report.

Under the bill, the Comptroller General would have investigative authority and limited authority to go to Court to enforce a subpoena, a matter we alluded to earlier.

It is the Attorney General, however, who would have the exclusive authority to enforce the substantive provisions of the bill through civil and criminal enforcement proceedings. In addition, the Attorney General would be empowered to defend all civil declaratory actions that challenged advisory opinions rendered by the Comptroller General on the applicability of the bill's registration, recordkeeping, and disclosure requirements.

We believe the administering agency should be given civil enforcement authority and we question whether H.R. 1180's present allocation of authority between the Comptroller General and the Attorney General would prove to be workable or effective. Disputes undoubtedly would arise between the Comptroller General and the Attorney General. The bill establishes no procedure for resolving such disputes. Moreover, although the Comptroller General would have primary responsibility for implementing the law, the Attorney General would have ultimate control because he alone would have authority to go to court to compel compliance.

Similarly, advisory opinions issued by the Comptroller General could be rendered meaningless if the Attorney General failed to defend a declaratory action filed by a lobbyist against the Comptroller General. In short, H.R. 1180 would place the Comptroller General in the awkward position of having his actions effectively overruled by the Attorney General.

Mr. Chairman, it is for these reasons that we have consistently stated before this Subcommittee and the Senate Committee on Government Operations that the agency responsible for administering a new lobbying disclosure law should be given civil enforcement authority. This should, of course, include the authority to go to court to defend civil challenges to the Comptroller General's advisory opinions and to compel compliance with the civil provisions of any new lobbying disclosure law.

There is ample statutory precedent for authorizing the Comptroller General to go to court in his own right or on behalf of the Congress. Specifically, the Energy Policy and Conservation Act directs the Comptroller General to collect energy information for the Congress and empowers him, through attorneys of his own selection, to institute a civil action to collect civil penalties or enforce subpoenas he issues under the Act. Similarly, the Federal Energy Administration Act of 1974 authorizes the Comptroller General to institute a civil action to compel compliance with subpoenas he issues under that Act. And the Impoundment Control Act of 1974 authorizes the Comptroller General to bring a civil action in Federal court, again through attorneys of his own selection, to compel release of impounded budget authority.

In short, we believe that vesting civil enforcement powers in the Comptroller General will not only place the enforcement of the legislative branch's information gathering power within the legislative branch where it should be, but would, in our view, eliminate potential conflict between the Comptroller General and the Attorney General.

We do not believe, however, that the agency responsible for administering a new lobbying law should be given criminal enforcement powers. As a general principle, enforcement of the Federal criminal laws through formal criminal proceedings is a function of the Attorney General. We can see no reason for departing from this principle in the proposed lobbying legislation.

Alternatives to vesting complete civil enforcement powers in the Comptroller General have been proposed in the past, most recently by S. 2477, a lobbying disclosure bill passed by the Senate during the 94th Congress. S. 2477 contained a provision authorizing the Comptroller General to institute a civil action in Federal court whenever, after notifying the Attorney General, the Attorney General failed to bring a civil suit within a specified period of time. Although adoption of this alternative would conceivably strengthen the enforcement provisions of H.R. 1180, it would also enable the Comptroller General to second-guess and effectively overrule the Attorney General, and like the provisions of the present bill, could cause needless friction between the Comptroller General and the Attorney General.

We recommend, therefore, that H.R. 1180 be amended to vest in the Comptroller General civil enforcement powers, including the authority to file civil enforcement actions and to defend civil challenges to advisory opinions.

Mr. Chairman and Members of the Committee, this concludes our statement. We will be glad to respond to any questions you have.

TESTIMONY OF ROBERT F. KELLER, DEPUTY COMPTROLLER GENERAL OF THE UNITED STATES, ACCOMPANIED BY PAUL G. DEMBLING, GENERAL COUNSEL, AND KENNETH M. MEAD, ATTORNEY-ADVISED, OFFICE OF GENERAL COUNSEL

Mr. KELLER. Thank you very much, Mr. Chairman.

First I would like to introduce on my left Mr. Paul Dembling, who is General Counsel of the General Accounting Office; on my right, Mr. Ken Mead, who is an attorney in the General Counsel's Office.

Mr. Chairman and members of the committee, we appreciate the opportunity to present the views of the General Accounting Office on H.R. 1180, as requested in Chairman Rodino's letter to us.

As you may know, on April 2, 1975, GAO issued a report entitled "The Federal Regulation of Lobbying Act, Difficulties in Enforcement and Administration." Since its enactment in 1946, the Federal Regulation of Lobbying Act has been the subject of continual congressional scrutiny and generally has been judged to be ineffective. In our report—that is our 1975 report—we confirmed this judgment. We found the enforcement and administration of the act to be woefully inadequate and, in 1975, testified to this effect before this subcommittee and before the Senate Committee on Government Operations. I believe the necessity for change in the present law is now almost universally accepted.

Mr. Chairman, we believe that H.R. 1180 constitutes a marked improvement over the current Lobbying Act, and should eliminate most of the difficulties that have arisen under the present law. I would like to make some comments about suggested changes or areas of the legislation which we definitely believe should be retained.

The bill would apply to any organization that spends in excess of \$1,250 in any quarterly filing period to retain another person to engage in certain lobbying activities on its behalf.

Although we have no opinion on the appropriate minimum expenditure that should be required before an organization must register and report under a new lobbying law, a minimum quarterly expenditure threshold does seem desirable.

Quarterly expenditures are comparatively easy for organizations that lobby to determine and for the administering agency to verify. A quarterly expenditure threshold is also preferable, in our view, to an annual expenditure requirement. With only an annual expenditure requirement, an organization could delay registration for 1 year simply by delaying payment to the person retained to engage in lobbying. Disclosure of lobbying activities to the Congress and the public must be timely to be effective. We think the quarterly expenditure threshold in H.R. 1180 would accomplish this objective.

The disclosure provisions of the bill also apply to an organization that employs "at least one individual who spends 20 percent of his time or more in any quarterly filing period . . ." engaged in prescribed lobbying activities. As indicated earlier, other provisions of the bill establish a quarterly expenditure threshold for organizations that retain, rather than employ, lobbyists.

It should be recognized, however, that it may be difficult for an organization to determine and for the administering agency to verify when an employee has spent 20 percent or more of his time engaged in lobbying. Furthermore, an organization could employ 20 individuals to spend 19 percent of their time lobbying and escape the bill's registration and reporting requirements. If just one individual, however, were to spend 20 percent of his time lobbying, the employer organization would be required to register and file lobbying reports.

The bill, H.R. 1180, would also require lobbying organizations subject to the bill to register and report as lobbyists when they attempt to influence high-level executive branch officials with respect to any report, investigation or rule, with certain exceptions, as well as when they attempt to influence the outcome of legislation.

The present law only applies to lobbying that is directed toward the Congress. We think it especially wise that the disclosure provisions of the bill currently cover lobbying directed at activities of the executive branch which, like legislation, directly affect the public. As we testified before this subcommittee on September 12, 1975, we see no convincing reason why the executive branch is less susceptible than the legislative branch of the pressure of special interest groups seeking favored treatment.

I would like to make one point here which is not in my prepared statement. And this concerns lobbying the executive branch. Under the definition of Federal officer or employee, section 2(c) of the bill, only executive branch officials in positions levels 1 through 5 listed in sections 5312 through 5316 of title V are included. This would permit lobbying of other executive branch officials without registration or reporting. For example positions equivalent to positions listed in sections 5312 to 5316 would not be covered nor would employees in the higher grades such as grades GS-15 through GS-18. By contrast, all employees of the House and Senate are covered, regardless of their position or salary. The committee may wish to expand the coverage of positions in the executive branch.

Also, I would like to point out that the bill does not cover lobbying of legislative branch agencies, such as the General Accounting Office, the Cost Accounting Standards Board, Office of Technology Assessment, Congressional Budget Office, and others. I cannot speak for the others, but insofar as the General Accounting Office and the Cost Accounting Standards Board are concerned, we recommend that they be covered by the bill.

The provisions of the bill also apply to communications made to influence the award of Government contracts. In our opinion, these provisions need some clarification. As presently crafted, they arguably could be construed to require that a company keep track of routine sales contracts where the communication involved merely relates to a company's performance capabilities.

The disclosure provisions of the bill do not, however, extend coverage to organizations whose sole lobbying activity is indirect or grassroots lobbying. Indirect or grassroots lobbying generally means encouraging the general public to communicate to Congress or executive branch policymakers by, for example, mass mailings.

We suggest that this subcommittee consider extending the bill's coverage to indirect or grassroots lobbying when the total direct expenses of the lobbying exceed a specified dollar amount.

Certain communications are specifically excluded from H.R. 1180's coverage. For example, communications made at the request of a Congressman are exempt from disclosure. Presumably, this exemption is intended to be limited to communications not only made at the request of, but also made to the requesting Congressman. If this is correct, we recommend the provision be amended to remove the possibility that an organization that lobbies Congressmen at the request

of another Congressman might escape the bill's disclosure requirements.

H.R. 1180 would require lobbying organizations and persons retained by lobbying organizations to maintain records relating to their lobbying activities. The fact the persons retained by a lobbying organization will also be required to maintain and preserve records should facilitate verification of the lobbying organization's registration and reports, as well as investigations of the organization's lobbying activities. Regulations governing the maintenance of records would be issued by the Comptroller General. And the records would be preserved for a period of at least 5 years. The authority to issue regulations governing the maintenance of records is essential, in our opinion, to establish fair, realistic and necessary recordkeeping requirements as experience is acquired in administering a new lobbying disclosure law.

H.R. 1180 would require lobbyists to file quarterly reports with the Comptroller General and the information required in those reports would be considerably more detailed than the information required for registration.

A report filed under H.R. 1180 would contain a description of the primary issues on which the organization spent a significant amount of its lobbying efforts. Another bill pending in the Congress would require a description of the 25 issues on which the organization spent the greatest portion of its lobbying efforts and a general description of any other lobbied issues.

None of the bills, however, require lobbyists to report their total expenditure for each issue they sought to influence. The amount of money expended by a lobbyist on a particular issue may be of interest to Congress and the public, at least where the amount expended exceeds a certain dollar minimum.

For example, if a lobbyist organization spent a total of \$50,000 lobbying on 10 separate issues during a quarterly filing period, but \$40,000 was spent on 1 issue, it seems, in our opinion, that the Congress and the public should be aware that \$40,000 was expended to influence the outcome of just 1 of the 10 lobbied issues.

H.R. 1180 would designate the Comptroller General as the official with primary responsibility for administering the bill's lobbying disclosure requirements.

The duties imposed on the Comptroller General would include maintaining and making available to the public, for inspection and copying, lobbyist registration statements and reports, and compiling and summarizing the information contained in these reports in a meaningful and useful way.

In addition, the Comptroller General would be empowered to conduct investigations; administer oaths and affirmations; take testimony by deposition; issue subpoenas; initiate civil actions for the sole purpose of compelling compliance with a subpoena; and render advisory opinions concerning the bill's registration, recordkeeping, and reporting requirements.

These administrative powers and procedures should significantly improve the effectiveness of lobbying disclosure and eliminate many of the weaknesses of the current law identified in our report. We do have a reservation, however, about one of the duties the bill would impose on the Comptroller General.

H.R. 1180 only authorizes the Comptroller General to prescribe procedural rules and regulations. This procedural limitation could affect the timely implementation and effectiveness of a new lobbying disclosure law.

If, for example, a general principle concerning H.R. 1180's applicability evolved in a series of advisory opinions and the Comptroller General promulgated a rule embodying this principle, would a court enforce the rule on the theory that it was procedural or would the court hold that the Comptroller General had exceeded his authority because the rule had substantive characteristics?

We do not know precisely what effect the procedural limitation may have on the Comptroller General's ability to effectively implement a new lobbying disclosure law. Thus, we recommend that the procedural limitation be deleted from the bill.

There is one other limitation on the Comptroller General's rulemaking authority that we wish to mention. All proposed rules must be transmitted to the Congress before they may take effect. The bill provides that either House of the Congress may veto the regulation within a prescribed time period. While we do not object to this provision, it should be recognized that the provision could prevent the timely implementation of the bill as well as the issuance of urgently needed regulations.

Finally, we would like to discuss the enforcement provisions in H.R. 1180. The methods of enforcement contemplated by H.R. 1180 should eliminate many of the enforcement weaknesses identified in our report.

Under the bill, the Comptroller General would have investigative authority and limited authority to go to court to enforce a subpoena, a matter we alluded to earlier.

It is the Attorney General, however, who would have the exclusive authority to enforce the substantive provisions of the bill through civil and criminal enforcement proceedings. In addition, the Attorney General would be empowered to defend all civil declaratory actions that challenged advisory opinions rendered by the Comptroller General on the applicability of the bill's registration, recordkeeping, and disclosure requirements.

We believe the administering agency should be given civil enforcement authority and we question whether H.R. 1180's present allocation of authority between the Comptroller General and the Attorney General would prove to be workable or effective.

Disputes undoubtedly would arise between the Comptroller General and the Attorney General. The bill establishes no procedure for resolving such disputes. Moreover, although the Comptroller General would have primary responsibility for implementing the law, the Attorney General would have ultimate control because he alone would have authority to go to court to compel compliance.

Similarly, advisory opinions issued by the Comptroller General could be rendered meaningless if the Attorney General failed to defend a declaratory action filed by a lobbyist against the Comptroller General. In short, H.R. 1180 would place the Comptroller General in the awkward position of having his actions effectively overruled by the Attorney General.

Mr. Chairman, it is for these reasons that we have consistently stated before this subcommittee and the Senate Committee on Government Operations that the agency responsible for administering a new lobbying disclosure law should be given civil enforcement authority. This should, of course, include the authority to go to court to defend civil challenges to the Comptroller General's advisory opinions and to compel compliance with the civil provisions of any new lobbying disclosure law.

There is ample statutory precedent for authorizing the Comptroller General to go to court in his own right or on behalf of the Congress. Specifically, the Energy Policy and Conservation Act directs the Comptroller General to collect energy information for the Congress and empowers him, through attorneys of his own selection, to institute a civil action to collect civil penalties or enforce subpoenas he issues under the act.

Similarly, the Federal Energy Administration Act of 1974 authorizes the Comptroller General to institute a civil action to compel compliance with subpoenas he issues under that act. And the Impoundment Control Act of 1974 authorizes the Comptroller General to bring a civil action in Federal court, again through attorneys of his own selection, to compel release of impounded budget authority.

In short, we believe that vesting civil enforcement powers in the Comptroller General will not only place the enforcement of the legislative branch's information-gathering power within the legislative branch where it should be, but would, in or view, eliminate potential conflict between the Comptroller General and the Attorney General.

We do not believe, however, that the agency responsible for administering a new lobbying law should be given criminal enforcement powers. As a general principle, enforcement of the Federal criminal laws through formal criminal proceedings is a function of the Attorney General. We can see no reason for departing from this principle in the proposed lobbying legislation.

Alternatives to vesting complete civil enforcement powers in the Comptroller General have been proposed in the past, most recently by S. 2477, a lobbying disclosure bill passed by the Senate during the 94th Congress. S. 2477 contained a provision authorizing the Comptroller General to institute a civil action in Federal court whenever, after notifying the Attorney General, the Attorney General failed to bring a civil suit within a specified period of time. Although adoption of this alternative would conceivably strengthen the enforcement provisions of H.R. 1180, it would also enable the Comptroller General to second-guess and effectively overrule the Attorney General, and like the provisions of the present bill, could cause needless friction between the Comptroller General and the Attorney General.

We recommend, therefore, that H.R. 1180 be amended to vest in the Comptroller General civil enforcement powers, including the authority to file civil enforcement actions and to defend civil challenges to advisory opinions.

Mr. Chairman and members of the committee, this concludes our statement. We will be glad to respond to any questions you have.

Mr. HARRIS. Thank you very much, Mr. Keller, for your very responsible testimony. It was very helpful to us. We note your recommendations and also the perfections that you recommend.

I am particularly interested in whether you think GAO should be the administering agency for this legislation.

Mr. KELLER. Mr. Chairman, naturally that has come up several times in the past when a new lobbying law has been considered. The Comptroller General and I have discussed the matter and have taken the position that we are not reaching for the job—if Congress wishes to give it to us, we will do the best job we can.

Mr. HARRIS. Do you think that GAO should be the agency?

Mr. KELLER. There is some argument for it. The bill deals primarily with the gathering and disclosure of lobbying information for the legislative branch. Perhaps GAO should be the one to police that. One of my concerns is that if the job does not come to GAO, where should you place it?

Mr. HARRIS. That was going to be my next question; you tried to duck the first one.

Is there another agency that is more suitable than GAO for administering this lobby bill?

Mr. KELLER. Some of the bills have suggested the Federal Elections Commission. Certainly, at least up until recently, they have had their hands full—I know that, but I suppose it is a possibility. The only other alternative I can think of is the Department of Justice. I don't know what their position would be. I would like to mention, Mr. Chairman, we think that after the initial year or two of operation, it would only take about 30 or 35 people to keep it going.

I would hesitate to recommend that you set up an independent agency just to handle this type of operation.

Perhaps I'm optimistic, but that's all we think would be required. Initially we would have court challenges concerning the law and advisory opinions—who has to register and who doesn't have to register. Once the initial start-up matters are taken care of I would hope that administering a new lobbying law, would be a common, fairly routine operation.

Mr. HARRIS. Do you think GAO could though?

Mr. KELLER. Yes, sir, I do.

Mr. HARRIS. And do you think it could be done with something in the neighborhood of 30 to 35 people?

Mr. KELLER. Yes, that is my guess.

Mr. HARRIS. Is that total staff—secretaries, clerks, professionals?

Mr. KELLER. Yes. Now there is a requirement for tying in with a computer certain information which is with the Federal Election Committee and there will be some computer rental time. I'm not prepared to give you the total cost estimate, I'm just talking about the people right now.

Mr. HARRIS. Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Keller, we certainly appreciate your very worthwhile and helpful testimony on H.R. 1180. I would like to zero in on the Government contracts problem which is dealt with on pages 4 and 5 of your statement.

One thing that disturbs me about the coverage of Government contracts under this bill is that there are bound to be numerous follow-up contacts, after the award of a contract. Such communications are necessitated in the carrying out of the contract itself.

Would you care to comment in that area as to—I think these communications on contracts are covered by H.R. 1180 and ought not to be. Do you have some opinion in that area?

Mr. KELLER. There possibly could be. But I didn't really look at it that way, Mr. Kindness, because the provision seemed to be aimed at trying to influence a bid or an award. Now I would have to agree with you that you could make the same argument for coverage when you're making a substantial amendment to a contract.

Mr. KINDNESS. Or if there is a dispute under the contract, the contracting officer and the contractor would communicate back and forth in an attempt to settle that dispute. Obviously, there is an attempt on the part of the contracting officer to settle the matter in one way and the part of the private contractor to settle it in another. So influence is sought to be effected there.

Mr. KELLER. I think you're right. That could come into play. Our concern really is that this language is quite similar to a bill passed by the House last year, H.R. 15—the language may be identical—and the matter was attempted to be taken care of in a committee report. As a lawyer it bothers me because some courts would look at what the law says; they may not be interested in what the Committee report says.

Mr. KINDNESS. I certainly agree with that.

Mr. KELLER. I think the committee should spell out precisely what they want to cover in the contracts concerned. We would be happy to work if the committee wants to try to develop some language to cover these matters. I would like to have it spelled out a little more.

Mr. KINDNESS. I think that is a very constructive suggestion.

Thank you very much for your testimony.

Mr. Chairman.

Mr. HARRIS. Thank you, Mr. Kindness. Does the minority counsel have any questions?

Mr. COFFEY. Yes, Mr. Chairman. Thank you.

Mr. Keller, last year Congressman Moorhead offered an amendment to the advisory opinion section of the bill. Basically, it said that those individuals in similar circumstances could rely on the Comptroller General's advisory opinion, similar to taxpayer reliance on revenue rulings.

Do you feel that these advisory opinions should have general applicability in that sense?

Mr. KELLER. Yes, but it would bother me a bit to say that any advisory opinion should never have the opportunity of being tested in court. I think the parties should rely on advisory opinions. If favorable, a person making a request for an advisory opinion would want to follow it. If it is unfavorable then it would seem to me he should have a right to go to court to test that opinion.

I think they should be accorded a great deal of weight, but I wouldn't want to cut a third party off from the opportunity to go to court to challenge the opinion.

Mr. COFFEY. I want to make sure that we understand what your position is on the idea of similarly situated individuals or organizations relying on the advisory opinions of the Comptroller General.

Mr. DEMBLING. I think that our position would be that other organizations would be able to rely on such advisory opinions if they were similarly situated or as precedent. At the present time the decisions of the Comptroller General are relied on by other organizations in addition to those that have submitted the question to us. So I think this should be a normal extension of the way the Comptroller General and the GAO operates at the present time.

Mr. COFFEY. One last question, Mr. Chairman, if I might.

Mr. HARRIS. Sure.

Mr. COFFEY. Mr. Keller, in your testimony you seemed to say that we should utilize grassroots lobbying as one of the threshold tests. There have been a number of individuals that have testified before our subcommittee and commented that the use of indirect lobbying as an independent standard might be unconstitutional. That, in fact, you could be making an organization a lobbyist solely on the basis of his communication with his own members or with the public.

I wonder if you would like to comment on that?

Mr. KELLER. Our position is that we think there is no doubt that if an organization, regardless of who it is, meets the threshold test, that is, \$1,250 or has a 20-percent paid employee devoting his time to lobbying, that if they make a direct or indirect contact, then they are lobbying.

But the way we read the bill, an organization that satisfied neither of these two tests could do all the grassroots lobbying they wanted without any legislation or reporting requirement.

Mr. COFFEY. H.R. 1180 reflects the bill as it passed the House last year. Indirect lobbying activities would be reported upon if you crossed either of the other two thresholds.

Your testimony indicates that you feel that it should be a third and separate standard for determining or making an organization a lobbyist, is that correct?

Mr. KELLER. Yes, I think it should. I think it is really a political decision as to whether you want to pick up groups of this type who do not otherwise directly contact Federal officers, but who spend unlimited funds on grassroots lobbying.

Mr. COFFEY. I guess my question would imply that it is not only a political decision, but a legal and constitutional one, as well.

Thank you, Mr. Chairman.

Mr. HARRIS. Thank you.

Again, our committee's thanks to Mr. Keller and Mr. Dembling and Mr. Mead for your testimony. We appreciate your help.

I have one last question. Should the committee or Congress decide to vest an administrative responsibility in another agency, would the GAO be willing to work with that agency toward helping them set up and administer the law?

Mr. KELLER. Well, we would certainly be ready to. But I must say, at this point, we don't have a great deal of expertise.

Mr. HARRIS. Thank you again, sir, for your testimony.

The next witness is Mr. Fred Wertheimer of the Common Cause. I understand he is accompanied by Mr. Michael Cole.

Mr. Wertheimer, I would like to welcome you to the committee along with your colleague, Mr. Cole.

We, of course, are great admirers of the work, that Common Cause has done and is doing in Congress and for government in general, bringing more awareness to the people as to the importance of their being aware what the Government is doing.

So we welcome you to the committee and I am pleased to receive your testimony.

Mr. WERTHEIMER. Thank you very much, Mr. Chairman.

With the committee's permission, I would like to have our statement inserted in the record in full.

Mr. HARRIS. Without objection we will include your statement in the record at this point.

If you would like to brief us of the evidence.

Mr. WERTHEIMER. Yes, we have some attachments that go with it including a constitution memo that we presented to this committee last time when we testified at the hearing during the course of the hearings.

[The prepared statement of Mr. Wertheimer follows:]

STATEMENT FRED WERTHEIMER, VICE PRESIDENT, COMMON CAUSE

Mr. Chairman, I am Fred Wertheimer, Vice-President for Operations of Common Cause; accompanying me today is Michael Cole, Common Cause Legislative Director. Both of us are registered lobbyists. We appreciate this opportunity to appear once again before this subcommittee to testify in behalf of new lobby disclosure legislation.

Since we appeared here a year and a half ago to discuss this subject, substantial progress has occurred in moving toward enactment of an effective and balanced lobby disclosure bill to at last replace the fundamentally deficient 1946 Federal Regulation of Lobbying Act. The last Congress saw lobbying legislation reach the floor and gain approval in both Houses for the first time since enactment of the 1946 legislation. Despite Congress' ultimate inability to produce a bill prior to adjournment, the hard and thoughtful work of members of this committee and the Senate Government Operations Committee during the last Congress certainly laid the groundwork for expeditious action on lobbying disclosure legislation this year.

We want to pay special tribute to Representative Walter Flowers, who as Chairman of this subcommittee during the last Congress, shaped the legislation in committee and effectively defended it against efforts to weaken it on the House floor. Also, we want to commend Judiciary committee members Tom Railsback and Robert Kastenmeier who for so long have been leaders in the effort to bring about meaningful lobby reform. Mr. Chairman, we want to express our appreciation to you for beginning hearings so promptly and express our readiness to work with you and the other members of this subcommittee as work on this legislation proceeds.

THE NEED FOR A NEW FEDERAL LOBBYING LAW

Our previous testimony before this and other Congressional committees has set forth in detail our reasons for believing that lobby disclosure legislation is urgently needed. Rather than once again citing a long series of examples of lobbying activities not being disclosed under the current law, we would prefer to provide for the record, as an appendix to our testimony, some illustrative examples from our prepared testimony of last year. In addition, however, I would like to mention two further examples.

By looking at lobbying information provided by two major companies to regulatory agencies—though not to the Congress under the lobbying law—it is possible to get an idea of the type of new information that would become a matter of public record if the 1946 statute were supplanted by an effective law.

Last October, in the course of a Federal Communications Commission proceeding, the American Telephone and Telegraph Company reported to the FCC at the Commission's request, its lobbying activities for the calendar quarter from April to June 1976. AT & T reported spending \$1,040,009 during that quarter alone, lobbying for the major communications bill commonly referred to as the Bell bill. Interestingly, AT & T filed no report with the Congress under the 1946 Act during that same quarter, presumably on the theory that lobbying is not a principal purpose of the company.

Another example that shows the difference between the real costs of lobbying and what is reported to Congress under the present inadequate law is the case of El

Paso Natural Gas. That company disclosed to the Federal Power Commission in 1972 at the Commission's request that it had spent \$893,862 during the previous year lobbying for a bill concerning divestiture of a pipeline firm. Among other expenses, the company said it paid a Washington, D.C. law firm \$353,113 to lobby for the bill. Nevertheless, El Paso did not file any lobbying report with the Congress for this period and the law firm reported to Congress receiving only \$6,227 in lobbying expenses from El Paso.

Any lobbying bill that Congress enacts must make available this kind of basic information that today so often remains hidden from public view.

KEY INGREDIENTS OF A NEW LOBBYING LAW

The need for new lobby disclosure legislation is clear. In light of the overwhelming votes in both Houses to pass such legislation last year, we believe that the stage has been set for speedy action on this issue in the 95th Congress. We would therefore like to focus our testimony on some of the key issues that will confront this committee when it begins to draft a bill.

A. Coverage

The threshold determination of who is to be covered by any new federal lobbying law is critical to its effectiveness. The fundamental flaw in the 1946 lobbying Act has, of course, been its "principal purpose" test which allows anyone who lobbies—even in an extremely sophisticated, costly, and organized fashion—to escape the Act's coverage so long as the lobbying can be characterized as other than the organization's or individual's principal purpose.

What we are seeking, quite simply, is substitution of a threshold approach which will bring within coverage all groups who are engaged in significant lobbying activities at the federal level. In our view, such a threshold must be straightforward and quantifiable, measuring time or money spent in lobbying or the frequency of lobbying communication.

We have accepted the concept discussed during the last Congress that only abbreviated reporting requirements should apply to groups who do significant lobbying, but not at the level of the more active lobbying organizations.

We believe that this can be accomplished by using a threshold formula for comprehensive reporting similar to the time-spent and retained agent approach set forth in the Railsback-Kastenmeier bill (H.R. 5795), and combining it with a threshold formula for abbreviated reporting based on the number of oral lobbying communications made by an organization through its paid employees. The latter concept was used by the Senate during the last Congress for triggering comprehensive coverage of an organization.

We believe that any new law should place lobbying registration and reporting requirements on organizations that lobby, as opposed to individuals. Organizations, however, should be responsible for disclosing those individuals who conduct the lobbying. This is the same approach used in the bills which passed the House and Senate last year. An important result of using this approach is that it guards against there being any chilling effect on communications from individual citizens. No one has ever seriously argued for covering the average citizen acting on his or her own behalf to communicate with his or her representative.

B. Meaningful reporting requirements

As was made clear during the last Congress, a key to effective lobby disclosure laws is inclusion of comprehensive reporting requirements. While unnecessary administrative burdens should be avoided, it is important to provide Congress and the public with sufficient information to make the reports meaningful. During the last Congress gradual refinements were made concerning the information required to be reported. Common Cause has continued to review and refine its position concerning the reporting requirements.

For example:

As indicated earlier, we have come to support a two-tiered approach to reporting, one that would retain comprehensive reporting for most organizations but would allow less active lobbying groups to file abbreviated reports requiring virtually no computations.

To meet some concerns raised about requiring public disclosure of amounts given to lobbying organizations by substantial givers, we now support allowing disclosure to be made in categories of amounts rather than in precise dollar amounts. This more limited approach—taken, for example, in the Railsback-Kastenmeier bill—will still provide the public with enough information to be able to judge the magnitude of a contributor's backing.

We believe that any new lobbying law must also include basic reporting provisions directed at the efforts of lobbying organization to stimulate lobbying at the grassroots level by their affiliates, members, employees, or shareholders. The absence of any coverage of such so-called "indirect lobbying" is one of the glaring defects in the 1946 Act. The House bill passed last year addressed this problem.

More and more organizations now utilize advertising campaigns, and have introduced computerized lobbying efforts, to urge others to pressure government decision-makers. In recent weeks, for example, the Calorie Council has been conducting an advertising campaign urging citizens to press Congress for reversal of the FDA's ban on saccharin and airline industry representatives have launched similar advertising efforts to head off airline deregulation. For some organizations, such as the National Rifle Association, solicited lobbying is the principal way in which lobbying pressure is exerted and the solicitation efforts constitute the bulk of the organizations' lobbying expenditures. In our view, these efforts must be publicly reported in order to have an effective disclosure law.

In the final analysis, we believe that under any bill that this committee reports, a covered organization should provide basic information about its issue interests, the key professionals who lobby on its behalf (including those firms retained to lobby), its overall expenditures (including gifts and expenditures on behalf of Federal officials), the major sources of its income, and the nature of its solicitation efforts to stimulate lobbying by its members, employees, stockholders, or others.

C. Executive branch coverage

One of the main deficiencies in the 1946 lobby law is that it applies only to lobbying of the Congress. Executive Branch agencies and departments are subject to enormous lobbying pressure by interested organizations. Yet almost no public information is required on any of these activities. Executive Branch lobbying is in fact one of the most secretive aspects today of the political process. At the very least, in our view new legislation must cover efforts to influence the award of major government contracts, grants or other awards (e.g. those valued at more than \$1 million). The bills that passed in each House of Congress last year included coverage of Executive Branch lobbying activities undertaken to obtain large federal contracts. We urge this committee to retain such coverage in any bill it reports.

D. Strong enforcement provisions

Nearly thirty years of experience with the present law has shown that without strong enforcement, lobby disclosure requirements—no matter how carefully drawn—will be evaded or ignored. The Justice Department has consistently failed in the past to act in this area, and no enforcement powers are given to the Clerk of the House or the Secretary of the Senate. We believe that a new law should give the General Accounting Office responsibility for enforcing these requirements and making the disclosed information available to the public. The GAO should have the power to investigate possible violations, issue subpoenas, take deposition, prescribe regulations, issue advisory opinion and initiate civil proceedings to compel compliance.

III. QUESTIONS RAISED REGARDING LOBBY DISCLOSURE REQUIREMENTS

During consideration of lobby disclosure legislation, questions have been raised about the burdens imposed, and possible constitutional problems with requiring disclosure of contributors to lobbying groups or of efforts to solicit others to lobby. We would like to address these concerns in our testimony.

A. Burdens

Even if the need for lobby disclosure legislation is conceded, some claim that registration and reporting requirements will impose intolerable paperwork burdens on covered organizations, particularly in the case of low budget or grassroots organizations. First of all, we believe that one of the constructive results of Congressional consideration of lobby disclosure in the last Congress was the refinement made concerning the information required to be disclosed. As we indicated earlier in our testimony, we believe that reporting requirements should be focused on the basic minimum requirements necessary for a meaningful lobby reform law. The two-tiered approach in particular—by allowing short form filings by smaller groups which nonetheless are active enough to come within a "contacts" threshold—should help alleviate concerns about burdensomeness. That approach reflects a recognition that those organizations that can afford to lobby extensively will have the more detailed reporting requirements.

Some, of course, regard any reporting requirements imposing a burden, but we feel that the type of reporting requirements we have advocated are both manageable and justified by the public interest in the information to be obtained. Moreover, for

tax audit or programmatic purposes, virtually all lobbying groups already keep much of the information required under the bill—e.g. the size of its membership, the issues it works on, the identity of its lobbyists, its sources of income, and its overall lobbying expenses.

The burdensomeness argument has been raised during every state level lobby reform movement. There is no evidence that any lobbying organizations have been unduly burdened or put at a disadvantage where state laws have been enacted which have reporting provisions comparable to or more stringent than any of the bills before this committee.

Common Cause currently files detailed reports of our lobbying with the Congress (providing information far beyond what the present law requires) and in more than 30 states.

B. Contributor reporting

Some argue that requiring disclosure of significant contributors to lobbying organizations unconstitutionally infringes on the donors' rights of free speech, association, and petition. We disagree and believe court rulings have made clear that such disclosure is constitutional.

The Federal Regulation of Lobbying Act of 1946, 60 Stat. 812, 839, which was attacked as violating the First Amendment, was upheld in *United States v. Harriss*, 347 U.S. 612 (1954) because in the Court's view:

"(Congress) has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose. It wants only to know *who is being hired, who is putting up the money, and how much*. It acted in the same spirit and for a similar purpose in passing the Federal Corrupt Practices Act—to maintain the integrity of a basic governmental process. See *Burroughs v. United States*, 290 U.S. 534, 545, 54 S.Ct. 287, 290, 78 L.Ed. 484." (emphasis added) 347 U.S. at 625–626.

The Supreme Court recently upheld the disclosure requirements of the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, against charges that they violated the First Amendment guarantees of free speech and association. In *Buckley v. Valeo*, 44 U.S.L.W. 4127 (U.S. January 30, 1976), the Court stated that disclosure provisions serve the government interest of informing the electorate of the source and uses of campaign money, thus allowing the voter a more precise view of the candidate by alerting the voter to the interests to which a candidate is most likely to be responsive. Disclosure requirements also deter actual corruption and avoid the appearance of it. 44 U.S.L.W. 4147. As the Court noted in *Harriss*, the disclosure of campaign contributors serves the same purpose as the disclosure of contributors to lobby organizations. The *Buckley* decision therefore indicates that disclosure of major contributors to lobby organizations does not unconstitutionally infringe upon First Amendment rights.

The Washington State Supreme Court recently underscored this point, stating:

"The electorate, we believe, has a right to know of the sources and magnitude of financial and persuasional influences upon government. The voting public should be able to evaluate the performance of their elected officials in terms of representation of the electors' interest in contradistinction to those interests represented by lobbyists. Public information and the disclosure . . . required of lobbyists and their employers may provide the electorate with a heretofore unavailable perspective regarding the role that money and special influence play in government decision making . . ." *Fritz v. Gorton*, 83 Wash 2d 275, 517 P. 2d 911, 931 (1974), appeal dismissed, 417 U.S. 902 (1974).

At this point in our testimony, Mr. Chairman, we would like to submit for the record a detailed legal memorandum that we have prepared on the constitutionality of lobby disclosure legislation and which discusses the *Fritz* case as well as other important federal and state court decisions.

C. Coverage of Lobbying Solicitations

Finally, some—including Representative Don Edwards in his testimony this week—contend that requiring lobbying organizations to report on their efforts to solicit others to lobby unconstitutionally interferes with first amendment rights. As indicated in our constitutional memorandum (pages 11–13), disclosure of lobbying solicitations is essential to provide the public and government officials with a full picture of the lobbying activities of a covered organization. In *United States v. Harriss*, supra, the Supreme Court upheld disclosure of lobbying solicitation, noting:

"The legislative history of the Act makes clear that, at the very least, Congress sought disclosure of such direct pressures, exerted by the lobbyists themselves or through their hirelings or through an artificially stimulated letter campaign." (emphasis added) 347 U.S. at 620.

The type of disclosure of solicitations we advocate—and the type provided for in the legislation which passed the House last year—does not prevent an organization from generating grass-roots lobbying campaigns or interfere with the rights of those who are solicited to do such lobbying.

IV. CONCLUSION

Organized lobbying has become an enormous factor in influencing public policy decisions. When such lobbying is hidden from the public, it becomes even more powerful in determining government policy. We believe that the type of lobby disclosure legislation we advocate will provide the general public, the media, competing interests, Members of Congress and the Executive Branch with the opportunity to understand the nature of the pressures being brought to bear on government officials and to learn how they are being exerted. Particularly important is the role of lobby disclosure in providing citizens with a means of determining whose interest public officials are representing.

We are very encouraged by this subcommittee's early start in taking up lobbying disclosure legislation. As you are well aware, both the House of Representatives and the Senate have recently passed comprehensive Codes of Conduct providing, among other things, for full disclosure of Members' financial holdings, sources of income, and placing tight restrictions on the gifts they may receive from lobbyists. It is now time to provide for similarly full disclosure of the activities of lobbying organizations. Just as we believe there is a substantial public interest in learning of the possible influence brought to bear on Members of Congress by their own financial holdings, we believe that there is an equally important public interest in bringing to light the organized pressures exerted on Members by outside lobbying groups.

We look forward to working with this subcommittee in the weeks ahead and we hope that a new lobby act that is workable, fair, and effective can be signed into law within the next few months.

EXCERPT FROM 1975 HOUSE LOBBY DISCLOSURE TESTIMONY

I. CASE HISTORIES AND THE NEED FOR REFORM

The combination of events has brought us to a point where even most lobbyists are publicly conceding, for the first time, that the old law is meaningless and should be changed. Beyond that however, they are not conceding very much more. The various arguments being raised in opposition to proposed changes would combine to leave us with basically the same situation we presently have.

The fundamental question now facing Congress is not whether we are going to have a new law, but whether we are going to have a new law that significantly improves upon the 1946 Act. There are key issues which will provide the basis for determining the answers to this question. They deal with such matters as the scope of the coverage of any new law—the organizations and individuals brought under it and the inclusion of the Executive Branch as well as Congress; the quality of information to be available to the public—the sources and amounts of money raised for lobbying, the purposes and amounts of money spent for lobbying, and the identification of lobbyists and the officials they are lobbying; and the methods for oversight and enforcement.

It will accomplish little to pass any new law which does not make substantial improvements in these areas.

An examination of how the present law works, or more appropriately how it fails to work, demonstrates the kinds of increased coverage that must be a part of any new law.

In July of 1975, the Vice President of Procurement for General Motors wrote letters to GM's suppliers urging that they contact their representatives in Congress to oppose fuel economy legislation. This is like a General in the Army asking one of his privates to "volunteer" for a mission. Congress and the public should be able to learn about this and similar practices.

According to reports filed under the present law, the oil industry, including 60 oil, gas and associated corporations and 16 committees or associations, is represented in Washington by 229 individuals registered as lobbyists. In addition, there are 29 Washington, D.C.-based public relations and law firms which have registered as representatives of these corporations and committees. All of these individuals and groups together reported spending a total of \$683,279 for lobbying purposes between October 1, 1974 and September 30, 1975. Common Cause during the same period, with some 14 staff members registered as lobbyists (less than half of whom were full time lobbyists) reported spending a total \$1,359,504 for lobbying. The fact is

that the reports on file vastly understate the amounts of money that have been spent by the oil industry to lobby. The Congress and the public should be able to determine this information.

Another example of this problem can be seen in examining the reports of the American Petroleum Institute, the major oil industry trade association. A comparison, for example, of the Common Cause lobbying reports for the third quarter of 1975, with that of API, show API spending less than \$64,000 to \$317,000 for Common Cause.

A recent study by Common Cause of the reports for the last quarter of 1974 and the first quarter of 1975 showed that a number of organizations and individuals active in lobbying on maritime issues had not registered as lobbyists or filed reports under the 1946 Act. These included such important maritime-related organizations as the Shipbuilders Council of America, the National Maritime Union, and the American Association of Port Authorities and such individuals as the President of the Shipbuilders Council and the Executive Director of the American Maritime Associations. Congress and the public should be able to easily determine the groups and individuals who are lobbying the federal government.

Enormous lobbying pressures have been brought to bear in recent energy battles. Senator Edmund Muskie, for example, noted in the September 11 Congressional Record that on September 3, the four major domestic automobile manufacturers launched a national advertising campaign to gain support for a five year delay in automobile emission standards. The advertisement according to Senator Muskie, appeared in 1800 daily newspapers at a cost to the industry estimated at \$750,000. This kind of information should be disclosed.

Major national figures such as Henry Ford II of Ford Motor Company, General Motors President Eliot Estes, ex-chairman Lynn Townsend of Chrysler Corporation, Leonard Woodcock of the United Auto Workers and Ralph Nader of Public Citizens have conducted extensive lobbying on the various energy fights in Congress. None of the activities of these individuals is presently reported under the 1946 Act, even though they are active lobbyists on behalf of major organizations.

There are further examples, which Common Cause would like to set forth for the record here as we did in testimony earlier this year before the House and Senate:

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

The American Trial Lawyers Association was not registered at the time as a lobbying organization, although they have now done so. Moreover, new legislation should make certain that information on such devious, as well as more legitimate, lobbying tactics are the subject of public reporting requirements.

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

Neither ITT, nor any of these six officers, was registered as a lobbyist. Only through diligent investigatory work was the information revealed to the public.

The American Electric Power Company, one of the nation's largest utility holding companies, recently conducted a massive advertising campaign to promote increased development of coal reserves. Most of these reserves are either owned or leased by AEP, which owns seven Midwestern electric companies and six mining companies. The campaign consisted of 36 advertisements in 260 national and local publications,

and cost AEP approximately \$3.6 million. While most of the ads simply aimed to convince the public that coal is the country's answer to the energy crisis, some of them specifically called for various legislative changes.

The AEP is not registered under the present lobby law.

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

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

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

These loopholes in the present laws help account for the secrecy which hides most lobbying activities. This secrecy is convenient for lobbyists, and often for government officials as well. But it is not convenient for the public. Any new law if it is to be effective must bring within its coverage the kinds of activities we have described in these examples.

THE CONSTITUTIONALITY OF PENDING LOBBY DISCLOSURE LEGISLATION

By Kenneth J. Guido, Jr., General Counsel, Common Cause

A number of questions have arisen with regard to the constitutionality of the pending lobbying disclosure legislation. The major questions involve sections which Common Cause has advocated be retained or included in the pending legislation. The sections involved define lobbying to include: solicitations of others to lobby and lobbying by grass roots and public interest groups. Additionally, questions have been raised about the constitutionality of requiring the disclosure of the identity of contributors to lobbying organizations. Opponents to the provisions assert that they will unconstitutionally chill and infringe First Amendment rights of speech, association and petition.

This memorandum will address each of the constitutional objections made to the pending proposals supported by Common Cause.

I. THE FIRST AMENDMENT PERMITS CONGRESS TO REQUIRE DISCLOSURE BY THOSE WHO SEEK TO INFLUENCE GOVERNMENT DECISIONS

A. The Congress may, consistent with the rights of free speech, association, and petition, require disclosure of lobbying activities

While the United States Supreme Court has been particularly protective of First Amendment freedoms, it has rejected the idea that the freedoms of speech, association and petition are absolute. *Civil Service Comm'n v. Letter Carriers*, 413 U.S. 548, 568 (1973); *Konigsberg v. State Bar*, 360 U.S. 36, 49 (1961); *Breard v. Alexandria*, 341 U.S. 622, 642 (1951).

Thus, where justified by a compelling governmental interest, incidental infringements upon First Amendment rights may be permissible. See, *Buckley v. Valeo*, 44 U.S.L.W. 4127 (U.S. January 30, 1976); *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *Adderley v. Florida*, 385 U.S. 39 (1966); *Cox v. Louisiana*, 379 U.S. 559 (1965).

As the U.S. Supreme Court stated in *Buckley v. Valeo*, *supra*:

"... [C]ompelled disclosure has the potential for substantially infringing the exercise of First Amendment rights. But . . . there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the 'free functioning of our national institutions' is involved." 44 U.S.L.W. at 4146-7.

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

States, 290 U.S. 534, 548 (1934), the Court upheld the constitutionality of federal legislation requiring "public disclosure of contributions, together with the names of contributors and other details." *Burroughs* was applied to a First Amendment claim in *United States v. Harriss*, 347 U.S. 612 (1954), and the compelling governmental interest in maintaining the integrity of the legislative process supported the disclosure requirements in 1946 Federal Regulation of Lobbying Act, 60 Stat. 812, against a claim that the act infringed upon First Amendment rights. Similarly, the disclosure provisions of the Federal Election Campaign Act were upheld in *Buckley v. Valeo*, *supra*, as directly serving substantial governmental interests.

In upholding the present lobby disclosure statutes against First Amendment attack in *United States v. Harriss*, 347 U.S. 612 (1954), the Supreme Court reasoned that the American ideal of government by elected representatives depends to a large extent on their ability to properly evaluate "the myriad pressures to which they are regularly subjected." *Id.* at 625. Requiring disclosure by lobbyists neither restricts the right to petition nor abridges the liberty of speech; it merely provides "for a modicum of information from those who . . . attempt to influence litigation." *Id.* at 625. The U.S. District Court for the District of Columbia has even more cogently stated this concept in denying a motion to dismiss in an action for violation of the Federal Regulation of Lobbying Act:

"The section [requiring registration] does not abridge constitutionally guaranteed privileges (freedom of speech, press, petition, etc.) since it leaves everyone free to exercise those rights, calling upon him only to say for whom he is speaking, who pays him, how much, and the scope in general of his activity with regard to legislation." *United States v. Slaughter*, 89 F. Supp. 205, 206 (D.D.C. 1950).

In a series of Washington State cases challenging a political reform act approved and enacted into law by a majority of the electorate in November, 1972, the Washington Supreme Court has upheld the law against First Amendment attacks. *Fritz v. Gorton*, 83 Wash. 2d 275, 517 P.2d 911 (1974), appeal dismissed, 417 U.S. 902; (1974) *Young Americans for Freedom, Inc. v. Gorton*, 83 Wash. 2d 728, 522 P.2d 189 (1974). In *Fritz* the Court specifically addressed itself to the assertion by lobbyists that the disclosure provisions violated their First Amendment right to petition government. The Court found the only effect of these provisions was to require that one who receives compensation and/or expends funds in lobbying register and openly report the nature and extent of such activities. The Court rejected the contention that disclosure provisions unconstitutionally restricted or prohibited lobbying activities. Indeed, it concluded that by narrowing its scope to the influence of money upon governmental processes, the Act avoided unconstitutional restrictions upon the ambit of First Amendment guarantees. 517 P.2d at 929.

Other state and federal courts have similarly recognized the power of the state to regulate lobbying and lobbyists. *Moffett v. Killian*, 360 F. Supp. 228 (D. Conn. 1973); *Lewis v. Baxley*, 368 F. Supp. 768 (M.D. Ala. 1973); *Campbell v. Commonwealth*, 229 Ky. 264, 17 S.W.2d 227 (1929). The compelling governmental interest in making both the public and the legislators aware of the interests which lobbyists represent have been determined to outweigh the incidental infringements upon the First Amendment rights of speech and petition.

B. There is a compelling State interest in requiring the disclosure of money received and spent to influence public decisions

Lobbyists play an important role in the legislative process by researching complex new areas of proposed legislation, providing specialized information and technical expertise, assembling information, and advising legislators as to the meaning and impact of proposed legislation. Statement of Richard D. Godown, General Counsel, National Association of Manufacturers, Hearings on S. 774 and S. 815 Before the Senate Committee on Government Operations, 94th Cong., 1st Sess. (May 15, 1975). But this same lobbying creates pressing dangers to the public interest and to the integrity of the lawmaking process. Lobbying the legislative and executive branches of government involves two significant risks. First, it poses the risk of a widely differential impact, correlated not to the public interest, but to the amount of money spent lobbying and on expense accounts. Second, where much is at stake, lobbying may go beyond assembly and advocacy. As competition escalates, spending may be diverted to acquire influence rather than to present the merits of the position advocated. Comment, "Public Disclosure of Lobbying Activities," 38 *Fordham L. Rev.* 524, 536 (1970).

In attempting to alleviate these two risks, lobby disclosure fulfills three primary needs. First, lobby disclosure provides public officials with information about the interests of those attempting to influence them. Only with this information can lawmakers make more knowledgeable decisions, since this information is key to sifting out their constituents' interests from the barrage of special interests. *United States v. Harriss*, 347 U.S. at 625.

Second, lobby disclosure makes it easier for public officials to resist undue or unethical pressures directed toward potential government action. The powerful influence of lobbyists creates an ever-present conflict of interest with the beneficiaries of the political process, which disclosure will ameliorate. The deterrence of actual corruption and the avoidance of the appearance of corruption were deemed by the U.S. Supreme Court to be substantial governmental interests sought to be vindicated by the Federal Election Campaign Act challenged in *Buckley v. Valeo*, 44 U.S.L.W. 4127, 4135 (U.S. January 30, 1976). Similarly, the deterrence and avoidance of the appearance of corruption justify the disclosure of the financial transactions of those who receive or expend funds to influence the outcome of governmental decisions.

Perhaps the most compelling state interest justifying lobby disclosure is the right of the electorate to receive the disclosed information. Lobby disclosure provides the electorate with a means of determining whose interests the public officials are representing, thereby increasing the effective exercise of the franchise. See *Buckley v. Valeo*, 44 U.S.L.W. at 4147. As the Washington State Supreme Court recently stated:

"The electorate, we believe, has a right to know of the sources and magnitude of financial and persuasional influences upon government. The voting public should be able to evaluate the performance of their elected officials in terms of representation of the electors' interest in contradistinction to those interests represented by lobbyists. Public information and the disclosure . . . required of lobbyists and their employers may provide the electorate with a heretofore unavailable perspective regarding the role that money and special influence play in government decision making . . ." *Fritz v. Gorton*, 517 P.2d at 931.

Far from being unconstitutional, the lobby disclosure promotes fundamental First Amendment values. The freedom to receive information and ideas has been long recognized as a necessary corollary of the freedom of speech. See, *Fritz v. Gorton*, *supra*; *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969); *Stanley v. Georgia*, 394 U.S. 557 (1969); *Moffett v. Killian*, *supra*; *New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Com'n*, *supra*. An informed electorate as well as an informed legislature constitute the essence of a democratic society.

II. THE PARTICULAR DISCLOSURE REQUIREMENTS UNDER CONSIDERATION DO NOT UNCONSTITUTIONALLY INFRINGE UPON THE RIGHTS OF FREE SPEECH, ASSOCIATION, OR PETITION

The lobby disclosure provisions which Common Cause supports do not require disclosure of de minimus lobbying activity; only when substantial amounts of money are spent, must the nature and extent of such activity be disclosed. Moreover, the provisions supported by Common Cause do not call for disclosure of the names and addresses of all contributors to a lobbying organization; only the identities of persons who contribute substantial sums per year must be disclosed.

The provisions supported by Common Cause, instead, require the disclosure of major contributors to lobbying organizations. They also require disclosure by those who spend substantial sums to contact directly, and to solicit others to contact government officials (including members of the Executive branch) advocating the adoption or rejection of a specific government policy. These provisions form a comprehensive reporting scheme requiring the disclosure of contributors to organizations that lobby directly or solicit others to do so whether the organization is a private or public interest lobbyist.

The disclosure required by the provisions supported by Common Cause is necessary in order to give the electorate and government officials the true scope of the influences brought to bear on specific issues. The required disclosure does not prevent anyone from petitioning the government and does not unduly burden any lobbying effort. The provisions are narrowly drawn to focus on a specific problem and are therefore not an infringement upon First Amendment rights.

A. Disclosure of significant contributors to lobbying organizations does not unconstitutionally infringe upon the rights of free speech, association, or petition

The disclosure of significant contributors to lobbying organizations is essential so that the electorate and governmental officials will be fully informed as to whose interests the organization is espousing. In *United States v. Harriss*, 347 U.S. 612 (1954), the Supreme Court upheld disclosure of contributions of more than \$500 per quarter to lobbying organizations.

The Federal Regulation of Lobbying Act of 1946, 60 Stat. 812, 839, which was attacked as violating the First Amendment, was upheld because in the Court's view:

"[Congress] has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose. It wants only to know who is being hired, *who is putting up the money, and how much*. It acted in the same spirit and for a similar purpose in passing the Federal

Corrupt Practices Act—to maintain the integrity of a basic governmental process. See *Burroughs v. United States*, 290 U.S. 534, 545, 54 S.Ct. 287, 290, 78 L.Ed. 484.

"Under these circumstances, we believe that Congress . . . is not constitutionally forbidden to require the disclosure of lobbying activities. To do so would be to deny Congress in large measure the power of self-protection. And here Congress has used that power in a manner restricted to its appropriate end." (emphasis added) 347 U.S. at 625-626.

The Supreme Court recently upheld the disclosure requirements of the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, against charges that they violated the First Amendment guarantees of free speech and association. In *Buckley v. Valeo*, 44 U.S.L.W. 4127 (U.S. January 30, 1976), the Court stated that disclosure provisions serve the government interest of informing the electorate of the source and uses of campaign money, thus allowing the voter a more precise view of the candidate by alerting the voter to the interests to which a candidate is most likely to be responsive. Disclosure requirements also deter actual corruption and avoid the appearance of it. 44 U.S.L.W. 4147. As the Court noted in *Harriss*, the disclosure of campaign contributors serves the same purpose as the disclosure of contributors to lobby organizations. The *Buckley* decision therefore indicates that disclosure of major contributors to lobby organizations does not unconstitutionally infringe upon First Amendment rights.

B. Disclosure of solicitation of others to lobby does not unconstitutionally infringe upon the rights of free speech, association, or petition

Lobbying solicitation has been included among activities to be reported for the same reasons that the disclosure of contributors to lobbying disclosure was included. The disclosure of lobbying solicitations will provide government officials with information as to the true sources of the influences exerted upon them, thus enabling them to determine if support for a position is broad-based. In addition, such information will allow the electorate to better evaluate whose interests their officials are representing, a purpose the Supreme Court found significant in *Buckley v. Valeo*, *supra* at 4147.

In *United States v. Harriss*, *supra*, the Supreme Court upheld disclosure of lobbying solicitation, noting:

"The legislative history of the Act makes clear that, at the very least, Congress sought disclosure of such direct pressures, exerted by the lobbyists themselves or through their hirelings or through an artificially stimulated letter campaign." (emphasis added) 347 U.S. at 620.

The Court then went on to discuss the reasons for lobby disclosure:

"Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to help prevent." 347 U.S. at 625.

The disclosure of lobbying solicitations will assist government officials in evaluating the pressures exerted on them and aid the electorate in determining to whose interests their officials are responsive.

United States v. Rumely, 345 U.S. 41 (1953) does not contradict the holding of *United States v. Harriss*, *supra*, that lobbying solicitations may trigger disclosure. In *U.S. v. Rumely*, *supra*, the Supreme Court held that lobbying does not reach all attempts to "saturate the thinking of the community" or all activities intended to influence, encourage, promote or retard legislation. In doing so, the Court did not hold that solicitations of others to lobby was not an appropriate standard to require disclosure. As the Supreme Court said in *U.S. v. Harriss*, *supra*, solicitation of others to contact Members of Congress concerning a matter of interest is not merely an attempt to "saturate the thinking of the community" but rather is lobbying in its commonly accepted sense. See *United States v. Harriss*, *supra* at 620. As with disclosure of other lobbying activities, disclosure of lobbying solicitations does not impermissibly infringe upon guaranteed freedoms and serves substantial governmental interests.

C. Disclosure of grassroots or public interest lobbying does not unconstitutionally infringe upon the rights of free speech, association, or petition

Public interest groups and grass roots lobbyists should be treated exactly the same as private interest groups for purposes of lobby registration and lobby disclosure. The need for both the public and public officials to know the sources of influence is just as great whether the lobbyist is characterized as a public or a private interest

group. The governmental interests noted in *United States v. Harriss*, *Buckley v. Valeo*, and *Fritz v. Gorton* apply equally to all sources of lobbying activity.

Required disclosure by grass roots lobbyists does not impermissibly burden First Amendment freedoms. The Supreme Court of Washington, in holding constitutional a state statute requiring disclosure by grass roots lobbying organizations, stated that the provision regulating grass roots lobbying organizations must be viewed

"... as a part of a matrix or program designed to insure that public officials and the electorate are informed of the sponsors of campaigns and lobbying efforts which seek to affect, directly or indirectly, governmental decision making." *Young Americans For Freedom, Inc. v. Gorton*, 83 Wash. 2d 728, 522 P.2d 189, 192 (1974).

Grass roots lobbyists and public interest lobbyists deserve no special treatment under the Constitution and laws may constitutionally be applied to all types of lobbying groups with equal force. In fact, constitutional equal protection issues would arise if public interest or grass roots lobbyists were treated differently from private interest lobbyists. Any such distinction would also lead to many practical problems in defining "public" and "private" interest groups and categorizing the many lobbying organizations within one of these definitions.

Disclosure of grass roots and public interest lobbying efforts will not prohibit such groups from acting and will not impermissibly burden such groups. Since the required disclosure serves a substantial governmental interest, it does not unconstitutionally infringe upon First Amendment rights.

Mr. HARRIS. Without objection, we would include that in the record.

I had noted the actual submission of Common Cause for the fourth quarter of 1976.

Mr. WERTHEIMER. We want to submit our lobbying disclosure as last time.

Mr. HARRIS. Is there any objection.

[No response.]

Mr. HARRIS. Without objection we will include that in the record at this point also.

[The document referred to follows:]

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

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

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

Year: 19...76... ←

REPORT

P	QUARTER			
	1st	2d	3d	4th
				X

(Mark one square only)

PURSUANT TO FEDERAL REGULATION OF LOBBYING ACT

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

A. ORGANIZATION OR INDIVIDUAL FILING

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

Common Cause, 2030 M Street, NW, Washington DC 20036. Non-partisan organization for the promotion of social and physical improvement in the United States.
 2. See page 3

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

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

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

NONE

NOTE ON ITEM "C."—(a) The expression "in connection with legislative interests," as used in this Report, means "in connection with attempting, directly or indirectly, to influence the passage or defeat of legislation." The term "legislation" means bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress, and includes any other matter which may be the subject of action by either House.—1.202 (a).
(b) Before undertaking any activities in connection with legislative interests, organizations and individuals subject to the Lobbying Act are required to file a "Preliminary" Report (Registration).
(c) After beginning such activities, they must file a "Quarterly" Report at the end of each calendar quarter in which they have either received or expended anything of value in connection with legislative interests.

C. LEGISLATIVE INTERESTS, AND PUBLICATIONS in connection therewith:

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

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

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

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

- Indefinite
- See page 4
- See page 5

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

↓ State or Territory
 City of Washington
 District of Columbia

AFFIDAVIT

I, the undersigned official, being duly sworn, say: (1) That I have examined the attached Report, numbered consecutively from page 1 through page 3 and the same is true, correct, and complete as I verily believe. (Be sure to fill in number of last page.)

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

Subscribed and sworn to before me on _____ at _____, D.C.
 (Print or type name below signature) (Signed) _____ (Typed) F. ROBERT MAYER

(Print or type name below signature) (Signed) _____ (Typed) Cynthia Cook Hahn (Official authorized to administer oaths)

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

(b) IF THIS REPORT IS FOR AN EMPLOYER.—(1) In General. Item "D" is designed for the reporting of all receipts from which expenditures are made, or will be made, in connection with legislative interests.

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

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

(c) IF THIS REPORT IS FOR AN AGENT OR EMPLOYEE.—(1) In General. In the case of many employees, all receipts will come under Item "D 5" (received for services) and "D 12" (expense money and reimbursements). In the absence of a clear statement to the contrary, it will be presumed that your employer is to reimburse you for all expenditures which you make in connection with legislative interests.

(2) Employer or Contributor of \$500 or More.—When your contribution from your employer (in the form of salary, fee, etc.) amounts to \$500 or more, it is not necessary to report such contributions under "D 12" and "D 14," since the amount has already been reported under "D 5," and the same as the "employer" has been given under Item "B" on page 1 of this report.

D. RECEIPTS (INCLUDING CONTRIBUTIONS AND LOANS)

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

Receipts (other than loans)

- 1. \$ 981.542.81 Dues and assessments
- 2. \$ 361.173.18 Gifts of money or anything of value
- 3. \$ None Printed or duplicated matter received as a gift
- 4. \$ 6,112.11 Receipts from sale of printed or duplicated matter
- 5. \$ None Received for services (e. g., salary, fee, etc.)
- 6. \$ 1,348,835.10 TOTAL for this Quarter (Add items "1" through "5")
- 7. \$ 4,480,831.46 Received during previous Quarters of calendar year
- 8. \$ 2,529,666.58 TOTAL from Jan. 1 through this Quarter (Add "6" and "7")

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

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

Contributors of \$500 or More (from Jan. 1 through this Quarter)
 13. **Give here the name of each contributor**
 Please answer "yes" or "no" . . . Yes . . . +

14. In the case of each contributor whose contributions (including loan) during the "period" from January 1 through the last day of this Quarter, total \$500 or more:

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

Amount	Name and Address of Contributor
\$1,500.00	John Doe, 1621 Blank Bldg., New York, N. Y.
\$1,700.00	The Roe Corporation, 2511 Doe Bldg., Chicago, Ill.
\$3,200.00	TOTAL

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

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

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

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

Expenditures (other than loans)

- 1. \$ None Public relations and advertising services
- 2. \$ 131,454.97 Wages, salaries, fees, commissions (other than Item "1")
- 3. \$ None Gifts or contributions made during Quarter
- 4. \$ 72,727.71 Printed or duplicated matter, including distribution cost
- 5. \$ 65,727.48 Office overhead (rent, supplies, utilities, etc.)
- 6. \$ 49,117.82 Telephone and telegraph
- 7. \$ 11,707.15 Travel, food, lodging, and entertainment
- 8. \$ None All other expenditures
- 9. \$ 330,735.13 TOTAL for this Quarter (add "1" through "8")
- 10. \$ 996,557.85 Expended during previous Quarters of calendar year
- 11. \$ 1,327,292.98 TOTAL from January 1 through this Quarter (add "9" and "10")

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

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

15. Recipients of Expenditures of \$10 or More

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

Amount	Date or Dates	Name and Address of Recipient—Purpose
\$7,750.00	7-11	Roe Printing Co., 3211 Blank Ave., St. Louis, Mo.—Printing and mailing circulars on the "Marshbanks Bill."
\$2,400.00	1-16, 8-14, 9-15	Drives & Drivers, 3127 Garden Bldg., Washington, D. C.—Public relations service of \$300.00 per month.
\$4,150.00	TOTAL	

COMMON CAUSE

Names of agents or employees who will file reports for this quarter: John W. Gardner, Bruce Adams, Thomas Belford, Dorothy D. Cecelski, Richard W. Clark, David Cohen, R. Michael Cole, Richard Morgan Downey, Margaret Fitzgerald-Bare, Kenneth J. Guido, Patricia Keefer, Andrew Kneier, Thomas J. Mader, David Masselli, Ann McBride, Jack Moskowitz, Robert Spencer O'Leary, and Fred M. Wertheimer.

LEGISLATIVE INTERESTS

Legislative interests are in such areas as open government, campaign financing, consumer protection, freedom of information, ERA, energy policy, environmental protection, land use policy, defense spending, tax reform, waste in government, maritime subsidies, voting rights, administration of justice and reform of the criminal code, intelligence policy, and are concerned with reordering of national priorities, Congressional reform and Congressional ethics reform. During the 94th Congress Common Cause has supported the following specific legislation (although not necessarily all the provisions of the bills listed) dealing with open meetings (S. 5, S.Res. 9, H.R. 11656), campaign financing reform (S. 564, H.R. 9100), full financial disclosure by federal officials and Members of Congress (S. 495, H.R. 3249), strengthened lobbyist regulations (S. 2477, H.R. 15), Consumer Protection Agency (S. 200, H.R. 7575), full Congressional representation for the District of Columbia (S.J. Res. 80, H.J. Res. 12, H.J. Res. 280), legislation to establish an office of special prosecutor (S. 495, H.R. 14476), postcard voter registration, broadcasting Congressional proceedings (S. Res. 39, H. Res. 269, H. Res. 110, H. Res. 875, H. Res. 1502), reconstitution of the Federal Election Comm. (S. 3065, H.R. 12406), *Parens Patriae* (H.R. 8532), Hatch Act Reform (H.R. 8617), amendments to the Clean Air Act (S. 3219, H.R. 10498), strip mining (H.R. 25), Congressional budget priorities, tax cut bill (H.R. 2166), tax reform act (H.R. 10612), Estate and Gift Tax Reform Act (H.R. 14844), lobbying by public charities bill (H.R. 13500, S. 2832), disclosure of funding of intelligence agencies, disclosure of U.S. commitments under Sinai agreement, and conditioning aid to Angola on Congressional approval, establishment of a Senate standing Committee on Intelligence Activities (S. Res. 400), Foreign Intelligence Surveillance Act (S. 3197), a "Sunset" bill (S. 2925), and the fiscal year 1977 DOD Authorization bill (H.R. 12438) and DOD Appropriation bill (H.R. 14262), Fiscal Assistance Amendments of 1976 (H.R. 13367), the Right to Privacy Act (H.R. 214), ERDA Authorization bill (H.R. 13350, S. 3105), and the bill to classify the New River as a wild and scenic river (H.R. 13372). Common Cause has also concerned itself with the following matters: revision of the federal criminal code (S. 1), energy conservation (H.R. 6860), Emergency Agriculture Act (H.R. 4296), Price-Anderson Bill to amend the Atomic Energy Act of 1954 (S. 2568, H.R. 8631), newsmen's shield, broadcast license renewal, the highway trust fund, and Senate committee reorganization.

LEGISLATIVE PUBLICATIONS

In Common, The Common Cause Report from Washington, vol. 7, no. 4, 255,000 distributed, fall, 1976, Editors Press. FrontLine Report, vol. 2, no. 6, 255,000 distributed, November-December, 1976, Comprint.

D.14 Contributors of \$500 or more from Jan. 1, 1976, to Dec. 31, 1976

<i>Name and address</i>	<i>Amount</i>
Mrs. Edward A. Bacon, Sr., Coral Gables, Fla.....	\$4,050.00
Rev. Charles J. Bowes, Jacksonville, Fla	1,800.00
Mrs. Nancy Larrick Crosby, Quakertown, Pa.....	1,000.00
Mr. Charles H. Dyson, Scarsdale, N.Y	2,500.00
Mrs. Charles H. Dyson, Scarsdale, N.Y	2,500.00
Mr. W. D. Eberle, Washington, D.C.....	500.00
Mr. Martin L. Gleich, San Diego, Calif	1,000.00
Mr. William T. Golden, New York, N.Y.....	500.00
Mr. William R. Hewlett, Palo Alto, Calif	1,000.00
Mrs. J. Higginbotham, Dallas, Tex	4,000.00
Mrs. Osmond Molarsky, Ross, Calif	500.00
Estate of Henrietta Murphy, Phoenix, Ariz	14,806.13
Mr. Percy Selden, Houston, Tex.....	500.00
Mrs. Arthur Hays Sulzberger, Stamford, Conn.....	1,000.00
Mr. Thomas J. Watson, Jr., Armonk, N.Y.....	1,000.00
Mr. and Mrs. James Morse, Ann Arbor, Mich	1,000.00
Ms. Grace Warner Waring, Philadelphia, Pa.....	1,000.00
Estate of Margaret T. Saunders, Holyoke, Mass	701.75
Mrs. Henry B. Bigelow, Concord, Maine	3,000.00
Mrs. Marion B. Blodgett, St. Paul, Minn	500.00
Rev. and Mrs. C. F. Buechner, Pawlet, Vt.....	500.00
Mr. Theodore W. Burkhardt, Echirolles, France.....	900.00
Mrs. R. E. Davis, Sedona, Ariz	500.00
Miss Elizabeth S. Dilworth, New York, N.Y	500.00
Mr. Joseph W. Drown, Los Angeles, Calif	2,000.00
Mr. Howard A. Fromson, Weston, Conn	1,000.00
Mr. Paul E. Geier, Rome, Italy.....	500.00
Mr. Crawford Gordon, Kaycee, Wyo	1,000.00
Mrs. Thomas H. Hawkins, Berwyn, Pa.....	600.00
Mr. Harold K. Hochschild, New York, N.Y	2,000.00
Mr. Henry H. Hoyt, Short Hills, NJ	1,000.00
Mr. Samuel C. Johnson, Racine, Wis	500.00
Mrs. James J. Kinsella, Peoria, Ill	1,000.00
Mr. Stanley Marcus, Dallas, Tex	1,000.00
Mr. William McChesney Martin, Washington, D.C	1,000.00
Mr. Harold E. Mertz, Altamonte Springs, Fla	600.00
Mr. J. Irwin Miller, Columbus, Ind	1,000.00
Mrs. Alexander Campbell, Geneva, N.Y.....	500.00
Mr. John Cowles, Minneapolis, Minn.....	525.00
Mrs. Mary Lewis Dickinson, Charleston, W. Va	1,000.00
Mr. Daniel Farber, Worcester, Mass	1,000.00
Mr. Walter A. Haas, Jr., San Francisco, Calif.....	3,000.00
Mr. and Mrs. Harry W. Havemeyer, New York, N.Y	500.00
Mr. H. H. Hoyt, Jr., Short Hills, NJ	500.00
Mrs. Esther U. Johnson, Oldwick, N.J.....	3,000.00
Mrs. Richard M. Link, Pasadena, Calif.....	575.00
Mr. Nicholas S. Ludington, Nicosia, Cyprus.....	1,000.00
Mr. and Mrs. Thomas J. Miller, Essex Fells, N.J.....	700.00
Estate of Richard L. Schweitzer, Tucson, Ariz	43,000.00
Mr. and Mrs. John D. Rockefeller, Charleston, W. Va	1,015.00
Mr. and Mrs. Henry B. Faulkner, Brookline, Mass.....	1,200.00
Mrs. Margaret R. Fuller, Cincinnati, Ohio	1,028.41
Mrs. S. B. Grimson, New York, N.Y	2,435.95
Mr. and Mrs. Andrew Grove, Los Altos Hills, Calif	2,726.16
Mr. and Mrs. Harry Guffee, West Haven, Conn.....	500.00
Mr. Jacob M. Kaplan, New York, N.Y	3,500.00
Ms. Jane A. Kelton, Dallas, Tex	700.00
Mrs. Halleck Lefferts, Washington, D.C.....	2,030.00
Mrs. Thelma L. Lewis, Cambridge, Mass	500.00
Mr. Charles P. Noyes, Syosset, N.Y.....	500.00
Mr. Laurance Rockefeller, New York, N.Y	2,000.00
Mrs. Albrecht Saalfeld, Greenwich, Conn	1,000.00
Dorcas D. Davis, Charleston, W. Va	1,000.00
Mr. Benjamin Bittenweiser, New York, N.Y.....	500.00
Mrs. Allan Nevins, Palo Alto, Calif	2,000.00
Mr. and Mrs. Samuel B. Payne, Shelburne, Mass	500.00
Mr. Morton Phillips, Minneapolis, Minn	500.00

D.14 Contributors of \$500 or more from Jan. 1, 1976, to Dec. 31, 1976—Continued

<i>Name and address</i>	<i>Amount</i>
Mr. Philip L. Rome, San Diego, Calif.....	500.00
Mr. James W. Rouse, Columbia, Md	500.00
Mrs. Mary L. Scranton, Dalton, Pa.....	750.00
Mr. Robert C. Stover, Poughkeepsie, N.Y	500.00
Mr. James Andrews, Washington, D.C	500.00
Miss Anne C. Bird, East Walpole, Mass	600.00
Mr. Malcolm K. Brachman, Dallas, Tex	1,000.00
Mr. Edwin L. Crosby, New Brighton, Minn	2,000.00
Mrs. Margaret W. Davis, Amherst, Mass	3,247.62
Mrs. Augusta DeWitt, Yonkers, N.Y	1,000.00
Mr. J. C. Dougherty, Austin, Tex	500.00
Dr. Emily H. Mudd, Haverford, Pa	1,000.00
Mrs. Clara L. Nothhacksberger, Paris, France	500.00
Mr. Nelson Poynter, St. Petersburg, Fla	500.00
Mr. C. Evans Roberts, Jr., Bellevue, Wash	500.00
Dr. and Mrs. Stephen Q. Shafer, New York, N.Y	5,000.00
Mr. and Mrs. John W. Shields, Lake Forest, Ill.....	1,000.00
Mr. Arthur Temple, Diboll, Tex.....	2,000.00
Mr. Robert B. Wallace, Washington, D.C	500.00
Mr. David J. Winton, Minneapolis, Minn	1,000.00
Mrs. Katherine D. Winton, Minneapolis, Minn	1,000.00
Ms. Charlotte S. Wyman, Gstaad, Switzerland	3,000.00
Mrs. Carol P. Guyer, Greens Farms, Conn	1,944.00
Jerry Keller, New York, N.Y.....	500.00
Timothy Light, New York, N.Y	1,000.00
Mrs. Donald Burnham, Pittsburgh, Pa	1,000.00
Mr. M. A. Farrell, State College, Pa	1,130.00
Patricia E. Benn and Edwin L. Crosby, New Brighton, Minn	1,000.00
Mr. and Mrs. S. E. Marder, Highland Park, Ill	500.00
Mrs. Helen D. Jones, Lubbock, Tex.....	1,020.00
Miss Mary E. Pennock, Brighton, Colo	500.00
Mr. Edward O. Meneghetti, Tacoma, Wash.....	1,000.00

Recipients of expenditures of \$10 or more from Oct. 1, 1976, to Dec. 31, 1976

<i>Name, address, purpose, and date</i>	<i>Amount</i>
Georgianna Rathbun, Washington, D.C., edit newsletter and research:	
October	\$2,500.00
November	2,500.00
December	2,500.00
Phillip Clapp, Washington, D.C., assist in editing newsletter:	
October	1,166.66
November	1,166.66
December	1,166.66
Laura Lawson, Washington, D.C., assist in editing newsletter:	
October	583.33
November	583.33
December	583.33
John W. Gardner, Washington, D.C., compensation and expense reimbursement:	
October	2,076.46
November	1,586.97
December	1,409.18
Thomas Belford, compensation:	
October	1,866.67
November	1,866.67
December	1,866.67
Richard W. Clark, compensation and expense reimbursement:	
October	1,833.34
November	1,897.59
December	1,925.84
David Cohen, Washington, D.C., compensation and expense reimbursement:	
October	2,374.99
November	2,478.30
December	2,465.28
R. Michael Cole, Washington, D.C., compensation and expense reimbursement:	
October	2,389.41
November	2,349.79
December	2,444.31

Recipients of expenditures of \$10 or more from Oct. 1, 1976, to Dec. 31, 1976—Continued

<i>Name, address, purpose, and date</i>	<i>Amount</i>
Kenneth J. Guido, compensation:	
October	241.66
November	241.66
December	241.66
Patricia Keefer, Washington, D.C., compensation:	
October	1,750.00
November	1,750.00
December	1,750.00
Thomas J. Mader, Washington, D.C., compensation:	
October	1,166.67
November	1,166.67
December	1,166.67
Mary Mazingo, Washington, D.C., compensation:	
October	491.67
November	374.39
Neil Upmeyer, Washington, D.C., compensation:	
October	1,250.00
November	1,250.00
John J. Conway, Washington, D.C., compensation:	
October	1,250.00
November	1,250.00
December	1,250.00
Andrew Kneier, Washington, D.C., compensation:	
October	1,200.00
November	1,200.00
December	1,200.00
Arlene Alligood, Washington, D.C., compensation:	
October	2,000.00
November	2,000.00
December	2,000.00
Martha Davis, Washington, D.C., compensation:	
October	1,250.00
November	1,250.00
December	1,250.00
Jack Fieldhouse, Washington, D.C., compensation:	
October	833.33
November	833.33
December	833.33
Kathy Carr, Washington, D.C., compensation:	
October	688.00
November	688.00
December	688.00
Ann Fitzgerald, Washington, D.C., compensation:	
October	333.33
November	333.33
December	333.33
Ann McBride, Washington, D.C., compensation and expense reimbursement:	
October	1,888.00
November	1,750.00
December	1,750.00
R. Morgan Downey, Washington, D.C., compensation:	
October	791.67
November	791.67
December	791.67
Jack Moskowitz, Washington, D.C., compensation and expense reimbursement:	
October	2,752.00
November	2,700.00
December	2,747.50
Ruth M. Saxe, Washington, D.C., compensation:	
October	1,166.67
November	1,166.67
December	1,166.67
Fred M. Wertheimer, Washington, D.C., compensation and expense reimbursement:	
October	3,161.77
November	2,929.84
December	2,832.00

Recipients of expenditures of \$10 or more from Oct. 1, 1976, to Dec. 31, 1976—Continued

<i>Name, address, purpose, and date</i>	<i>Amount</i>
Eileen Steinhauser, Washington, D.C., compensation:	
October	750.00
November	750.00
December	750.00
Bruce Adams, Washington, D.C., compensation:	
October	1,333.32
November	1,333.32
December	1,333.32
Dorothy Cecelski, Washington, D.C., compensation and expense reimbursement:	
October	791.67
November	843.55
December	791.67
Robert O'Leary, Washington, D.C., compensation:	
October	791.67
November	791.67
December	791.67
Betsy Sherman, Washington, D.C., compensation:	
October	1,000.00
November	1,000.00
December	1,000.00
Wendy Wolff, Washington, D.C., compensation:	
October	833.33
November	833.33
December	833.33
Margaret Fitzgerald-Bare, Washington, D.C., compensation:	
October	1,133.32
November	1,133.32
December	1,133.32
David Masselli, Washington, D.C., compensation:	
October	1,200.00
November	1,200.00
December	1,200.00
Diana Neidle, Washington, D.C., compensation:	
October	1,000.00
November	1,000.00
December	1,000.00
Miscellaneous taxi fares and other costs reimbursed to Common Cause volunteers for legislative-oriented activities:	
October	1,065.05
November	958.01
December	883.65
Chesapeake & Potomac Telephone Co., Washington, D.C.:	
October	13,957.65
November	18,402.40
December	16,509.52
In-house cost of printing legislative-oriented material:	
October	2,192.07
November	2,278.44
December	1,732.80
Maxwell McKenzie, photographer, Washington, D.C., one-time use rights of portrait of Jimmy Carter for FrontLine, September–October, issues profile:	
October	25.00
Herblock Cartoons, Washington, D.C., one-time use of two cartoons, FrontLine, July–August issue:	
October	30.00
Dr. M. A. Aziz, Washington, D.C., illustration of capital on FrontLine newsletter, September–October:	
October	50.00
Western Union, McLean, Va., telegrams:	
October	248.25
Trade Typographers, Inc. Washington, D.C., galley and chart composition repros, In Common Newsletter, summer:	
October	1,548.33
Phils Photo, Inc., Washington, D.C., photolettering, In Common Newsletter, fall:	
October	311.86
November	73.71
U.S. Postmaster, Washington D.C., postage for mailing Newsletter In Common, summer:	
October	8,500.00
U.S. Postmaster, Washington D.C., postage for mailing Newsletter Issue Profiles:	
October	1,000.00

Recipients of expenditures of \$10 or more from Oct. 1, 1976, to Dec. 31, 1976—Continued

<i>Name, address, purpose, and date</i>	<i>Amount</i>
U.S. Postmaster, Washington D.C., postage for mailing Newsletter In Common, fall: November.....	8,000.00
Centrum Corp., Washington, D.C., design and production of summer issue of In Common Newsletter: October	2,167.50
Centrum Corp., Washington, D.C., design and production of fall issue of In Common Newsletter: November.....	816.00
Editors Press, Inc., Hyattsville, Md., printing 295,250 copies of 64 pages, vol. 7, No. 3, Newsletter In Common, summer: October.....	16,802.17
Editors Press, Inc., Hyattsville, Md., printing 285,600 copies of 32 pages, vol. 7, No. 4, Newsletter In Common, fall: November.....	12,004.97
Comprint, Gaithersburg, Md., printing 8,000 copies of 4 pages, vol. 2, No. 5, FrontLine, October report: October	247.00
Comprint, Gaithersburg, Md., printing 280,000 copies of 12 pages, vol. 2, No. 6, FrontLine, November–December report: November	5,703.88
A.D.W., Beltsville, Md., affixing labels and mailing FrontLine, September–October, report:	
October	1,539.05
November	1,281.10
A.D.W., Beltsville, Md., affixing labels and mailing FrontLine, November–December, report: December	2,220.04
Sisk Mailing Service, Inc., Lanham, Md., affixing labels and mailing In Common Newsletter, summer:	
October	2,765.37
November	135.12
Jim Hellmuth, Washington, D.C., cover illustration for In Common Newsletter, fall; November.....	90.00
Columbia Computer Corp., Washington, D.C., maintenance of mailing list: October	90.00
American Security Corp., Washington, D.C., airline tickets:	
October	1,707.00
November	3,450.00
Eastern Airlines International, Miami, Fla., airline tickets: December	74.00
Thomas Mathews, Washington, D.C., consultant fee:	
October	500.00
November	500.00

Jan. 1, 1975 to Dec. 31, 1976—Committee report includes all contributions previously reported in 1st, 2d, and 3d quarters

<i>Name and address</i>	<i>Amount</i>
Matthews, T. S., Suffolk, England.....	\$115
Nilsson, Mr. and Mrs. Henry, Stockholm, Sweden.....	200
Schoellkopf, Dr. Judith, Ravello Salerno, Italy	200
Anderson, Mr. Verner, Lunenburg, Mass	125
Farber, Mr. Daniel, Worcester, Mass	300
Kimball, Mrs. Rufus H., Concord, Mass	225
Taggart, Mr. Ganson, Winchester, Mass	120
Frost, Mr. R. H., Beverly, Mass	115
Pierce, Miss C. W., Rockport, Mass	190
Sherwood, Mrs. E. B., Canton, Mass	110
Rabb, Mr. Norman, Boston, Mass	150
Baumgartner, Dr. Leona, Cambridge, Mass	450
Ladd, Helen P., Cambridge, Mass	220
Murray, Dr. Henry A., Cambridge, Mass	200
Staton, Mrs. E. B., Cambridge, Mass.....	150
Barus, Ms. Deborah, Newton Center, Mass.....	130
Bernat, Mr. Paul, Chestnut Hill, Mass	120
May, Mr. Philip, Belmont, Mass	150
Brown, Thornton, Milton, Mass.....	150
Perkins, Mr. and Mrs., M.D., Milton, Mass	125
Sanger, Miss Marjorie D., Needham, Mass	150
Forte, Jr., O. W., Weston, Mass.....	110
Stone, Martin, Weston, Mass	115
Godfrey, Wilfred, Osterville, Mass	200
Pratt, Mrs. E. H. B., Marion, Mass	120
Mitchell, Jr., Leeds, Barrington, R.I.....	115

Jan. 1, 1975 to Dec. 31, 1976—Committee report includes all contributions previously reported
in 1st, 2d, and 3d quarters—Continued

Name and address	Amount
Bergeron, Arthur J., Berlin, N.H.	200
Crary, Mr. and Mrs. Stephen T., Lyme, N.H.	270
Forbes, Mr. A. I., Exeter, N.H.	200
Dunfey, Mr. William L., Hampton, N.H.	200
Redwin, Jr., Mr. and Mrs. James, Brunswick, Maine	125
Bunten, Mrs. A. T., Kennebunk, Maine	115
Mertens, Robert E., Woodstock, Vt.	125
Simmons, Mrs. C. H., Dorset, Vt.	200
Embree, Miss Katherine, West Brattleboro, Vt.	200
Libassi, Mr. and Mrs. F. P., West Hartford, Conn.	250
Kyle, Mr. Richard S., Old Lyme, Conn.	125
Spalding, Miss Helen E., North Haven, Conn.	240
Thomas, Mr. Howard E., New Canaan, Conn.	200
Richardson, Jr., Mr. Lunsford, Rowayton, Conn.	300
Henley, Dr. Jean, Ridgefield, Conn.	115
Lechner, Mrs. Benjamin, Riverside, Conn.	250
Watkins, Jr., Mr. A. F., Westport, Conn.	150
Blake, Dr. Eugene C., Stamford, Conn.	200
Goodman, Mrs. Benny, Stamford, Conn.	125
Hoffman, Mr. and Mrs. H. E., Stamford, Conn.	250
Baker, Mr. and Mrs. John, Essex Fells, N.J.	225
Wood, Mr. and Mrs. Loren T., Essex Fells, N.J.	215
Taylor, Mr. Fred H., Montclair, N.J.	115
Edwards, Dr. and Mrs. C. C., Short Hills, N.J.	125
Klein, Mr. and Mrs. Walter C., Short Hills, N.J.	110
Sullivan, Mr. Frank E., Newark, N.J.	250
Ucko, K., Wayne, N.J.	245
Wiley, Mr. and Mrs. W. B., Summit, N.J.	250
Merck, Mrs. Albert, Mendham, N.J.	105
Cooper, Mrs. Marguerite S., Moorestown, N.J.	300
Walstad, Mr. and Mrs. Paul, Kingston, N.J.	300
Kuhn, Mr. Thomas, Princeton, N.J.	200
McCutchen, Mr. Brunson S., Princeton, N.J.	150
Miles, Jr., Mr. Rufus E., Princeton, N.J.	105
Sullivan, Edward C., APO New York, N.Y.	115
Mithertz, Mr. Leon, New York, N.Y.	115
Paley, Mr. Jeffrey, New York, N.Y.	125
Canc, Mr. Melville H., New York, N.Y.	250
Buckner, Mrs. Helen W., New York, N.Y.	215
Hoyt, Mr. Whitney F., New York, N.Y.	200
Lawrence, Mr. and Mrs. James F., New York, N.Y.	200
Lemann, Mrs. Lucy B., New York, N.Y.	300
Maske, Mr. Gunnar, New York, N.Y.	275
Potter, Mrs. William, New York, N.Y.	140
Rockefeller, Mrs. Mary C., New York, N.Y.	115
Rodgers, Mr. and Mrs. Richard, New York, N.Y.	300
Pascal, Mrs. Gertrude, New York, N.Y.	115
Reed, Mr. Philip D., New York, N.Y.	250
Sheffield, Miss Ann, New York, N.Y.	255
Kenin, Dr. Michael, New York, N.Y.	165
Osborn, Mr. and Mrs. Frederick, Garrison, N.Y.	175
Bowen, John F., Rye, N.Y.	115
Cahen, Mrs. Frances H., Scarsdale, N.Y.	125
Rosenthal, Mr. and Mrs. Edward, White Plains, N.Y.	200
Rabinowitz, Mr. Wilbur M., Brooklyn, N.Y.	125
Rauch, Mr. Louis J., Old Westbury, N.Y.	300
Nichols, Mrs. George, Cold Spring Harbor, N.Y.	225
Abrams, Frank W., Southold, N.Y.	115
Bisbee, Mrs. Dorothy W., Southold, N.Y.	300
Abrash, Mr. H., Troy, N.Y.	140
Panza, Kenneth S., Woodstock, N.Y.	115
New, Mr. John G., Oneonta, N.Y.	105
Hubbell, Miss Anne S., Buffalo, N.Y.	200
Richman, Mr. and Mrs. Howard D., Pittsburgh, Pa.	150

Jan. 1, 1975 to Dec. 31, 1976—Committee report includes all contributions previously reported in 1st, 2d, and 3d quarters—Continued

<i>Name and address</i>	<i>Amount</i>
Ryan, Jr., Mr. Thomas A., State College, Pa	120
Swain, Miss Barbara, Bryn Mawr, Pa	175
Rosenwald, Mrs. Edith G., Jenkintown, Pa	125
Rosenwald, Mr. Lessing J., Jenkintown, Pa	125
Elliott, Dr. and Mrs. Frank A., Philadelphia, Pa	105
Larkin, Jr., Mr. and Mrs. J. J., Philadelphia, Pa	165
Brown, Jr., Richard P., Philadelphia, Pa	200
Russell, Mr. Alexander G., Philadelphia, Pa	300
Brinton, Mrs. Samuel T., Kennett Square, Pa	300
Graham, Mrs. Katharine, Washington, D.C	115
Herter, Sr., Mrs. Christian A., Washington, D.C	115
Kuhn, Mr. and Mrs. Ferdinand, Washington, D.C	150
Arent, Mr. Albert E., Chevy Chase, Md	150
Byrne, Mr. James M., Chevy Chase, Md	250
Polinger, Howard & G. H., Chevy Chase, Md	195
Harper, Mrs. Louise G., Washington, D.C	150
Pratt, Miss Vera C., Washington, D.C	165
Rea, Mr. Michael M., Washington, D.C	200
McGovran, E. R., College Park, Md	140
Ransay, Jr., Mr. John B., Baltimore, Md	215
Mortenson, Mr. and Mrs. James A., Baltimore, Md	120
Davis, William L., Baltimore, Md	200
Bissell, Mr. and Mrs. Frank, Easton, Md	105
Olds, Mr. George, Easton, Md	175
Walker, Mrs. John M., Easton, Md	140
Stewart, Mr. and Mrs. Walter J., Annandale, Va	130
Burwell, Dr. J. A., Falls Church, Va	225
Glennan, Dr. T. K., Reston, Va	250
Reilly, Dr. Michael J., McLean, Va	200
Zander, Mr. Randolph, Alexandria, Va	230
Bradford, Eugenie R., Alexandria, Va	200
Price, C., Whitestone, Va	200
Foster, Mrs. Natalie R., Roanoke, Va	200
MacNair, Mr. and Mrs. Everett W., Chapel Hill, N.C	120
Laffitte, Mr. and Mrs. Davis, Fayetteville, N.C	140
Lawson, A. C. Mark S., Kinston, N.C	200
Lane, Mrs. Linda & Wm. A., Macon, Ga	250
Sorrells, Dorothy W. & Bettye N. Wood, Fountain, Fla	170
Strong, Miss Elizabeth C., Miami Shores, Fla	120
Dixon, Colin A. & Elizabeth, Indian Rocks Beach, Fla	200
Davis, Mr. and Mrs. Cameron L., Naples, Fla	150
Solomon, Rosalind & Jay, Chattanooga, Tenn	115
Sommer, Mr. and Mrs. Adolph, Columbus, Ohio	115
Corning, Mrs. Warren H., Mentor Ohio	200
Sturman, Mr. Reuben, Cleveland, Ohio	250
Britton, Mrs. G., Cleveland, Ohio	170
Pfouts, Mr. and Mrs. Peter, E. Cleveland, Ohio	120
Smith, Mr. Norman F., Shaker Heights, Ohio	150
Semans, Mrs. Catherine B., Athens, Ohio	110
Koch, Mrs. William F., Indianapolis, Ind	150
McCrary, Mr. Roger B., Huntertown, Ind	200
Sanders, Mr. John M., Bloomfield Hills, Mich	300
Roberts, Mr. and Mrs. James B., West Bloomfield, Mich	150
Wert, William R., Milford, Mich	200
Kirby, Mr. William J., St. Clair Shores, Mich	150
Williams, Jr., Mr. and Mrs. C. H., Ann Arbor, Mich	250
Kosloskey, J. R., Dearborn, Mich	220
Ford, Mrs. Edsel, Grosse Pte. Shores, Mich	115
Light, Dr. Richard U., Delton, Mich	115
Rosenfield, Mr. and Mrs. Joseph F., Des Moines, Iowa	370
Mount St. Francis Library, Dubuque, Iowa	200
Wagner, Robert J., Milwaukee, Wis	120
Harper, Dr. and Mrs. Alfred E., Madison, Wis	105
Polesky, Dr. Herbert F., Minneapolis, Minn	140
Wroblewski, Mr. and Mrs. Leonard, Minneapolis, Minn	110

Jan. 1, 1975 to Dec. 31, 1976—Committee report includes all contributions previously reported in 1st, 2d, and 3d quarters—Continued

<i>Name and address</i>	<i>Amount</i>
Musser, Miss Laura J., Little Falls, Minn	420
Chambers, Mildred S., Saud Rapids, Minn	115
Metzenberg, Mr. and Mrs. Robert L., Highland Park, Ill	125
Lewis, Mr. James R., Northbrook, Ill	200
Jackson, Mr. and Mrs. Frederick H., Wilmette, Ill	150
Barsanti, Mr. Richard H., Forest Park, Ill	165
Sheaff, Mrs. Howard M., Evanston, Ill	175
Lifschultz, Barry, Evanston, Ill	110
Rinaldo, Jr., P. S., Downers Grove, Ill	175
Asher, Mrs. Norman, Chicago, Ill	300
Boyd, Mr. and Mrs. Alan S., Chicago, Ill	250
Korman, Mr. and Mrs. Albert S., Chicago, Ill	150
Caskey, Mr. and Mrs. Paul, Rockford, Ill	240
Moyer, Mr. Donald E., Champaign, Ill	105
Herr, Mr. Fred N., Modesto, Ill	125
Schlipf, Mrs. Albert, Springfield, Ill	140
Moore, Mr. and Mrs. Lane, Chesterfield, Mo	250
Moore, Mr. and Mrs. Lane, Chesterfield, Mo	250
Stamper, Miss Frances A., St. Louis, Mo	120
Watkins, Mrs. Horton, St. Louis, Mo	125
Shifrin, Mrs. Edwin G., St. Louis, Mo	140
Maxwell, Stanley L., Kansas City, Mo	200
Langston, Mrs. Wann, Oklahoma City, Okla	275
Weber, Garry, Dallas, Tex	200
Winstead, Sam, Dallas, Tex	400
Kahn, Mr. and Mrs. Edmund, J., Dallas, Tex	300
Meyers, Mrs. Julienne S., Dallas, Tex	200
Sjalom, Ms. Rosalie, Dallas, Tex	200
Temple, Mrs. Arthur, Taxarkana, Tex	400
Roush, Dr. William H., Temple, Tex	115
Farfel, A. J., Houston, Tex	200
Hannah, Mr. John T., Houston, Tex	250
McAshen, Mrs. S. M., Houston, Tex	250
Childers, Mrs. Jean A., Houston, Tex	300
Remenchik, Dr. Alexander, Houston, Tex	125
Perlman, Mrs. Billie, Houston, Tex	150
Holcombe, Mr. John W., Huntsville, Tex	120
Nadig, Dr. and Mrs. Perry W., San Antonio, Tex	125
Rall, Mr. George, San Antonio, Tex	125
Koxmetsky, Mrs. George, Austin, Tex	250
Peak, Miss Helen, Austin, Tex	150
Jansen, Mr. and Mrs. John F., Austin, Tex	135
Bloom, Mr. Dalton, Austin, Tex	115
Dalrymple, Mr. Edwin, Austin, Tex	135
Benton, A. Edgar, Denver, Colo	145
Loges, Mike, Denver, Colo	200
Roth, Mr. and Mrs. Herrick S., Denver, Colo	11
Pearson, Doris, Denver, Colo	105
Olinger, Mr. William O., Denver, Colo	120
Powers, Miss Margaret, Denver, Colo	115
Brooks, Leon, Denver, Colo	250
Bush, Mr. and Mrs. Alfred, Lakewood, Colo	145
Hays, Mr. and Mrs. William, Lakewood, Colo	180
Boehm, Mr. and Mrs. Delmar C., Denver, Colo	129
Warner, Mr. and Mrs. Alex H., Boulder, Colo	300
Cattell, Dr. and Mrs. R. B., Golden, Colo	110
Myers, Leslie M., Hotchkiss, Colo	165
Landis, Paul H. & Bessie B., Moscow, Idaho	145
Hite, James W., Mesa, Ariz	150
Krumm, Erma L., Scottsdale, Ariz	145
Woodward, William S., Carefree, Ariz	150
Griffin, Miss Julann, Los Angeles, Calif	150
Laub, Arhtur M., Los Angeles, Calif	200
Voynow, Jr., Edward, Los Angeles, Calif	200
Gage, Miss Margaret M., Los Angeles, Calif	200

Jan. 1, 1975 to Dec. 31, 1976—Committee report includes all contributions previously reported in 1st, 2d, and 3d quarters—Continued

<i>Name and address</i>	<i>Amount</i>
Bohem, Mr. and Mrs. Paul, Los Angeles, Calif.....	200
Mandel, Mr. Eugene, Beverly Hills, Calif.....	250
Wise, Mr. Robert E., Malibu, Calif.....	150
Karcher, Miss Elizabeth M., Arcadia, Calif.....	175
Eggers, Laurence P., Pasadena, Calif.....	120
Tooby, Mrs. Grace F., San Marino, Calif.....	200
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Brownfield, Dr. Bernard, North Hollywood, Calif.....	105
Hayes, Mr. and Mrs. Lester, La Jolla, Calif.....	200
Killingsworth, Mr. C. V., Vista Manor, Calif.....	120
Henderson, W. W., San Diego, Calif.....	200
Hicks, Harold, Palm Springs, Calif.....	200
Kenworthy, Thomas, Palm Springs, Calif.....	225
Selkirk, Mr. and Mrs. Ralph W., Corona Del Mar, Calif.....	125
Bard, Archie, Oxnard, Calif.....	200
Stoeckly, Mr. and Mrs. Robert, Santa Barbara, Calif.....	225
Clem, Mrs. Walter W., Santa Barbara, Calif.....	130
Fortier, Mr. and Mrs. Waldo J., Fresno, Calif.....	125
Carpenter, Mr. Leonard, Carmel, Calif.....	165
Bulkley, Mr. and Mrs. G. L., Carmel Valley, Calif.....	170
Gurevitz, Dr. and Mrs. Howard, Hillsborough, Calif.....	115
Wilson, Mr. Joseph R., Burlingame, Calif.....	135
Gamble, Miss Hathaway, Menlo Park, Calif.....	200
Van Loben Sels, Mr. M. J., Menlo Park, Calif.....	120
Barshell, M. M., Redwood City, Calif.....	120
Oppenheimer, Mr. and Mrs. Maurice, San Francisco, Calif.....	115
Hormay, August, San Francisco, Calif.....	140
Ishiyama, Mr. and Mrs. George S., Palo Alto, Calif.....	200
Veazey, Mrs. Hazel L., San Mateo, Calif.....	200
Martinson, Mr. and Mrs. John M., Pleasanton, Calif.....	170
Johnson, Jr., Dr. David M., Walnut Creek, Calif.....	110
Steel, Eric, Oakland, Calif.....	120
Barrett, Barbara, Watsonville, Calif.....	115
Rodgers, Jr., Mr. and Mrs. Eben, Santa Rosa, Calif.....	135
Jones, Hedwig, C., Willits, Calif.....	125
Coombs, Mr. and Mrs. S. W., Sacramento, Calif.....	305
Wheeler, Mr. George, Yuba City, Calif.....	200
Lieber, Dr. Llewellyn, APO San Francisco, Calif.....	165
Bernatowicz, Mrs. A. J., Honolulu, Hawaii.....	125
Fitzpatrick, Jr., Mr. and Mrs. E. C., Ashland, Oreg.....	200
Caner, Dr. John, Seattle, Wash.....	125
Tinker, Dr. Richard V., Seattle, Wash.....	315
Boardman, Mrs. E. L., Des Moines, Wash.....	120
Naffin, Mr. and Mrs. Paul, Camas, Wash.....	367
Hopp, Mrs. Laura, Yakima, Wash.....	200
Maxwell, G. R., Dayton, Wash.....	110
Gilbert, Mr. and Mrs. Richard, Richland, Wash.....	135
Heath, William R., Valdez, Alaska.....	165

TESTIMONY OF FRED WERTHEIMER, VICE PRESIDENT FOR OPERATIONS OF COMMON CAUSE; ACCOMPANIED BY R. MICHAEL COLE, COMMON CAUSE LEGISLATIVE DIRECTOR

Mr. WERTHEIMER. At the outset we would like to pay special tribute to Representative Flowers, who was chairman of this subcommittee during the last Congress. Shaped the legislation—helped shaped the legislation of this committee and very effectively defended it on the floor against efforts to weaken it.

We would also want to commend Judiciary Committee member Tom Railsback and Robert Kastenmeier who has been working on this question for so long and testified here on Monday.

We would like to commend this committee for moving so expeditiously in this session to once again place the question of lobby disclosure.

We feel that tremendous progress was made in the last Congress. Bills were passed in both Houses overwhelmingly and the timing was such as we all know that we were never able to complete a conference on this legislation, but I think the progress of the last Congress made it clear that it is time to pass a new lobby disclosure law.

We think the need has been abundantly established. Just about most people accept the fact that we should and are going to have a new lobby disclosure law and, of course, we, I think at this stage are involved in a question of discussions of what is going to make up that law as opposed to some of the fights over past years of whether we will have a new law or not. And we considered that a very healthy element.

I would like to address three or four of the major areas that always make up discussions about lobby disclosure legislation.

The first, of course, is the threshold question. During the last Congress I think there came to be an agreement by all parties interested in this legislation that a new lobby disclosure law should cover organizations. That individuals per se should not be required to report, but that only organizations should be filing registration and reports under a lobby disclosure law.

I think it was also fairly well agreed on that those organizations should be reporting on the activities of key professionals as part of their registration and that is certainly our view that the law, as passed last time, should cover organizations, it should not place reporting and registration requirements on individuals, but organizations should be required to report on the activities of those key professionals and people who represent the organization in a paid capacity or in a leadership capacity as lobbying representatives.

On the threshold question we come to accept an idea that was raised in the last Congress which really is that in certain cases there should be short-form reporting requirements. We believe the threshold approach set forth in the Railsback-Kastenmeier bill, which is really a variation of the bill that passed last year and is based on either hours spent by a paid individual or individuals or amounts of money spent to retain outside agents is a basic threshold that should be used for more comprehensive lobbying reporting requirements.

We also believe that it can combine with a threshold for less active groups based on the threshold that was used by the Senate last time, an oral contacts threshold. That threshold—if that was the only basis

for covering the organization that only required—should only require, in our view, a shorter form, and much easier information to provide and thereby eliminating the arguments—in our view, some of the arguments about burdens of this that have been made in more comprehensive reports. The concepts of oral contacts that we talked about that are similar to the end. The idea talked about last time which would exempt local organizations in contacts with Representatives from its own community.

We believe that a combination of these approaches will provide coverage in comprehensive way for those organizations that carry out significant lobbying activities and paid professionals.

For those organizations that carry out less significant activities, yet do carry out active lobbying campaigns that go beyond the community of their elected Representatives it will also provide coverage for them, but in a less burdensome way.

We have always felt that the key to whether new reports were attached to the kinds of information that is disclosed and made available to the public. We have refined somewhat our thinking in this area since the last Congress in a couple of ways that are outlined in our testimony. First, as I just mentioned, deals with short form reporting to less active organizations. The second has to do with the disclosure of contributions to lobbying organizations by major contributors.

The legislation that passed the Congress last time, in both the House and Senate, required disclosure of contributors to a large lobbying organization who gave \$2,500 or more.

The approach set forth in the Railsback-Kastenmeier bill this time which talks about starting at a \$3,000 level and requiring disclosing category forms rather than specific dollar amounts. This concept that we can support in terms of providing what we think is sufficient information for the public while at the same time giving more discretion in terms of the disclosure by the individual or organization involved.

We do think, and have always argued, that the disclosure of contributions to lobbying organizations is an important ingredient of the lobby law. We believe that such disclosure is constitutional, we believe that the cases that deal with this recognize that it's constitutional.

The 1946 act which has been in effect for 30 years has been requiring disclosure of contributions to lobbying organizations of \$500 or more.

In our testimony we have quoted from the *Harriss* case which in discussing the constitutionality of the 1946 act clearly recognized that in talking about what the congressional goals were that those goals included describing it and this takes place on page 10 of my testimony.

The Court said that Congress wants only to know who would be hired, who is putting up the money, and how much. Now, that is not a direct ruling on the question of disclosure as such. It's a clear recognition by the Court at that time of what the goals of the Congress were at the time when the constitutionality of the act was in question. I think—we think the decisions in *Buckley* and the decisions that have taken place in State courts make clear that if you have a legitimate threshold for disclosure that it is constitutional and proper in terms of filling the purpose of the lobby disclosure law.

We also believe that grassroots or indirect lobbying campaigns must be covered by lobby disclosure law that is going to be effective.

A great deal, and a growing amount, of the organized lobbying activities in this country take place now through solicitations and stimulated lobbying campaigns by a variety of organizations including us, of course, that is a large chunk of the lobbying that goes on in this country. What we have talked about is an approach and I think it's an approach that once again the bills took last time that says, that those organizations that are conducting these campaigns should be making public in a disclosure fashion the fact that they're going on.

That puts the onus on the organization carrying out solicitation on the lobbying campaign and not on individuals who happen to be responding to it.

We have listed on testimony a series of items that we think must be included to make disclosure meaningful in addition to this and I feel that the issues involved, the termination of key professionals or lobbying expenditures involved and some of the other items I've talked about and we feel very strongly that executive branch coverage is essential for this lobby disclosure law.

Once again, both bills—both bills that passed the House and Senate last time dealt with Government contracts, awards, and grants over \$1 million with an effort to focus on substantial sums of money coming from the executive branch and an effort to cover and require disclosure when lobby was going on with respect to those activities.

Executive branch lobbying has always been the total nonpublic part of the lobbying process and we believe that at a minimum there should be clear coverage when people are lobbying the executive branch for large sums of money.

Enforcement again has been a problem in this area. We share the view that was set forth in both bills last time that the GAO would be an excellent place for oversight to this legislation. You will find—or at least we found when we started this process at the very beginning that everyone—every potential agency involved thought that the other agency should be handling it which leaves you really with no place to do it.

I do think that the GAO would be well equipped to do it in terms of the work they did on campaign finance disclosure reports, the Presidential side of the equation in 1972, they did an excellent job. I think they should have the civil enforcement powers that were talked about by the previous witness.

Some of the major arguments against this legislation always relate to the question of burden, the amount of reporting that is required and that, of course, ultimately is always going to be a judgment question for this committee and for the Congress.

We think the kind of approach that we have talked about; the kind of approach set forth in the Railsback-Kastenmeier bill will require comprehensive reporting without providing undue burdens.

We feel that in closing that this is an issue that's been before Congress for some time and it's finally ready to be resolved. There are some very important questions that this committee will deal with in resolving that question.

We think executive branch coverage is one and we think it is vital for the committee to provide it. We think indirect solicitation is another and we think it's extremely important if you're going to have a lobby disclosure bill that you provide coverage where organizations are stimulating lobbying campaigns. We think it's extremely important that some basic thresholds exist whereby those people who are providing support—financial support for organizations become part of the public disclosure process.

Thank you, Mr. Chairman.

Mr. HARRIS. Thank you for your testimony.

If I may, just on that last point, ask you if you feel like every contributor should disclose—at least how do we deal with the right to privacy here as far as the individual's right to contribute to those organizations is concerned?

Mr. WERTHEIMER. I think we deal with that much in the way that campaign finance disclosure laws have dealt with it. That we do have a threshold.

Now, the use of a threshold such as \$3,000 which is in the Rail-sback-Kastenmeier bill will in effect draw a line and provide substantial sums of money to go to organizations without disclosure and it is a balancing test just as the threshold of campaign finance laws becomes a balancing test.

These laws are not designed to turn over membership lists per se. They don't require, just as the campaign finance disclosure laws it's a threshold between what is a legitimate amount for the public to know and what is not. And we think that the substantial size of the threshold here does provide protection both for basic organizational membership lists and for those who are going to contribute smaller sums.

Mr. HARRIS. Do you, Mr. Wertheimer, feel that lobbying is legitimate and an honorable profession?

Mr. WERTHEIMER. I certainly do. And I'm very happy to call myself a lobbyist. Part of the fight I think on lobby disclosure laws and as you know this bill is basically and fully a disclosure law. It is to get out in the open the kinds of activities that are taking place.

It's always been our view that the process would work better and ultimately the public could come to accept the basic concept that goes back to our constitution that the people should be petitioning Government and lobbying for their goals if it was done in a way that was out on the table and that is part of our goal in this case.

Mr. HARRIS. Well, this is what—actually I was leading up to your specific comment, precise comment with regard to the purpose of this legislation.

I think you have general attitudes around and they differ as to what the purpose the intent of such legislation is. Some would say, well, it is to prevent inappropriate arm twisting or under the table wheeling and dealing. Others would say, no, it's just—the purpose is just to have the understanding of the public as to what private influences come to bear on various legislative endeavors.

Which do you think it is?

Mr. WERTHEIMER. We start off from the proposition that lobbying has an enormous impact on the system and that in order for the system to function as it should that both the Congress and the public

have the right to know the way in which these activities are being carried out.

They affect the legislative process; everyone recognizes it. Anyone who's been in Congress knows it and deals with lobbyists all the time. Our concern is that when you effect it in a way where neither Congress nor the public nor the record is being established about how that process is carried out, the legislative process, the governmental process is not functioning properly.

And, in our view, it's part of what leads people to view lobbyists and lobbying in a very negative way because that's the way the average person in the street thinks about it.

Now, there are high stakes involved that the Government is dealing with on a daily basis. There are high stakes involved for all the groups that come before the Government and we have operated from the viewpoint that in that context there is a basic right to know from members of Congress to the public about how organizations are carrying out those activities.

We accept the idea that that has to be balanced with rights to privacy and with preventing of undo burden and, of course, there we get into the basic differences about what constitutes undo burdens and what constitutes fair right to privacy.

We think the legislation that this committee starts out with is very balanced legislation. It's gone through a very, very extensive process of the over past couple of years. It's been a very emotional issue in this city and around the country. There are lots of changes that have taken place from the beginning of the serious consideration of it and I think that we feel that this both effective—we're at the point of being able to pass effective and fair legislation and we think it is extremely timely given the many years in which the country has gone without any kind of lobby disclosure law.

Mr. Cole, I think has a comment.

Mr. COLE. I just wanted to make one additional comment that as you're well aware, Mr. Chairman, and other members of the committee, recently both Houses of Congress have enacted codes of conduct that are quite stringent in requiring the full disclosure of the influences that are brought upon Members of Congress because of their own personal finances. And just as we feel that that is terribly important in the public interest and allow the public to know what these pressures are it is for very analogous reasons that we think there's an interest in the public to know what the outside pressures are. So both sets of pressures we think should be disclosed.

This committee, I know, has dealt in the past with questions of financial disclosure, personal financial disclosure and we think that this is really another part of that same kind of effort that both Houses of Congress have been very involved in in recent weeks.

Mr. HARRIS. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

Thank you for your testimony today, Mr. Wertheimer. Your opinions on executive branch coverage is one area I'd like to explore a little more closely.

Have you made any estimate of, or made any inquiry into, the numbers of people in the executive branch who could be "contact recipients" under the Railsback bill?

Mr. WERTHEIMER. You mean in terms of the number of Government officials? I don't have the precise number. I think it depends, of course, on what we're dealing with. If you're dealing with GS-15s through GS-18s and level 1 through 4 or 5 executive branch officials, and others, we're in the tens of thousands. I can get you the exact figure if you'd like to know. Of course, this is balanced by the fact that we're dealing with contracts over \$1 million so that while the potential breadth of the number of people is wide, the number—the extent of the activities depend in terms of how many contracts we're dealing with.

Mr. KINDNESS. We believe from information received in last session of Congress, that there may very well be somewhere over 100,000 employees within the categories that are included in the Railsback bill. I was just wondering if there was any—a more moderate approach such as the Rodino bill which might be acceptable to you.

Such extensive coverage of the executive branch conjures up ideas for recordkeeping that boggle the mind.

Mr. WERTHEIMER. I guess one could look at it that way; one could look at it another way and say that we've been known—we've existed in this country without any information about what kinds of activities are being conducted in terms of influencing the executive branch for many, many years.

The crux that we've talked about really focusing in on one aspect of the executive branch and that's the aspect of Government contract grants and awards. In that sense, in our view, it is an attempt to be a balance once again between the kind of coverage you will get if you covered every kinds of activity and every kinds of contact with the kinds of pressures that no doubt or efforts to influence that will come to bear on the Government when you're dealing with substantial sums of money.

Mr. KINDNESS. What about after the contract is awarded would you care to comment on what the—

Mr. WERTHEIMER. Well, I heard your questions before and I would say that we would also be happy to work with the committee on that question.

Basically to us you're dealing with the question of whether or not your in the process of implementing a contract, which is not to us an effort to obtain a grant or a contract which is described here or whether or not you are attempting to renegotiate the contract and that to us is a dividing line, but I don't think that question was discussed per se. I don't remember it during the last Congress. We would be happy to take another look at it and to work with you and other members of the committee on that precise question on where the line gets drawn.

Mr. KINDNESS. I would toss out another idea for consideration, in the meantime. That is, perhaps, where the contract is going to be bid there is less necessity that in the case of the single supplier in negotiated contracts, for instance. Such activity is already made public.

Mr. WERTHEIMER. Some have argued that in a case where it is—where it's clear competitive bidding with automatic going to the lowest competitive bidder that that might be an area that you could examine and we want to take a look at that question.

Mr. KINDNESS. Now with respect to indirect lobbying, I have a concern that we are looking at an unnecessary area of regulation. Where some organization conducts such a campaign, whether it's letters, mass mailings, or advertising in the public media, there is some public disclosure of what is going on. As I say, particularly in the latter case where you're advertising, people and the general public are aware of such efforts. If they respond, presumably, they are aware that they have been solicited.

I am wondering what is to be gained by additional disclosure, other than determining the exact amount of money spent. Is there a purpose beyond that?

Mr. WERTHEIMER. To the extent of the impact of the efforts undertaken. One of the examples that we have submitted was an example that took place, I think, in 1975 where four major automobile—domestic automobile manufacturers launched what turned out to be a nationwide advertising campaign and, I think, on the same day, but in any event they took out advertisements in 1,800 daily newspapers at a cost of \$750,000. Now that is a rather massive campaign that is not necessarily going to be realized simply by the fact that people in one part of the country knows it's going on there, but not in other parts of the country.

Advertising is only part of the way that indirect lobbying solicitation campaigns—

Mr. KINDNESS. But there is nothing hidden about that, under the table, and it becomes a subject of public comment. That is, what I'm wondering about, is there really anything more to be disclosed than is disclosed by the act itself?

Mr. WERTHEIMER.—I think we feel so and, again, in terms of the impact of the activities in the matter and the ways in which they're being carried out.

You talk about the Calorie Council recently has undertaken a campaign with respect to saccharin. Now the fact that they're doing it I suppose is public information. On the other hand, they don't appear to be registered and no one seems to know who they are which gets you again indirectly to the question of contributors as well.

But basically we feel that not only is the indirect lobbying campaign which are only partially done through advertising; they are often done through different ways. They are often done through mail campaigns that are computerized often, but that is not only in existence, but a very growing part of the way that lobbying practices are conducted in the country now and we should have that as of the public record if we're trying to develop a record of how and what's going on in terms of lobbying activities.

Mr. KINDNESS. One could validly contend that the stimulation of public interest in legislative matters or administrative matters is a healthy thing in making our system work. I'm really hesitant about putting any sort of chilling effect on the way of that type of activity.

Do you care to comment on that area?

Mr. WERTHEIMER. As you know we certainly share your view that it is a healthy effect. That's what our organization is about. That is what we do. We try to organize groups, people around the country communicate with me and to stimulate them to conduct lobbying campaigns.

I guess I don't share your view about a chilling effect. I know the argument is made. I think the process will continue. I think the reporting disclosure requirement can be done in a way that is not necessarily burdensome and I think should be part of the public record.

I don't personally feel that they, in fact, will inhibit direct—indirect lobbying solicitation campaigns.

Mr. KINDNESS. Thank you.

Mr. HARRIS. Does my colleague from California have any questions?

Mr. MOORHEAD. I have one or two.

What is your feeling about lobbying done by employees, officers of the executive branch. Should they be covered by legislation?

Mr. WERTHEIMER. The question of the executive branch lobbying Congress, is that what you're talking about?

Mr. MOORHEAD. Yes, lobbying by officials in the executive branch of Government.

Mr. WERTHEIMER. Should they be covered, yes. We have struggled with that question. We have been hopeful, but we personally have not been able to work it out—to figure out a way in which there could be a better—a much better way of disclosing information about the way the executive branch lobbies in Congress. Obviously, it lobbies in a extremely active and continuing manner and our goal eventually would be to see that—be some further forms—some forms—basic forms for disclosure.

We have not figured that out yet.

Mr. MOORHEAD. Is it important that the public knows about where their money goes for these purposes?

Mr. WERTHEIMER. Yes, I think so. I think there are ways of finding that out now in terms of analyzing budgets for example which do do some allocations and breakdowns though.

We think that is a subject that deserves attention.

Now we know that there's a provision—been a provision in the law for 50 or 60 years that says the executive branch can't lobby Congress. Somehow that provision—I don't know whether—whatever it was intended to be doesn't seem to have been a prohibition. Or if it does, it's not a prohibition in reality and probably shouldn't be in fact, but it's on the books and I think it has led to some distortions in the concept of what is lobbying and not lobbying from the executive branch.

Mr. MOORHEAD. I want to say that we have a difficult series of problems to face. Trying to balance the first amendment, the rights that individuals have and trying not to discourage lobbying which has such an important part in our whole democratic process, and, at the same time, making sure that any kind of potential misbehavior is disclosed.

Sometimes it is a tough struggle between the two. I don't know whether we will find the exact right answer. We have to struggle with that and try to come to a proper conclusion. But we are all trying to reach the best solution that we can for the country.

Mr. WERTHEIMER. Thank you.

Mr. MOORHEAD. Chairman, I have just one last question.

Do you think that H.R. 5795 covers the Washington attorney-type lobbyist, a super lawyer?

Mr. WERTHEIMER. The Railsback-Kastenmeier bill?

Mr. HARRIS. Basically the Railsback-Kastenmeier bill.

Mr. WERTHEIMER. Yes, I would expect it does to the requirement that people or organizations that are retained by an organization and their activities have to be reported by the organization. I think it is crucial that Washington lawyers be covered and he or she is—

Mr. HARRIS. I understand that they are very powerful. That they are behind the scenes formulating national policy in a way that mere mortals can't completely understand, is that correct?

Mr. WERTHEIMER. I don't know if it's correct, but if this bill passes, I think you'll find out.

Mr. COLE. Mr. Chairman, if I could make one other point on that.

Mr. HARRIS. Yes, Mr. Cole.

Mr. COLE. In addition to the basic coverage which is provided under the threshold section of the Railsback-Kastenmeier bill, section 8, in the duties of the Comptroller General, there's a provision for cross-indexing that we would favor and which would provide for Washington attorneys for example to retain agents and ability to look at all their clients and what they're been paid, and which issues they're working on. We think that is a good provision and we think it may have been—it may have been provided for some other bills, but we think that specifically it should be provided for so that you can get a feel of who these Washington attorneys are representing.

Mr. HARRIS. It's hard for me to understand what the thresholds are sometimes. A lot of times I understand that in some of these law firm operations there is no direct contact made. They just sort of tell other people where to go and how to do these things.

Mr. WERTHEIMER. If the other people are in the same firm they are going to get covered in the organization and the organization is going to get covered.

Now, we're obviously not going to get a day to day calendar out of Clark Clifford's activity out of this lobbying disclosure, but I think you will get a much more sense of an impact of the role that lawyers are playing in Washington—Washington lawyers are playing in the lobbying process.

Mr. HARRIS. Do you think that is important?

Mr. WERTHEIMER. To know the role?

Mr. HARRIS. Yes, sir.

Thank you very much for your testimony, we appreciate it.

Mr. HARRIS. The next witness, the American Civil Liberties Union, Mr. Kenneth Norwick, accompanied by Mr. David Landau.

We welcome you to the committee and we are pleased to have your testimony.

We do have a copy of your testimony and if you would prefer we will put it in the record at this point.

Mr. NORWICK. Yes, we would very much appreciate if our prepared statement could be added to the record.

Mr. HARRIS. Without objection, the statement is included.

[The prepared statement of Mr. Norwick follows:]

SUMMARY OF THE STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION REGARDING
BILLS TO REGULATE LOBBYING

The American Civil Liberties Union endorses H.R. 5578 introduced by Mr. Edwards of California. We believe that all other proposals including the House-passed version

of last year emphasize reporting and disclosure at the expense of compelling First Amendment principles and values. H.R. 5578 draws a far better balance.

Our four principle areas of concern are: (1) The regulation of indirect efforts to influence the legislative process, i.e. solicitations to members of an organization or to the general public; (2) The regulation of the lobbying activities of small, local organizations which have a slight impact on the legislative process; (3) The disclosure of contributors to lobbying organizations; (4) The inclusion of executive branch contact within the definition of lobbying.

We believe the regulation of these activities is unconstitutional in light of a long line of Supreme Court decisions. Further, Congress has not established any factual record demonstrating the need for regulating these activities, or the basis for drawing statutory lines with respect to various different types of lobbying activity. In the final analysis, it is gifts—not the advocacy of ideas—that corrupts the legislative process.

We urge Congress to limit its efforts to the disclosure of direct contacts with Members of Congress. Adoption of H.R. 5788 would not deter citizens from communicating with their elected representatives and would promote legitimate public interest in lobbying regulation.

STATEMENT OF KENNETH P. NORWICK AND DAVID E. LANDAU ON BEHALF OF THE
AMERICAN CIVIL LIBERTIES UNION

We appear today on behalf of the American Civil Liberties Union, a nationwide organization of approximately 275,000 members devoted entirely to protecting the Bill of Rights. Kenneth P. Norwick is Legislative Counsel to the New York Civil Liberties Union, and author of the book "Lobbying for Freedom," which is a citizen's guide to lobbying in the various state legislatures. David E. Landau is Staff Associate of the American Civil Liberties Union Washington office.

We are grateful for the opportunity to testify once again on a most important issue: government regulation of the right to lobby. In the last Congress, this Subcommittee reported out and the House of Representatives eventually passed a lobbying disclosure bill, H.R. 15, as part of an effort to cleanse the legislative process and restore public confidence in government. We believe that this proposal overlooked fundamental First Amendment principles and if enacted could have been successfully challenged as unconstitutional based on a long line of Supreme Court cases stretching from 1953 to the present.

Today, we would like to examine the constitutional questions raised by H.R. 15 and most of the other proposals presently before this Subcommittee. We endorse H.R. 5578, introduced by Mr. Edwards of California, as the proposal which provides for the disclosure of lobbying activities within the framework of the Constitution. Moreover, we believe that the recent changes in the House ethics code has significantly lessened the need for lobbying disclosure legislation. In the final analysis, it is the regulation of gifts, not the regulation of lobbying, that will purge corrupting influences from the government.

Although often portrayed as an evil influence on the legislative process, the lobbyist is exercising the constitutionally protected right to petition the government for redress of grievances. The First Amendment confers broad immunity upon the activities of persons and organizations who attempt to present their points of view to elected officials. Our constitutional system puts great faith in the competition of competing ideas as the ultimate cleansing tool. As Chief Justice Charles Evans Hughes once wrote: "The maintenance of the opportunity for free political discussions to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our Constitutional system." *Stromberg v. California*, 283 U.S. 259, 369 (1931).

The fact that the Constitution recognizes lobbying as a vital component of the democratic process does not mean that Congress is absolutely prevented from protecting itself against corrupting influences. However, because it seeks to regulate constitutionally protected activity, the efforts of Congress to protect itself must be as narrow as possible. We believe that these efforts must meet two principal tests:

Scope of Activities Covered.—Lobbying activities must not be defined so broadly that they sweep within the scope of regulation efforts to educate the general public, or segments of the public, on pending legislation. The Supreme Court has never sanctioned regulation of indirect efforts to influence the legislative or political process.

Thresholds and Deterrent Effect.—The amount of lobbying activity necessary to trigger regulation must not be so small that it sweeps in organizations whose lobbying activities are not widespread enough to affect significantly the legislative process, or on whom the burden of registration and reporting would fall so heavily that people would be

frightened away from lobbying. Requirements which have this effect would directly abridge the right to petition the government for redress of grievances.

Of all the present proposals, only H.R. 5578 conforms to these principles. It regulates only direct contacts with members, officers and employees of the Congress. Activities aimed at informing the general public are not within the scope of the bill. The thresholds for triggering the act's obligations require substantial expenditures of money and time in directly contacting legislators or their staffs. Thus, groups which significantly affect the legislative process by direct lobbying activities will be required to register and report.

The registration and reporting provisions are straightforward. Compliance will be relatively easy. Organizations which lobby must describe the organization, its size, and the amount of money it spends on lobbying communications. It must supply the names and salaries of its employees who lobby. It must identify the issues on which that lobbyist works and the money which the lobbyist spends.

H.R. 5578 contains a greatly expanded provision on disclosure of gifts. The gifts provision is, indeed, at the heart of the bill. It is not vigorous advocacy of ideas which gives lobbying a bad name and which is perceived as corrupting. Rather, it is the favors which lobbyists can lavish on elected officials which raise suspicions in the mind of the public. It is no accident that the ethics proposals recently passed by the House focus on outside money as the chief corrupting influence. A close study of past abuses demonstrates that gifts by lobbyists and not the advocacy of ideas is at the root of the problem. The gifts disclosure provision of H.R. 5578, coupled with the new ethics code, brings the true evil to the public attention. There has been no evidence of a need for regulation beyond substantial direct communications and gifts.

It is well established constitutional law that if Congress seeks to regulate First Amendment activity it must demonstrate a compelling governmental interest. We believe that there has been insufficient examination of the lobbying process. Congress has not investigated the wide variety of methods other than direct lobbying utilized by the diverse organizations covered by these proposals. Arbitrary lines have been drawn that sweep across universities, hospitals, churches, environmental groups and small businesses. We submit that before Congress considers enacting lobbying legislation, it should examine the facts about lobbying activities not only by large organizations such as the ACLU, but by small, local organizations and charitable institutions. More important, the sponsors of the broader lobbying disclosure proposals have failed to come forward with facts about the abuses and evil they claim permeate the legislative process. We believe H.R. 5578 provides the most sensible approach to the disclosure of lobbying activities because it is limited to the constitutionally permissible area of regulation.

The remainder of this testimony will analyze the constitutional issues and compare H.R. 5578 with the other proposals.

DIRECT VERSUS INDIRECT LOBBYING

As indicated above, H.R. 5578 would require registration and disclosure by organizations which engage in direct contacts with members of Congress and Congressional employees. In contrast, the other proposals include as one of their key elements a requirement that activities known generically as "lobbying solicitations" be disclosed.

While the definitions vary somewhat, "lobbying solicitations" typically include the efforts by organizations to require, encourage or solicit others to make direct contacts with members of Congress or their staffs. The Railsback bill (H.R. 5795) not only requires disclosure of lobbying solicitations, but also time spent making lobbying solicitations is a threshold for the registration and reporting provisions. This means that organizations which never contact members of Congress, but only try to affect legislation through appeals to the public, will be swept within the lobbying statute.

Apart from direct contacts with Congress, American citizens must be allowed to exercise their First Amendment rights without the threat of substantial criminal sanctions for failure to disclose and register their political literature with the government. The regulation of lobbying solicitations would have the effect of bringing virtually all activity designed to promote a given public policy viewpoint—all information dissemination, all expression of opinion, all attempts at persuasion—within the purview of a lobbying disclosure statute.

The Supreme Court has never permitted government regulation of such indirect efforts to influence the legislative or elective process. Decisions of the present Court as well as a long line of earlier cases over a twenty year period make it quite clear that the Court would strike down Congressional efforts to regulate lobbying solicitations.

In *United States v. Rumely*, 345 U.S. 41 (1953), the Court considered the scope of the authority of the House Select Committee on Lobbying Activities to investigate the adequacy of the Lobbying Regulation Act. One group under investigation refused to comply with a Committee subpoena which purported to require disclosure of bulk purchasers of their books. The group's main purpose, in the words of the Committee, was "distribution of printed material to influence legislation indirectly". To avoid raising serious constitutional questions, the Court drastically narrowed the scope of the House resolution authorizing the investigation of "all lobbying activities intended to influence, encourage, promote or retard legislation." It did so because "... the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process, raises doubts of the constitutionality in view of the prohibitions of the First Amendment." 345 U.S. at 46.

Adopting the language of the Court below—which had held the resolution unconstitutional—the Supreme Court read the phrase "lobbying activities" to mean "lobbying in its commonly accepted sense", that is "representations made directly to the Congress, its members, or its Committees." *Id.* at 47.

One year later, the Supreme Court, in *United States v. Harriss*, 347 U.S. 612 (1954), applied the same construction to the language of the Federal Regulation of Lobbying Act itself. Several persons had been indicted under the Act for failure to report expenditures related "to the costs of a campaign to communicate by letter with members of Congress on certain legislation." 347 U.S. at 615. The Court took care not "to deny Congress in large measure the power of self-protection" by preventing Congress from any regulation of lobbying. 347 U.S. 625. But, as in *Rumely*, Chief Justice Warren limited the reach of the Act to cover only "lobbying in its commonly accepted sense"—to direct communication with members of Congress on pending or proposed Federal legislation." 347 U.S. 620.

The Supreme Court has not faced the issue of lobbying since the *Harriss* decision. However, there is every reason to believe the Court would adopt the same analysis today.

In the sections of its recent Federal Election Campaign Act (FECA) decision, *Buckley v. Valeo* 424 U.S. 1 (1976), concerning the disclosure of political contributions and expenditures, the Supreme Court dealt with analogous issues. It began by stressing a fundamental point: "... we have repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." 424 U.S. at 64. The Court held that governmental interests supporting disclosures—informing the public about the sources and uses of political money thereby helping to eliminate corruption—were sufficiently strong to uphold the validity of such requirements for political committees controlled by candidates.

But, when it comes to other political committees (and individuals) whose activities are independent of federal candidates, the Court made an important distinction. Applying a First Amendment analysis, such independent efforts have to be disclosed only if the major purpose of those efforts is to nominate or elect candidates, and only if they involve communications that in express terms "advocate the election or defeat of a clearly identified candidate." 424 U.S. 80. Other independent expenditures, those which do not explicitly advocate election or defeat of a candidate, do not fall within "the core area sought to be addressed by Congress", 429 U.S. 79, and thus Congress cannot require their disclosure.

In narrowly construing the definitions of political campaign expenditures, the Court adopted the position that had led the Court of Appeals to strike down broader disclosure provisions of FECA. That portion of the decision was not appealed to the Supreme Court.

Section 308 of FECA required disclosure by any group that committed "any act directed to the public for the purpose of influencing the outcome of an election or publication or broadcast of any material that is designated to influence individuals to cast their votes for or against such candidate or to withhold their votes from such candidate." 519 F. 2d. at 870.

The section was held flatly unconstitutional by the Court of Appeals. As part of the rationale, the Court cited the Second Circuit opinion in *United States v. National Committee for Impeachment*, 469 F. 2d. 1135 (2d Cir. 1972). In that case, the Second Circuit narrowly construed the section of the 1971 FECA requiring disclosure of activities aimed at the public by political committees. The Second Circuit said a broader reading of this section would result in an enormous interception of activities protected by the First Amendment:

"... every position on any issue, major or minor, taken by anyone would be a campaign issue and any comment upon it, in, say, a newspaper editorial or an advertise-

ment, would be subject to proscription unless the registration and disclosure were complied with. Such a result would, we think, be abhorrent; . . . Any organization would be wary of expressing any view-point lest under the Act it be required to register, file reports, disclose its contributors, or the like. On the Government's thesis every little Audubon Society Chapter would be a "political committee" for "environment" is an issue in one campaign after another. On this basis, too, a Boy Scout troop advertising for membership to combat "juvenile delinquency" or a Golden Age Club promoting "senior citizens rights" would fall under the Act. The dampening effect on First Amendment rights and the potential for arbitrary administrative action that would result from such a situation would be intolerable." 469 F. 2d. 1142.

Similarly, in *ACLU v. Jennings*, 366 F. Supp. 1941 (D.D.C. 1977), vacated as moot sub. nom., *Staats v. ACLU*, 422 U.S. 1030 (1975), a three-judge district court was faced with a challenge to the 1971 FECA. The court perceived the same constitutional obstacles and adopted the same narrow interpretation propounded in *National Committee for Impeachment*.

In adopting this narrow construction of "political committee" the D.C. Court of Appeals for the D.C. Circuit and the Supreme Court effectively precluded registration of the activities addressed to the general public covered by H.R. 1180 and related bills, i.e., lobbying solicitations. But the proposed lobbying disclosure bills leave no room for a narrow construction which would save them. While it is true that H.R. 1180 does not apply to speeches or articles in newspapers or magazines, it does regulate paid advertisements in publications or on TV or radio. This is a constitutionally impermissible distinction. The Supreme Court in *New York Times v. Sullivan*, 376 U.S. 259 (1969), held that paid advertisements in newspapers enjoy the same protections as other forms of First Amendment expression. Regulation of political speech, regardless of form, must conform to the standards set by the Supreme Court.

Restricting disclosure to direct lobbying activity provides Congress with information which the Supreme Court has said that government may collect. Requiring disclosure of lobbying solicitations, however, would cross over the boundary which now protects public advocacy of ideas from government regulation.

THRESHOLDS AND DETERRENT EFFECT

Under H.R. 5578, organizations which spend \$2500 a quarter on lobbying activities and either retain an outside lobbyist or have at least one salaried employee who spends 20 percent of his or her time lobbying would be subject to regulation.

In contrast, the other proposals utilize much lower thresholds to trigger the reporting obligations. These thresholds would force registration and reporting requirements upon small local organizations with small budgets and already overburdened staffs, as well as large, loosely organized national grassroots organizations. For these organizations, compliance would be so burdensome that many would be deterred from lobbying at all.

For example, under H.R. 1180 each registered organization would have to file quarterly reports including information on approximately 25 separate items. Moreover, every registered organization would have to maintain extensive records and institute intricate accounting and internal reporting procedures in order to prove compliance. The need to centralize recordkeeping and to track expenditures on lobbying solicitations as they filter through the grassroots organizational structure, will be too intimidating and too costly for many organizations. The threat of criminal sanctions is even more intimidating, especially to small or inexperienced citizens groups venturing into lobbying.

Under H.R. 1180 any organization which employs one person who spends 20 percent of his or her time lobbying triggers the bill's requirements. Organizations of all sizes are covered. For example, a group of citizens forms the Northern California Bird Watchers Society. Mrs. John Smith, a housewife, volunteers to coordinate the Society's activities. To reimburse her for some of her efforts, the Society decides to pay her a salary of \$25 per week. During the consideration of a bill to create a new wildlife refuge in Northern California, Mrs. Smith writes a series of letters on behalf of the Society to Congress. For a period of about four weeks, this consumes 75 percent of her time.

Under H.R. 1180, the Northern California Bird Watchers Society is now a lobbying organization and before Mrs. Smith can write letters she must register as a lobbyist and prepare a system to enable her to file periodic reports, all under threat of criminal penalty.

A threshold based on 12 contacts with members of Congress or their staffs would also be unsatisfactory. If an organization desires to contact only the Committee on the Judiciary regarding a single piece of legislation or a single issue, it would have to first devise an elaborate reporting and recordkeeping scheme to comply with the complex and burdensome reporting provisions.

The low level of these thresholds, coupled with the burdens of compliance and the presence of criminal sanctions will deter many groups and individuals from entering the lobbying process. Congress will thus have caused citizens to forego their constitutionally guaranteed right to petition the government for redress of grievances. Where such a deterrent effect on First Amendment activity is possible, legislation will be subject to "exacting scrutiny". As the Supreme Court in *Buckley* put it:

"We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *Alabama NAACP v. Alabama*, 377 U.S. 449 (1958) we have required that the subordinating interest of the State must survive exacting scrutiny. We also have insisted that there be a "relevant correlation" or "substantial relation" between the governmental interest and the information required to be disclosed. This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure." 429 U.S. 64.

Other than H.R. 5578, none of the proposals meets this test. Regulation of many of the groups which would be covered bears no relation to the prevention of corruption in government. Their efforts are intermittent; their impact on the legislative process is often slight and their activities are open to public view. Their efforts are largely geared to public discussion of issues, an area which Congress cannot regulate, and at times to writing to Congress to express their views.

It is only where groups are large enough to engage in lobbying on a sustained or widespread basis that the interest of Congress is sufficient to meet this test. H.R. 5578, which requires the quarterly expenditure of \$2500, provides such a measure. Organizations of a size large enough to have one regularly salaried employee, spending \$2500 per quarter, engage in substantial lobbying and are well enough organized so that the registration and reporting requirements are not so bewildering, intimidating or costly that they would consider refraining from lobbying at all.

There is an additional reason why Congress should limit its regulation to lobbying activities of a certain size. In drafting the First Amendment, the Founding Fathers sought to protect the ability of citizens to band together to petition their government. Historically, public educational campaigns, which in part ask people to write to Congress, have been the key to the major social reform movements in this country, from the Revolutionary War to the Abolitionists and the Civil Rights Movement to Impeachment and Watergate. Such movements have begun small and gradually snowballed into forces for social change. The guarantees of the First Amendment have given these citizens' movements breathing space in which to grow. The regulation envisioned by H.R. 1180 would destroy this breathing room.

DISCLOSURE OF CONTRIBUTORS

Most of the current proposals require that individual contributors to lobbying organizations must either face public disclosure of their support or withhold their contributions. For many citizens this may be the only means of participating in the organization. Furthermore, disclosure of members can have a significant deterrent effect on the free exercise of the right of association, especially for those individuals involved with unpopular causes. Based on the principle that no individual should be forced to disclose his or her associational ties, H.R. 5578 does not require organizations to disclose the identity of their members and contributors and the amount of their contributions.

The provisions of H.R. 1180 and other bills also require disclosure of all amounts of \$2500 without regard to the actual utilization of the funds. In general interest organizations, only a small percentage of each contribution is devoted to lobbying. A \$2500 contribution to the ACLU, for example, would be used to finance a variety of activities that have nothing to do with lobbying. Moreover, such a contribution to the ACLU is for a different purpose and utilized in a different way than a \$2500 contribution to a smaller or different organization such as the Sierra Club or to the American Council on Education. Disclosure of these contributions has little, if any, correlation to the apparent purposes of the Act, and thus does not conform to the standards set by the Supreme Court.

The Supreme Court first recognized the right of associational privacy in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1968), where it reversed a conviction for contempt for failure to disclose the membership list of the NAACP. Speaking for a unanimous court, Justice Harlan said the inviolability of privacy in group associations may in many circumstances be indispensable to the preservation of freedom of association.

The holding of *NAACP v. Alabama* was affirmed in several subsequent cases. In *Bates v. Little Rock*, 361 U.S. 5116 (1960), the Supreme Court unanimously invalidated a conviction based on the refusal of the NAACP to furnish city tax officials with membership lists. In *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293 (1961), the Supreme Court unanimously affirmed a lower court decision enjoining the enforcement of a statute requiring the disclosure of membership lists of the local NAACP. (See also *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963)).¹

The principle of the NAACP cases has been applied to other situations. In *Shelton v. Tucker*, 364 U.S. 479 (1960) the Court invalidated an Arkansas statute which compelled teachers to disclose all of their organizational affiliations for the past five years. And in *Talley v. California*, 362 U.S. 60 (1960), the Court ruled unconstitutional "on its face" a Los Angeles ordinance prohibiting the anonymous distribution of any handbill.

The Supreme Court in *Buckley* cited these cases with approval. Although the Court upheld disclosure of contributors to "political committees", it invalidated disclosure of members of independent committees. Through this narrow construction the Court made it clear that it would not tolerate a contributor disclosure statute that affected the funding of every conceivable general interest organization engaged in political activities. Said the Court:

"When it is an individual other than a candidate or a group other than a 'political committee' the relation of the information sought to the purposes of the Act may be too remote." 429 U.S. 79, 80.

In other words, the governmental interest in the disclosure of names of contributors to independent committees is not substantial enough to outweigh the prohibitions of the First Amendment. It has been argued that there is a governmental interest in the disclosure of the financial backers of lobbying organizations in order to determine the sources of the influences on Congress. However, in the context of the First Amendment, the Supreme Court has imposed the additional requirement of "less drastic means". The Court wrote, in *Shelton v. Tucker*, 364 U.S. 429, 488 (1960) that "even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose."

The contributor disclosure provisions of the bills before this Committee clearly do not meet this test. The disclosure of all contributors who donate over \$2500 to an organization is "drastic" because in most organizations those who contribute \$2500 or more could not in any sense control the organization. This is exemplified by the special problems of charitable organizations now electing to lobby under the provisions of the Tax Reform Act of 1976. Many of these organizations only receive donations based on the promise of anonymity of contributors. The disclosure of contributors to these organizations, including churches, hospitals and universities, would have a crippling effect on their ability to raise funds. Because the right of Americans to freely associate and participate in organizations must not be abridged or discouraged, the contributor disclosure provision should be rejected.

EXECUTIVE BRANCH COVERAGE

We believe that the lobbying disclosure bill should be confined to legislative activity. We are skeptical of any attempt to include contacts with the Executive Branch in a definition of lobbying. The nature of the Administrative process demands, at the very least, treatment of this activity in separate legislation. We defer detailed analysis of this problem however to organizations such as the Sierra Club which have more experience and expertise in this area.

CONCLUSION

If Congress insists on regulating lobbying as part of its effort to reform, then it must be sensitive to the prohibitions and limitations the Constitution places on its power to regulate the rights of individuals to freely associate and express political ideas. We believe: (1) Congress must not regulate indirect efforts to influence the legislative process; (2) Congress must not regulate the lobbying activities of small, local organizations which have slight impact on the legislative process; (3) Congress must not require the disclosure of contributors; (4) Contacts with the executive branch should not be included in the definition of lobbying.

¹In *Gibson* the Supreme Court suggested that it would approve membership lists disclosure only where there was a very specific and formal investigation of criminal subversive activity, as in the Communist Party case. (*Communist Party v. Subversive Activities Control Board*, 367 U.S. 1 (1961)).

The regulation and disclosure of the above activities, we believe, would be found unconstitutional. On the other hand, H.R. 5578 provides for the disclosure of lobbying activities within the contours of the Constitution.

Justice Brennan in *New York Times v. Sullivan*, 376 U.S. 259 (1969) wrote of a profound national commitment to the principle that "debate on public issues should be uninhibited, robust and wide-open." Believing in this principle, the Founding Fathers amended the Constitution to guarantee free speech and the right to petition the government. In its quest for reform, Congress must not constrain these fundamental rights of the American democratic system.

TESTIMONY OF KENNETH P. NORWICK, AMERICAN CIVIL LIBERTIES UNION; ACCOMPANIED BY DAVID E. LANDAU

Mr. NORWICK. At the outset, I think I want to introduce myself. I've been a professional lobbyist at the State level for over 7 years on behalf of the New York Civil Liberties Union, which is the ACLU's largest single affiliate and I have also been the author of a book on lobbying which is designed to encourage people to lobby, to organize themselves to be heard in their government.

I would also like to introduce Mr. David Landau, who is a staff associate of the American Civil Liberties Union who is here with me today.

Mr. Chairman, we first testified before this subcommittee in September 1975 on the then pending bills before the committee. And at that time we emphasized very strongly our belief that the right to lobby is a basic, precious first amendment right and that any effort, any legislation to regulate and control and to interfere with that basic right must be very carefully considered, very carefully drafted, and very carefully deliberated before it was enacted.

Since then we have worked closely with this committee and counterpart committees in the Senate. We do think that this committee has been responsive to these first amendment concerns and that the bills that have now been presented before you show significant recognition of the first amendment concerns that we've raised and others have raised. However, there are still very serious first amendment problems in many of the bills that are before you now.

What we want to emphasize here and as indicated in our testimony is the fact that when we are dealing with first amendment rights it seems to us that that has to be demonstrated and compelling governmental and public interest in the legislation. A compelling and demonstrated need for the legislation.

We submit that there has been no factual basis demonstrated for the kind of sweeping pervasive regulation that the pending bills would impose.

We hear references to misbehavior, as Mr. Moorhead has just said a few minutes ago, and we hear talk about the abuses of lobbyists and the power of lobbyists, but what are the abuses, what are the problems, what is it that Congress is trying to do with these bills?

I tried very hard to understand what abuses motivate these bills. I don't know what the abuses are. Is it arm twisting? Perhaps, but these bills as far as I can tell do not deal with arm twisting. Is it bribery? Perhaps, but lots of other bills are now addressed to that. So we suggest to the committee, with all due respect, that the question should seriously be asked, what are the abuses? What is the compelling state interest underlying these bills? And how will those abuses, if we can identify them, be cured by these bills?

I think there is a significant analogy here, an analogy that has been referred to by the spokesman for Common Cause. We have the experience of the Federal Election Campaign Act which also, as we know, touched very fundamentally on first amendment rights. A sweeping bill was enacted, and what happened was that first, a Federal court of appeals struck down a number of provisions of that bill because it was over-broad, because it swept up first amendment activity—that Congress should not have regulated.

Then, the Supreme Court going beyond the court of appeals, also struck down a number of provisions of that bill because they severely interfered with first amendment rights.

To be sure the Supreme Court said, "That some regulation of campaign financing is constitutional." We don't dispute that, nor do we dispute, and the *Harriss* case would make it hard for us to do so, that some regulation of lobbying, carefully limited, carefully drafted would also be constitutional. But our main point is that there has to be a factual record, a factual basis of abuse. Clearly there was such in the Federal Election Campaign Act.

Clearly the abuse, the power of money in campaigns and in elections was apparent to the Congress and to the court. We don't think that the same kind of abuse has been demonstrated here and since we are dealing with first amendment rights, we think it is terribly important that these questions be considered.

We have reviewed the various bills that are now before the committee and we have concluded that only H.R. 5578 introduced by Congressman Edwards serves the legitimate purposes of a lobbying bill such as they may be without unduly or improperly interfering with the basic constitutional right to lobby.

We find that the other bills, including H.R. 1180, go too far interfering with basic constitutional rights and, therefore, we oppose those bills.

In addressing the question of lobbying in general, I think it is important to stress that we are concerned primarily about the smaller groups—about the ad hoc, indigenous, single issue group that may arise from time to time in different communities or may exist on a permanent basis, but do not have large funding, and do not have elaborate staffs and exist by the skin of their teeth from day to day.

I am personally familiar with these kinds of organizations on the State level be they right-to-life groups or proabortion groups, or gay rights groups or environmental groups and the list can go on and on. There are such groups—it's my belief that we should encourage them to organize themselves, to hire lobbyists if they can, if not, to designate one or more of their own members to come to the Congress, to come to the State legislatures and be heard. And it is my very strongly held view that legislation that requires these groups even on a short form to register with the Government, checking with the Government, and to report to the Government that they exist and what they are doing will almost certainly discourage and chill a lot of these groups from going forward with this activity.

One example that is still recent enough to be a distinct memory is the impeachment campaign. The impeachment campaign was a classic lobbying campaign and what we found there was groups of

citizens, probably in every congressional district, organized themselves to be heard on that issue—perhaps the most important issue of its day. And they organized themselves, they gave themselves names, titles, and they tried to lobby. They perhaps wanted their own Congressman, Senators, but they also were encouraged to lobby others and to lobby the relevant committees, including this one. And I suspect that if we told those groups that if they wanted to organize themselves and to lobby on the impeachment issue, either side by the way, that they would have to check in with the Government and give the names of their chief operating officers and perhaps their contributors, they would elect not to have done so, I think that this is a very serious price to pay for a participatory government.

Our problems with the bills other than Mr. Edward's bill can be summarized with three headings. The first has to do with what is being called indirect lobbying and lobbying solicitations. In our judgment that kind of lobbying, that kind of communication is too far removed from the legitimate concerns of Congress in a lobbying bill to be justified. To the extent that we are looking into the communications of the mail between an organization and its members we are taking an enormous step toward "1984," toward the kind of surveillance that should not be a part of the American system. We should not be asking organizations what they are saying to their members.

Generally, we don't think that organizations should have to check in with the Government when it takes a full-page ad or half-page ad or a quarter-page ad on any issue. We have to remember that we are dealing with freedom of speech when we are dealing with public discourse. We are dealing with the rights of every citizen to speak out, to be heard, and to try to inform and persuade others. We believe that there ought to be no regulation, no disclosure of any lobbying activity that is not directly concerned with direct contacts with the Congress.

Second, we are very much concerned about the definition of a lobbyist. As I have indicated, we are primarily concerned with smaller groups, those perhaps that are dealing with unpopular issues, those that do not have the kinds of budgets that can set aside a staff person to be in charge of checking in with the Government.

In our view, the threshold definitions of Mr. Edward's bill are responsible. They will certainly include all those organizations, groups like Common Cause and others that seem to be concerned about words like "significant" are used and "large amounts" are used. If we're serious about words like significant activities and large amounts then the threshold of \$10,000 a year would surely sweep up all of those groups that you are concerned with and would leave out all those groups that you should not be concerned with.

We have heard reference to a chilling effect and the idea that regulation might discourage people from getting involved in lobbying. On the State level we have been working on a State lobbying bill for New York and working with the Common Cause people there as well as the legislature. That bill has gotten some publicity. I received a letter, an unsolicited letter from a gay activist in upstate New York in which he wrote and said:

We are interested in lobbying. We want to go to Albany and send a lobbyist to Albany, but we are afraid. We are afraid that if we have to check in with the government and subject ourselves to the regulations of the government and perhaps the harassment of the government, we are not going to do it.

And they asked for my advice. Should they send the lobbyist to Albany? Frankly, if we had the kind of bill that required registration and reporting of these bills, I'm not sure I could have advised him to do so.

The third basic problem is the disclosure of contributors. In our view, no contributors to any organizations should be required to be disclosed against their will. In our view, a person contributing to an organization in which he or she believes is exercising, again, a basic first amendment right. A private right that the Government should have no voice in and should have no surveillance over. And this is especially true with respect to general purpose and general interest organizations like the Civil Liberties Union, like right to life groups, like environmental groups, like many other groups which do more than just lobby.

If people contribute to a group because they have a general sympathy with the activities and the beliefs of that organization, a small part of which is lobbying, we don't think that the price of that membership ought to be disclosure just because some part of it is lobbying.

And there is a further problem with the new Tax Reform Act 501C3 groups that may choose the lobby. They receive a great deal of contributions and funding from people who believe in their general purposes, beyond lobbying. We understand and we refer on our testimony to the fact that much of their fundraising is specifically premised on the fact that the contribution will be kept confidential and private. And it is just too high a price to pay for the benefits of disclosure to require these people to be identified if they don't want to be.

These basically are our concerns. We do not come before you and say you can't pass a bill dealing with lobbying. We don't come before you and say, that it is unconstitutional to do anything in this area. We do emphasize that when we are dealing with precious first amendment rights, you've got to be very careful, very specific and, if in doubt, you should air on the side of the first amendment.

Thank you very much.

Mr. HARRIS. Thank you very much.

Mr. Moorhead?

Mr. MOORHEAD. I think you have raised some very excellent points. In fact, I have difficulty in finding too much fault with the comments that you made.

As I understand your suggestion, you wouldn't include any kind of activity under the lobbying legislation that didn't directly reflect contact between the individual and a Member of Congress or his staff. I would assume that the staff would come under that.

Mr. NORWICK. Yes, we would include that.

Mr. MOORHEAD. Insofar as writing letters to the—say, the AFL writes letters to all their members and asks them to communicate with Congressmen—you would not cover that?

Mr. NORWICK. That is correct.

Mr. MOORHEAD. What thresholds do you suggest?

Mr. NORWICK. Mr. Moorhead, our position is that there ought to be a threshold, below which an organization would not qualify as a lobbyist. The threshold ought to be sufficiently high that it would not include the kind of smaller indigenous grassroots organization that could least afford to comply.

Mr. MOORHEAD. You mentioned \$10,000.

Mr. NORWICK. I believe I was paraphrasing the Edward's bill which if I'm not mistaken uses \$2,500 a quarter which is \$10,000 a year.

Mr. MOORHEAD. There is one situation about which I have been very concerned in connection with this legislation. That is the issue of contributions disclosure. As you know, there are many people that tithes with churches, and so forth. If you are a large contributor to a small church, you end up on a lobbying report—even though your contribution was religiously (not politically) motivated.

Mr. NORWICK. I think that raises, the wonder of the first amendment. That every example would probably implicate three or four different first amendment rights. The rights to religious liberty; a separation of church and state; the right of freedom of speech; the right of freedom of association; and the right to lobby. That particular example probably would be questionable under a number of first amendment theories and we would certainly agree with you that that would be most objectionable and most offensive.

Mr. MOORHEAD. Thank you very much for coming. I think the information that you provided us and that is contained in your report, will be very helpful.

Mr. NORWICK. I would just add that we have worked closely with the committee and its staff for the last several years and we will be happy to continue to do so to best protect the first amendment rights.

Mr. MOORHEAD. I think the one thing all of us want to be certain of, is that the people's constitutional rights will be protected.

Mr. NORWICK. We appreciate that very much.

Mr. HARRIS. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

I certainly want to thank you for your testimony this morning. I would just note, that, in the course of your comments there was little emphasis placed on the coverage of the executive branch, which I view as being a different "kettle of fish" altogether from legislative lobbying. Would you care to add any comments in that area?

Mr. NORWICK. Well, I would simply say that we agree with you. That it is a different "kettle of fish" and probably should be addressed separately.

Mr. Landau has been working somewhat more closely in this area. Perhaps he would like to add to that?

Mr. KINDNESS. Mr. Landau?

Mr. LANDAU. We have been working closely with a number of groups who report working a great deal of time with the executive branch groups such as the Sierra Club and the Environmental Defense Fund. Tracking contracts made to the executive branch would have a crippling effect on those organizations. The draft of H.R. 15 last year and a number of proposals this year, includes the top five policymaking levels of the executive branch officials which turns out to be well over 500 persons. Organizations would have to keep a

list of these 500 persons which include many regional offices around the country and check off every time they contacted these people in order to figure out the time spent for threshold purposes.

Because of this we believe that that kind of chilling effect or the right to petition is very objectionable.

Mr. KINDNESS. If we were talking about Railsback bill, H.R. 5795, there would be a number of persons in the executive branch far in excess of those covered by last year's bill.

Mr. LANDAU. Right.

Mr. KINDNESS. I have a little difficulty in determining how we might approach the cutoff of the indigenous or small local organizations as distinguished from more highly organized or perpetualized organizations in any manner other than an expenditure threshold.

Have you explored any other threshold or cutoff point in your thinking, and perhaps discarded it, and for what reasons?

Mr. NORWICK. You may know the Senate seems to be intrigued with the idea of defining a lobbyist in terms of the number of contacts a lobbyist would have.

We have addressed ourselves to that in our testimony for the Senate and we feel very strongly that that is an inappropriate and unworkable definition.

If anyone—if any organization including those that I have alluded to, spend one day, one afternoon, trying to lobby one issue before one committee of the Congress they would meet most contact tests. It would inevitably sweep in far too many groups. Even if you had a high threshold of contacts, 200 or 500 contacts, whatever it might be, the conjuring up, keeping track of every contact in your pocket diary and having to report to the Government that I finally made my threshold and I'm now a lobbyist and then having the GAO or someone else say, well, isn't that true that you said, hello to Congressman Kindness on the street. Wasn't that a contact? We just don't think it would work. It's too sweeping.

Mr. LANDAU. In the Railsback draft another threshold based on amounts spent on solicitations is included. It is in the Senate draft also. I would just like to stress that if you have a threshold based on solicitations it means the group that never contacted the Government directly would become a lobbyist just through an expenditure on a newspaper advertisement. The Senate bill last year used a threshold of \$5,000. In most medium-sized cities, that's how much one newspaper advertisement would cost.

We find that very objectionable. Second, Common Cause this morning advocated the two-tiered approach and I'd like to make a comment about that.

In the two-tiered approach that I have been hearing about I think the first level is based on contacts. The number is either 15 or 25, which is less than one committee of the House. Thus you're sweeping in all those small groups. Although the reporting burdens are somewhat less, you still have the stigma of being a registered lobbyist. You have the burden of keeping some sort of record and of sending the names—your name to the Government. And so—although we're not unalterably opposed to a two-tiered approach, we believe that if a two-tiered approach is used, it must have threshold sufficiently high enough to exclude the kind of groups we're talking about today.

Mr. KINDNESS. Thank you very much.

Mr. HARRIS. Thank you, Mr. Kindness.

One quick question. I heard your position on contributions and the possible constitutional problems created, do you apply the same criterion for the contribution disclosure requirements and the campaign that is in the Fair Campaign Act?

Mr. NORWICK. Our position in that litigation was a somewhat technical one. We did not object to the reporting of large financial contributions to major party candidates in election campaigns, but we took a very strong position that there should be no disclosure of minor party candidates because of the chilling effects on privacy and associational rights and that there was a much less clear nexus and public interest between unpopular groups and minor party candidates.

Mr. HARRIS. I was asking you the question if it is unconstitutional to put the requirements on wherever contributing to lobbying takes you, why is it then not the specific requirements on disclosures of our Campaign Act? Why is it unconstitutional to require a disclosure with regard to contributions to the American Petroleum Institute to obtain petroleum legislation and not unconstitutional to require disclosure with regard to Kindness for Congress for a committee which is probably a much more appropriate activity for an individual to engage in. Would you agree Kindness. [Laughter.]

Mr. KINDNESS. Very much so.

Mr. NORWICK. I'm here to say that any disclosure of any contribution wouldn't necessarily be struck down by the court as unconstitutional. We hope it wouldn't be, but I'm not here to say that. There is a long line of cases protecting the associational privacy and especially with unpopular groups.

Mr. HARRIS. That might be an unpopular group for all I know. [Laughter.]

Mr. NORWICK. The Campaign Reform Act swept within it organizations that did not directly contribute to campaigns, but took positions on public issues, but indirectly affected the outcome of elections. The court of appeals struck that down as clearly unconstitutional and Common Cause and the other respondents in that case did not even appeal that part of the ruling. So even the *Buckley v. Valeo* case stands for the proposition that not all contributions for all purposes in the political arena must be disclosed. We would say that when it comes to public issues as distinct from campaigns for office the first amendment would prevail.

Mr. HARRIS. Thank you very much for your testimony.

We appreciate both the attitude and the care that went into your preparation of your testimony. It was very helpful.

Mr. NORWICK. Thank you.

Mr. HARRIS. Mr. Donald Schwab, Veterans of Foreign Wars.

Mr. Schwab.

Mr. SCHWAB. Good morning, sir.

TESTIMONY OF DONALD H. SCHWAB, DIRECTOR NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. HARRIS. We appreciate your coming before us.

Do you have a prepared statement?

If you would like to put the whole statement in the record at

this point, you may. Do you care to brief the statement rather than read it?

Mr. SCHWAB. I'd be happy to brief it.

Mr. HARRIS. Without objection, the statement was taken for the record.

[The prepared statement of Mr. Schwab follows:]

SUMMARY SHEET OF THE STATEMENT OF DONALD H. SCHWAB, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

The Veterans of Foreign Wars of the United States believes organizational reporting thresholds and record keeping and reporting requirements of pending legislation to be too stringent. The low levels recommended would be an impediment to special interest groups, which act unselfishly, with relatively limited funding. In addition, the possible abridgment of rights guaranteed under the First Amendment to the Constitution continues to be in question.

In view of the foregoing, we recommend organizational reporting thresholds be developed on a sliding scale similar to that for public charities as enunciated in Section 4911, Public Law 94-455, the Tax Reform Act of 1976. We further recommend that veterans' organizations functioning under the provisions of 501(c)(19) of Internal Revenue laws be excluded from the record keeping and reporting requirements of whatever bill is advanced. Our rationale therefore is that we do not normally pursue selfish interests.

In conclusion it is hoped whatever bill is advanced is neither so burdensome as to be an impediment to interest groups, which act unselfishly, nor which may prove to be unconstitutional.

STATEMENT OF DONALD H. SCHWAB, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. Chairman and members of the committee, thank you for the privilege of presenting to this distinguished Committee the views of the Veterans of Foreign Wars of the United States with respect to pending legislation to regulate lobbying and related activities.

My name is Donald H. Schwab, and my title is Director of the National Legislative Service of the Veterans of Foreign Wars of the United States.

For the record, the Veterans of Foreign Wars of the United States employs individuals who testify before various committees of both Houses of Congress, and we have over the years filed quarterly reports with both the Clerk of the House and the Secretary of the Senate, in accordance with the 1946 Regulation of Lobbying Act. The thrust of our activities is directed toward passage of legislation beneficial to veterans, their dependents, widows and orphans. Our legislative posture for each ensuing year is established by resolutions passed by the voting delegates in attendance at our last national convention, representing our more than 1.8 million members. Our efforts in this regard require daily personal, telephonic or written communication with Members of Congress, their staffs or the professional staffs of committees and subcommittees. In addition, and for the edification of our membership, it is my responsibility to monthly prepare an article regarding Congressional actions for our V.F.W. Magazine, which has a circulation of nearly two million. Also, I am the author of the legislative input for our publication entitled "Washington Action Reporter," which is mailed to some 20,000 of our V.F.W. and Ladies Auxiliary members and other interested persons.

In our opinion several bills presently under consideration are on the one hand extremely stringent both as to reporting thresholds and required record keeping and reporting, while on the other, sufficiently ambiguous, at least in one definition, to place both organizations and individuals in jeopardy of being in violation thereof, and subject to heavy penalty. Again, as in prior legislation, the possible abridgement of freedom of speech guaranteed by the First Amendment to the Constitution is in question.

As stated in my testimony to the Subcommittee on Administrative Law and Governmental Relations of this Committee the first session of the 94th Congress, the Veterans of Foreign Wars of the United States interposes no objection to financial disclosure deemed appropriate and necessary. As a matter of fact, we are required by the provisions of 36 USC 118 to make an annual financial report to the Congress of the United States.

The reporting threshold for organizations, employing anyone who is paid \$1,250 per quarter, is highly restrictive in that \$5,000 per year does not permit much meaningful lobbying. This, coupled with the extensive record keeping and reporting requirements would necessitate the employment of additional personnel and would thwart the efforts of small interest groups which crusade for a cause while having little effect on large, monied organizations. I believe it pertinent that interest groups perform a watchdog function and initiate ideas which not infrequently become law. According to Lester W. Milbrath in his book, *The Washington Lobbyist*, "if we had no lobby groups and lobbyists we would have to invent them."

In view of the foregoing, we would recommend lobbying thresholds as follows:

1. For organizations it would appear a realistic dollar approach would be one on a sliding scale similar to that enunciated in Section 4911, Public Law 94-455, the Tax Reform Act of 1976, with respect to lobbying by public charities.

- For individuals, paid or unpaid, who spend 30 percent or more of their time in any quarter in direct lobbying be required to file a report with the Comptroller General containing information similar to that presently required under the 1946 Regulation of Lobbying Act.

While on the subject of organizational thresholds, we believe veterans' organizations functioning under the provisions of Section 501(c)(19) of Internal Revenue laws should be excluded from the record keeping and reporting requirements of whatever bill is shepherded through Congress for the following reasons:

1. We in the Veterans of Foreign Wars do not normally lobby for the passage of legislation beneficial to the organization per se, or even strictly for our membership, but, rather, for all the nation's 29.7 million veterans, their dependents, widows, and orphans who combined total nearly half the population of our nation.

During my tenure as Assistant Director and National Legislative Director of the V.F.W., a period of six years, and to the best of my knowledge, the only legislation upon which we have testified which would directly affect the Veterans of Foreign Wars has been legislation with respect to postal rates for nonprofit organizations.

You may be interested in the statement of the Honorable William Jennings Bryan Dorn, former chairman of the House Veterans' Affairs Committee, with respect to lobbying activities of the Veterans of Foreign Wars of the United States, which is appended to my testimony.

With respect to nebulous definitions, many pending bills include the oral or written communication or preparation thereof to any federal officer or employee to influence as "hearing." We believe that the word "hearing" must be further defined and much more specific. This, since the V.F.W. employs and pays in whole or in part over 100 service officers throughout the nation accredited by the Veterans Administration to represent claimants in hearings at all Veterans Administration regional offices, the Board of Veterans Appeals here in Washington, and, also, before the various discharge review boards and Boards for Correction of Military Records within the Department of Defense. In addition, the legal counsel for our National Veterans Service provides free representation before the Civil Service Appeals Review Board. These representatives daily seek to influence the boards before which they appear on behalf of their gratuitously represented clients. However, the intent of such influence is not to change the law, but, rather, to convince the board adjudicating the case that the claimant's appeal is in keeping with published regulations, predicated upon existing law. These accredited representatives in the employ of the V.F.W. are not staffed to meet extensive reporting requirements and we do not believe that such is the intent of any bill.

With respect to possible abridgement of First Amendment rights it is pertinent to note this was the subject of dissenting views in the last Congress by the Honorable Don Edwards, Chairman of the Subcommittee on Civil and Constitutional Rights, the Honorable John F. Seiberling, a Member of that same Subcommittee, and the Honorable Charles G. Wiggins, a Minority Member of the full Committee, with respect to H.R. 15 as published in House Report 94-1474. Again, last month upon introduction of his bill to regulate lobbying, H.R. 5578, Mr. Edwards cited abridgement of First Amendment rights. It would surely be a disservice to all if the Congress advanced legislation which became law only to be struck down later by the courts as unconstitutional.

In conclusion it is hoped whatever bill is advanced is neither so burdensome as to be an impediment to interest groups, which act unselfishly, nor which may prove to be unconstitutional. These, then, are the views of the Veterans of Foreign Wars of the United States. We appreciate your concern to enhance public confidence in the legislative process and know you will give proper consideration to our concern in your deliberation of the bills now before you.

Thank you.

Mr. SCHWAB. Thank you for the privilege of presenting to this distinguished committee the views of the Veterans of Foreign Wars of the United States with respect to pending lobbying legislation.

Our primary concerns are the reporting thresholds and the record-keeping and reporting requirements facing pending legislation which we believe to be too stringent.

The low levels recommended would be an impediment to special interest groups, small special interest groups which act unselfishly with rather limited funding. In addition, the possible breach of rights guaranteed under the first amendment of the Constitution continues to be in question.

With respect to reporting thresholds we believe that \$1,250 a quarter or 20 percent of employees time are both too low.

In my full statement I suggested reporting thresholds financially as a sliding scale similar to that in the present tax law for a charitable organization, which is on a sliding scale and not necessarily in the amounts that they give there, but I think this would be equitable to all organizations.

We have a concern with the definition of hearings although we are aware of the exceptions listed in the pending bills. I think we would be more comfortable with more specific definitions or exclusions in that we have service officers throughout the Nation who represent gratuitous clients before the Veterans' Administration regional offices, the Department of Defense, the Civil Service Commission, the Social Security Administration and if we are not happy with the decision of these hearings, of course, we go on to appeal or through channels even through the executive level of each agency.

We also recommend that veterans' organizations functioning under provision of 501(c)(19) of Internal Revenue laws be excluded from the reporting requirements or whatever bill is advanced. Our rationale for this is that normally we do not pursue selfish interests with the Congress of the United States, but rather legislation beneficial not only to our membership, but to all veterans, their dependents, their survivors.

Since I have been with the Veterans of Foreign Wars I believe we have testified only on one issue before Congress which would directly have effect on the organization and that has been with regard to nonprofit postal rates.

In conclusion we hope that whatever bill is advanced that it's neither so burdensome as to be an impediment to small interest groups which act unselfishly, nor which may prove to be unconstitutional.

It will be a great shame to pass a meaningful lobby registration bill that was workable and gear up for it and then have it struck down because of some flaw accord.

That concludes my presentation. I would be happy to respond to any questions.

Mr. HARRIS. Thank you very much.

I appreciate your statement and the point that you have made and especially coming as it does from an organization we all admire and respect a great deal.

Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman. Thank you, Mr. Schwab, I don't have any questions. I think your point is very clearly made.

Mr. SCHWAB. Thank you, sir.

Mr. HARRIS. Thank you very much for coming before us, sir, we appreciate your comments.

The next witness is Mr. John De Lorenzi of the American Automobile Association.

We welcome you to our hearing, Mr. De Lorenzi and we appreciate your comments.

If you prefer, we can place your statement in the record at this point in total and you may care to summarize it.

Mr. DE LORENZI. It's relatively brief, Mr. Chairman, so if I may, I'd like to read it.

Mr. HARRIS. You may read your statement.

[Prepared statement of Mr. De Lorenzi follows.]

STATEMENT OF JOHN DE LORENZI MANAGING DIRECTOR, PUBLIC POLICY DIVISION
AMERICAN AUTOMOBILE ASSOCIATION

Good Morning, Mr. Chairman and members of the Committee, I am John de Lorenzi, Managing Director of the Public Policy Division of the American Automobile Association. I am accompanied by Jerry C. Connors, Manager of Congressional Relations for AAA.

The AAA, which is now celebrating its 75th anniversary, has more than 18½ million members and is made up of 867 clubs and branch offices in 49 states. AAA presently is registered as a lobbyist under the Federal Regulation of Lobbying Act. We support the principle of lobbying reform.

Mr. Chairman, like many who are interested in efficient, honest government, AAA has been closely following the efforts of the Congress to come up with a workable and equitable lobbying reform bill. Public business should be public and the present bill (H.R. 1180) has come a long way from its incredibly restrictive and probably unconstitutional beginnings.

In the process, the idea that lobbying is a shady activity, indulged in only by secretly-funded, nefarious groups bent on working their mysterious will on the Congress, has given way to the realization that lobbying is something done by nearly everyone. In short, it is the direct participation in public decision making of those who would be affected by such a decision.

Bearing this in mind, along with a citizen's constitutional right to petition the Government for a redress of his grievances and the right of freedom of speech, with its currently prominent corollary, freedom of the press, it is difficult to come up with legislation that will achieve its purpose without being repressive.

For that reason, we would like to congratulate the committee on including in Section 3(b)(2) of the bill a provision which exempts from the act a regular publication of a voluntary membership organization published for purposes mostly unrelated to lobbying.

We are pleased with this because it affirms our belief that freedom of the press should not be just for those of the mass media rich enough to own a printing press or a television station.

Indeed, the genesis of freedom of the press in the Constitution was to protect the small, not-so-powerful, not-so-rich publications. As an example, the AAA is a nationwide organization yet it does not have a single national publication distributed to all of its 18½ million members. Instead, the individual clubs, reflecting their geographic and local interests, issue approximately 175 magazines or newsletters for their members to keep them informed.

Under earlier versions of lobbying reform legislation, an article on matters of legislative interest may have triggered lobbying reporting if it encouraged its readers to contact their Congressman or included Congressional names and addresses, even if it did so without comment, assuming the organization was covered by other requirements.

To us, telling people what is transpiring in Washington and encouraging them to attempt to influence legislation is an eminently democratic and constitutional action. Not being able to tell them to write their Congressman, without having to register as a lobbyist, seems incongruous. We're glad that H.R. 1180 seems to agree.

However, there are some other sections in the bill which cause us great concern because we do not think they are in the public interest. Supposedly, the purpose of lobbying reform is to correct abuses. But it is a great leap from correcting abuses to regulating so-called grass roots lobbying, as this bill does.

The rationale behind this harassment of, if not interference with, free speech is justified on the grounds that the Congress should know whether such grass roots communications are the "spontaneous" expression of the public's feelings. That's how it was explained in the Committee's "Regulating Lobbying and Related Activities" report of Sept. 2, 1976 (House Report 94-1474).

This is an absurd test. My dictionary defines spontaneous as "happening or arising without apparent external causes . . . unpremeditated . . . unconstrained and unstudied in manner of behavior." In other words, a communication from someone who had not studied the issues or was scarcely aware of them would be more valued than one from someone who did know what he was talking about under this criteria.

And where would the latter gain his information? In most cases, not from the commercial mass media which simply does not have the space (in the case of publications) or the time (in the case of television and radio) to cover all the issues that interest all of the nation's diverse groups and individuals. That is the reason for the growth of specialty publications and newsletters and the reason for the demise of such giant general publications as LIFE and LOOK; the need for more detailed information.

And if someone does not subscribe to a specialized publication, where can he obtain the information needed to help him reach a considered judgment? The answer is through special committees, ad hoc groups and voluntary citizen's organizations often set up to deal with one specific issue.

In the case of a group specially organized for legislative purposes, such as a voters league or public interest organizations, by the group's very nature some individual would be spending 20 percent of his time on what would be "covered" activities in the present bill.

The result would be that innumerable worthy, small groups would either have to disband or else figure out how they could comply with the registration requirements of the bill, including the quarterly filing of registrations and the keeping of records for five years.

This would be an onerous burden on any organization but particularly on those with little money and little manpower. And in the end what would have been achieved? Two things for sure: a chilling effect on legislative participation at the grass roots level and the creation of still one more monstrous Washington Bureaucracy to maintain the resultant files of useless papers from those determined enough to contact their Congressmen.

As we stated earlier, we do not believe this is correcting an abuse but rather an attempt to regulate lobbying and to discourage people from presenting their collective views to elected officials.

We think that this approach should be abandoned and recommend that the Committee look at H.R. 5578, a lobbying reform bill introduced by Rep. Don Edwards (D. Calif.), which disposes of this sticky problem of abridgement of first amendment rights by eliminating any strictures on grass roots lobbying entirely. If there are problems with grass roots lobbying—and we are not convinced there are—we believe the solution to them is at the receiving end in Washington, not out in the rest of the country. As is, you have already exempted political parties, and state officials at the grass roots level. Why not the genuine grass roots?

On first reading the home state exemption language contained in H.R. 1180 and earlier in H.R. 15 as passed by the 94th Congress, we felt that the Act would not apply to any communication from "any organization to a Member of the Senate or the House of Representatives, or to an individual on the personal staff of such Member, if such organization's principal place of business is located in the State . . . represented by such Member . . ."

Our belief was short-lived that this was a major improvement over earlier proposals which said the communications which were exempt from the act would be either to the two Senators in the organization's home state or to the Member in the congressional district in which the organization's "principal place of business" is located.

We now know from following the testimony and listening to the discussion on H.R. 1180 that regardless of what we thought the language meant, it still limits exempt House communications only to the Member in the organization's home office congressional district.

Rep. Edwards, in Section 4(b)(2) of his H.R. 5578, attempts to broaden the area of exempt communications by proposing that a "lobbying communication" would not be regarded as such from an organization if it were addressed to a Member whose congressional district was within the standard metropolitan statistical area in which the home office was situated. This is an improvement but not much.

Would it not be in the best interest of everybody, including the Congress, to allow vital information to be relayed to a Member without it being regarded as a "lobbying communication"? If a branch office plant may close down in a Member's district because of some pending legislation, should not the Congressman from that area hear about this directly from the branch office without being concerned whether it's a lobbying or non-lobbying communication.

The situation of some AAA clubs under H.R. 1180 is instructive. As an example, the Automobile Club of Southern California, an AAA affiliate, has 78 branch offices in Southern California. As a service organization, AAA clubs try to be as close to their members as possible to render them service, listen to their complaints and suggestions and to fill their needs. That includes reflecting their views on legislation. This is part of the by-laws or articles of incorporation of any AAA club. Additionally, all of our national surveys consistently show that interest in legislation is one of the top three reasons why members belong to AAA.

Yet if the manager of the ACSC office in San Diego, California's second largest city, wanted to write to Representative Bob Wilson about the legislative views of local club members this could be regarded as a lobbying communication under certain conditions because the "home office" is in Los Angeles. We submit that this is a distortion. For all intents and purposes, and in the view of the local member, his home office is San Diego. And he is right.

The same applies to other AAA clubs which cover large territories or entire states such as the Automobile Club of Michigan with 56 branch offices. There are important member views to be conveyed to Michigan congressmen other than those who reside in the Detroit standard metropolitan statistical area.

In brief, we believe that this definition of a "lobbying communication" in regards to a personal membership organization such as ours, is an unfair one and politically unrealistic if Members really want to know what their constituents are thinking about. We do not think that it should be necessary for groups such as individual AAA clubs to have to register as a lobbyist because members in their branch offices have something they want to say to their elected representatives. We hope you will give this matter serious consideration.

Thank you for letting us appear before you. If you have any questions, we will try to answer them.

SUMMARY

1. The American Automobile Association supports the principle of lobbying reform.
2. AAA congratulates the committee for exempting from the Act regular publications of a voluntary membership organization published for purposes mostly unrelated to lobbying.
3. AAA does not believe that Congress should attempt to regulate so-called grass roots lobbying.
4. AAA believes the definition of a "lobbying communication" in regards to the location of the home office of an organization should be eliminated.

TESTIMONY OF JOHN DE LORENZI, MANAGING DIRECTOR, PUBLIC POLICY DIVISION, AMERICAN AUTOMOBILE ASSOCIATION: ACCOMPANIED BY JERRY C. CONNORS, MANAGER OF CONGRESSIONAL RELATIONS FOR AMERICAN AUTOMOBILE ASSOCIATION

Mr. DE LORENZI. Good morning, Mr. Chairman and members of the committee. I am John De Lorenzi, managing director of the public policy division of the American Automobile Association. I am accompanied by Jerry C. Connors, manager of congressional relations for AAA.

The AAA, which is now celebrating its 75th anniversary, has more than 18½ million members and is made up of 867 clubs and branch offices in 49 States. AAA presently is registered as a lobbyist under the Federal Regulation of Lobbying Act. We support the principle of lobbying reform.

Mr. Chairman, like many who are interested in efficient, honest government, AAA has been closely following the efforts of the Congress to come up with a workable and equitable lobbying reform

bill. Public business would be public and the present bill H.R. 1180 has come a long way from its incredibly restrictive and probably unconstitutional beginnings.

In the process, the idea that lobbying is a shady activity, indulged in only by secretly funded, nefarious groups bent on working their mysterious will on the Congress, has given way to the realization that lobbying is something done by nearly everyone. In short, it is the direct participation in public decisionmaking of those who would be affected by such a decision.

Bearing this in mind, along with a citizen's constitutional right to petition the Government for a redress of his grievances and the right of freedom of speech, with its currently prominent corollary, freedom of the press, it is difficult to come up with legislation that will achieve its purpose without being repressive.

For that reason, we would like to congratulate the committee on including in section 3(b)(2) of the bill a provision which exempts from the act a regular publication of a voluntary membership organization published by purposes mostly unrelated to lobbying.

We are pleased with this because it affirms our belief that freedom of the press should not be just for those of the mass media rich enough to own a printing press or a television station.

Indeed, the genesis of freedom of the press in the Constitution was to protect the small, not-so-powerful, not-so-rich publications. As an example, the AAA is a nationwide organization yet it does not have a single national publication distributed to all of its 18½ million members. Instead, the individual clubs, reflecting their geographic and local interests, issue approximately 175 magazines and newsletters for their members to keep them informed.

Under earlier versions of lobbying reform legislation, an article on matters of legislative interest may have triggered lobbying reporting if it encouraged its readers to contact their Congressman or included congressional names and addresses, even if it did so without comment, assuming the organization was covered by other requirements.

To us, telling people what is transpiring in Washington and encouraging them to attempt to influence legislation is an eminently democratic and constitutional action. Not being able to tell them to write their Congressman, without having to register as a lobbyist, seems incongruous. We're glad that H.R. 1180 seems to agree.

However, there are some other sections in the bill which cause us great concern because we do not think they are in the public interest. Supposedly, the purpose of lobbying reform is to correct abuses. But it is a great leap from correcting abuses to regulating so-called grassroots lobbying, as this bill does.

The rationale behind his harassment of, if not interference with, free speech is justified on the grounds that the Congress should know whether such grassroots communications are the spontaneous expression of the public's feelings. That's how it was explained in the committee's "Regulating Lobbying and Related Activities" report of September 2, 1976 (House report 94-1474).

This is an absurd test. My dictionary defined "spontaneous" as happening or arising without apparent external cause . . . unpremeditated . . . unconstrained and unstudied in manner of behavior. In other words, a communication from someone who had not studied

the issues or was scarcely aware of them would be more valued than one from someone who did know what he was talking about under this criteria.

And where would the latter gain his information? In most cases, not from the commercial mass media which simply does not have the space—in the case of publications—or the time—in the case of radio and television—to cover all the issues that interest all of the Nation's diverse groups and individuals. That is the reason for the growth of specialty publications and newsletters and the reason for the demise of such general publications of *Life* and *Look*; the need for more detailed information.

And if someone does not subscribe to a specialized publication, where can he obtain the information needed to help him reach a considered judgment? The answer is through special committees, ad hoc groups and voluntary citizen's organizations often set up to deal with one specific issue.

In the case of a group specially organized for legislative purposes, such as a voters league of public interest organizations. By the group's very nature some individual would be spending 20 percent of his time on what would be covered activities in the present bill.

The result would be that innumerable worthy, small groups would either have to disband or else figure out how they could comply with the registration requirements of the bill, including the quarterly filing or registrations and the keeping of records for 5 years.

This would be an onerous burden on any organization but particularly on those with little money and little manpower. And in the end what would have been achieved? Two things for sure: A chilling effect on legislative participation at the grassroots level and the creation of still one more monstrous Washington bureaucracy to maintain the resultant files of useless papers from those determined enough to contact their Congressman.

As we stated earlier, we do not believe this is correcting an abuse but rather an attempt to regulate lobbying and to discourage people from presenting their collective views to elected officials.

We think that this approach should be abandoned and recommend that the committee look at H.R. 5578, a lobbying reform bill introduced by Representative Don Edwards, Democrat, California, which disposes of this sticky problem of abridgement of first amendment rights by eliminating any strictures on grassroots lobbying entirely. If there are problems with grassroots lobbying—and we are not convinced there are—we believe the solution to them is at the receiving end in Washington, not out in the rest of the country. As is, you have already exempted political parties, and State officials at the grassroots level. Why not the genuine grassroots?

On first reading the home State exemption language contained in H.R. 1180 and earlier in H.R. 15 as passed by the 94th Congress, we felt that the act would not apply to any communication from "any organization to a Member of the Senate or the House of Representatives, or to an individual on the personal staff of such Member, if such organization's principal place of business is located in the State . . . represented by such Member . . ."

Our belief was short-lived that this was a major improvement over earlier proposals which said the communications which were exempt

from the act would be either to the two Senators in the organization's home State or to the Member in the congressional district in which the organization's principal place of business is located.

We now know from following the testimony and listening to the discussion of H.R. 1180 that regardless of what we thought the language meant, it still limits exempt House communications only to the Member in the organization's home office congressional district.

Representative Edwards, in section 4(b)(2) of his H.R. 5578, attempts to broaden the area of exempt communications by proposing that a "lobbying communication" would not be regarded as such from an organization if it were addressed to a Member whose congressional district was within the standard metropolitan statistical area in which the home office was situated. This is an improvement but not much.

Would it not be in the best interest of everybody, including the Congress, to allow vital information to be relayed to a Member without it being regarded as a lobbying communication? If a branch office plant may close down in a Member's district because of some pending legislation, should not the Congressman from that area hear about this directly from the branch office without being concerned whether it's a lobbying or nonlobbying communication.

The situation of some AAA clubs under H.R. 1180 is instructive. As an example, the Automobile Club of Southern California, an AAA affiliate, has 78 branch offices in southern California. As a service organization, AAA clubs try to be as close to their members as possible to render them service, listen to their complaints and suggestions and to fill their needs. That includes reflecting their views on legislation. This part of the bylaws or articles consistently show that interest in legislation is one of the top three reasons why members belong to AAA.

Yet, if the manager of the Automobile Club of Southern California's second largest city, wanted to write to Representative Bob Wilson about the legislative views of local club members this could be regarded as a lobbying communication under certain conditions because the home office is in Los Angeles. We submit that this is a distortion. For all intents and purposes, and in the view of the local member, his home office is San Diego. And he is right.

The same applies to other AAA clubs which cover large territories or entire States such as the Automobile Club of Michigan with 56 branch offices. There are important member views to be conveyed to Michigan Congressmen other than those who may reside in the Detroit standard metropolitan statistical area.

In brief, we believe that this definition of a lobbying communication in regards to a personal membership organization such as ours, is an unfair one and politically unrealistic if Members really want to know what their constituents are thinking about. We do not think that it should be necessary for groups such as individual AAA clubs to have to register as a lobbyist because members in their branch offices have something they want to say to their elected representatives. We think you will give this matter serious consideration.

Thank you for letting us appear before you. If you have any questions, we will try to answer them.

Mr. HARRIS. Thank you, Mr. De Lorenzi.

Mr. Kindness.

Mr. KINDNESS. Mr. De Lorenzi I don't have any questions. I believe you set forth your views very clearly in your testimony.

Mr. HARRIS. Thank you very much for coming before us. We appreciate your testimony.

I would like to also announce that the committee will continue these hearings on this legislation on April 21 and April 22. Until such time, the subcommittee is adjourned.

[Whereupon, at 11:40 a.m., the hearing was adjourned, to reconvene on April 21, 1977.]

LOBBYING AND RELATED ACTIVITIES

THURSDAY, APRIL 21, 1977

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY
Washington, D.C.

The subcommittee met at 9:40 a.m. in room 2141, Rayburn House Office Building, the Hon. George E. Danielson (chairman of the subcommittee) presiding.

Present: Representatives Danielson, Jordan, Mazzoli, Harris, Moorhead, and Kindness.

Staff present: William P. Shattuck counsel; Jay Turnipseed and Timothy J. Hart, assistant counsel; Alan F. Coffey, Jr., associate counsel; and Florence McGrady, clerk.

Mr. DANIELSON. The subcommittee will come to order.

Today we are going to take up the subject of a lobbying bill—lobbying regulating bill.

We have with us today, scheduled, five witnesses: the Hon. Peter Flaherty, deputy attorney general; Mr. J. M. Lyle, representing the National Security Industrial Association; the Business Round Table, represented by Mr. Robert Hatfield; the National Association of Manufacturers, represented by Mr. Richard Godown; and the Chamber of Commerce of the United States, represented by Mr. Fred Krebs, their attorney.

The schedule this morning will require that we be prepared to adjourn shortly after 11 am. The House is going into session at 11 am. We can continue in session following that until there is a call of the House for whatever reason. So, we may have as much as about 2 hours.

For that reason I'm going to request the indulgence of my colleagues to stay clearly within the 5-minute rule, and I'll be compelled to call time rather closely.

So, without more, I'll invite you forward Mr. Flaherty, since you're No. 1 on the list. Do you have someone with you?

Mr. FLAHERTY. Yes, Mr. Chairman. I have two members from the Department of Justice.

Mr. DANIELSON. Why don't you identify them for the record.

Mr. FLAHERTY. On my left, Ray Calamaro. Do you want to come up and sit with us, Ray?

Mr. DANIELSON. I'm going to admonish you, Mr. Deputy Attorney General, that I wish, when you appear before this subcommittee, you would get your brief in timely.

I came down at 6 o'clock this morning to read the briefs, and there was nothing from the Department of Justice. My guess is that if you were appearing before a court, you would have had your brief in on time; and we expect a similar cooperation.

Your presentation is much less effective when we haven't had time to read your material. So, I'm going to have to leave it up to your eloquence.

I'm going to urge, under those circumstances, that you do not read your statement. It will be accepted into the record without objection. And could you just give us the highlights and your most persuasive arguments as to all the points you wish to make.

Mr. FLAHERTY. Thank you, Mr. Chairman. I appreciate your remarks on the timely submission of statements.

On my right is Mr. Donsanto, who I would like to introduce to the Committee.

I have submitted a lengthier statement for the record. My oral remarks will be much briefer and will refer to the highlights of my prepared statement.

Mr. DANIELSON. Operator, will you turn up the volume a little bit. I don't want to miss any of this, please, and I'm slightly hard of hearing.

Okay, proceed.

TESTIMONY OF HON. PETER E. FLAHERTY, DEPUTY ATTORNEY GENERAL; ACCOMPANIED BY RAYMOND S. CALAMARO, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS; AND CRAIG C. DONSANTO, ATTORNEY, CRIMINAL DIVISION.

Mr. FLAHERTY. I have submitted a lengthier statement for the record, and my oral remarks this morning will be much briefer and refer basically to the highlights of the proposed legislation.

First of all, it's a pleasure, Mr. Chairman, and members of the subcommittee, to appear here this morning to present the views of the Department of Justice on the reform of the Lobbying Act.

The present statute, requiring disclosures by those who seek to influence the legislative processes, who coordinate lobbying, was passed back in 1946. It contains so many weaknesses, which, over the years, have prevented it from serving the purposes which led to its enactment.

It applies only to trade associations and interest groups whose lobbying activities are supported by dues and contributions. It applies only to the activities of members or agents of such groups, who personally engage in the solicitation or receipt of contributions for lobbying purposes.

It contains no provision for monitoring, no procedure for bringing violations to the attention of the Justice Department, and no enforcement sanction short of criminal prosecution.

Probably most importantly, the extent of its coverage—that is the 1946 act—is left to the vague concept of "principal purpose" which has left some confusion in the lobbying community as to who is covered and who is not. And it also has created some insurmountable enforcement problems.

We would support the enactment of legislation by the Congress which would remedy this state of affairs, and which would bring effectively to the public view, significant instances in which the legislative process is influenced by the organized efforts of interest groups.

At the same time, we are mindful of the fact that such legislation as proposed here, may, potentially, tread upon First Amendment rights.

Of the various bills pending before the subcommittee, we feel that H.R. 1180 probably approaches what we feel is the ideal replacement for the present Lobbying Act of 1946. This bill would impose reporting obligations on any organization which retains an outside lobbyist who is paid more than \$1,250 in any calendar quarter. We feel that this threshold is reasonable.

In addition, organizations which have internal employees—inside lobbyists, if you will—who spend more than 20 percent of their time on the job lobbying or preparing studies, or position papers preparatory to lobbying, would also be required to register under H.R. 1180.

We feel that a percentage of time threshold is probably a reasonable method for determining the coverage of inside lobbyists. And although we feel that the percentage of time is more easily proved in an enforcement action than the number of contacts formula, which has also been suggested as an alternative approach, we consider the number of contacts threshold acceptable. We favor, however, the percentage of time as the more acceptable one from the enforcement standpoint.

A third alternative has been mentioned in legislation, and this would trigger coverage on the basis of the number of hours which an employee spends in lobbying-related activities.

This particular alternative, we feel, is unacceptable. It would be very burdensome, very cumbersome, very difficult to enforce, and very difficult to report on. And, for that reason, we feel that it is the less acceptable, and we do not favor this alternative.

I'd like to also speak briefly on indirect lobbying. A vital question regarding lobbying regulation is whether or not indirect lobbying, that is, the solicitation by an organization of members or others to make direct contacts with Members of Congress should be covered in a lobbying law.

We believe that organizations which engage in indirect lobbying to an appreciable degree should be required to report on those activities. In this regard, the approach taken by H.R. 1180 is a reasonable one in that it requires organizations, which are otherwise covered in the bill, shall also report on lobby solicitations that are directed to at least 500 persons, 100 employees, 25 directors, or 12 affiliated organizations.

It has also been suggested that encouraging others to engage in lobbying activities should be sufficient, by itself, to subject an organization to coverage by a disclosure law such as we are considering here—at least if the organization in question engages in indirect lobbying to a considerable extent.

In other words, indirect lobbying would, itself, be a triggering mechanism for inclusion within the law. In this regard we recognize there are strong competing arguments on both sides of the issue, and the Administration is presently studying it.

A final position on whether indirect lobbying should be a separate triggering mechanism has not yet been formulated.

Briefly, I'd like to speak on the reporting requirements of the bill. Once an organization qualifies for coverage by meeting one of the threshold tests, it must register with the General Accounting Office. Quarterly reports are required to be filed, and a general description of lobbying activities will take place in the filing of those quarterly reports.

We feel that the registration and reporting forms should be simple and basically easy to fill out, and this is consistent with the goals of the bill.

If a reporting organization, when it files its report, need only itemize its sources of lobbying income if a particular source accounts for more than \$2,500 in income during the calendar year in question, then, in that case, the income used by the organization in whole or in part to pay for lobbying activities should be covered by the bill. And we have no objection to that provision.

Gifts. In the bill H.R. 1180, it requires the reporting by a lobbying organization of any gifts of \$25 or more to congressional personnel or executive personnel, if you will, and we support such a measure in the bill.

The enforcement mechanism. The Comptroller General is given the extensive powers to monitor and to investigate compliance with the act. He is given the power to issue subpoenas, of course, and to hold other investigative hearings. We support that.

In addition, if there is a violation, and it falls within the criminal area it is referred to the Criminal Division of the Justice Department.

If, on the other hand, the matter is one of a civil nature, then it would be referred to the Civil Division of the Justice Department, which could seek mandatory injunctive relief and other appropriate measures.

These two measures we also support in the bill. We have no objection to the bulk of these enforcement procedures and sanctions.

We are of the view, however, that the bill should clarify whether the civil penalties contained in sections 13(a) and 13(d) may be imposed by the Civil Division without referral from the Comptroller General. It was not clear to us whether the Civil Division in the Justice Department actually could involve these provisions.

We would ask that that, perhaps, be clarified. As the bill is now drafted, we assume that it is empowered to invoke these provisions as it sees fit. We also strongly believe that this result is a desirable one, and urge the subcommittee, perhaps, to give clear expression to this view in the legislation.

We assume the Criminal Division will be able to exercise its criminal law enforcement mandate under the penal sections of the Act.

The Department of Justice urges the adoption of H.R. 1180 as modified by these suggestions.

[The prepared statement of Deputy Attorney General Flaherty follows:]

STATEMENT OF PETER F. FLAHERTY, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. Chairman and members of the Subcommittee, it is my pleasure to appear before you this morning for the purpose of presenting the views of the Administration on

several bills pending before you that seek to reform the Federal Regulation of the Lobbying Act.

We support the enactment of a lobbying bill which would be comprehensive, even-handed, easily enforceable, and which would effectively open to public view significant instances in which the congressional process is influenced by the organized efforts of outside groups. The legislation we support will not affect individually generated efforts of private citizens to redress grievances, nor will it affect small organizations with no consistent or significant role as lobbyists. Finally, we do not believe that the kind of lobbying legislation we espouse will infringe First Amendment rights of free speech and association.

INADEQUACIES OF THE PRESENT LAW

The only statute which currently purports to regulate the activities of those who attempt to influence the decision-making processes of government is the 1946 Lobbying Act, 2 U.S.C. 261-270. Unfortunately this relatively primitive disclosure statute is a grossly inadequate tool for achieving the objective of opening the activities of the lobbying community to full public view. The Administration thus enthusiastically supports efforts which have been made by the last Congress, and which are now being carried forward, hopefully to conclusion, by this Congress, to replace this antiquated statute with clear and comprehensive disclosure provisions.

The defects in the present statute are in large part products of the rudimentary state of the art concerning disclosure laws that existed in 1946. In an over abundance of caution to avoid impinging on the Right to Petition, the 1946 Lobbying Act confined its reach only to those lobbyists and the organizations for which they work, whose "principal purpose" was to engage in activities which are covered by the Act. As the subcommittee is aware, the concept of "principal purpose" in the context of a statute whose sole enforcement mechanism is criminal prosecution, has proven to be an almost insurmountable obstacle to effective regulation.

In *United States v. Harris*, 347 U.S. 612 (1954), the Supreme Court attempted to read meaning and substance into the text of the Lobbying Act in the face of arguments that the statute was unconstitutionally vague and violated the First Amendment. Yet the Court's opinion succeeded only in adding to the statute's problems. First, the Court held that the Act was applicable only to direct and personal contacts solely between lobbyists and members of Congress themselves. As a result, all lobbying activities directed at Congressional staff were effectively removed from the Act's coverage. Second, the Court construed the Act's jurisdictional section, 2 U.S.C. 266, in such a way as to exclude from the disclosure requirements activities of lobbyists who did not personally participate in the solicitation, acceptance or receipts of "contributions" for lobbying purposes. As a result, all lobbying activities financed by earned income or business profits, as well as the activities of lobbyists who did not participate personally in fund-raising, were excluded from coverage.

Beyond these difficulties, the lack of any provision in the present Lobbying Act requiring the Clerk of the House and the Secretary of the Senate, who are charged with the responsibility for receiving lobbying reports, to audit the reports they receive has proven a further serious weakness in the Act's enforcement structure. In the absence of any audit and referral functions, the Department of Justice has had to rely solely on information provided by journalists, lobbyists with opposing interests, and occasionally, on Congressmen themselves for information which might indicate that the Act had been violated.

Furthermore, the lack of any administrative or civil sanction with which to address *inadvertent* violations has had the effect of making enforcement practically impossible even in these few situations where a lobbyist's activities fall within the Act. The Justice Department believes that criminal prosecution is an inappropriate penalty with which to redress an unintentional violation of a complex disclosure statute.

In short, Federal law regulating lobbying activities presently (1) reaches only direct contacts with members of Congress which are made by or on behalf of interest groups and trade associations that are supported by dues and contributions from the public; and (2) it contains no provision for monitoring compliance and (3) it contains no enforcement machinery other than criminal prosecution.

LAST YEAR'S PROPOSALS

Both the House and the Senate in the 94th Congress made substantial progress towards rectifying this state of affairs by passing, respectively, H.R. 15 and S. 2477. Each of these bills replaced the dubious concept of "principal purpose" with more precise quantitative standards for coverage and with more comprehensive disclosure provisions. Authority to receive lobbying disclosure reports was vested in the General

Accounting Office, which was also given an affirmative mandate to monitor compliance, promulgate regulations, to correct civil violations by informal conciliation, or if this fails, apply a variety of civil penalties. Criminal sanctions, to be enforced by this Department, were reserved only for situations where violations were committed intentionally or with motive to conceal material information from the public. In addition, loopholes in the present law concerning lobbying communications directed at Legislative Branch employees who are not themselves members of Congress, and concerning lobbying activities not supported by contributions or performed by lobbyists who did not participate personally in the solicitation or receipt of contributions, were closed.

The bills before this committee today are in large part refinements of last year's work; we believe they reflect substantial progress, in the pursuit of effective lobbying regulation.

H.R.1180

A. *Threshold Tests*

This bill would require disclosure of all organizations which expend in excess of \$1,250 in any calendar quarter for the purpose of hiring an "outside" lobbyist to engage in oral or written communications directed at a "Federal Officer or Employee". We feel that \$1,250 per quarter is within a reasonable range as a coverage threshold for outside lobbying activities.

Three alternative threshold tests have been proposed for coverage by virtue of "inside" lobbying, i.e., lobbying done by the paid employees of an organization:

1. *Percent Test*

H.R. 1180 proposes a requirement that the organization must employ at least one paid individual who devotes at least 20 percent of his or her time to lobbying activities. This test is particularly attractive from an enforcement perspective, as coverage can be proven relatively easily through employee's job descriptions and interviews with employees concerning their duties. We also feel that a percent test, whether it is 20 percent or some other figure, is responsible in that it draws the line in such a way as to exclude all organizations who lobby only through volunteer members or through paid employees to an inconsequential degree.

2. *Contact Test*

This test was adopted by the Senate last year. It would be triggered if an organization makes a prescribed number (roughly once a week) of contacts with members of Congress or their staffs where such contacts are intended to affect the course of legislation. Status inquiries would not be included in such a contact test. This test, is less attractive from an enforcement perspective than the percentage test, since it would ordinarily require extensive interviews with congressional employees contacted and place emphasis on the time and precise nature of each contact. However, we feel that 12 covered contacts is a reasonable place to draw the line, and although this test is less attractive from the percentage test, it is conceptually acceptable.

3. *Hours Spent Test*

This proposal would qualify an organization under the bill depending upon the amount of time its employees spent in lobbying activities. The difficulty with this proposal is the burdensome recordkeeping requirements it imposes on lobbyists and organizations and the difficulty of monitoring their alleged hours allegedly devoted to such lobbying activities. In most situations, it would make the burden of proof virtually impossible in an enforcement action, and would leave considerable confusion in the lobbying community concerning precisely when an organization becomes covered. We do not favor this coverage formula.

4. *Dual Threshold*

We note that the Senate has explored the notion of a dual threshold test: a lower threshold based on the number of lobbying contacts which, if met, triggers only minimal reporting requirements, and a higher threshold of expenditures or amount of time spent on lobbying which would require more substantial reporting.

B. *Exemptions From Coverage*

A number of communications are specifically excluded from coverage by H.R. 1180 with the result that money or time expended for such communications would not be counted towards the jurisdictional floors discussed above. These specific exclusions include communications to be submitted for the public records, communications by a person acting on his behalf for redress of personal grievances, activities covered by the Federal Election Campaign Act (i.e. those dealing with influencing the elective

process rather than the decision-making processes of government), communications made by citizens on their own initiative with either of the two Senators, or the Congressman representing his district of residence, and unpaid expressions of editorial opinion appearing in the media. The specific exclusions are reasonable, many of them may be indeed required by the First Amendment to protect the right of petition. However, H.R. 1180 does not include a specific exemption for communications directed at status inquiries, which we feel should be added to the list.

C. Indirect Lobbying

A vital question of lobbying regulation is whether or not "indirect lobbying"—the solicitation by an organization of members or others to make direct contacts with Congressmen—should be covered in a lobbying law, either as reporting or as a threshold requirement.

We feel that a comprehensive lobbying regulation law should include a provision that requires the reporting of solicitations to lobby members of Congress or their staffs. "Indirect lobbying" appears to be the real growth area of national lobbying efforts. A few examples:

An oil company makes regular mailings to its shareholders telling them where, who, and what to write to their representative about pending legislation;

A major automobile company executive writes to its suppliers urging them to contact their representatives to oppose energy legislation;

Auto manufacturers run a national advertising campaign in 1,800 daily newspapers costing \$750,000 for public support for a five year delay on emission standards;

An organization arranges for free mailgrams to be sent to Congress on behalf of one member or his friends who phone Western Union;

Drug companies solicit pharmacists and doctors, airline officials solicit passengers, and gun owners are solicited to oppose legislation; and

New organizations crop up repeatedly for the exclusive purpose of developing grassroots support for legislative goals.

Such massive systematic and coordinated efforts to encourage others to influence legislation seemingly deserve to be disclosed to the American public.

The Department of Justice is, however, cognizant of serious arguments against the constitutionality of legislation that would make indirect lobbying a separate threshold test for inclusion within the law. These arguments stress its potentially chilling threat to our First Amendment guarantee of free speech. While direct communication to Members of Congress is generally conceded to be subject to government regulation, the argument is made that communications to third persons who, in turn, express themselves to Congressmen or Senators, approach more closely the forbidden perimeter of the First Amendment. Simply put, opponents say indirect lobbying is more like simple exhortation or advocacy which is constitutionally protected. We believe, however, that former Chief Justice Warren's opinion in *U.S. v. Harris*, 347 U.S. at 620-621, 625, supports our conclusions that such indirect lobbying may be regulated, at least for reporting purposes.

Our view is, moreover, supported by the recent decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), in which the Supreme Court upheld the constitutionality of the disclosure provisions of the Federal Election Campaign Act. Like the FECA, lobbying disclosure bills such as H.R. 1180 do not prohibit anyone from doing anything. They merely require that if one chooses to interject himself into the processes of government to an appreciable extent, certain information about that involvement should be made public.

Any First Amendment impact which requiring disclosure of lobbying solicitations may have is further reduced by the fact that all of the bills under discussion today place the reporting obligation on the organization for which the individual lobbyist works, rather than imposing personalized preconditions on the individual lobbyist.

The question of whether indirect lobbying should be a triggering mechanism in and of itself is a more difficult issue. In this latter regard, we recognize that there are strong competing arguments on both sides, and the Administration is presently studying it. A final position on whether indirect lobbying should serve as a separate triggering mechanism has not yet been formulated.

D. Coverage of Executive Branch Lobbying

H.R. 1180 would extend its provisions to regulate lobbying of the Executive Branch. The Department of Justice is of the view that the complexities of Executive Branch lobbying, and the need to tailor legislation to the peculiarities and idiosyncracies of the numerous Executive Branch agencies which have decision-making powers, would

be better left to separate legislation where these questions can be more fully addressed with the objective of maximizing the disclosures, if possible. Executive Branch lobbying is of sufficient importance that it deserves separate and careful consideration.

E. Reporting Requirements

Once an organization qualifies for coverage by meeting one of the threshold tests, it must register with the General Accounting Office annually, and it must file reports with that office quarterly (Sections 4 and 6). We feel that the registration and reporting forms should be as simple and as easy to fill out as possible, consistent with the goals of the statute. The thrust of the information required to be disclosed in the registration statements consists of an identification of the organization filing the statement, a general description of its lobbying objectives, a description of the methods by which it arrives at the position it wishes to take on an issue, and an identification of all "outside" lobbyists paid by the registrant as well as all employees who perform "inside" lobbying activities on its behalf.

Reports, which must be filed quarterly, call for disclosure of the total amounts expended for lobbying activities during the reporting period; and a breakdown as to how much was given to each outside lobbyist or how much of the salary of each employee who engaged in lobbying-related activities was attributable to lobbying. Reports also must contain a general description of the "primary" issues which the reporting organization sought to influence, a disclosure of all payments made by the reporting organization to "Federal officers or employees" who have interests therein, and pertinent information concerning lobbying "solicitations".

A reporting organization need only itemize its sources of lobbying income if a particular source accounts for more than \$2,500 in income during the calendar year in question, and then only if that income was used by the organization in whole or in part to pay for lobbying activities covered by the bill. (Section 6(b)(8)). We have no objection to such a provision.

Under H.R. 1180, the reporting organization must report all gifts made directly to congressional employees and covered executive level Executive Branch employees which exceed \$25 in value. With respect to this item, it does not appear to matter whether the purpose of the gift in question was specifically intended to influence decision-making—that purpose is apparently inferred by the fact that the organizations required to report such items must have already met one of the tests for coverage by the Act described above. We believe that \$25 is within a reasonable range as a threshold for the reporting of such gifts to Congressional personnel. Significantly, H.R. 1180 contains a provision requiring the General Accounting Office to report to the House Committee on Standards of Official Conduct all instances in which a reporting organization is responsible for making gifts to House officers and employees exceeding \$100 in any calendar year, presumably for some form of disciplinary action. This attempt at self-policing is to be commended. It might also be advisable to place in the bill a provision requiring the Comptroller General to refer to the Department of Justice all information which comes to its attention in connection with its administration of this legislation reflecting gratuities to congressional employees or executive level employees, in excess of some appropriate amount, from a given donor for our consideration under various federal criminal statutes dealing with bribery and conflicts of interests.

All organizations covered by the Act, as well as all outside lobbyists individually, must maintain pertinent records concerning activities which are material to the administration of this Act, and make them available to the General Accounting Office on request. Records must be preserved and produced in this manner for five years, which is the statute of limitations applicable to violations of the bill's criminal provisions. (Section 5).

F. Enforcement Mechanism

The Comptroller General is given extensive powers to monitor and to investigate compliance with the Act, and to impose certain administrative penalties for non-wilful violations. He is given power to issue subpoenas, administer oaths, hold investigatory hearings, and issue regulations as well as "Advisory Opinions" interpreting substantive provisions of the Act at the request of any individual (Sections 7, 8 and 9). If the Comptroller General determines that a violation is not "wilful" in nature, he must attempt to obtain voluntary compliance. If he fails in these informal efforts, he may refer the matter to the Civil Division of the Justice Department which may seek mandatory injunctive and other appropriate relief (Section 10). All "criminal" (i.e., "wilful") violations must be referred to the Criminal Division of the Department of Justice for appropriate prosecutive action (Section 10(d)). When a matter is referred to the Department for either civil or criminal action, the Attorney General must report

back to the Comptroller General on the status and disposition of such a matter every 60 or 90 days (Section 10(e)). Non-wilful violations of the registration, reporting and recordkeeping provisions of the Act may be remedied by information conference or conciliation. If these methods fail, a violator may be subject to a civil penalty up to \$5,000 (Section 13(a)). "Knowing and wilful" violations of the reporting, registration or recordkeeping provisions of the bill are subject to criminal sanctions of imprisonment for up to two years and/or a \$10,000 fine (Section 13(b)) as is the submission of intentionally false or fraudulent information (Section 13(c)). Finally, the selling or commercial use of information which is disclosed under the bill is subject to a civil penalty of up to \$10,000.

We have no objection to the bulk of these enforcement procedures and sanctions. We also are of the view that the bill should clarify whether the civil penalties contained in Sections 13(a) and 13(d) may be imposed by the Civil Division without referral from the Comptroller General following mandatory conciliation pursuant to Section 10. As the bill is now drafted, we would argue that the Civil Division is empowered to invoke these provisions as it sees fit, although admittedly the bill is ambiguous on this point. Since we strongly believe this result to be desirable, we urge the Subcommittee to give clearer expression to this view in the legislation. We assume that the Criminal Division will be able to exercise its criminal law enforcement mandate under the penal sections of the Act, applicable to intentional or aggravated conduct, unencumbered by the possibility of parallel administrative jurisdiction on the part of the General Accounting Office.

The Department of Justice urges the adoption of H.R. 1180 as modified by these suggestions.

H.R. 2301

This bill is textually identical to H.R. 1180 except in three aspects:

First, where H.R. 1180 requires that organizations which meet its thresholds for coverage report only those general areas of legislative interest with respect to which it has or intends to conduct lobbying activities, H.R. 2301 requires that a reporting organization identify the 25 or so most significant subjects of its lobbying interest. We feel that such a degree of specificity adds little to the public perception of what a reporting organization may be doing, and that any benefits which might conceivably be said to be gained by requiring such an itemization are offset by the increased burden which an identification of this sort would place on organizations subject to the Act. Indeed, it is our view that general descriptions of the areas in which a reporting organization has or intends to conduct lobbying activities will in the long run be more meaningful and readily understandable to the public for whose benefit the reports are to be required than an overly specific list of lobbying interests. Moreover, most organizations that would be required to report under either H.R. 1180 or H.R. 2301 will have relatively few lobbying interests, so that requiring them to provide more specific information as to precisely what they are doing in this regard will be of little value. In those relatively few instances in which an organization is engaged in lobbying to a substantial extent, requiring it to choose among the relative importance of its interests and to identify only the most important ones may actually have a negative effect on the overall purpose of public disclosure. Consistent with our preference that the forms should be as simple and straight forward as possible, we prefer the formula in Section 6 of H.R. 1180 which leaves it to the registrant to disclose what its lobbying interests are.

Second, unlike H.R. 1180, H.R. 2301 does not contain any provision calling for the referral of sizable gifts which are made by a given registrant to an employee of the Congress to the House Committee on Standards of Official Conduct for appropriate internal congressional action as may be appropriate. As indicated previously, we favor such self-policing provisions where gifts to congressional employees are involved.

Finally, H.R. 2301 imposes a stricter "floor" for the itemized reporting of contributions made for lobbying purposes than in H.R. 1180. H.R. 2301 would require a reporting organization to report its "contribution schedule" (which is an unnecessarily confusing concept), and would require itemization of contributions in excess of \$2,500 during a calendar year only to the extent that they exceed the "contribution schedule" and the amount contributed amounts of more than 1% of the reporting organization's total dues receipts for the year. This formula, besides being confusing, is far too stringent. It also seems not to cover sources of *earned* income which is used to lobby. We prefer the approach taken by H.R. 1180 in this regard.

Nevertheless, H.R. 2301 is a fundamentally sound bill, and with the reservations and suggested improvements noted in the previous discussion of H.R. 1180, we commend it to the Subcommittee's favorable consideration.

This bill is also practically identical to H.R. 1180, and the comments which we have made about that bill thus by-and-large apply to it. H.R. 5795, however, differs from H.R. 1180 in the following significant respects:

First, it contains a more extensive definition of terms than does H.R. 1180, with the result that the substantive reporting and registration requirements are easier to understand and to comply with. Concepts such as "issue," "lobbying communication," and "principal operating officers" we feel are positive additions to a bill such as this.

While H.R. 5795 contains the same coverage test for organizations that engaged in lobbying through "outside" lobbyists as H.R. 1180 (\$1,250 per quarter), the percentage test for coverage of organizations which engage in "inside" lobbying is replaced by a standard based on the number of hours which an employee spends on lobbying activities covered by the bill (Section 3(a)(2)). Not only is this test confusing, but it would be extremely difficult to prove, with all of the consequent enforcement difficulties which such problems are bound to create. Furthermore, we suggest that in a practical sense the "number of hours" test used in this bill will cause substantial confusion in the lobbying community, especially among those only marginally engaged in attempting to influence government decision-making. We prefer the percentage formula for determining when inside lobbying should give rise to coverage by reporting and disclosure requirements.

All contributors of funds used to lobby, which are made to an organization covered by the bill, would appear to have to be identified, at least by name, regardless of the amount contributed in each instance (Section 4(b)(3)), while a more particular itemization of the amounts actually donated is required where the amount exceeds \$3,000 per year. Although an organization could receive an exemption from this reporting obligation with respect to a particular donor whose contributions for lobbying purposes did not exceed 5% of the organization's total annual expenditures for lobbying purposes (Section 4(d)), it would have to apply for and support such an exemption request through the advisory opinion process provided for in Section 9 of the bill. We believe that this procedure is far too burdensome; and since in the absence of a formal exemption an organization would appear to have to report the identity of every source of funds used in any way to lobby, we feel that the entire treatment of lobbying contributions by H.R. 5795 is too broad and burdensome. Again, we prefer the approach taken by H.R. 1180 which requires the itemization of only those who contributed more than \$2,500 for lobbying purposes within a calendar year.

H.R. 5578

This bill differs in many respects from H.R. 1180 and H.R. 2301, and although it has certain strengths from our point of view, we do not consider it to be as comprehensive or desirable a bill as those just discussed.

On the plus side, H.R. 5578 seeks only to reach lobbying efforts directed at influencing the legislative process before the Congress (Sections 3(9) and 3(10)). It does not attempt to draw within its scope the perplexing difficulties inherent in seeking to regulate through disclosure the myriad of means and methods by which influence may be brought to bear on the decision-making process of the numerous and distinct Executive Branch departments and agencies. We reiterate that Executive Branch lobbying is a complex and difficult subject, which in our view would more effectively be addressed in separate legislation, with respect to which this Department is eager to work with the Congress.

H.R. 5578 also contains what we feel is a more comprehensible definitional section. It attempts to define concepts such as "communication" (Section 3(10)), and "issue before the Congress", which do not have adequate corollaries in either H.R. 1180 or H.R. 2301. The term "organization" is also defined in such a way as to make clear that the substantive reporting and recordkeeping requirements are not intended to apply to entities which are composed merely of volunteers. (Section 3(13)).

On the negative side, the monetary threshold for coverage of an organization by virtue of the fact that it retains an outside lobbyist is high: \$2,500 per quarter. We prefer a lower range beginning with \$1,250.

Second, the so-called "in state" exemption contained in Section 4(b) is constitutionally over broad. It discriminates in favor of those organizations which maintain their principal places of business in populous "standard metropolitan statistical areas" which are represented in the House of Representatives by large congressional delegations.

Third, the reporting section requires that an organization subject to the bill identify the 10 chief issues with respect to which it engaged in lobbying activities, a concept of which we disapprove in H.R. 2301.

Finally, this bill completely fails to cover solicitations to lobby, which as we have previously indicated we feel should be subject to disclosure where an organization meets other thresholds for coverage.

One peculiar provision in H.R. 5578, which appears to be unique in bills on this subject, warrants mention and possible serious consideration. The emphasis in the criminal penalty provisions contained in sections 14(2) and 14(3) is on heavy fines rather than on imprisonment. Wilful violations of the substantive provisions of the bill can result in fines of up to \$100,000. In our view this may be a particularly appropriate deterrent to violations of a statute such as this which is principally directed at entities seeking to advance their respective causes through lobbying our government. In this regard, we might suggest that the Congress give thought to imposing two levels of criminal penalties: one consisting of heavy fines for malefasant organizational defendants, and another emphasizing imprisonment for those individual officers, employees or agents of organizational defendants who wilfully cause the submission of intentionally false or fraudulent reports.

CONCLUSION

Although I deliberately have not attempted this morning to analyze all of the bills before this Subcommittee dealing with lobbying reform, I hope my testimony has been useful and has touched upon the salient and most important features in the bills.

I am deeply appreciative of the Subcommittee's time and patience and with your willingness to work with the Department of Justice in producing a lobbying bill which is clear, comprehensive and enforceable. We continue to stand ready and eager to assist the Subcommittee and its staff in this regard in the days ahead.

Thank you.

Mr. DANIELSON. Thank you, Mr. Flaherty. Mr. Moorhead? I'm sure Mr. Moorhead will bear in mind that I have an eagle eye on my watch.

Mr. MOORHEAD. I'll certainly do that, Mr. Chairman. Mr. Flaherty, in your discussion of penalties, I noticed on the last page of your statement you discussed the possibility of high fines rather than jail terms.

Do you think that criminal penalties are really necessary in this legislation, or can civil penalties be adequate?

Mr. FLAHERTY. Only for wilful violations, basically. Of course, civil sanctions should be looked at first for the unintentional violations, and to enforce compliance with the legislation.

But I think we do have to have, yes, a separate section for wilful disregard—intentional disregard—of the act. I think that's why it's in there, and I think it is necessary.

Mr. MOORHEAD. At the present time, under the present law, there's really no effective enforcement possible. Is that correct?

Mr. FLAHERTY. That's the problem with the present act of 1946; yes, sir.

Mr. MOORHEAD. In your discussion, also, you were talking about the ways in which you had interpreted the effectiveness of this proposed legislation, and the advantages and disadvantages of logging time.

But if you had a percentage of time threshold to make the determination whether you'd come under the act wouldn't you also pretty much have to log the time of certain employees?

How else could you ever make that determination accurately?

Mr. FLAHERTY. I see a difference there, though. We feel that if you have to keep track of every hour, or enforce that, we're better off from the enforcement standpoint to—from going into the records—to be able to determine whether a person spends 20 percent or—then they are within the purview of the act—rather than going by an hour to hour basis.

There's not a great deal of difference. We simply favor the other one as being less cumbersome—the 20 percent rule.

Mr. MOORHEAD. I think I understand your position, but I want to make it very clear.

Last time we were discussing this kind of legislation, you weren't too anxious to have the executive branch included in the Legislative Lobby Bill.

What about Government contracts? Is it the position of the Carter Administration that contract activities should not be part of this kind of lobby disclosure act, or included in this bill?

Mr. FLAHERTY. Well, it's not our position that it shouldn't be covered somewhere. Our position, however, is that we shouldn't try to cover the two in one bill. We would rather see separate legislation for the Executive, and separate legislation for the legislative—

Mr. MOORHEAD. It is your feeling, though, that this isn't something that should be handled by administrative decree, or by regulation within the various departments, or by the Chief Executive himself? It should be done through an Act of Congress?

Mr. FLAHERTY. Yes, we feel it should be done separately. We have no objection that Congress should be involved so long as it is done separately.

Mr. MOORHEAD. Well, OK; thank you. I will terminate my questioning at this point.

Mr. DANIELSON. The gentleman has consumed 4 minutes. The Chair recognizes the lady from Texas, Ms. Jordan.

Ms. JORDAN. Thank you, Mr. Chairman.

Mr. Flaherty, would you tell me, in a philosophical way, why do you think it's necessary for us to pass a lobbying act? What is the evil we're trying to address? What are the abuses we're trying to correct?

Mr. FLAHERTY. I think it's not so much an evil, or a wrong, as it is a reporting requirement that we have here. Obviously, there are first amendment matters that are involved in any area where people—whether they are trade associations or organizations—

Ms. JORDAN. May I just interrupt? I want to interrupt your statement right there. You said it's not an evil, not a wrong; it's a reporting requirement. What are we trying to address? Are we going through this exercise with all of these bills because we don't think people are reporting properly their lobbying activities? Is that the reason why the Justice Department sees fit to support 1180 or any lobbying disclosure?

Mr. FLAHERTY. Well, I think it's more than that. I think what we have, at the present time, is legislation on record since 1946, which is somewhat primitive regarding lobbying regulation and in the enforcement.

We are faced with an act that really doesn't have any teeth in it. And the Justice Department would like to have legislation that spells out more clearly the regulatory procedures for the public, for the trade associations, for the lobbyists, if you will, that are involved, and also for the governmental agencies that are involved, that oversee the enforcement of it. Right now we just have a vague act, and I think we have to bring this up-to-date.

Ms. JORDAN. Because?

Mr. FLAHERTY. Well, I happen to believe and I believe the philosophy of the Justice Department is that this is an area in which the public has a right to know what is spent on these matters.

Ms. JORDAN. So, it is the public's right to know what is being spent in lobbying activities that we're trying to address. Now, is that your statement.

Mr. FLAHERTY. Yes. The public should have the right to review it. It's, in effect, a sunshine type of bill. That's the way I would view it.

Ms. JORDAN. All right, then, in order for us—if we concede that what we're trying to do is protect the public's right to know what is being spent, then why do we need the complicated threshold tests?

You have discussed the percentage test, the contacts test, the hours spent, and what the Justice Department would require. Is all of this necessary to protect the public's right to know what is being spent?

Mr. FLAHERTY. Well, first of all, we don't think it really is that complicated—the thresholds. You have to have an area where you draw the line.

But all that says is that up to \$1,250 per quarter you don't report. You have to start somewhere, so the threshold amount is if you spend over \$1,250, then you would report. So, it really is not that complicated; it's just simply a matter of drawing a line.

And so with the 20 percent. If you're an internal lobbyist within a trade association, or an organization, you can spend 20 percent of your time—then you've got to report. It's simply drawing a line, but we felt a reasonable one.

Ms. JORDAN. Where are these reports going to be kept? Who's going to have the custody of the reports?

Now, remember, you have said what we're trying to do is protect the public's right to know what is being spent. That's why we're going through this.

Mr. FLAHERTY. The General Accounting Office is the custodian.

Ms. JORDAN. And what will be the avenue of the public access to the General Accounting Office to go over these reports?

Mr. DONSANTO. The General Accounting Office, like the Federal Elections Committee, would make these things available to the public—index them and make them available on microfilm.

I would defer to the representative of the General Accounting Office as to how he would go about making them available. The law does require that he do so.

Ms. JORDAN. So, in going back to the reason for this bill; we're going to microfilm the reports and put them some place. The General Accounting Office is going to see to it that the public has open, free, and unstinted access to these reports. I assume that's what we're thinking.

Mr. DONSANTO. That's what I'm thinking, yes.

Ms. JORDAN. Mr. Chairman, I see you have your gavel, and I'm finished.

Mr. DANIELSON. Very sensitive, Ms. Jordan. Thank you very much. Mr. Congressman from Ohio.

Mr. KINDNESS. I yield to the lady from Texas if she has further questions.

Ms. JORDAN. Mr. Kindness, I appreciate it, but I think I'll turn Mr. Flaherty over to you.

Mr. KINDNESS. I thank the lady.

The line of questioning that was being pursued, however, is one that is important. It is of concern to the whole subcommittee, and has been right along—the definition of what we're doing—and I'd like to ask just one further question along that line.

If the public's right to know is to be properly protected, is it necessary for some form of publication to be made, rather than just the storage of records; or are we heading in the direction of creating a massive storehouse of information that nobody wants?

And is the cost of such publication a justifiable cost? Has the Department considered that aspect of it?

Mr. FLAHERTY. It's always a difficult question to determine where records should be stored, where the public would have proper access, and I appreciate the extent of your questioning and Congresswoman Jordan's questioning in that area.

It's simply, again, a decision that they should be stored in the General Accounting Office. At least they are available there; the interested public has a right to see them there.

I wish there were, perhaps, an even better way to make them available, other than microfilming, but, again, it's a matter of convenience for storage reasons.

Mr. KINDNESS. While we're in this area, then, turning back to the point of the position expressed in behalf of the Justice Department and the Administration as to the executive branch lobbying, does it horrify you somewhat to consider what the volume of paper work might be if we're talking about the inclusion of the executive branch?

Mr. FLAHERTY. Well, it doesn't horrify me, but I recognize there would be a great volume to it, no question about that.

Mr. KINDNESS. This is a strong consideration, I assume, in the development of an interim position of the Administration on the executive branch coverage in the bill—I would take it—I hope so. It's a vast housekeeping problem at the very least, and an administrative problem.

Mr. FLAHERTY. Storage would be a problem, but we would simply have to adjust to it.

Mr. KINDNESS. At the taxpayer's expense.

Mr. FLAHERTY. Right.

Mr. KINDNESS. Well, it would provide some jobs, I'm sure, but caretaking jobs of that nature we can do without.

Mr. Chairman.

Mr. DANIELSON. The Chairman recognizes the gentleman from Kentucky, Mr. Mazzoli.

Mr. MAZZOLI. Thank you, Mr. Chairman.

Let me, first, welcome the Assistant Attorney General who, though his name is Flaherty and my name is Mazzoli, we still have a common heritage, and that is, we both went to the University of Notre Dame. So, let me congratulate Pete for coming to Washington and joining our Notre Dame family.

Let me focus on the things that the gentelady from Texas had gotten into. That is the need to focus on the intent of the bill to figure out where we want to go with it. And I think her questions set the stage for that.

As I have said before many times, this reminds me of the statements which, I believe, were spoken by one of the justices of the Supreme Court, who said, "I can't define pornography, but I can tell you what it is when I see it."

I think it's hard for us to define the kind of lobbying we're looking at to control or make reports of, but we seem to know it when we see it. And that's the problem we're faced with here.

And I think, basically, what we're going to have to do here—and I support a lobbying bill—is recognize that when we cast the net, we're going to haul in some fish we didn't really intend to haul in, in order to get the fish we're really searching for.

And I think here our task will be to try to make the bill as little awkward or burdensome to the fish we didn't intend to catch.

In that connection, Mr. Attorney General, what is your position, and the Justice Department's, on geographical exemptions—exemptions for individuals or people who contact the congressman or senator from their area?

Mr. FLAHERTY. We have allowed for that in my more detailed statement.

Mr. MAZZOLI. If I understand correctly, your exemption is for the place of residence.

In the case of urban areas where there are several congressional districts carved out of a particular city, would the Justice Department have any objection to having an exemption based upon residency within a total area if we can?

Mr. FLAHERTY. I don't see any problem in that.

Mr. MAZZOLI. For example, in Pittsburgh you have two or three Congressmen from the area, so if someone from outside but who works in my district, or Joe Gaydos' were to write him, there would be no problem, in your judgment?

Mr. FLAHERTY. I think there would be no problem on that.

Mr. MAZZOLI. Let me ask one final question.

You mention that it's not your intention or Justice's, and it's certainly not our committee's, to put together reporting requirements which would be just another part of the paper work snarl.

Are you satisfied that if you or the GAO is required to write the rules, that we can write the rules—that implementing this law is not going to be that burdensome?

Mr. FLAHERTY. I am, but I think your question is well taken. I support that it would be a simple form, that it would be an easy one to fill out, and, perhaps more than that, one that is easily read by members of the public and understandable.

I think what you will have here is a better reporting bill, more understandable, with triggering mechanisms and some better enforcement procedures. That's the way I see this bill, as a very understandable one.

Mr. MAZZOLI. Now, let me ask you this: If we were to write a rule or put a proviso in here which would require that all proposed rules and regulations covering the reporting be sent back to this committee for oversight and for comment, and maybe even veto, how would your position be on that?

Mr. FLAHERTY. I really don't see a problem on that. We would like to see it ourselves, of course.

Mr. MAZZOLI. You would put it in writing?

Mr. FLAHERTY. Sure.

Mr. DANIELSON. Thank you, Mr. Mazzoli.

Mr. Harris of Virginia.

Mr. HARRIS. Thank you, Mr. Chairman.

Is the Department familiar with the current law and the filing requirements? Have any of your people studied how successful it's been as far as the way it's operating and the current procedures?

Mr. FLAHERTY. It's mostly voluntary.

Mr. HARRIS. I was asking if the Department had studied what the current situation is as far as the filings and, what have you, go.

Mr. FLAHERTY. The 1946 act?

Mr. HARRIS. Current law.

Mr. FLAHERTY. As far as the Justice Department goes, we've had very little contact with them because there has been very little enforcement regarding the Act.

Mr. HARRIS. My main question is, as I study this proposal of which I'm cosponsor, if, in fact, it does require a great deal more paper or filing than is already, supposedly, required? I have the notion that somewhere in the clerk's office there's a great deal of paper stacked up some place. I'm not sure it says a whole lot, but I have a notion it's there. I wondered if you had looked at that.

Mr. FLAHERTY. I'm not sure it does require a great deal more paper work, under the H.R. 1180 bill, than the Act.

Our understanding of H.R. 1180 is that it is not that complex—a simple statement of the lobbying activities, the amount of money that has been used or the percentage of time. It really shouldn't be a difficult form to devise and to understand.

Mr. HARRIS. I think, Mr. Chairman, just so the forms don't get lonesome down there, the Committee ought to go on down there and look at those boxes of forms. They're filed quarterly I think.

Mr. DANIELSON. If the gentleman will locate them, we'll send him down as a subcommittee.

Mr. HARRIS. Be glad to. Get the per diem on that, don't I, Mr. Chairman?

Again, I have another specific question. The Comptroller General, in his testimony, indicates that he believes that the agency, that is the GAO—well, at least the agency responsible for administering the new lobbying disclosure law—should be given civil enforcement authority.

And I'd like to ask specifically if the Justice Department agrees with that. For example, if the GAO were given responsibility for administering this law, do you—does the Justice Department—agree that they should have civil enforcement authority?

Mr. FLAHERTY. No, I don't think they should have the enforcement. I think we should keep civil enforcement the way it is in the bill now; that is, leave the control up to the Justice Department.

We feel that would be a better situation than to have the GAO do that.

Mr. HARRIS. In testimony that he gives—it's on page 10—I would like the Justice Department to give some thought to some of the predicament that we're putting the administering agency in under the current situation, and maybe make additional comments if the Justice Department sees fit.

I'm referring specifically to the problem he cites on page 10; and, Mr. Chairman, if there's no objection, I would like for it to go into the record at this point.

Would the Justice Department be willing to do that?

Mr. FLAHERTY. I'd be glad to do that.

[Additional views furnished by the Department of Justice follow:]

DEPARTMENT OF JUSTICE
Washington, D.C., June 24, 1977.

HON. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, House of Representatives, Washington, D.C. 20515

DEAR MR. CHAIRMAN: The Department of Justice is pleased to comply with your request for our written views on the criminal enforcement provisions of H.R. 1180 currently being considered by your Subcommittee, and concurs in your announced intention to reopen the record in this matter to receive this and other communications regarding the present bill. I hope that the comments will aid your Subcommittee in its deliberations.

It is my understanding that in the markup scheduled for next week, the Subcommittee will consider striking subsection (b) of the enforcement section (Section 13) in its entirety, and substituting therefor language identical to 18 U.S.C. 1001, the federal false statement statute. If this proposal is adopted, I feel that it will unduly restrict the conduct to which criminal sanctions apply, to the detriment of the entire enforcement effort.

I anticipate that violations of the proposed bill will fall into two general categories: failures to register and/or report; and failures to make correct or adequate disclosures. If the proposal is adopted, it will make knowing and willful failures to register or report noncriminal, and will restrict prosecution of inadequate disclosure cases to those in which the required information has been concealed or covered up by a trick, scheme, or device. From an enforcement standpoint, we prefer the standard in the present draft bill, which follows the tested approach of other disclosure statutes, including the federal securities laws and the analogous Foreign Agents Registration Act. Under the present bill, both failures to file and omissions of material facts can be prosecuted if they are knowing and willful.

The disclosures required by the bill further the interest of the Congress and the people in knowing the identities, activities, and expenditures of those who seek to influence public policy, and allow assessment of the impact of these activities on the political process. Persons or organizations which knowingly and willfully violate the registration scheme should accordingly be subject to the same type criminal penalties applicable to others who violate disclosure statutes where the disclosures further an important public purpose.

Mr. Chairman, time does not allow me to comment on any other provisions at this time, but my staff remains available to discuss issues arising under the bill at any time, especially those which involve enforceability of the statute.

Very truly yours,

BENJAMIN R. CIVILETTI,
Assistant Attorney General,
Criminal Division.
BY ROBERT L. KEUCH,
Deputy Assistant Attorney General.

Mr. HARRIS. Thank you very much, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Harris.

I only have a couple of points, Mr. Flaherty.

From my own information I agree with you that the Department of Justice should have the responsibility for both criminal and civil enforcement. I don't believe in multiplying our government law offices if we can avoid it.

I note that you want the executive branch left out of the lobbying control bill. Am I correct on that?

Mr. FLAHERTY. Of this particular piece of legislation, yes, because we don't see a mix as being helpful here. I think it would be clearer if it was eliminated—left out.

Mr. DANIELSON. And you feel that solicitation in indirect lobbying should be covered?

I know, as a member of this committee, that—Let us say we get into the gun control bill, inflated with mail which, I'm sure, is encouraged by the gun lovers and gun haters, as the case may be.

How is that type of mail, however, inconsistent with the first amendment right to petition government?

Mr. FLAHERTY. Well, first of all, I may not have made my statement as clear as I should have on indirect lobbying. We believe that organizations that are already covered by the bill, already involved in lobbying, should be required to report their indirect lobbying. We're in favor of the reporting.

As far as other organizations that are not otherwise covered by the bill, we have taken no position on that in our statement.

Mr. DANIELSON. Well, just for fun, take one; take a position. What would your response be?

Now, you have an organization which is not otherwise covered, but does precisely the same thing in indirect lobbying as does an organization which is covered. And I won't hold you responsible for it, but I'd like to have your answer.

Mr. FLAHERTY. It's a problem that gets closer, I think—The problem in your question is you're getting closer there to the rights of individuals to petition their Government and others.

And the reason we're staying a little bit further away from that is because we think there is a more chilling effect on first amendment rights in that area than in the other.

Mr. DANIELSON. Am I correct in sensing that you feel a little bit tender about that point?

Mr. FLAHERTY. I think that's a correct observation at this point.

Mr. DANIELSON. I'm not belittling you when I say it. I feel real tender about that point.

You want justice; I've covered that. I'm glad you recognize the first amendment, because it sure bothers me in this bill.

I think that we would have to have the office with which the documents are filed be the same as that which would be empowered to issue the rules and regulations. The two are so closely knit I don't think they should be separated.

Enforcement, however, should go to Justice even though the filing of the records and rulemaking would go to some other agency.

We have now, within the Congress, and have had for about 5 years—in the House—the office called the Office of Registration of Records, I believe it is, which is a repository for quite a number of records which are available on microfilm. The public has immediate access—can put a dime in the slot or something like that and get a copy.

I think that would work out fine for registration, except I think you wouldn't want to be making any rulemaking on the side.

My last observation: Ms. Jordan, thank you, asked practically all the questions I wanted to ask, but I hope we're not putting together the solution to a nonproblem. This worries me to some extent.

If there's any real evil here, it would seem to me it would lie in the possibility that someone interested in legislation might, through good entertainment, a few gifts, a few other considerations, attempt to dull the keenness of someone's judgment, and get a little bit of advantage they shouldn't otherwise have.

Now, within the Congress we now have some very stringent rules on receiving gifts or other considerations, reporting them; but we don't have that with respect to the executive department.

I see that one wholesome thing we might have here would be that if members of the executive department had to report every consideration they receive, gift or otherwise, entertainment comparable to that which members of Congress now have to report—I think it's \$35, I don't recall—that might be a wholesome thing.

Would you care to comment on that?

Mr. FLAHERTY. As I mentioned earlier, we have no objection regarding Executive personnel, even legislation on that, as long as it would be separate rather than mixed together.

But I basically look upon the bill as a reporting bill. As I think you are so stating it's a procedural bill rather than correcting, say, an evil. We know that lobbying is part of our system whether we like it or not, and we're here just simply to get more disclosure on it, more information.

Mr. DANIELSON. I appreciate your position, I truly do. I just think we have to cut very carefully here so that we don't cut against it, we just cut with it.

The Justice Department does serve as the registration or administering agency for the Foreign Agents Registration Act. Would that be somewhat similar to this; and do you not have experience which could be applied to this particular law if you were to so allocate it?

Mr. FLAHERTY. I think Mr. Donsanto would—

Do you want to comment on that?

Mr. DONSANTO. The Foreign Agent Registration Act is a disclosure law very similar to this. It is directed to situations where those lobbying represent interests that are not domestic.

It is administered by the Criminal Division; however, it serves a national security interest and it's thrust—

Mr. DANIELSON. Almost indefinable, but go ahead.

Mr. DONSANTO. It's thrust is a little different from what this is, and—

Mr. DANIELSON. I know that the thrust is different, and I don't mean to put you on the spot, but I just wanted to be sure that you were bearing in mind that Justice already does serve as the agency for a similar type—

Mr. DONSANTO. Yes.

Mr. DANIELSON. Well, we'll keep that in mind, and I thank you very much.

Yes, sir.

Mr. CALAMARO. One thing, I heard some refinements in the last questions of Mr. Mazzoli. I wonder if you'd allow the Deputy Attorney General to take a look at the question on the record, and do a little more—and change the syntax on that? I think the question might have had more packed into it than we had thought about.

Mr. DANIELSON. There's no question. You have an absolute right to do that. In fact, we invite and welcome any assistance you can give us. This is not as easy a problem as it might look like on the surface.

Thank you very much, gentlemen. We appreciate your attendance, your assistance here.

Mr. DANIELSON. Ah, Ms. Jordan.

Ms. JORDAN. I think there ought to be an opportunity to correct for the record, if necessary, a response to the question propounded by Mr. Mazzoli about the exemption for large, standard, metropolitan statistical areas which may be represented by more than a single Member of Congress.

He is very sensitive to that and so am I. I have the central city, Houston, Tex., and there are three Members of Congress who surround me.

In your testimony, Mr. Flaherty, you have noted, on page 23: "the so-called 'in state' exemption contained in section 4(b) is constitutionally broad. It discriminates in favor of those organizations which maintain their principal places of business in populous 'standard metropolitan statistical areas' which are represented in the House of Representatives by large congressional delegations."

Now, that shows that you have a real problem with helping us out in these large congressional delegations; which when you indicated in your response to Mr. Mazzoli that you saw no difficulty with that kind of exemption.

Mr. FLAHERTY. You are correct. There are difficulties with it, and if we may, we would like to take a look at it again and get back to this Committee on that particular issue.

[The information referred to follows:]

THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., May 23, 1977.

Hon. GEORGE DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I wish to supplement the testimony I gave before your Subcommittee on April 21, 1977, regarding lobbying disclosure legislation.

After much discussion within the Executive Branch we have arrived at the following positions:

1. On pages 17-19 of my prepared statement, I discuss the desirability of requiring organizations which meet the bill's thresholds for coverage to report only those general areas of legislative interest with respect to which they have or intend to conduct lobbying activities. After further reflection and deliberation, I now believe that more specificity with respect to issues lobbied on is desirable and would support a provision calling for the listing of a specified number (in the 10 to 25 range) of primary issues lobbied on.

2. On pages 6 and 7 of my prepared remarks, I indicated a slight preference for the percentage of time test for "inside" lobbyists although I also found the number of contacts test acceptable (a typographical error in the prepared statement at this point left off an entire line where the acceptability of the contacts test was emphasized). We have again reviewed and compared the contacts test, the percent test, and the hours test. We have concluded that *each* of these tests has advantages and disadvantages.

The 20 percent test does cover written communications from an organization directly to a Congressman as well as preparations for direct oral communications. Its higher threshold excludes less significant lobbying efforts and may thus be less inhibiting. But it may be hard to distinguish precisely what is covered in the percentage-time categories. The test also involves additional recordkeeping, and is not cumulative, e.g., as in instances where a number of people devote small percentages of time to lobbying.

The contacts test threshold is easily understandable by those who lobby, covered activities are clearly delineated, and the test is cumulative. Record-keeping also may be facilitated. But the test may discourage small lobbying efforts (especially if the number of contacts threshold is set too low), and may involve some inequities in that contact durations as well as officials' attendance per contact may vary widely.

The comments above concerning the 20 percent test are also relevant to the similar hours test. However, the hours test may involve slightly less recordkeeping for lobbying organizations. And if the number of hours is set too low, it may tend more to discourage lobbying.

We now believe that the contacts test, percent test, and hours spent test, are all reasonable from an enforcement viewpoint.

3. We do support the kind of exemption from coverage outlined in Section 3(b)(5) of H.R. 1180, the co-called "home state" exemption. However, we would not support any further expansion of this exemption to include House members not representing the district containing an organization's principal place of business (yet within the Standard Metropolitan Statistical Area). Our position would not, of course, affect individual constituents who would remain able to contact any member of Congress without risk of coverage by this legislation. We do not, however, believe that it is either consistent with the purposes of the legislation or with equitable considerations—such equitable considerations may even rise to the level of questions of equal protection of the laws—to permit an organization to lobby *any* of several Congressional representatives within its SMSA without coverage.

4. The issue of the disclosure of the membership of lobbying organization and of its major contributors is of concern to us. We are sensitive to the need to know who and what organizations fund or control organizations which lobby. We are also concerned that excessive disclosure requirements may inhibit membership or contributions of those who do not wish to be identified with a particular issue and who value some degree of personal privacy in this area. We believe that relatively high contribution thresholds, possibly in the \$3,000 to \$5,000 range, should be set before such contribution reporting is required, and we support an approach which would require that the range of a contribution in category blocks be reported rather than the precise amount of contribution. We believe that this approach should also ameliorate the difficulties that disclosure would entail for dues supported associations which base their dues in part on sensitive commercial information.

5. We believe on reflection that this legislation should address some limited aspects of lobbying in the executive branch. The complexities and differences between the operations and functions of executive agencies lead us to conclude at this time that *general* coverage of the executive branch should not be attempted in this bill (however, we strongly support such comprehensive coverage as part of a separate bill). However, we do believe that coverage of the lobbying of executive branch personnel, those paid on executive schedule, where such lobbying would affect major government contracts or influence matters before Congress, appears to be appropriate in this legislation. Accordingly, we have embarked upon a study of these two areas and hope to make proposals as soon as that study is completed.

6. On pages 9 through 12 of my testimony I indicated that "indirect lobbying," i.e., soliciting others to communicate with Congress, should be disclosed by those organizations which are already required to report because of their direct lobbying activities. However, with respect to whether soliciting the public should in and of itself be a triggering mechanism, I stated that there are "strong competing arguments on both sides," and that we were studying the question. After careful review, we have concluded that such exhortation of the public should not by itself require registration and reporting.

Ever since Alexander Hamilton, James Madison, and John Jay published *The Federalist*, such unhindered public solicitations have been considered a vital part of American society. The federal government must be especially careful not to chill political expression, as such a registration trigger might do. A small organization might have to register simply for taking out a one page ad in a major newspaper urging fellow citizens to write Congress about an issue. Furthermore, the distinction between such political advertisements and newspaper editorials, columns, guest columns or "op-ed" pieces and the like is not altogether clear.

Other points also should be noted. The soliciting organization is not contacting Congress directly. Therefore, the link between an indirect lobbyist and a member of Congress is attenuated because an individual citizen freely chooses to write or not to write Congress after reading an ad or letter. In addition, any statute requiring solicitation as an independent trigger would be difficult to administer and would generate concern among many small organizations throughout the country.

It should be remembered that we continue to believe that organizations which already qualify as lobbyists under this legislation, because of their direct lobbying, should have to report their other activities to influence Congress, such as their solicitation efforts. Thus, major solicitation efforts by any large organization very probably would be disclosed.

Sincerely,

PETER F. FLAHERTY,
Deputy Attorney General,

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., June 17, 1977.

Hon. PETER W. RODINO, JR.
*Chairman, Committee on the Judiciary, U.S. House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Office of Management and Budget on H.R. 1180, a bill "To regulate lobbying and related activities."

We concur in the April 21, 1977 testimony of Deputy Attorney General Peter F. Flaherty and in his supplemental letter of May 23, 1977. We also agree that at this point it appears appropriate to extend the scope of this legislation to coverage of the lobbying of high level Executive branch personnel when such lobbying is intended to influence the Executive branch officials on legislative matters before the Congress and on the award of major contracts. We are currently reviewing these areas with the Department of Justice and the Committee will be provided with the Administration's recommendation upon completion of the review.

Sincerely,

JAMES M. FREY,
*Assistant Director for
Legislative Reference.*

Mr. DANIELSON. Thank you both.

I might point out, Ms. Jordan, that I'm in the same kind of a situation. In the standard metropolitan statistical area, or whatever you call it, where I live, we have 17 Members of Congress, and the boundaries are so finely drawn that most people don't even know which district they live in.

We'll take care of that in markup.

Ms. JORDAN. All right.

Mr. DANIELSON. Thank you, Mr. Flaherty.

Our next witness today is Mr. J. M. Lyle, President of National Security Industrial Association.

Won't you please come forward?

And if you have an associate with you, he or she is invited. I'd like to have them identified for the record.

Mr. LYLE. Thank you, Mr. Chairman.

TESTIMONY OF JOSEPH M. LYLE, PRESIDENT, NATIONAL SECURITY INDUSTRIAL ASSOCIATION: ACCOMPANIED BY MILO G. COERPER, GENERAL COUNSEL

Mr. LYLE. I'm Vice Admiral Joseph M. Lyle, U.S.N. (Ret.), president of the National Security Industrial Association.

With me is Milo G. Coerper, a partner of Coudert Brothers, general counsel for the Association.

Mr. Chairman—

Mr. DANIELSON. I want to thank you, Mr. Lyle, for having appended a summary of your statement. And it's a good summary; it reflects the body of the statement very well.

Without objection we'll receive the main statement in the record. There being no objections, so ordered.

And now, won't you just give us the highlights and sell your case as well as you can.

Mr. LYLE. All right, thank you, Mr. Chairman.

Relevant to the subject of the hearing, and of the positions that we take, the Association's essential role and purpose is to foster an effective working relationship and good two-way communications between government and industry in the interest of national security.

Our particular province is the business and technical aspects of the government-industry relationship, dealing with government policy and procedures (not individual contracts) in the fields of procurement, research and development and logistics.

As a matter of long-standing policy, the Association neither advocates nor opposes any particular military force level or governmental budget level, or any particular government program or weapons system. In the legislative arena, we do not lobby the Congress or solicit others to do so.

Mr. Chairman, our basic position is that we do not question the principle of lobbying disclosure as it concerns legislation-related matters, and therefore do not oppose the provisions of H.R. 1180 and other related bills dealing with these aspects of the matter.

However, we are deeply concerned with and opposed to the extension of such provisions to the area of communications—with executive branch agencies—related to the Government procurement process, for the following reasons:

1. The application of disclosure requirements to contract-related communications with the executive branch agencies would, inevitably, severely inhibit industry's normal and proper day-to-day, buyer-seller, business relationships with executive branch procuring agencies.

This will not only constitute an improper infringement of companies' rights to free communications with their government, but also will be disadvantageous to the Government, since sound procurement—providing the product best meeting the Government's needs at the lowest reasonable cost—depends on free and open two-way communications between the parties concerned, both before and after the award of a contract.

2. In the area of rules and rulemaking-related communications, both associations and individual companies dealing with the procuring agencies frequently submit comments and recommendations to executive branch agencies on government policies and regulations which are not necessarily connected with a formal hearing or "rulemaking proceeding."

In the complex field of technical procurement, these industry inputs are highly useful to Government and, indeed, are essential to the development and maintenance of a sound and practical body of procurement regulations, reflecting a proper and equitable balancing of both Government and industry interests.

The inclusion of informal rule and rulemaking-related communications within the purview of the legislation would have a marked "chilling effect" on this process and thus a significant adverse effect on the practicality and fairness of Government procurement regulations.

3. The complex recordkeeping and reporting provisions will be unreasonably and unnecessarily burdensome, particularly for larger companies with multiple autonomous elements dealing directly with Government agencies, where contract-related communications will run into the hundreds per month.

In support of this last point, attached to our full statement is a report of information obtained from representative companies which points up the scale of the problem and the magnitude of the recordkeeping and reporting workload associated with the application of lobbying disclosure provisions to buyer-seller contract-related communications between companies and executive branch agencies.

This report indicates that a typical medium large company in the aerospace/electronics field selling to the Government (primarily DOD) would engage in:

a. About 400 contract-related communications per quarter with executive branch officials as defined in H.R. 1180, requiring an estimated annual outlay of about \$25,000 to perform the associated recordkeeping and reporting required under the bill, and

b. About 29,000 contract-related communications per quarter with executive branch officials as defined in H.R. 5795, requiring an estimated annual outlay of about \$940,000 for recordkeeping and reporting required under the bill.

The ratio of recordkeeping/reporting workload and related costs per communication will, as indicated above, vary with the level and volume of communications. It will also vary widely among companies depending on the degree of detail, care in preparation, internal reviews and top management approval required.

The man-hour and dollar costs per communication reflected by the above figures could well be higher for companies that maintain extensive internal controls in this area as a result of company policy, or that establish them in the wake of broader and more stringent legislation.

We therefore urge that any lobbying-disclosure legislation made applicable to the executive branch agencies be limited to communications directly concerning legislation before the Congress, and, in particular, that communications relating to procurement—both individual contracts and the procurement policy/regulation (rulemaking) process—be excluded.

In consideration of the foregoing, our positions on the several lobbying-disclosure bills known to have been introduced are as follows:

H.R. 5578 and 6202: We favor these bills, because their application is limited to communications with the legislative branch and does not include executive branch agencies.

H.R. 766: This bill is satisfactory to us, because its application is primarily limited to communications with the legislative branch, its only application to executive branch agencies being solicitation to communicate with the Congress.

H.R.'s 557 and 1035: These bills are less satisfactory from our point of view but preferable to those that follow because while they apply to executive branch agencies, the application is limited to communications seeking to influence the "policymaking process" and, therefore, would not affect normal buyer-seller communications concerning contracts.

For the reasons set forth in subparagraph 2 above, however, we recommend that communications concerning procurement policies, procedures and regulations be made exempt from disclosure requirements.

H.R.'s 1180, 2301 and 5795: These bills are unsatisfactory from our point of view because they will significantly affect procurement-related communications with executive branch agencies.

For the reasons set forth above, we believe them to be unsound legislation and not in the Government interest, and we, therefore, recommend they not be adopted.

H.R. 5795's broadening of the definition of "Federal officer or employee" to include grades GS-15/0-6 and above and those "whose principal responsibility or job description includes the drafting, revision or letting of Government contracts" we find particularly objectionable and burdensome.

Mr. Chairman, I am now ready to address any questions you might have.

[The prepared statement of Mr. Lyle follows:]

SUMMARY

STATEMENT OF JOSEPH M. LYLE, PRESIDENT, NATIONAL SECURITY INDUSTRIAL ASSOCIATION

NSIA's essential purpose is to foster good two-way communications between Government and industry, primarily in the areas of procurement, research and development and logistics. It does not lobby the Congress in the usual sense or solicit others to do so.

We do not question the principle of lobbying disclosure, as embodied in H.R. 1180 and other Bills, with respect to legislation-related matters, but are opposed to the extension of such provisions to procurement-related communications with Executive Branch agencies for the following reasons:

1. Such extension will inhibit companies' normal and proper day-to-day buyer-seller business relationships with Executive Branch procuring agencies, which will constitute improper infringement of companies' rights to free communications with their government, and also be disadvantageous to the government, since sound procurement—providing the product best meeting the government's needs at the lowest reasonable cost—depends on free and open two-way communications between the parties concerned, both before and after the award of a contract.

2. The inclusion of informal rule- and rulemaking-related communications within the purview of legislation will have a marked "chilling effect" on the submission by associations and companies of comments and recommendations to Executive Branch agencies on government policies and regulations not connected with formal hearings or "rulemaking proceedings". These industry inputs are highly useful to government and indeed are essential to the development and maintenance of a sound and practical body of procurement regulations, reflecting a proper and equitable balancing of both government and industry interests. Inhibiting them will thus have a significant adverse effect on the practicality and fairness of government procurement regulations.

3. The complex record-keeping and reporting provisions will be unreasonably and unnecessarily burdensome, particularly for larger companies with multiple autonomous elements dealing directly with various government agencies, where contract-related communications will run into the hundreds per month (specific data in attachment to statement).

We therefore urge that any lobbying-disclosure legislation made applicable to Executive Branch agencies be limited to communications directly concerning legislation before the Congress, and in particular that communications relating to procurement—both individual contracts and the procurement policy/regulation (rule-making) process—be excluded.

In the light of the foregoing, we favor H.R.'s 5578 and 6202; H.R. 766 is satisfactory; H.R.'s 557 and 1035 are less satisfactory but preferable to H.R.'s 1180, 2301 and 5795, which are unsatisfactory from our point of view and should not be adopted.

STATEMENT OF JOSEPH M. LYLE, PRESIDENT, NATIONAL SECURITY INDUSTRIAL ASSOCIATION

Mr. Chairman and Members of the Subcommittee: I welcome this opportunity to appear in behalf of the National Security Industrial Association (NSIA) to present its views on pending lobbying disclosure legislation embodied in H.R. 1180 and related Bills.

NSIA was established in 1944 as a special government-industry liaison and communications vehicle at the instance of James Forrestal, then Secretary of the Navy and later the first Secretary of Defense. It is a non-profit association of approximately 260 American research and industrial companies of various types and sizes, both large and small, representing all segments of an industry which provides goods and services to the U.S. Government, particularly DOD, NASA and ERDA. The Association's essential role and purpose is to foster an effective working relationship and good two-way communications between government and industry in the interest of national security. Through a structure of seven standing committees, it provides industry advice and technical assistance to the Government, either on request or on the Association's own initiative.

Our particular province is the business and technical aspects of the government-industry relationship, dealing with government policy and procedures (not individual contracts) in the fields of procurement, research and development, and logistics. While devoted to the maintenance of a strong national defense, as a matter of long-standing policy the Association neither advocates nor opposes any particular military force level or governmental budget level, or any particular government program or weapon system.

In the legislative arena, while we testify from time to time before Congressional Committees on selected broad issues within our province and of general concern to industry, as a matter of policy we do not engage in lobbying in the usual sense by lobbying individual members of the Congress or soliciting others to do so.

Our basic position is that we do not question the principle of lobbying disclosure as it concerns legislation-related matters, and therefore do not oppose the provisions of H.R. 1180 and other related Bills dealing with these aspects of the matter. However, we are deeply concerned with and opposed to the extension of such provisions to the area of communications with Executive Branch agencies related to the government procurement process, particularly those centered around the normal day-to-day buyer-seller business relationships between companies and government agencies incident to the furnishing by industry of goods and services in response to government needs. We strongly believe such communications to be entirely separate from and unrelated to those seeking to influence legislation and other matters before the Congress and thus outside the concept and definition of lobbying.

We are opposed to the extension of lobbying disclosure requirements to procurement-related communications with Executive Branch agencies because we believe that this will do damage to companies' rights and be to the Government's disadvantage for the following reasons:

1. The application of disclosure requirements to contract-related communications would inevitably severely inhibit industry's normal and proper day-to-day business relationships with Executive Branch procuring agencies. This will not only constitute an improper infringement of companies' rights to free communications with their government, but also will be disadvantageous to the government, since sound procurement—providing the product best meeting the government's needs at the lowest reasonable cost—depends on free and open two-way communications between the parties concerned, both before and after the award of a contract.

2. In the area of rules and rulemaking-related communications, both associations and individual companies dealing with the procuring agencies frequently submit comments and recommendations to Executive Branch agencies on government policies and regulations which are not necessarily connected with a formal hearing or "rulemaking proceeding." In the complex field of technical procurement, these industry inputs are highly useful to government and indeed are essential to the development and maintenance of a sound and practical body of procurement regulations, reflecting a proper and equitable balancing of both government and industry interests. For these reasons, government agencies have as a matter of regular practice sought and welcomed such industry views and comments. The inclusion of informal rule and rulemaking-related communications within the purview of the legislation would have a marked "chilling effect" on this process and thus a significant adverse effect on the practicality and fairness of government procurement regulations.

3. The complex record-keeping and reporting provisions will be unreasonably and unnecessarily burdensome, particularly for larger companies with multiple autonomous elements dealing directly with various government agencies, where contract-related communications will run into the hundreds per month. This point is addressed in more detail below in our statement.

In support of point No. 3 above, attached to this statement is a report of information obtained from representative companies which points up the scale of the problem and the magnitude of the record-keeping and reporting workload associated with the application of lobbying disclosure provisions to buyer-seller contract-related communications between companies and Executive Branch agencies.

This report indicates that a typical medium large company in the aerospace/electronics field selling to the Government (primarily DoD) would engage in:

a. About 400 contract-related communications per *quarter* with Executive Branch officials as defined in H.R. 1180, requiring an estimated *annual* outlay of about \$25,000 to perform the associated record-keeping and reporting required under the Bill, and

b. About 29,000 contract-related communications per quarter with Executive Branch officials as defined in H.R. 5795, requiring an estimated *annual* outlay of about \$940,000 for record-keeping and reporting required under the Bill.

The ratio of record-keeping/reporting workload and related costs per communication will as indicated above vary with the level and volume of communications. It will also vary widely among companies depending on the degree of detail, care in preparation, internal reviews and top management approval required. The man-hour and dollar costs per communication reflected by the above figures could well be higher for companies that maintain extensive internal controls in this area as a result of company policy, or that establish them in the wake of broader and more stringent legislation.

The above points are particularly troubling to this Association because of its long-standing fundamental concern for the fostering and maintenance of an effective working relationship and good two-way communications between government and industry.

We therefore urge that any lobbying-disclosure legislation made applicable to the Executive Branch agencies be limited to communications directly concerning legislation before the Congress, and in particular that communications relating to procurement—both individual contracts and the procurement policy/regulation (rule making) process—be excluded.

In consideration of the foregoing, our positions on the several lobbying-disclosure Bills known to have been introduced are as follows:

H.R. 5578 and 6202: We favor these bills, because their application is limited to communications with the Legislative Branch and does not include Executive Branch agencies.

H.R. 766: This Bill is satisfactory to us, because its application is primarily limited to communications with the Legislative Branch, its only application to Executive Branch agencies being *solicitation* to communicate with the Congress.

H.R.'s 557 and 1035: These Bills are less satisfactory from our point of view but preferable to those that follow because while they apply to Executive Branch agencies, the application is limited to communications seeking to influence the "policy-making process" and therefore would not affect normal buyer-seller communications concerning contracts. For the reasons set forth in subparagraph 2 above, however, we recommend that communications concerning procurement policies, procedures and regulations be made exempt from disclosure requirements.

H.R.'s 1180, 2301 and 5795: These Bills are unsatisfactory from our point of view because they will significantly affect procurement-related communications with Executive Branch agencies. For the reasons set forth above we believe them to be unsound legislation and not in the Government interest and we therefore recommend they not be adopted. H.R. 5795's broadening of the definition of "Federal officer or employee" to include grades GS-15/0-6 and above and those "whose principal responsibility or job description includes the drafting, revision or letting of Government contracts" we find particularly objectionable and burdensome.

This completes our statement. I have appreciated this opportunity to give the Subcommittee the Association's views on the important subject of lobbying-disclosure as applied to Executive Branch agencies, particularly in the area of procurement-related communications. I will be pleased to try to answer any questions you might have regarding our statement or other aspects of the matter.

REPORT OF COMPANY RECORD-KEEPING AND REPORTING WORKLOAD ASSOCIATED WITH
APPLICATION OF LOBBYING DISCLOSURE PROVISIONS TO CONTRACT-RELATED
COMMUNICATIONS WITH EXECUTIVE BRANCH AGENCIES

To obtain a measure of the magnitude of company record-keeping and reporting workload associated with the application of lobbying disclosure provisions to procurement-related communications with Executive Branch agencies, we asked a representative array of medium and large companies, with product lines primarily in the aerospace/electronics area—which encompasses the greater part of DOD, NASA and FAA systems procurements—for the following information in connection with their provision of goods and services to the Government:

(a) An estimate of the average number of *procurement-related communications/contacts* per quarter as defined in the main House and Senate lobbying-disclosure Bills considered in the 94th Congress: H.R. 15 and S. 2477, respectively.

Note: In our survey we used the 94th Congress Bills to provide an established basis for company estimates, the provisions of the Bills to be introduced in the 95th Congress not being known at the time. In practical terms for our purposes, the essential provisions of these two Bills bearing on "communications" were as follows:

H.R. 15 applied to "oral or written communications directed to a Federal officer or employee to influence . . . award of government contracts, excluding the submission of bids", a Federal officer or employee being defined in effect, as far as the Executive Branch is concerned, as any officer of the Executive Branch in Executive levels I-V (essentially political appointees: assistant secretaries, general counsels and above). This would seem to embrace only high level contacts/communications in advance of any award of a contract. (For workload purposes this Bill was similar in scope and effect to H.R. 1180 in the 95th Congress.)

S. 2477 covered communications with any member of the Executive Branch urging or requesting action concerning an award or contract of \$1,000,000 or more. This would seem potentially to embrace all sorts of procurement-related contacts/communications by marketing, contracts and technical people, both before and after the award of a contract. (For workload purposes, it was similar in scope and effect to H.R. 5795 in the 95th Congress.)

(b) An estimate of the quarterly man-hours required to perform the record-keeping and reporting related to the above communications to comply with the provisions of the two Bills.

Attachment to Statement of Joseph M. Lyle

The following is an aggregate of the responses from 13 medium and large companies doing business primarily with DOD, NASA and FAA:

	H.R. 15 (H.R. 1180)	S. 2477 (H.R. 5795)
Estimated communications/contacts per quarter:		
Range (high-low)	9-1,735	600-200,000
Average (per company)	378	28,688
Estimated associated recordkeeping and reporting man-hours per quarter:		
Range (high-low)	3-1,300	110-100,000
Average (per company)	425	15,699
Derived information from above data:		
Company average annual recordkeeping/reporting cost at \$15/man-hour	¹ \$25,500	¹ \$941,940
Recordkeeping/reporting man-hours per communications/contact	1.124	.547

¹ Per company.

As the range of the above data indicates, the impact of disclosure legislation will vary considerably from one company to another, depending on company size and whether the company's procurement role is primarily that of a prime contractor, with many day-to-day business contacts with its Government customer, or a sub-contractor whose communications and business relationships are primarily with its prime contractor.

The ratio of record-keeping/reporting workload and related costs per communication will as indicated above vary with the level and volume of communications. It will also vary widely among companies depending on the degree of detail, care in preparation, internal reviews and top management approval required. The man-hour and dollar costs per communication reflected by the above figures could well be higher for companies that maintain extensive internal controls in this area as a result of company policy, or that establish them in the wake of broader and more stringent legislation.

Attachment

ORAL SUMMARY BY JOSEPH M. LYLE, NSIA STATEMENT ON LOBBYING DISCLOSURE

Mr. Chairman and Members of the Subcommittee: I am Vice Admiral Joseph M. Lyle, USN Retired, President of the National Security Industrial Association.

With me is Milo G. Coerper, a partner of Coudert Brothers, General Counsel for the Association.

Mr. Chairman, I have a six-page statement giving the Association's views on pending lobbying disclosure legislation as embodied in H.R. 1180 and other bills relating to this subject. To save the Subcommittee's time, I propose to submit the statement and its attachment for the record and give you a brief oral summary of its main points, after which I will be pleased to respond to any questions on our statement the Subcommittee may have.

Relevant to the subject of this hearing, the Association's essential role and purpose is to foster an effective working relationship and good two-way communications between Government and industry in the interest of national security. Our particular province is the business and technical aspects of the government-industry relationship, dealing with government policy and procedures (not individual contracts) in the fields of procurement, research and development and logistics. As a matter of long-standing policy, the Association neither advocates nor opposes any particular military force level or governmental budget level, or any particular government program or weapon system. In the legislative arena, we do not lobby the Congress or solicit others to do so.

Mr. DANIELSON. Thank you, Mr. Lyle.

Ms. Jordan, would you care to inquire?

Ms. JORDAN. Briefly, Mr. Chairman.

Mr. Lyle, if I may try to summarize your testimony, it is: that if you're going to do anything with regard to lobby disclosure legislation, let that apply to the Congress; but, for heaven's sake, don't touch the executive branch!

Would that be the thrust of your testimony?

Mr. LYLE. Correct, Ms. Jordan.

Ms. JORDAN. I could not disagree with you more.

I have no further questions, Mr. Chairman.

Mr. DANIELSON. Thank you, Ms. Jordan.

Mr. Moorhead?

Mr. MOORHEAD. Under H.R. 5795, the Railsback-Kastenmeier Bill, communications on Government contracts with individuals at the GS-15 level, and with persons of the military rank above O-6, would be covered.

Do you have many statistics as to how many people would actually be involved there?

Mr. LYLE. No, sir, I do not. We could get that for you, but the data, or workload, does take into account that scope of coverage.

Mr. MOORHEAD. Well, are there thousands of them that would fit into that category?

Mr. LYLE. Yes, there would be thousands.

Mr. MOORHEAD. It would be quite an expensive proposition.

Mr. LYLE. It would be. In my statement I point out that under such a bill as 5795, with that scope of reporting, GS-15 and above and O-6, there would be—communication would run, a typical company, 29,000 per quarter at a cost requiring an outlay of about \$940,000 a year.

Mr. MOORHEAD. Well, I personally am in agreement with the attorney general on this question. I think that we shouldn't be considering these Government contracts in the same bill that we consider legislative lobbying.

But what would you think, if contract activities were covered under a separate title with, perhaps, less burdensome reporting requirements? Do you think it could be handled that way?

Mr. LYLE. I'm sorry, Mr. Moorhead, I didn't understand the last part of your question.

Mr. MOORHEAD. Assuming the majority of the committee, or of the Congress, want to include this particular subject matter, do you think it could be done as a separate title? With, perhaps, less stringent reporting requirements than you have with the legislative lobbying?

Mr. LYLE. Well, our first position is not covered at all.

Mr. MOORHEAD. I understand that. I would agree with you.

Mr. LYLE. If it is to be covered, we would hope that it would be minimal; and, therefore, I would prefer the pattern contemplated in 1180, which restricts it, essentially, to the secretarial level or presidential appointment level.

Mr. MOORHEAD. What do you think about a requirement that you merely list those contracts which an organization has been awarded? If all that's important is the public's right to know, wouldn't the listing—

Mr. LYLE. Yes.

Mr. MOORHEAD [continuing]. Specific contracts satisfy that?

Mr. LYLE. Well, to really answer that fairly, I think not, sir. If you really were dedicated to the principle of disclosure, and you wanted to know the communications, I think the listing of the contracts would not suffice for that.

Mr. MOORHEAD. I have no further questions.

Mr. DANIELSON. Thank you, Mr. Moorhead.

Mr. Kindness of Ohio.

Mr. KINDNESS. Thank you, Mr. Chairman.

Just one question, Admiral Lyle. We are considering some bills that have coverage of Government contracts in them, but I'm not sure whether it's directed in the correct way.

What would be the position, if any, of your organization concerning coverage in the lobbying bill with respect to Government contracts, those of communications made with Members of Congress concerning contracts?

Mr. LYLE. We would have, I think, no objection on that, sir.

Mr. KINDNESS. Thank you.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. DANIELSON. Were you done, Mr. Kindness?

Mr. KINDNESS. Yes.

Mr. DANIELSON. All right, you were fast.

I tell you what, sir; I appreciate your testimony here.

I want to point out one thing: I think most of us on this Committee are concerned that whatever legislation we may report on should address itself to something that needs being addressed to.

I think if there's any real problem in the field of lobbying, it's the possibility that undue influence may be used. Whether that be in the legislative process or the executive department doesn't seem to make an awful lot of difference.

The duck hunting trip to the Eastern Shore of Maryland I know, of course, is a much beaten-up example, but it's a good example.

And I don't know what we will finally arrive at in mark up, but I would think there should be some application to follow the rule of morality which is in keeping with 1977—apply rather even handedly across the board.

I thank you for your help.

Mr. LYLE. Mr. Chairman, may I respond briefly to that point?

Mr. DANIELSON. Surely.

Mr. LYLE. I'm sure you are aware, though, that the matter of conversation—possible conversation—in the duck lines, this is covered by a rather rigorous set of regulations that have now been issued in the executive branch.

Mr. DANIELSON. There's a rather leaky roof on the cover. Nothing ever happens. Someone gets their wrist slapped at the most. I've never seen anything substantial take place.

We'll keep that in mind. I do appreciate your research on the amount of reporting which is reflected in the appendix to your statement. I think it's very useful. We had not had that information before and I thank you for it.

Thank you, gentlemen.

Our next witness is Mr. Robert Hatfield, chairman of the board and chief executive officer of Continental Group of New York.

Mr. Hatfield; and, again, if you have an associate, won't he come forward? And identify him.

Mr. HATFIELD. Thank you. I have some in the room, Mr. Chairman, but for the purpose of testifying, if it's all right with you, I'll try to wing it alone.

Mr. DANIELSON. All right, you just go alone. That's fine with us.

TESTIMONY OF ROBERT S. HATFIELD, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, CONTINENTAL GROUP OF NEW YORK, N.Y.

Mr. HATFIELD. Mr. Chairman Danielson, members of the subcommittee, my name is Robert S. Hatfield. I'm chairman and chief executive officer of the Continental Group, formerly known as the Continental Can Co.

Continental is the world's leading diversified packaging company with 1976 sales of \$3½ billion. We have operations around the world including 175 facilities in 36 States of the Union. I am today representing the Business Roundtable, an organization of 179 corporate chief executives, as well as my company.

I very much appreciate this opportunity to testify on the efforts of your subcommittee to update and introduce more effective lobbying disclosure legislation, and hope I can make a constructive contribution.

I will, of course, be glad to answer any questions you may have following my prepared remarks.

At the outset, let me say that for some time I have been concerned about the unjustified suspicion and distrust of Government, business and the relationship between the two. This suspicion does not result from knowledge of improprieties, many of which have been disclosed in the past few years, but rather from a lack of public awareness of how our business and Governmental systems work.

What 99 percent of the so-called lobbyists—be they representing business, labor or some other interest group—slip under the table

is not money, but facts and arguments that are often quite unexciting. This is common knowledge in the tight community on the Hill, where, I believe, there are very few secrets.

I am here today representing the Business Roundtable and my company for two reasons. First, I personally believe that our American system of Government cannot function properly without the free and unfettered flow of information between the people and the Congress.

Unsound legislation would unduly restrict this flow and decrease the ability you have to make the very best informed decisions.

Second, my company and many of the Roundtable member companies lobby in both a very general and a very specific sense.

I must admit to great confusion over what the present lobbying law requires, and we really need clarification and precision. But I also want to see a law that is just and fair and is not so burdensome that our Government relations professionals, our grassroots representatives and chief executives must give up communicating with the Congress.

Now, what is the problem? To anyone outside the community, the lobbying process appears quite mysterious. For this perception, we are all a little guilty—businessmen, Congressmen, staff, media and lobbyists alike.

This perception derives from the efforts to protect sources, or to act as if lobbying doesn't happen, or to create secrecy so as to cloak the mundane nature of some of our lobbying work.

Whatever the reasons, however, the mystery simply need not exist. I have been told on a number of occasions recently that lobbying the lobbying bill is an example of hardship duty which few people are willing to admit they've been assigned.

As a businessman, I have nothing to hide, and I fully support full disclosure of what the continental group says and does on the Hill. I believe this should be the case for all who lobby.

Increased public confidence is essential. The information that comes out will disappoint those who seek scandals. And it will not be easy to develop clear and reasonable accounting requirements. I want to emphasize the words clear and reasonable now, for I shall return to them later.

There is another, more practical reason for supporting new legislation in this area. The ambiguities of current law—originally drafted 30 years ago—lead to widely differing means of compliance—from clearly over-reporting to no reporting at all.

This range distorts an already too fragmented and misleading picture of what goes on. The law also reflects unfairly upon those who report, more so than those who may engage in extensive lobbying on the same issues without reporting.

A new law is necessary just to eliminate this unfairness. We need even-handed, balanced legislation which protects all who wish to make their views known. I shall also return to this principle later.

Let's move for a few minutes from the why—

Mr. DANIELSON. Mr. Hatfield, I want to point out that we have—I can only assure us of 15 more minutes.

Mr. HATFIELD. I see.

Mr. DANIELSON. And you've got 15 more pages, and we have two additional witnesses. So, with all respect to your having prepared

a fine statement—it will be received into the record without objection, and it being so ordered, would you make your points?

And I think if you could detach yourself from that statement, I think you'll come over quite well.

Mr. HATFIELD. I think if you don't mind bearing with me while I do make the point: first of all, taking up from here, I think it's important that the legislation is clear and as simple as possible, and as easy to comply with as possible.

Mr. DANIELSON. I don't think you'll get a quarrel with us on that.

Mr. HATFIELD. But, on the other hand, something that may be very simple in terms of recordkeeping—seem very simple on the surface—can very well increase the risk of compliance and noncompliance unless the committee or those who form the rules really understand what they're asking for in terms of the data to be submitted.

Mr. DANIELSON. What you're telling us to do is the very best possible job of draftsmanship; isn't that it?

Mr. HATFIELD. Yes, it is.

Mr. DANIELSON. You have a strong commitment.

Mr. HATFIELD. And also I'm saying, sir, that I do think that the purpose of the legislation should be constantly born in mind.

I'm not sure, for example, from what I've heard here this morning, that simply to know the cost—as the Assistant Attorney General indicated, the cost of lobbying activities—is going to give you the answer, or give those that wish to know the answer, what they're seeking about lobbying activities.

I think you hit it on the head when you said what we want to uncover is undue influence. As far as the business community is concerned, I promise you that we are fully in accord with full disclosure. We believe the public do have a right to know what our activities are on the Hill, and also what it is we're trying to do—put forward in the way of ideas.

So, we are fully in accord with that. We think the law should apply equally to business, to associations, to trade unions, to everybody who lobbies. And the law should be even handed. It should not require of one particular segment of our society different treatment than another.

I, personally, feel that the present situation with the executive branch is that they are making up their own rules. I think it would be very complicated if you tried to cover them in the same bill.

Whether or not—I don't think I'm smart enough to know whether what they've done is adequate to give the public what it needs and should have in the way of their own rules and regulations.

There was a court decision recently that indicated—I think it was before the FCC—that all the context, even *ex parte*, should be made a part of the record.

So, there is something going on in the executive branch that's positive, and I'm not sure whether that requires legislation. But I think it ought to be kept separate from this is all that I'm saying.

I also believe that the recordkeeping ought to be in days and not hours and minutes. I think that's too cumbersome.

And then, if I may make another point that I think is terrifically important: ours is a representative form of government, and it seems to me that the constituent talking with his representatives in Washing-

ton is what this Government is all about; and that we should do nothing to restrict the flow of information between a citizen of the United States of America and his representatives in Washington.

And I say this as an individual citizen. I say it as a businessman. I think a plant manager of ours in Houston, Texas has a perfect right to go to Representative Jordan and talk to her about the effect of proposed policy and proposed legislation on his work and his job and his company, without having to file burdensome reports of what transpired.

Mr. DANIELSON. On that point may I point out that you are saying regardless of whether or not he actually resided within her district.

Mr. HATFIELD. Yes, sir; if he works there, I believe that that's the same thing.

Mr. DANIELSON. I don't think that we can afford to fragment our cities beyond the city.

Mr. HATFIELD. I agree.

Mr. DANIELSON. Go ahead.

Mr. HATFIELD. On the question of determining the cost of written procedures, Mr. Chairman, I would tell you that to prepare a document, to come down in Washington and do a good job of making a sound contribution to legislation, you call on many people in your organization—sometimes outside consultants—to get the facts. And then you have meetings to find out, really, what is important and what's cogent to the question.

If you had to keep track of every single minute that was spent on preparing these papers, it would be so burdensome as to render effective relationship with Washington on complex questions impossible.

I think, basically, that that sums up what I've had to say, sir. If there are questions, I would be glad to try to answer them.

[The prepared statement of Mr. Hatfield follows:]

STATEMENT OF ROBERT S. HATFIELD, CHAIRMAN AND CHIEF EXECUTIVE OFFICER OF THE CONTINENTAL GROUP, INC.

Mr. Chairman, Members of the Subcommittee, my name is Robert S. Hatfield. I am chairman and chief executive officer of the continental group, formerly known as the Continental Can Company. Continental is the world's leading diversified packaging company with 1976 sales of \$3½ billion. We have operations around the world including 175 facilities in 36 states of the union. I am today representing the business roundtable, an organization of 179 corporate chief executives, as well as my company.

I very much appreciate this opportunity to testify on the efforts of your subcommittee to update and introduce more effective lobbying disclosure legislation and hope I can make a constructive contribution. I will, of course, be glad to answer any questions you may have following my prepared remarks.

At the outset, let me say that for some time I have been concerned about the unjustified suspicion and distrust of Government, business and the relationship between the two. This suspicion does not result from knowledge of improprieties, many of which have been disclosed in the past few years, but rather from a lack of public awareness of how our business and governmental systems work. What 99 percent of the so-called lobbyists—be they representing business, labor or some other interest group—slip under the table is not money, but facts and arguments that are often quite unexciting. This is common knowledge in the tight community on the hill, where I believe there are very few secrets.

I am here today representing the business roundtable and my company for two reasons. Firstly, I personally believe that our American system of Government cannot function properly without the free and unfettered flow of information between the people and the Congress. Unsound legislation would unduly restrict this flow and decrease the ability you have to make the very best informed decisions. Secondly,

my company and many of the roundtable member companies lobby in both a very general and a very specific sense. I must admit to great confusion over what the present lobbying law requires and we desperately need clarification and precision. But I also want to see a law that is just and fair and is not so burdensome that our Government relations professionals, our grassroots representatives and chief executives must give up communicating with the Congress.

Now, what is the problem? To anyone outside the community, the lobbying process appears quite mysterious. For this perception, we are all a little guilty—businessmen, congressmen, staff, media and lobbyists alike. This perception derives from the efforts to protect sources, or to act as if lobbying doesn't happen, or to create secrecy so as to cloak the mundane nature of some of our lobbying work. Whatever the reasons, however, the mystery simply need not exist. I have been told on a number of occasions recently that lobbying the lobbying Bill is an example of hardship duty which few people are willing to admit they've been assigned. As a businessman, I have nothing to hide, and I fully support full disclosure of what the continental group says and does on the hill. I believe this should be the case for all who lobby.

Increased public confidence is essential. The information that comes out will disappoint those who seek scandals. And it will not be easy to develop clear and reasonable accounting requirements. I want to emphasize the words "clear" and "reasonable" now, for I shall return to them later.

There is another, more practical reason for supporting new legislation in this area. The ambiguities of current law—originally drafted in 1946—lead to widely differing means of compliance—from clearly over-reporting to no reporting at all. This range distorts an already too fragmented and misleading picture of what goes on. The law also reflects unfairly upon those who report, more so than those who may engage in extensive lobbying on the same issues without reporting. A new law is necessary just to eliminate this unfairness. We need even-handed, balanced legislation which protects all who wish to make their views known. I shall also return to this principle later.

Let's move for a few minutes from the "why" we need new legislation to "how" lobbying should be administered. My intent is not to enter into a detailed discussion of the specifics of the actual bills before you (although I will try to answer any specific questions you have) along these lines. Rather, I would like to discuss some general principles which must be observed in developing any legislation for enactment.

The most important principle is that the requirements posed by such legislation be as clear and as simple as possible. We are dealing with a form of criminal legislation in one of the most sensitive human rights areas of the first amendment. You already have heard testimony on this issue from others far more qualified than I to discuss constitutional questions. But permit me the opportunity to emphasize some practical considerations.

The more complicated and ambiguous are the recordkeeping and reporting requirements, the greater is the opportunity for error and noncompliance. As a management matter, we may very well have to curtail some lobbying activities that really will aid the dialogue between business and Government in order to reduce our risks—risks associated with prosecution and time-consuming, potentially embarrassing investigations.

I'm sure no one in the Congress wishes to curtail legitimate lobbying activities. But business already devotes too much productive time to filling out reports for the Federal Government. Although it's difficult to assess how such complexity and ambiguity will jeopardize legislation in the courts from a constitutional point of view, I emphatically believe that complex and ambiguous reporting requirements will curtail either the number of contacts with the Congress or the quality of information provided to members. In our increasingly complex and interdependent society, we believe that Congress' need to know would be as dangerously compromised as our right to petition.

Second, each requirement or restriction should apply equally to any group dealing with the same or similar issues. Not all questions pending before Congress are national or international in scope. Not all national questions have the same impact. For example, when a local question results in the formation of a local ad hoc group to engage in solicitations, perhaps the legislation should not apply at all. Perhaps an effort to save a local water project would fall in this category. On the other hand, any large-scale solicitation campaign with respect to a national issue conducted by a national organization that lobbies on a regular basis—be it business, labor, public interest or other—undoubtedly must be covered. A good example would be the organized efforts to support or oppose common situs picketing legislation. My point is let's eliminate as much as possible any distortion in the pictures that can be painted from the disclosures you may require.

Third, legislation that concerns lobbying disclosure with Congress should not pertain to executive branch communications. Contacts with the executive branch raise different policy questions than congressional lobbying. Moreover, executive branch contacts are already subject to a variety of disclosure requirements. Any effort to deal with these two questions in the same bill will inevitably cause duplication, conflict and confusion instead of clarity, understanding and fuller disclosure. I do agree with ACLU's position on this point.

An example would be useful here. There is evidently some concern about the subtle influence regulated industries bring to bear on their regulators, through *ex parte* contacts, entertainment and the like. These problems are already receiving attention. President Carter has imposed rules designed to end the so-called "revolving door" between Federal agencies and industries they regulate. The Government, through the 1976 Sunshine Act, requires a greater disclosure of *ex parte* contacts. Many agencies, themselves, have adopted public disclosure rules. The courts are involved in this area as well. I understand that only recently the Court of Appeals in Washington sent a case back to the FCC with directions to the agency to make all *ex parte* contacts a part of the case record.

If lobbying legislation were to cover the same ground, it would cause duplicate reporting. This increase in recordkeeping costs would not assure greater clarity. In any event, it would be extremely difficult to coordinate the requirements of both branches because of the increasing requirements the executive branch and the courts are adopting on their own. In summary on this point, unless this committee is willing to repeal the Sunshine Act, preempt internal executive branch regulations and start all over again, it should exclude the executive branch from the lobbying legislation pending before you.

A fourth point—reporting requirements with respect to the finances of lobbying organizations should not force disclosure of sensitive or proprietary dues information or individual salaries. There is unwarranted preoccupation with the precise amounts of money that never leave private hands. It is one thing to ask for disclosure of sums spent by lobbyists for the benefit of public officials. Disclosure of confidential dues and salaries, however, cannot reveal how any issue before Congress is influenced. To be sure, it may reveal how much influence an organization may *think* an employee or a member has. This, however, is a proprietary matter which can only distort public policy if relied upon in any manner. A reasonable compromise might be the identification of the largest contributors to the organization.

Finally, the reporting requirements of any legislation should avoid as much as possible recordkeeping based on actual hours and minutes spent engaged in lobbying. As you know, most of a lobbyist's time spent lobbying is on his feet in the halls and the offices of Congress. Punching a time clock is obviously impractical if not impossible in these circumstances. It would be far more practical for a businessman to keep records of how many days each quarter he engaged in lobbying. I have heard objections made to this approach on the grounds that a skillful businessman can bypass restrictions simply by cramming a month's worth of lobbying into one day. This is unrealistic. A test based on counting all or any part of days spent lobbying would in fact be far more revealing and practical than a test based on hours and minutes.

I'd like to return to my first point about clarity and simplicity. The bills pending before you have two very important provisions which illustrate the general need to keep recordkeeping at a minimum.

The first provision is the so-called home-state and district exemption. Such a provision in some bills would exempt from the legislation's coverage any communication to a senator or congressman representing the organization's principal location of business. Such an exemption is salutary, I believe, but it does not go far enough.

To be more precise, it really misses the point. The purpose of this exemption is to permit a free flow of information between a congressman or senator and his constituents. But this goal is not furthered for the employee in California who can make a record-free communication to the congressman in his employer's principal place of business, which may be 3000 miles away. What the employee needs is the right to communicate to his own congressman without having to keep records and to file a report. Accordingly, the exemption should extend to any *individual* where he lives or works. We are all interested in encouraging greater involvement by the American people in the political and legislative process. Any recordkeeping requirements covering an individual's contacts with his or her own representatives would have a chilling and negative effect on such involvement.

In assessing this kind of an exemption, it is important to keep in mind both the needs of the individual and his employer. There are many employees who would voluntarily keep accurate and complete records and forward them on to their employer's

headquarters. But there are also many who would not. This is especially true since it is the employer, not the employee, who is liable for criminal penalty. Many employers, then, may well simply prohibit lobbying by unauthorized personnel in order to avoid the risk of misreporting. Some employers also may have to adopt a no-lobbying policy just to limit bookkeeping requirements at headquarters. Such actions would obviously be unfortunate and detrimental to our American system.

I am aware that some of the various bills exempt expressions of personal points of view. This does not solve the problem. For example, if natural gas shortages were to threaten a plant shutdown, it would be very difficult to distinguish between the personal feelings of the employee and the formal views of the employer. In many instances, of course, policy views originate in the field, not at the headquarters, and certainly not at the main lobbying office. A plant manager should not have to report to his headquarters every second he spends talking to his own congressman.

Finally, a broad home-state and district exemption would not be subject to abuse in terms of grassroots solicitations. The bills before you require reporting of any broad-scale solicitation programs. I support this requirement, which would always reveal the origin and existence of extensive letter, telegram and telephone campaigns.

The second key provision concerns putting a price tag on written communications. How do you determine how much it costs to prepare and draft letters, memoranda, talkpieces and so on? A written position paper reflects input from many areas of the company, often including research, sales, financial public relations and legal. Keeping records of every little input, ranging from two minutes in the company computer to ten minutes of advice from the legal staff, is a monumental undertaking hardly worth the result. Such papers also often grow out of studies commenced for purposes of analysis, not lobbying. At what point does analysis turn into advocacy? I suggest that such a point can often be virtually impossible to identify, let alone trace throughout a corporation. Because this legislation is criminal, vague requirements will inevitably result in no communications or grossly distorted over-reporting that bears no relation to reality.

I would therefore urge strongly that an organization be given the choice of publicly filing all written communications with the lobbying reports in lieu of trying to figure out how much these written documents cost. After all, what should be of interest is not how much the document costs, but what it says and to whom.

I am sure such an approach would be acceptable. It minimizes paperwork and maximizes disclosure. What more could you ask? Congress would obtain full disclosure with no burden on the private sector.

Perhaps I am protesting too much about an obvious principle you will readily accept. But I am troubled. This approach is so clear, simple and effective that it may raise suspicions. We sincerely hope it is not rejected simply because sensationalists will not have dollar figures to gossip about or to wave at the press. To repeat, what we write is far more important than how much it costs.

To sum up my remarks: The business roundtable recognizes the need for effective disclosure of substantial and significant efforts to influence issues before the Congress and supports legislation to make appropriate changes in the legislation should reflect the following principles:

Our governmental system is based on the constitutional right of the people to freely petition their Government:

A lobbying law should not impose undue burdens of recordkeeping and reporting that could impair or inhibit the exercise of this right; and

All requirements and restrictions should apply equally to all individuals and groups who seek to influence issues before the Congress.

The most important objective is full disclosure of who is communicating with the Congress on legislative issues and what they are saying. Extensive recordkeeping and reporting of time and costs is meaningless and runs counter to current efforts to eliminate unnecessary government regulation and paperwork. Even if such detailed reports were prepared, what purpose would they serve and who would read them? I strongly believe that practical, realistic legislation can be drafted that would disclose to the American people the influences on Congress and do so without unnecessary costs.

Thank you very much for this opportunity to testify. I will be glad to answer any questions you have and we are ready to provide any technical drafting assistance the subcommittee may desire.

Mr. DANIELSON. Thank you, Mr. Hatfield.

Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Hatfield, I have one question. On page 19 of your statement you recommend that there be an option afforded, so that instead of reporting the cost of written communications, the organization would simply be able to file copies of those written communications.

Mr. HATFIELD. Yes, sir.

Mr. KINDNESS. I hadn't thought of that before, but it makes a great deal of sense. I think that's full disclosure of content rather than how much it costs, which really doesn't mean very much after all.

I'd just like to point that out. I think it's certainly worth our consideration.

Thank you, Mr. Danielson.

Mr. DANIELSON. Thank you, Mr. Kindness.

Ms. Jordan?

Ms. JORDAN. Thank you, Mr. Chairman.

I don't really have any questions, Mr. Hatfield.

I know Mr. Hatfield, and he is sincere in the presentation he makes to this Committee.

I would simply suggest, Mr. Chairman, that Mr. Hatfield's organization has done much work on lobby-disclosure bill—that he be advised that they are welcome to supply this committee with any information which they feel might be helpful to us as we go into the drafting process.

Mr. DANIELSON. Thank you.

Mr. HATFIELD. We shall be glad to do so, and I welcome that.

Mr. DANIELSON. I adopt my colleague's statement.

For that matter, anybody who's here, if you've got a constructive idea we welcome it.

Ms. JORDAN. I am finished.

Mr. DANIELSON. Oh, you're finished. Thank you. No more questions, thank you.

Mr. Harris of Virginia.

Mr. HARRIS. Thank you, Mr. Chairman.

I want to thank you, too, for your testimony, Mr. Hatfield. I think it's good, and I agree with your point that the filing should be simple and clear. I think the requirements should be clear and I think the filing should be clear.

And I think anyone who has had to make up these forms in the past, as I'm sure many in your organization have, realize how ridiculous it can be when you start talking about hours or minutes or whether you're actually doing it on one thing or something else.

I realize it's important that, if we're going to get an enforceable law, we've got to have one whose restrictions are reasonable, where the requirements are clear for the individual that has to file.

I think your testimony has put your finger on this. If we're going to get a law, I think we've got to listen to that type of testimony very carefully.

Mr. HATFIELD. I'd like to make one other comment if I may, and that is, we referred to the voluminous files. In my company, which is a fair size company, we have very rigorous rules and regulations about the retention of documents, and still I find we have warehouses full of documents that simply pile up in the ordinary course of business.

I can imagine—only imagine—what kind of volume of documents would be required to fulfill the requirements of some of the bills that I have seen. I believe that it might well require warehouses upon warehouses.

I am not sure who's going to read those documents. And I'm not sure, after they've been beautifully colated, indexed and filed away by hundreds of people what value they're going to have.

Mr. DANIELSON. Have you concluded, Mr. Harris?

Mr. HARRIS. Yes.

Mr. DANIELSON. Thank you very much. I thank you also for your statement.

You will recall that you spoke to me about this bill on the middle of February?

Mr. HATFIELD. Yes, sir.

Mr. DANIELSON. And at that time told me that you intended to communicate with other interested groups. I think you mentioned Common Cause, the Nader group, the Sierra Club and others.

I hope you will continue, because I think that the problem, one, is going to have to meet everybody's needs, and I commend you for cooperating with everybody.

Now, at the risk of spoiling the tenor of the whole meeting—you talked about warehouses full of records. You are probably the only one who wouldn't be troubled too much. You can grind them up and make corrugated boxes. [Laughter.]

Thank you very much.

Mr. HATFIELD. As long, Mr. Chairman, as they are, indeed, ground up and quickly, well, that would be fine.

Mr. DANIELSON. Thank you.

Our next witness is Mr. Richard Godown, senior vice president and general counsel of the National Association of Manufacturers.

Welcome, Mr. Godown.

Mr. GODOWN. Mr. Chairman, it's a pleasure to be here.

Mr. DANIELSON. Now, we're going to receive your full statement into the record, and if there's not objection—and there being none, it's so ordered.

And now, why don't you just give us the most persuasive parts of your argument. I thank you for having prepared a summary along with your statement—makes it really easy to get a handle on it. Thank you.

TESTIMONY OF RICHARD GODOWN, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. GODOWN. Mr. Chairman, I will try. Let me begin by saying that I am Richard Godown, the general counsel and senior vice president in NAM—in the National Association of Manufacturers which is currently registered under the 1946 regulation of the Lobbying Act.

And we have the dubious pleasure of submitting quarterly reports. What I say here today will reflect our experience in so doing.

Let me begin with just a few preliminary considerations. Almost, without exception, everyone who has addressed the problem seems to be in agreement that some new legislation is necessary.

As I have said on previous occasions, the current law is absolute as a guide to conduct, and the Supreme Court decision in *U.S. v. Harriss* does not help very much because it still leaves you as an individual and me as a counsel, and other corporate counsel, attempting to decide what is a primary or a principal purpose—or one of your principal purposes.

Let me go to the subject of executive branch coverage and Government contracts, and say that, on behalf of our members, we think that such coverage ought to be deleted—I mean in general, coverage of the executive branch—in the lobbying statute, and, particularly, coverage of Government contracts.

The reasons are stated very briefly, that:

1. Any extension outside the legislative branch, in our view, is going to multiply coverage exponentially, and work contrary to the Administration's announced intention of reducing paperwork and lessening the burden of government regulation on the people.

2. A second reason is that legislation regulating lobbying is not the proper vehicle for exercising control over attempts to influence the letting of government contracts, in our view.

We believe that those people who attempt to do business with the Department of Defense, and Department of Defense individuals, are either covered by or impacted by sufficiently for the purposes that you are attempting to get at here, by the legislation by the DOD Standards of Conduct.

If the Chairman will, I would like to submit for the record a copy of the DOD Standards of Conduct, which is DOD Directive 5500.7, dated January 19, 1977.

Mr. DANIELSON. Is there any objection to receiving the document in the record? If there be none it's so ordered.

{The document referred to follows:}

STANDARDS OF CONDUCT

[860]

(DOD DIRECTIVE 5500.7, 32 CFR PART 40, 42 FR 3646, JANUARY 19, 1977.)

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[860.05]

Sec. 40.1 Purpose and Objectives.

(a) Government employment, as a public trust, requires that Department of Defense (DOD) personnel place loyalty to country, ethical principles, and law above private gain and other interests. This Part prescribes standards of conduct required of all DOD personnel, regardless of assignment.

(b) This part implements Executive Order 11222 of May 8, 1965 and the Civil Service Commission Regulation, "Employee Responsibilities and Conduct," Title 5, Code of Federal Regulations, Part 735. It includes standards of conduct based on the conflict of interest laws, and it reflects the Code of Ethics for Government Service contained in House Concurrent Resolution 175, 85th Congress.

(c) Penalties for violations of these standards include the full range of statutory and regulatory sanctions for civilian and military personnel.

[860.10]

Sec. 40.2 Applicability and scope.

The provisions of this part apply to all DOD personnel and to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereinafter referred to as "DOD Components"), including nonappropriated fund activities.

[860.15]

Sec. 40.3 Definitions.

(a) *DOD Personnel*. All civilian officers and employees, including special Government employees, of all Components, and all active duty officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, and Marine Corps.

(b) *Gratuity.* Any gift, favor, entertainment, hospitality, transportation, loan, any other tangible item, and any intangible benefits (for example, discounts, passes, and promotional vendor training), given or extended to or on behalf of DOD personnel, their immediate families, or households for which fair market value is not paid by the recipient or the U.S. Government.

(c) *Special Government Employee.* A person who is retained, designated, appointed, or employed to perform, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a Reserve officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

(d) *Standards of Conduct Counselors.* See Sec. 40.16.

[860.20]

Sec. 40.4 Proper conduct of official activities.

(a) DOD personnel shall become familiar with the scope of authority for, and the limitations concerning, the activities for which they have responsibilities.

(b) The attention of DOD personnel is directed to the statutory prohibitions which apply to DOD personnel conduct.

(c) DOD personnel shall not make or recommend any expenditure of funds or take or recommend any action known or believed to be in violation of U.S. laws, Executive Orders, or applicable Directives, Instructions, or regulations.

(d) In cases of doubt as to the propriety of a proposed action or decision in terms of regulation or law, DOD personnel shall consult legal counsel or, if appropriate, the Standards of Conduct Counselor or Deputy Counselor to ensure the proper and lawful conduct of DOD programs and activities.

[860.25]

Sec. 40.5 Equal opportunity.

DOD personnel shall scrupulously adhere to the DOD program of equal opportunity regardless of race, color, religion, sex, age, or national origin, in accordance with DOD Directive 1100.15, 'The Department of Defense Equal Opportunity Program,' June 3, 1976.

(Sec. 40.5 amended 42 FR 7955, Feb. 8, 1977, effective Jan. 31, 1977.)

[860.30]

Sec. 40.6 Conduct prejudicial to the Government.

DOD personnel shall avoid any action, whether or not specifically prohibited by this part, which might result in or reasonably be expected to create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person or entity;
- (c) Impeding Government efficiency or economy;
- (d) Losing complete independence or impartiality;
- (e) Making a Government decision outside official channels; or
- (f) Affecting adversely the confidence of the public in the integrity of the Government.

[860.35]

Sec. 40.7 Conflicts of interests.

(a) *Affiliations and Financial Interests.* DOD personnel shall not engage in any personal, business, or professional activity, or receive or retain any direct or indirect financial interest, which places them in a position of conflict between their private interest and the public interests of the United States related to the duties or responsibilities of their DOD positions. For the purpose of this prohibition, the private interests of a spouse, minor child, and any household members are treated as private interests of the DOD personnel.

(b) *Using Inside Information.* DOD personnel shall not use, directly or indirectly, inside information to further a private gain for themselves or others if that information

is not generally available to the public and was obtained by reason of their DOD positions.

(c) *Using DOD Position.* DOD personnel are prohibited from using their DOD positions to induce, coerce, or in any manner influence any person, including subordinates, to provide any benefit, financial or otherwise, to themselves or others.

(d) *Disqualification or Divestiture Requirements.* Unless otherwise expressly authorized by action taken under 18 U.S.C. 207 or 208, all DOD personnel who have affiliations or financial interests which create conflicts or appearances of conflicts of interests with their official duties must disqualify themselves from any official activities that are related to those affiliations or interests or the entities involved. A formal disqualification must be sent to an individual's superior and immediate subordinates whenever it appears possible that his official functions will affect those affiliations, interest, or entities. If the individual cannot adequately perform his official duties after such disqualification, he must divest himself of such involvement or be removed from that position.

(e) *Membership in Associations.* DOD personnel who are members or officers of non-Governmental associations or organizations must avoid activities on behalf of the association or organization that are incompatible with their official Government positions (DOD Directive 5500.2, "Policies Governing Participation of Department of Defense Components and Personnel in Activities of Private Associations," August 4, 1972 (37 FR 16674) and DOD Instruction 5410.20, "Public Affairs Relations with Business and Non-Governmental Organizations Representing Business," January 16, 1974).¹

(f) *Commercial Soliciting by DOD Personnel.* To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, full-time DOD personnel, except special Government employees, are prohibited from making personal commercial solicitations or sales to DOD personnel who are junior in rank or grade, at any time, on or off duty.

(1) This limitation includes, but is not limited to the solicitation and sale of insurance, stocks, mutual funds, real estate, and any other commodities, goods, or services.

(2) This prohibition is not applicable to the one-time sale by an individual of his own personal property or privately owned dwelling or to the off-duty employment of DOD personnel as employees in retail stores or other situations not including solicited sales.

(3) For civilian personnel, the limitation applies only to personnel under their supervision at any level.

(g) *Assignment of Reserves for Training.* DOD personnel who are responsible for assigning Reserves for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to gain unfair advantage over civilian competitors.

(h) *Prohibited Selling by Retired Officers.* There are legal limitations on sales by retired Regular military officers to any component of the Department of Defense, Coast Guard, National Oceanic and Atmospheric Administration, or Public Health Service.

(i) *Dealing with Present and Former Military and Civilian Personnel.* DOD personnel shall not knowingly deal on behalf of the Government with present or former, military or civilian, Government personnel whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in this Part.

[860.40]

Sec. 40.8 Gratuities.

(a) *Policy Basis.* The acceptance of gratuities by DOD personnel or their families, no matter how innocently tendered and received, from those who have or seek business with the Department of Defense and from those whose business interests are affected by Department functions (1) May be a source of embarrassment to the Department, (2) May affect the objective judgment of the DOD personnel involved and (3) May impair public confidence in the integrity of the Government.

(b) *General Prohibition.* Except as provided in paragraph (c) of this section, DOD personnel and their immediate families shall not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly from, or on behalf of, any source that:

(1) Is engaged in or seeks business or financial relations of any sort with any DOD Component;

(2) Conducts operations or activities that are either regulated by a DOD Component or significantly affected by DOD decisions; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the official duties of DOD personnel.

(c) *Limited Exceptions.* The general prohibition in paragraph (b), above, does not apply to the following:

(1) The continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the appropriate Standards of Conduct Counselor.

(2) The acceptance of unsolicited advertising or promotional items that are less than \$5 in retail value.

(3) Trophies, entertainment, prizes, or awards for public service or achievement or given in games or contests which are clearly open to the public generally or which are officially approved for DOD personnel participation.

(4) Things available to the public (such as university scholarships) covered by DOD Directive 1322.6, "Fellowships, Scholarships, and Grants for Members of the Armed Forces," April 27, 1963 (32 CFR Part 139) and free exhibitions by Defense contractors at public trade fairs.

(5) Discounts or concessions extended Component-wide and realistically available to all personnel in the Component.

(6) Participation by DOD personnel in civic and community activities when any relationship with Defense contractors is remote; for example, participation in a little league or Combined Federal Campaign luncheon which is subsidized by a Defense contractor.

(7) Social activities engaged in by officials of a DOD Component and officers in command, or their representatives, with local civic leaders as part of community relations programs of the DOD Component in accordance with DOD Directive 5410.18, "Community Relations," July 3, 1974.¹

(8) The participation of DOD personnel in widely attended gatherings of mutual interest to Government and industry, sponsored or hosted by industrial, technical, and professional associations (not by individual contractors) provided that they have been approved in accordance with DOD Instruction 5410.20, "Public Affairs Relations with Business and Nongovernmental Organizations Representing Business," January 14, 1974.¹

(9) Situations in which (i) Participation by DOD personnel at public ceremonial activities of mutual interest to industry, local communities, and the DOD Component concerned serves the interests of the Government and (ii) Acceptance of the invitation is approved by the Head of the employing DOD Component, or his designee.

(10) Contractor-provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable. In any such case, the individual shall report in writing the circumstances to his supervisor as soon as possible.

(11) Attendance at promotional vendor training sessions when the vendor's products or systems are provided under contract to DOD and the training is to facilitate the utilization of those products or systems by DOD personnel.

(12) Attendance or participation of DOD personnel in gatherings, including social events such as receptions, which are hosted by foreign governments or international organizations, provided that the acceptance of the invitation is approved by the Head of the employing DOD Component, or his designee.

(13) Situations in which, in the sound judgment of the individual concerned or his supervisor, the Government's interest will be served by DOD personnel participating in activities otherwise prohibited. In any such case, a written report of the circumstances shall be made in advance, or, when an advance report is not possible, within 40 hours by the individual or his supervisor to the appropriate Standards of Conduct Counselor (or designated Deputy Counselors).

(d) *Reimbursements.* (1) The acceptance of accommodations, subsistence, or services, furnished in kind, in connection with official travel from sources other than those indicated in paragraph (b) of this section is authorized only when the individual is to be a speaker, panelist, project officer, or other bona fide participant in the activity attended and when such attendance and acceptance is authorized by the order-issuing authority as being in the overall Government interest.

(2) Except as indicated in paragraph (d)(1) of this section, DOD personnel may not accept personal reimbursement from any source for expenses incident to official travel, unless authorized by their supervisor consistent with guidance provided by the appropriate Standards of Conduct Counselor (pursuant to 5 U.S.C. 4111 or other statutory authority). Rather, reimbursement must be made to the Government by check payable to the Treasurer of the United States. Personnel will be reimbursed by the Government in accordance with regulations relating to reimbursement.

(3) In no case shall DOD personnel accept, either in kind or for cash reimbursement, benefits which are extravagant or excessive in nature.

(4) When accommodations, subsistence or services in kind are furnished to DOD personnel by non-U.S. Government sources, consistent with this subsection, appropriate deductions shall be reported and made in the travel, per diem, or other allowances payable.

(e) Procedures with respect to gifts from foreign governments are set forth in DOD Directive 1005.3, "Decorations and Gifts from Foreign Governments," September 16, 1967.¹

(f) Procedures with respect to ROTC Staff Members are set forth in DOD Directive 1215.8, "Policies Relating to Senior Reserve Officers Training Corps (ROTC) Programs," May 1, 1974.¹

(g) After the effective date of this part, DOD personnel who receive gratuities, or have gratuities received for them, in circumstances not in conformance with the standards of this section shall promptly report the circumstances to the appropriate Standards of Conduct Counselor (or Deputy) for disposition determination.

[860.45]

Sec. 40.9 Prohibition of contributions or presents to superiors.

DOD personnel shall not solicit a contribution from other DOD personnel for a gift to an official superior, make a donation or gift to an official superior, or accept a gift from other DOD personnel subordinate to themselves. However, this section does not prohibit voluntary gifts or contributions of nominal value on special occasions such as marriage, illness, transfer, or retirement, provided any gifts acquired with such contributions shall not exceed a reasonable value.

[860.50]

Sec. 40.10 Use of Government facilities, property, and manpower.

DOD personnel shall not directly or indirectly use, take, dispose, or allow the use, taking, or disposing of, Government property or facilities of any kind, including property leased to the Government, for other than officially approved purposes. Government facilities, property, and manpower (such as stationery, stenographic and typing assistance, mimeograph and chauffeur services) shall be used only for official Government business. DOD personnel have a positive duty to protect and conserve Government property. These provisions do not preclude the use of Government facilities for approved activities in furtherance of DOD community relations, provided they do not interfere with military missions or Government business.

[860.55]

Sec. 40.11 Use of civilian and military titles or positions in connection with commercial enterprises.

(a) All DOD personnel, excluding special Government employees, are prohibited from using their titles or positions in connection with any commercial enterprise or in endorsing any commercial product. This does not preclude author identification for materials published in accordance with DOD procedures.

(b) All retired military personnel and all members of reserve components, not on active duty, are permitted to use their military titles in connection with commercial enterprises provided that they indicate their inactive reserve or retired status. However, if such use of military titles in any way casts discredit on the Military Departments or the Department of Defense or gives the appearance of sponsorship, sanction, endorsement, or approval by the Military Departments or the Department of Defense, it is prohibited. In addition, the Military Departments may further restrict the use of titles including use by retired military personnel and members of reserve components, not on active duty, in overseas areas.

[860.60]

Sec. 40.12 Outside employment of DOD personnel.

(a) DOD personnel shall not engage in outside employment or other outside activity, with or without compensation, that: (1) Interferes with, or is not compatible with, the performance of their Government duties;

(2) May reasonably be expected to bring discredit on the Government or the DOD Component concerned; or

(3) Is otherwise inconsistent with the requirements of this Part, including the requirements to avoid actions and situations which reasonably can be expected to create the appearance of conflicts of interests.

(b) Enlisted military personnel on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession.

(c) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity prior to the commencement of the strike and if the employment is otherwise in conformance with the provisions of this part. After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(d) DOD personnel are encouraged to engage in teaching, lecturing and writing. However, DOD personnel shall not, either for or without compensation, engage in activities that are dependent on information obtained as a result of their Government employment, except when (1) the information has been published or is generally available to the public, or (2) It will be made generally available to the public and the agency head gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(e) Civilian Presidential appointees shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to DOD responsibilities, programs, or operations or which draws substantially from official material which has not become part of the body of public information.

[860.65]

Sec. 40.13 Gambling, betting, and lotteries.

While on Government owned, leased, or controlled property, or otherwise while on duty for the Government, DOD personnel shall not participate in any gambling activity, including a lottery or pool, a game for money or property and the sale or purchase of a number slip or ticket. The only exceptions are for activities which have been specifically approved by the Head of the DOD Component.

[860.70]

Sec. 40.14 Indebtedness.

DOD personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law (such as Federal, State, and local taxes), so that their indebtedness does not adversely affect the Government as their employer, DOD Components are not required to determine the validity or amount of disputed debts.

[860.75]

Sec. 40.15 Information to personnel.

All DOD personnel, except enlisted personnel not required to file Statements of Affiliation and Financial Interests (DD Form 1555)¹ shall be given a copy of this part or implementing DOD Component regulation and an oral standards of conduct briefing preceding employment or assumption of duties. Each individual receiving such briefing shall attest in writing to his attendance at the briefing, the fact that he has read the standards of conduct, and his comprehension of the requirements imposed. Enlisted personnel not required to file the Statement shall be given standards of conduct briefings and attest in writing to their attendance at such briefings. All DOD personnel shall be reminded at least semi-annually of their duty to comply with required standards of conduct.

[860.80]

Sec. 40.16 Standards of conduct counselors.

(a) The Head of each DOD Component shall designate a Standards of Conduct Counselor and one or more Deputy Counselors. Those designated shall be responsible for providing advice and assistance to their Components and to the person

those Components on all questions arising from the operation and implementation of this Part. They shall also be responsible for the proper review, including audits, coordination, and advice regarding all standards of conduct problems.

(b) The General Counsel of the Department of Defense, or his designee, shall provide legal guidance and assistance to the Deputy Assistant Secretary of Defense (Administration), Office of the Assistant Secretary of Defense (Comptroller), or his designee, who shall be the Standards of Conduct Counselor for the Office of the Secretary of Defense, and to the Standards of Conduct Counsellors of all DOD Components.

(c) The General Counsel, DOD, shall represent the Department of Defense to the Civil Service Commission on matters relating to standards of conduct.

[860.85]

Sec. 40.17 Reporting suspected violations.

DOD personnel who have information which causes them to believe other DOD personnel have violated a statute or standard of conduct imposed by this Part should first bring the matter to the attention of those persons. If those persons are one's supervisors or the communication is not expected to remedy or does not appear to have remedied the problem, a report shall be made to the appropriate authority and to the Standards of Conduct Counselor.

[860.90]

Sec. 40.18 Resolving violations.

The resolution of standards of conduct violations shall be accomplished promptly by one or more measures, such as divestiture or conflicting interest, disqualification for particular assignments, changes in assigned duties, termination, or other appropriate action, as provided by statute or administrative procedures. Disciplinary actions shall be in accordance with established personnel procedures.

[860.95]

Sec. 40.19 Statements of affiliations and financial interests (DD Form 1555).¹

The following DOD personnel are required to submit initial and annual Statements of Affiliations and Financial Interests, DD Form 1555¹, unless they are expressly exempted. (See Sec. 40.24 for details on applicability and requirements.)

(a) All civilian DOD personnel paid at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS-16 including the Executive Schedule.

(b) Officers of flag or general rank.

(c) Commanders and Deputy Commanders of major installations, activities, and operations, as determined by the Heads of the DOD Components.

(d) Board members of the Armed Service Board of Contract Appeals.

(e) DOD personnel classified at GS-13 or above, or at a comparable pay level under other authority, and members of the military in the rank of Lieutenant Colonel, Commander, or above, when the responsibilities of such personnel require the exercise of judgment in making a Government decision or in taking Government action in regard to activities in which the final decision or action may have a significant economic impact on the interests of any non-Federal entity.

(f) Special Government employees (except those exempted in Sec. 40.24).

(g) Other DOD personnel who are required, with Civil Service Commission approval, to file such Statements.

[861]

Sec. 40.20 Nondisqualifying financial interest.

DOD personnel need not disqualify themselves under Sec. 40.7(d) for holding shares of a widely held, diversified mutual fund or regulated investment company. In accordance with the provisions of 18 U.S.C. 208b(2), such holdings are hereby exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

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(c) Commanders and Deputy Commanders of major installations, activities, and operations, as determined by the Heads of the DOD Components.

(d) Board members of the Armed Service Board of Contract Appeals.

(e) DOD personnel classified at GS-13 or above, or at a comparable pay level under other authority, and members of the military in the rank of Lieutenant Colonel, Commander, or above, when the responsibilities of such personnel require the exercise of judgment in making a Government decision or in taking Government action in regard to activities in which the final decision or action may have a significant economic impact on the interests of any non-Federal entity.

(f) Special Government employees (except those exempted in Sec. 40.24).

(g) Other DOD personnel who are required, with Civil Service Commission approval, to file such Statements.

Sec. 40.20 Nondisqualifying financial interest.

DOD personnel need not disqualify themselves under Sec. 40.7(d) for holding shares of a widely held, diversified mutual fund or regulated investment company. In accordance with the provisions of 18 U.S.C. 208b(2), such holdings are hereby excepted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

Sec. 40.21 DOD-related employment reporting.

Pre-employment and post-employment reporting requirements concerning defense-related employment are covered in DOD Directive 7700.15.¹

Sec. 40.22 Required statement of employment (DD Form 1357).¹

(a) Each retired Regular officer of the Armed Forces shall file with the Military Department in which he holds retired status a Statement of Employment (DD Form 1357).¹ Each Regular officer retiring hereafter shall file this Statement within 30 days after retirement. Whenever the information in the Statement is changed, each such officer shall file a new DD Form 1357¹ within 30 days of that change.

(b) The Military Departments shall review the Statements of Employment as required to assure compliance with applicable statutes and regulations.

Sec. 40.23 The General Counsel, DOD is authorized to modify or supplement any of the enclosures to this Part in a manner consistent with the policies set forth in this Part.

Sec. 40.24 Requirements for submission of DD Form 1555 statements.

(a) *DOD Personnel Required to Submit Statements.* DOD personnel required to file Statements of Affiliations and Financial Interests (DD Form 1555)¹ are those indicated in Sec. 40.19 of this Part.

(b) *Review of Positions.* Each DOD Component shall include in the description of each position indicated in Sec. 40.19 of this Part a statement that the incumbent of the position must file a Statement of Affiliations and Financial Interests as required by this part. All positions shall be reviewed at least annually to determine those which require Statements. Any individual may request a review of the decision requiring him to file a Statement through the established compliant procedures of the DOD component.

(c) *Exclusion of Positions.* Heads of DOD Components, or their designees may determine that the submission of Statements is not necessary for certain positions because of the remoteness of any impairment of the integrity of the Government and the degree of supervision and review of the incumbents' work.

(d) *Manner of Submission of Statements.* (1) The Secretary of Defense is required to submit his Statement to the Chairman of the Civil Service Commission in accordance with the provisions of section 401 of Executive Order 11222.

(2) All DOD civilian Presidential appointees and Directors of Defense Agencies shall submit their Statements to the DOD General Counsel.

(3) Personnel of the Office of the Secretary of Defense (OSD) and the Organization of the Joint Chiefs of Staff shall submit their Statements through their superiors for review and forwarding to the OSD Standards of Conduct Counselor.

(7) Agreements with other DOD Components and Government agencies involving detailing of DOD personnel shall contain a requirement that the other DOD Component or Government agency shall, within 60 days, forward to the parent DOD Component's Standards of Conduct Counselor a copy of the detailed individual's Statement, if required, and notice concerning the disposition of any conflict or apparent conflict of interests indicated.

(e) *Excusable Delay.* When required by reason of duty assignment or infirmity a superior may grant an extension of time with the concurrence of the Standards of Conduct Counselor or Deputy Counselor. Any extension in excess of 30 days requires the concurrence of the head of the DOD Component concerned or his designee. Any late Statement shall include appropriate notation of any extension of time granted hereunder.

(f) *Special Government Employees (as defined in Sec. 40.3 of this part).* (1) Each special Government employee shall, prior to appointment, file a Statement of Affiliations and Financial Interests.

(2) The following are exempted categories of special Government employees who are not required to file Statements unless specifically requested to do so:

(i) Physicians, dentists, and allied medical specialists engaged only in providing service to patients.

(ii) Veterinarians providing only veterinary services.

(iii) Lecturers participating in education activities.

(iv) Chaplains performing only religious services.

(v) Individuals in the motion picture and television fields who are utilized only as narrators or actors in DOD productions.

(vi) Members of selection panels for NROTC candidates.

(vii) A special Government employee who is not a "consultant" or "expert" as those terms are defined in the Federal Personnel Manual, Chapter 304.

(3) The Secretary or a Deputy Secretary of Defense or the Secretary of a Military Department may grant an exemption to an appointee from the requirement of filing a Statement upon a determination that such information is not relevant in light of the duties the appointee is to perform.

(g) *Annual Statements.* DD Form 1555½. Statements shall be filed by October 31st of each year for all affiliations and financial interests as of September 30th of that year. Even though no changes occur, a complete Statement is required. All DOD Components shall notify the Office of the Secretary of Defense Standards of Conduct Counselor no later than December 31st of each year that all required Statements have been filed, reviewed and any problems appropriately resolved or explain the details of the outstanding cases.

(h) *Interests of Relatives of DOD Personnel.* The interest of a spouse or minor child, or any member of one's household is to be reported in the same manner as an interest of the individual.

(i) *Information Not Known by DOD Personnel.* DOD Personnel shall request submission on their behalf of required information known only to other persons. The Submission may be made with a request for confidentiality that will be honored even if it includes a limitation on disclosure to the DOD personnel concerned.

(j) *Information Not Required to be Submitted.* DOD Personnel are not required to submit on a Statement any information relating to their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic or political organization or a similar organization not conducted as a business for profit. For the purpose of this part, educational and other institutions doing research and development or related work involving grants or money from or contracts with the Government are to be included in a person's Statement.

(k) *Confidentiality of Statements of DOD Personnel.* DOD Components shall hold each Statement in confidence. A Component may not disclose information from a Statement except as the Component head or the Civil Service Commission may determine for good cause. "Good cause" includes a determination that the record or any part of the record must be released under the Freedom of information Act. Persons designated to review the Statements are responsible for maintaining the Statements except to carry out the purpose of this part.

(l) *Disqualification.* See paragraph (d) of Sec. 40.7 of this part for requirements concerning disqualification.

(m) *Effect of Statements on Other Requirements.* The Statements required of DOD personnel are in addition to, and not in substitution for, any similar requirement imposed by law, order, or regulation. Submission of Statements does not permit DOD personnel to participate in matters in which their participation is prohibited by law, order, or regulation.

business for profit. For the purpose of this part, educational and other institutions doing research and development or related work involving grants or money from or contracts with the Government are to be included in a person's Statement.

(k) *Confidentiality of Statements of DOD Personnel.* DOD Components shall hold each Statement in confidence. A Component may not disclose information from a Statement except as the Component head or the Civil Service Commission may determine for good cause. "Good cause" includes a determination that the record or any part of the record must be released under the Freedom of Information Act. Persons designated to review the Statements are responsible for maintaining the Statements except to carry out the purpose of this part.

(l) *Disqualification.* See paragraph (d) of Sec. 40.7 of this part for requirements concerning disqualification.

(m) *Effect of Statements on Other Requirements.* The Statements required of DOD personnel are in addition to, and not in substitution for, any similar requirement imposed by law, order, or regulation. Submission of Statements does not permit DOD personnel to participate in matters in which their participation is prohibited by law, order, or regulation.

Sec. 40.25 Effective date.

This part shall become effective on January 19, 1977.

Dated: January 17, 1977.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

{FR Doc. 77-1918 Filed 1-18-77; 8:45 am}

¹Form DOD Directive 1555, 1005.3, 7700.15, 5410.18 and 5410.20. Filed as part of original. Copies available from Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Attn: Code 300.

DEPARTMENT OF DEFENSE

OFFICE OF THE SECRETARY

[32 CFR Part 40]

STANDARDS OF CONDUCT

PROPOSED RULEMAKING

Pursuant to the authority contained in E.O. 11222, May 8, 1965 and Pub. L. 87-651.

Part 40 prescribes standards of conduct relating to possible conflict between private interests and official duties required of all Department of Defense personnel, regardless of assignment.

The primary revision provides for a more concise and effective regulation.

Public comment on the proposed revision may be submitted on or before January 7, 1977 to Office of the General Counsel, Room 3E980, Petagon, Washington, D.C. 20301.

The proposed amendment to Part 40 reads as follows:

Sec.

40.1 Purpose and objectives.

40.2 Applicability.

40.3 Definitions.

40.4 Appropriate conduct of official activities.

40.5 Information to personnel.

40.6 Standards of conduct counsellors.

40.7 Reporting suspected violations.

40.8 Resolving violations.

40.9 Statements of affiliations and financial interests.

40.10 Nondisqualifying financial interest.

40.11 Required statement of employment.

40.12 Requirements for submission of statements of affiliations and financial interests.

40.13 Effective date.

AUTHORITY: The provisions of Secs. 40.1-40.13 are issued under E.O. 11222 and Pub. L. 87-651.

Sec. 40.1 Purpose and objectives.

(a) Government employment, as a public trust, requires that DOD personnel put loyalty to ethical and legal principles and to country above personal gain and any other interests. This Part prescribes standards of conduct required of all Department of Defense (DOD) personnel, regardless of assignment.

(b) Penalties for violations of this Part include the full range of statutory and regulatory sanctions for civilian and military personnel.

(c) This Part implements (1) Executive Order 11222 of May 8, 1965, and (2) The Civil Service Commission Regulation, "Employee Responsibilities and Conduct," Title 5, Code of Federal Regulations, Part 735. It includes standards of conduct based on the conflict of interests laws, and it is in consonance with the Code of Ethics for Government Service contained in House Concurrent Resolution 175, 85th Congress. Preemployment and postemployment reporting requirements concerning defense related employment are covered in DOD Directive 7700.15, "Reporting Procedures on Defense Related Employment," October 30, 1970.¹

Sec. 40.2 Applicability.

This Part applies to all DOD personnel in the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies including nonappropriated fund activities (hereinafter referred to as "DOD Components").

Sec. 40.3 Definitions.

(a) *DOD Personnel* means all civilian officers and employees, including special Government employees, of all DOD Components and all active duty officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, and Marine Corps.

(b) *Gratuity* means any gift, favor, entertainment, hospitality, transportation, loan, any other tangible item, and any intangible benefits, for example discounts, passes, and promotional vendor training, given or extended to or on behalf of DOD personnel or their families for which fair market value is not paid by the recipient or the U.S. Government.

(c) *Officer or employee* means all civilian officers and employees, and all military officers on active duty, except those who are "special Government employees."

(d) *Special Government employee* means an officer or employee who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a fulltime or intermittent basis. The term also includes a reserve officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

(e) *Standards of Conduct Counsellors* are discussed in Sec. 40.6.

Sec. 40.4 Appropriate conduct of official activities.

(a) *General.* (1) DOD personnel shall become familiar with the scope of legal authority for, and the legal limitations concerning, the activities for which they have responsibilities.

(2) The attention of DOD personnel is directed to the statutory prohibitions which apply to DOD personnel conduct.

(3) DOD personnel shall not make or recommend any expenditure of funds or take or recommend any action known or believed to be in violation of U.S. laws, Executive Orders, or applicable Directives, Instructions, or regulations.

(4) In cases of doubt as to the propriety of a proposed action or decision in terms of regulation or law, DOD personnel shall consult the Standards of Conduct Counsellor and, as appropriate legal counsel to ensure the proper and lawful conduct of DOD programs and activities.

(b) *Conduct prejudicial to the Government.* DOD personnel shall avoid any action, whether or not specifically prohibited by this Part, which might result in or reasonably be expected to create the appearance of:

- (1) Using public office for private gain;
- (2) Giving preferential treatment to any person or entity;
- (3) Impeding Government efficiency or economy;
- (4) Losing complete independence or impartiality;
- (5) Making a Government decision outside official channels; or
- (6) Affecting adversely the confidence of the public in the integrity of the Government.

(c) *Conflicts of interests.*—(1) *Affiliations and financial interests.* DOD personnel shall not engage in any personal, business, or professional activity, or receive or retain any direct or indirect financial interest, which places them in a position of conflict between their private interests and the public interests of the United States related to the duties or responsibilities of their DOD positions. For the purpose of this prohibition, the private interests of a spouse, minor child, or dependent member of one's household shall be deemed to be private interests of the DOD personnel.

(2) *Using inside information.* DOD personnel shall not use, directly or indirectly, inside information to further a private gain for themselves or others if that information is not generally available to the public and was obtained by reason of their DOD positions.

(3) *Using DOD position.* DOD personnel are prohibited from using their DOD positions to induce, coerce, or in any manner influence any person, including subordinates, to provide any benefit, financial or otherwise, to themselves or others.

(4) *Disqualification or divestiture requirements.* Unless otherwise expressly authorized by action taken under 18 USC 207 or 208, all DOD personnel who have affiliations with or interests in Defense contractors must disqualify themselves from any official activities in relation to those entities. The formal disqualification must be sent to the individual's superior and immediate subordinates. If the individual cannot adequately perform his official duties after such a disqualification, he must divest himself of such involvement or be removed from the position.

(h) *Membership in associations.* DOD personnel who are members or officers of non-governmental associations or organizations must avoid activities on behalf of the association or organization that are incompatible with their official Government positions. (DOD Directive 5500.2, "Policies Governing Participation of Department of Defense Components and Personnel in Activities of Private Associations," August 4, 1972 (37 FR 16674) and DOD Instruction 5410.20, "Public Affairs Relations with Business and Non Governmental Organizations Representing Business," January 16, 1974.)¹

(e) *Dealing with present and former military and civilian personnel.* DOD personnel shall not knowingly deal on behalf of the Government with military or civilian personnel, or former military or civilian personnel, of the Government, whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in this Part.

(f) *Commercial soliciting by DOD Personnel.* In order to eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, fulltime civilian personnel and active duty military personnel are prohibited from making commercial solicitations or sales to DOD personnel junior in rank or grade, at any time, on or of duty, in or out of uniform. This limitation includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and any other commodities, goods, or services. This prohibition is not applicable to the one-time sale by an individual of his own personal property or privately owned dwelling or to the off duty employment of DOD personnel as employees of retail store outlets or similar establishments where the sales of goods and services do not involve solicited sales situations.

(g) *Assignment of reserves for training.* DOD personnel who are responsible for assigning Reserves for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to give them an unfair advantage over their civilian competitors.

(h) *Prohibited selling by retired officers.* There are legal limitations on sales by retired regular military officers to any component of the DOD, Coast Guard, National Oceanic and Atmospheric Administration, or Public Health Service.

(i) *Equal opportunity.* DOD personnel shall scrupulously adhere to the DOD program of equal opportunity regardless of race, color, religion, sex, age, or national origin. (DOD Directive 1100.15, "The Department of Defense Equal Opportunity Program," June 3, 1976.)¹

(j) *Gratuities.*—(1) *Policy basis.* Acceptance of gratuities by DOD personnel or their families, no matter how innocently tendered and received, from those who have or seek business with the Department of Defense and from those whose business interests are affected by Department functions may be a source of embarrassment to the Department, may affect the objective judgment of the DOD personnel involved, and may impair public confidence in the integrity of the Government.

(2) *General prohibition.* Except as provided in paragraph (j) of this section, DOD personnel shall not solicit, accept, or agree to accept any gratuity, for themselves, members of their families, or others, either directly or indirectly from, or on behalf of, any source which:

(i) Is engaged in or seeks business of financial relations of any sort with any DOD Component;

(ii) Conducts operations or activities that are either regulated by any DOD Component or significantly affected by DOD decisions; or

(iii) Has interests that may be substantially affected by the performance or nonperformance of the official duty of DOD personnel.

(3) *Limited exceptions.* The general prohibition in paragraph (j)(2), of this section, do not apply to the following:

(i) Continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the Standards of Conduct Counsellor.

(ii) Advertising or promotional items of clearly less than \$5 in retail value.

(iii) Trophies, entertainment, prizes, or awards for public service or achievement or given in games or contests which are clearly open to the public generally or which are officially approved for DOD personnel participation.

(iv) Things available to the public such as university scholarships covered by DOD Directive 1322.6. "Fellowships, Scholarships, and Grants for Members of the Armed Forces." April 27, 1963 (32 Part 139) and free exhibitions by Defense contractors at public trade fairs.

(v) Discounts or concessions extended component-wide and available to all personnel in the component.

(vi) Participation in civic and community activities by DOD personnel when any relationship with defense contractors is remote, for example, participation in a little league or Combined Federal Campaign luncheon which is subsidized by a concern doing business with a DOD Component.

(vii) Social activities engaged in by officials of the Department and officers in command, or their representatives, with local civic leaders as part of community, relations programs of the Department, in accordance with DOD Directive 5410.18, "Community Relations," July 3, 1974.¹

(viii) Participation of DOD personnel in widely attended gatherings of mutual interest of Government and industry, sponsored or hosted by industrial, technical, and professional associations, not by individual contractors, provided that they have been approved in accordance with DOD Instruction 5410.20, "Public Affairs Relations with Business and Nongovernmental Organizations Representing Business," January 14, 1974.¹

(ix) Situations in which (a) participation by DOD personnel at public ceremonial activities of mutual interest to industry, local communities, and the Department serves the interests of the Government and (b) the invitation is approved by the Head of the employing DOD Component or his designee.

(x) Contractor-provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable. In any such case, the individual shall report the circumstances to his supervisor as soon as possible.

(xi) Situations in which, in the sound judgment of the individual concerned or his supervisor, the Government's interest will be served by DOD personnel participating in activities otherwise prohibited. In any such case, a report of the circumstances shall be made in advance, or, when an advance report is not possible, within 48 hours by the individual or his supervisor to the appropriate Standards of Conduct Counsellor, who, for this purpose, shall be directly responsible to the head of the military department or the Secretary of Defense.

(4) The acceptance of accommodations, subsistence, or services furnished in kind in connection with official travel from other than sources indicated in paragraph (j)(2) of this section, is authorized only when the individual attending is to be a speaker, panelist, project officer or other bona fide participant in the activity attended and when such attendance and acceptance is authorized by the order-issuing authority as in the overall Government interest.

(5) DOD personnel may not accept personal reimbursement from a private source for expenses incident to official travel, unless authorized by the Standards of Conduct Counsellor (pursuant to 5 U.S.C. 4111 or other statutory authority). Rather, any reimbursement must be made to the Government by check payable to the Treasurer of the United States. Personnel will be reimbursed by the Government in accordance with regulations relating to reimbursement. In no case shall DOD personnel accept, either in kind or for cash reimbursement, benefits which are extravagant or excessive in nature.

(6) When accommodations, subsistence, or services in kind are furnished to DOD personnel by private sources, consistent with paragraph (j) of this section, appropriate deductions shall be reported and made in the travel, per diem, and other allowances otherwise payable.

(7) Procedures with respect to gifts from foreign governments are set forth in DOD Directive 1005.3, "Decorations and Gifts from Foreign Governments," September 16, 1967.¹

(8) Procedures with respect to ROTC Staff Members are set forth in DOD Directive 1215.8, "Policies Relating to Senior Reserve Officers Training Corps (ROTC) Programs," May 1, 1974.¹

(9) After the effective date of this Part, DOD personnel who receive gratuities or have gratuities received for them in circumstances not in conformance with the standards of this Part shall promptly take one of the following steps concerning them.

(i) Return them to the originating parties to the extent feasible.

(ii) Provide them to the officer designated for collection and disposition for the component or unit.

(iii) Report to the appropriate Standards of Conduct Counsellor the circumstances of the receipt and handling of the gratuity up to the present time.

(k) *Prohibition of contributions or presents to superiors.* DOD personnel shall not solicit a contribution from other officers or employees for a gift to an official superior, make a donation or a gift to an official superior, or accept a gift from an officer or employee receiving less pay than themselves. However, a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, transfer, or retirement is not prohibited.

(l) *Use of government facilities, property, and manpower.* DOD personnel shall not directly or indirectly use, or allow the use of, government property or facilities of any kind, including property leased to the government, for other than officially approved activities. Government facilities, property, and manpower, such as stationery, stenographic and typing assistance, mimeograph, and chauffeur services, shall be used only for official government business. DOD personnel have a positive duty to protect and conserve government property, including equipment and supplies entrusted to them. This paragraph does not preclude the use of government facilities for approved activities in furtherance of DOD-community relations provided they do not interfere with military missions.

(m) *Use of civilian and military titles or positions in connection with commercial enterprises.* (1) All civilian personnel, and military personnel on active duty, are prohibited from using their civilian and military titles or positions in connection with any commercial enterprises or in endorsing any commercial product. This does not preclude such author identification for material published in accordance with DOD procedures.

(2) All retired military personnel and all members of reserve components, not on active duty, are permitted to use their military titles in connection with commercial enterprises provided that they indicate their inactive reserve or retired status. However, if such use of military titles in any way casts discredit on the military services or the DOD or gives the appearance of sponsorship sanction, endorsement, or approval by the military services or the DOD, it is prohibited. In addition, the military departments may restrict retired personnel and members of reserve components, not on active duty, from using their military titles in overseas areas.

(n) *Outside employment of DOD personnel.* (1) DOD personnel shall not engage in outside employment or other outside activity, with or without compensation which:

(i) Interferes with, or is not compatible with, the performance of their Government duties;

(ii) May reasonably be expected to bring discredit on the Government or the DOD agency concerned; or

(iii) Is otherwise inconsistent with the requirements of this Part, including the requirements to avoid actions and situations which reasonably can be expected to create the appearance of conflicts of interests.

(2) No enlisted member of the armed forces on active duty may be ordered or authorized to leave his post to engage in a personal, business, or professional activity if it would interfere with the customary or regular employment of local civilians in their art, trade, or profession.

(3) Off-duty employment of military personnel by an organization involved in a strike is permissible if the member was on the payroll of such organization prior to the commencement of the strike and if the employment is otherwise in conformance with the provisions of this Part. No military member may accept employment by an organization at a location where that organization is involved in a strike after commencement and during the course of such a strike. Members who are engaged in off-duty civilian employment which does not meet the above policy are required to terminate such employment.

(4) An active duty officer of the regular Navy or Marine Corps may not be employed by any person furnishing naval supplies or war materials to the United States and continue to receive his service pay.

(5) DOD personnel are encouraged to engage in teaching, public speaking, and writing. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Government employment, except when that information has been published or is generally available to the public, or when the agency head gives written authorization for the use of non-public information on the basis that the use is in the public interest and when it will be made generally available to the public.

(6) An employee who is a civilian Presidential appointee shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency or which draws substantially on official material which has not become part of the body of public information.

(o) *Gambling, betting, and lotteries.* DOD personnel shall not participate, while on Government-owned, leased, or controlled property, or otherwise while on official duty for the Government, in any gambling activity, including for example, a lottery or pool, any game for money or property, and the sale or purchase of a number slip or ticket. The only exceptions are for official activities which have specific agency approval.

(p) *Indebtedness.* DOD personnel shall pay their just financial obligations, particularly those imposed by law such as federal, state, and local taxes, so that their indebtedness does not adversely affect the Government as their employer. DOD Components are not required to determine the validity or amount of disputed debts.

Section 40.5 Information to personnel.

All DOD personnel, including those appointed by the President, shall, in fact, be given a copy of this Part or implementing DOD Component regulation and an oral standards of conduct briefing preceding employment or assumption of duties and will be reminded at least semi-annually of their duty to comply with the required standards of conduct. Each recipient of such a briefing shall attest in writing to his attendance at such a briefing, the fact that he has read this Part, and his comprehension of the requirements imposed by its standards.

Section 40.6 Standards of conduct counselors.

(a) The Secretary of each military Department and the Director of each Defense Agency shall designate a Standards of Conduct Counselor and one or more Deputy counselors. Those designated shall be responsible for providing advice and assistance to their departments or agencies and to personnel of those departments and agencies on all questions arising from the operation and implementation of this Part. They shall also be responsible for the proper coordination and disposition of all standards of conduct problems.

(b) The General Counsel of the DOD, or his designee, shall provide legal guidance to the Standards of Conduct Counselors throughout the Department of Defense.

(c) The General Counsel shall represent the DOD to the Civil Service Commission. The General Counsel shall assist the Deputy Assistant Secretary of Defense (Administration), Office of the Assistant Secretary of Defense (Comptroller), or his designee, who shall perform the role of Standards of Conduct Counselor for the Office of the Secretary of Defense.

Section 40.7 Reporting suspected violations.

DOD personnel who have information which causes them to believe that there has been a violation of a statute or standard of conduct required by this Part shall promptly report such information to their immediate supervisors or, if those persons' conduct is at issue, to the next higher superiors. If the person to whom the report is made believes there has been a violation, he shall report the matter to the appropriate Standards of Conduct Counselor for action.

Section 40.8 Resolving violations.

The resolution of standards of conduct problems shall be accomplished promptly by one or more measures, such as divestment of conflicting interests, disqualification for particular assignments, changes in assigned duties, termination, or other appropriate action, as provided by statute or administrative procedures. Disciplinary actions shall be in accordance with established personnel procedures.

Section 40.9 Statements of affiliations and financial interests.

The following DOD personnel are required to submit annual and updating Statements of Affiliations and Financial Interests, Form 1555² unless they are expressly exempted. (See Sec. 40.12 for details on applicability and requirements.)

(a) All civilian officers and employees paid at the level of grades GS-16 to 18 or the Executive Schedule.

(b) All officers of flag or general rank.

(c) Commanders and Deputy Commanders of major installations, activities, and operations as determined by the respective Secretaries of the Military Departments and the Directors of the Defense Agencies.

(d) Board members of the Armed Service Board of Contract Appeals.

(e) DOD personnel classified as GS-13 or above, or at a comparable pay level under other authority, and members of the military in the rank of Lieutenant Colonel, Commander, or above when the responsibilities of such personnel require the exercise of judgment in making a Government decision or in taking Government action in regard to activities in which the final decision or action may have a significant economic impact on the interests of any non-Federal entity.

(f) Special Government employees.

(g) Other DOD personnel who are requested, with Civil Service Commission approval, into file such Statements.

Section 40.10 Nondisqualifying financial interest.

(a) A full-time officer or employee need not disqualify himself under 40.12(m) if his financial holdings are in shares of a widely-held, diversified mutual fund or regulated investment company.

(b) The indirect interests in business entities of holders of shares in a widely-held, diversified mutual fund or regulated investment company are hereby exempted from the provisions of 18 U.S.C. 208a. This determination is in accordance with the provisions of 18 U.S.C. 208b(2) as being too remote or inconsequential to affect the integrity of Government officers' or employees' services.

Section 40.11 Required statement of employment.

(a) Each regular retired officer of the armed forces shall file with the military department in which he holds a retired status a Statement of Employment (DD Form 1357).¹ Each regular officer retiring hereafter shall file this Statement within thirty days after retirement. Whenever the information in the Statement is no longer accurate, each such officer shall file a new DD Form 1357.

(b) The military departments shall appropriately review the Statements of Employment to assure compliance with applicable statutes and regulations.

Section 40.12. Requirements for submission of statements of affiliations and financial interests.

(a) *DOD personnel required to submit statements.* DOD personnel required to file Statements of Affiliations and Financial Interests (DD Form 1555)² are those indicated in Section 40.9.

(b) *Review of positions.* Each DOD component shall include in the description of each position indicated in Section 40.9, a statement that the incumbent of the position must file a statement of affiliations and financial interests as required by this Part. All positions shall be reviewed at least annually to determine those which require statements. Any individual may request a review of the decision requiring him to file a statement through the established grievance or complaint procedures of the component.

(c) *Exclusion of positions.* The Secretary of the Military Department or Director of the Defense Agency concerned, or their designees, may determine that the submission of a Statement is not necessary for certain positions because of the remoteness of any impairment of the integrity of the Government and the degree of supervision and review of the incumbents' work.

(d) *Manner of submission of statements.* (1) The Secretary of Defense is required to submit his Statement to the Chairman of the Civil Service Commission in accordance with the provisions of Section 401 of Executive Order 11222.

(2) All Defense civilian Presidential appointees shall submit their Statements to the Department of Defense General Counsel.

(3) Office of the Secretary of Defense (OSD) personnel and Directors of the Defense agencies shall submit their Statements through their superiors for review and forwarding to the OSD Standards of Conduct counsellor.

(4) Military Department and Defense Agency personnel shall submit their Statements through their supervisors for review and forwarding to officials of the Military Departments or Defense Agencies designated in the regulations of those departments and agencies.

(5) Commanders of Unified Commands shall submit their Statements directly to the OSD Standards of Conduct Counsellor. Other personnel of Unified Commands shall submit their Statements through their supervisors to the Deputy Command Counsellor in the Office of the Legal Advisor to the Unified Command.

(6) All statements shall be reviewed and approved by the appropriate Standards of Conduct Counsellor prior to the commencement of service and annually thereafter as prescribed in g. of this section. Designees to positions requiring the approval of the Secretary of Defense or the Secretary of a Military Department shall execute the Statement in advance of nomination so that it may be thoroughly reviewed and evaluated prior to appointment.

(7) In order that DOD Components may maintain cognizance of Statements of their personnel who are assigned to other DOD Components or Government agencies which receive and review such Statements, the other Defense Component or Government agency shall, within 60 days, forward to the parent DOD Component's Standards of Conduct Counsellor a notification of the date of the Statement, whether it is an initial or annual Statement, and the disposition of any conflict or apparent conflict of interests, indicated.

(e) *Excusable delay.* When required by reason of duty assignment, a superior may grant an extension of time with the concurrence of the Standards of Conduct Counsellor or his designee. Any extension in excess of 30 days requires the concurrence of the Head of the Military Department or Defense Agency concerned or his designee. Any late Statement shall include appropriate notation of any extension of time granted hereunder.

(f) *Special Government Employees (as defined in Section 40.3(d)).* (1) Each special Government employee shall, prior to appointment, file a Statement of Affiliations and Financial Interests.

(2) The following are exempted categories of special Government employees who are not required to file a Statement unless specifically requested to do so:

(i) Physicians, dentists, and allied medical specialists engaged only in providing service to patients.

(ii) Veterinarians providing only veterinary services.

(iii) Lecturers participating in educational activities.

(iv) Chaplains performing religious services.

(v) Individuals in the motion picture and television fields who are utilized as narrators or actors in DOD productions.

(vi) Members of selection panels for NROTC candidates.

(vii) A special Government employee who is not a "consultant" or "expert" as those terms are defined in the Federal Personnel Manual, Chapter 304.

(3) The Secretary or a Deputy Secretary of Defense or the Secretary of a Military Department may grant an exemption to an appointee from the requirement of filing a Statement upon a determination that such information is not relevant in light of the duties the appointee is to perform.

(g) *Annual statements.* DD Form 1555 Statements shall be filed by October 31st of each year for all affiliations and financial interests as of September 30th of that year. Even though no changes occur, a complete Statement is required.

(h) *Interests of employee's relatives.* The interest of a spouse or minor child, or of any member of an employee's immediate household who is dependent for more than 50 percent of his support upon the DOD employee, is to be reported in the same manner as an interest of the employee.

(i) *Information not known by employees.* For required information not known to the employee but known to another person, the employee shall request its submission on his behalf. The submission may be made with a request for confidentiality that will be honored even if it includes a limitation on disclosure of particular details to the employee himself.

(j) *Information not required to be submitted.* An employee is not required to submit on a Statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business for profit. For the purpose of this paragraph educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed to be businesses for profit and are to be included in an employee's Statement.

(k) *Confidentiality of employee's statements.* DOD Components shall hold each Statement in confidence. A Component may not disclose information from a Statement except as the agency head or the Civil Service Commission may determine for good Cause. "Good cause" includes a determination that the record or any part of the

record must be released under the Freedom of Information Act. Persons designated to review the Statements are responsible for maintaining the Statements in confidence and shall not allow access to, or allow information to be disclosed from, the Statements except to carry out the purpose of this Part.

(1) *Effect of employees' statements on other requirements.* The Statements required of employees are in addition to, and not in substitution for, in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a Statement by an employee does not permit him to participate in a matter in which his participation is prohibited by law, order, or regulation.

(m) *Disqualification or divestiture requirements.* Unless otherwise expressly authorized by action taken under 18 U.S.C. 207 or 208, all DOD personnel who have affiliations with or interests in Defense contractors must disqualify themselves from any official activities in relation to those entities. The formal disqualification must be sent to the individual's superior and immediate subordinates. If the individual cannot adequately perform his official duties after such a disqualification, he must divest himself of such involvement or be removed from the position.

Section 40.13 Effective date.

This Part shall become effective on the date it is adopted by the Secretary of Defense.

Dated: December 6, 1976.

MAURICE W. ROCHE,

Director, Correspondence and Directives OASD (Comptroller).

[FR Doc. 76-36121 FILED 12-7-76; 8:45 AM]

¹ Filed as part of original. Copies available from Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, A11n: Code 300.

² Filed as part of original. Copies available from Office of General Counsel, Rm 3E977, Pentagon, Washington, D.C. 20301.

Mr. GODOWN. Thank you.

One last point should be covered, I believe, because the independent agencies have rules governing ex parte communications and the conduct of individuals, and where they don't have them they should enact them. That is the more proper way to take care of this problem.

Now, if I may, let me go on to the subject of indirect lobbying; that is, solicitation.

We believe strongly that the right of an organization to address the general public as well as its members is deeply rooted in the constitutional right of free speech, and that this right cannot be interfered with because communication is solicited or contains an exhortation to action.

In point of fact, we view the major work that we do at NAM as being involved with educating our members. That's why they pay dues to us.

It's our job here in Washington and throughout the country to be on the alert for legislation that is going to have an impact on the business community—to summarize it in an understandable form, which is not always easy to do, to inform our members about it and, indeed, to exhort them that if, in fact, they agree with us that this will impact on them, then it is their duty, their right, and their responsibility to get in touch with their respective representatives and let you all know—you who sit here in Congress—what that impact will be.

How else, indeed, can legislation be brought about in a fair and equitable manner—in a reasonable manner? We think that that is a high purpose.

We happen to think, for instance, that lobbying is an honorable profession which could greatly benefit, perhaps, from a change of nomenclature. Nobody wants to be labeled as a lobbyist, it's not the kind of thing you answer your child to give when they ask what does your father do. He says, "He's a Government representative."

Let me go to disclosure of membership lists and dues. We believe that there is an absolute right of association—to gather together for a common cause—and to petition Congress for redress of grievances.

And we believe that the line of cases, beginning with the NAACP, decided by the Supreme Court, guarantees the—I almost said privacy—guarantees the privacy of that right of association, and that disclosure of a membership list, which or without dues, is an invasion of that privacy.

And, therefore, we would urge you not—

Mr. DANIELSON. You did not cite that case in your brief. Would your mind supplying to Counsel? At least if you did I don't recall it.

Mr. GODOWN. Yes, sir, I believe it's there, but I'll be glad to discuss it with Counsel.

Let me go now to thresholds of coverage, and simply say that there's a two-pronged attack on coverage, and one of them is the employment of an outside attorney or someone who doesn't work for, or who is not with your organization as an employee.

And the question is: How much in a quarterly period ought you to have to spend in order to come within the ambit of the coverage of the lobbying legislation?

And on that we would say that the higher the better in order to avoid dross—in order to avoid covering people whom you don't want to cover because what they are doing is not significant.

I respectfully suggest to the committee that that figure is in and around, perhaps, \$2,500 per quarter, because after all, if a company or an association is doing that, then they're spending about the average of \$10,000 a year, which is not an insubstantial amount.

If they're spending that much to attempt to influence legislation, then perhaps you ought to know about them and they ought to be registered.

The second tier of coverage has to do with individuals, and this is somebody who is an officer, or a director, or an employee, or an agent—as I use the terminology here—whether paid or not paid.

I would hate to see legislation enacted, for instance, which, because of a quirk, didn't cause somebody as notable as Ralph Nader, for instance, to come within the ambit of coverage. He, obviously, is a well-known, well-exposed, and obvious point of influence in this country at this point, and we believe his activities, along with others, should be covered.

I do not believe, for instance, that the individuals who are employed or engaged for the express purpose of preparing or drafting oral or written communications ought to be covered within the ambit of legislation because of the practical problem.

Consider the company's difficulty, consider the association's difficulty, in determining when, in fact, an individual's work product is going to be used to lobby.

I sit as counsel having to make this kind of decision and advise other people when lobbying occurs. It is almost impossible now, and I would respectfully suggest that incorporation of this kind of language in a new lobbying bill would simply compound current errors, and not make the job for anyone any easier.

Let me go to the question of exemptions and say—just tick off a few. I think that every individual should be able to contact every Member of Congress when he's acting solely on his own behalf.

I think that every individual ought to be able to contact on any subject elected Members of the House and Senate who represent his State.

I believe that a communication, made at the request of a Member of Congress or a committee staff, should be exempt. That is, these things should not be reportable events. They shouldn't give rise to a reportable event.

Communication which deals only with the status of an issue ought to free, so to speak—ought not to be lobbying. Communication made by means of a newsletter or other written material emanating from a volunteer membership organization, should be treated in exactly the same manner as a speech, newspaper, or book. All should be exempt communications because all are grounded in first amendment rights.

As to the question of registration, we believe that any registration requirement which mandates disclosure of a membership list and/or your dues is unconstitutional because it does not meet the test of the *Gibson* case—and that is cited in my testimony.

The *Gibson* case states that there must be an overriding and compelling State interest mandating disclosure in the fashion called for. We suggest that there is no such overriding purpose.

Advisory Opinions. We're glad to see a provision on advisory opinions, and we feel that this would be helpful in helping citizens to comply with the law—honest citizens who seriously have in mind complying with the law.

As for sanctions, it is our association's belief that criminal sanctions are not necessary. We think that—we hope that this committee would take a very long look before reporting on a bill which has criminal sanctions in it, because you're dealing in a very tender first amendment area.

And I am supposing, by virtue of having sat in the hearing room for the first couple of sessions and knowing what you all have in mind—I know that it would not be the intention of this subcommittee to interfere with the citizens' right to communicate with Congress, or to impede it, or to chill those communications.

I'm just suggesting to you, as a practical matter, that if you have civil sanctions that will be somewhat impeded, it would have criminal sanctions that would be more impeded.

Mr. Chairman, I will conclude my preliminary and extemporaneous remarks by saying this: Of all the bills before the committee, each of which we have studied avidly, we believe that H.R. 6202 more fully incorporates those principles which we are here testifying to.

We believe, also, that the bill sponsored by the American Civil Liberties Union, but for the coverage which has to do with the preparation in review of materials—but for that coverage—we feel that the ACLU bill also deserves serious consideration.

Thank you. I'll be glad to answer questions.

[The prepared statement of Mr. Godown follows:]

SUMMARY OF STATEMENT BY NAM SENIOR VICE PRESIDENT AND
GENERAL COUNSEL RICHARD D. GODOWN

The NAM witness made the following points in testifying before the House Judiciary subcommittee on H.R. 1180, H.R. 5795, H.R. 6202 and related bills:

There is general agreement that lobby reform legislation is necessary. The "principal purpose" test of the 1946 Regulation of Lobbying Act was not rendered any more clear by the U.S. Supreme Court in *U.S. v. Harriss* (347 U.S. 612, 1953).

Neither the Executive Branch in general, or Government Contracts in particular should be covered by lobby legislation. Any extension outside the legislative branch will multiply coverage exponentially, and would be contrary to efforts to reduce Federal regulation and paperwork.

To include solicitation of others either as a threshold criterion or a reportable event will have a dampening effect on free speech and is constitutionally suspect.

An overriding, compelling federal interest must be shown to justify disclosure of membership lists and dues contributions: Regulation of lobbying is not such an overriding, compelling interest.

Hiring an outsider to lobby for \$2,500 per quarter or using individuals or agents within the organization to lobby twelve or more times during the same period, are fair criteria for determining who shall register and report. This is also likely to result in coverage of the more prominent "public interest" lobbyists.

Individuals should be free to contact every member of Congress and the Congressional staff on personal matters and not have this action count as lobbying. Responses to inquiries from Congress and requests relating simply to status or subject matter should also be unrestricted.

A "Home State" exemption should apply so that communications between an organization and the Members of Congress (and staffs) representing the principal place of business of the organization are not covered by lobby legislation.

Advisory opinions issued by the Comptroller General and civil fines should be adequate for enforcement. Criminal sanctions in this First Amendment area should be avoided.

STATEMENT OF NAM GENERAL COUNSEL RICHARD D. GODOWN ON
BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

My name is Richard D. Godown and I am Senior Vice President and General Counsel of the National Association of Manufacturers. I want to thank the Chairman for the invitation to appear and give testimony on behalf of the 13,000 manufacturing concerns which we represent, many of whom would be covered by the lobby legislation under consideration by this committee. NAM is registered under the 1946 Federal Regulation of Lobbying Act and currently files quarterly reports with the Clerk of the House and Secretary of the Senate. Our experience in doing will also be reflected in the testimony given here today.

Preliminary Considerations. Almost without exception, those familiar with current federal law regulating lobbying agree that a new law is necessary. The vague language of the 1946 Act has not been rendered easier to comply with by the U.S. Supreme Court on the relatively few occasions it has been called upon to interpret the statute.¹ As I have testified on a prior occasion "the current law is useless as a guide to conduct."

There is also fairly widespread agreement that lobbying per se is useful, in that it can serve to bring to the attention of Members of Congress the impact on their constituents of various measures under consideration. Then to, the right to speak one's mind and to petition Congress for a redress of grievances are basic rights in this country guaranteed by the Constitution and jealously guarded by the courts. Consequently, any move to regulate lobbying must pass strict constitutional tests because, whether we agree with him or not, one who would try to influence legislation or try to influence others to influence legislation has the right to do so.

We believe it more likely that effective legislation will be reported if efforts are directed at defining with precision, who is covered and what activities are covered, so as to keep subjective judgments at an absolute minimum. A major infirmity of the current law is that these questions cannot be answered with any certainty. Where criminal statutes are involved, particularly those restriction first amendment freedoms, they must comply with stricter requirements of definiteness than other statutes.² Men of common intelligence must not be left to guess and differ as to their application. To do so violates the first essential of due process of law.³

¹ The "principal purpose" test set forth in the 1946 Act has never been precisely defined either by Congress or the Courts and the leading case, *U.S. v. Harriss* (347 U.S.C. 612 (1953)), did little to obviate the problem.

² *U.S. v. Harriss*, *op. cit.*

³ *Connally v. General Construction Company*, 269 U.S. 385, 391 (1925).

Every effort should be made at equitable coverage; at imposing minimum burden and of calling forth information of some use to Congress and the public. The comments which follow are offered with these objectives in mind.

Executive Branch Coverage—Government Contracts—Both H.R. 1180 and H.R. 5795 extend coverage to the Executive Branch of Government, and specifically include the letting of government contracts as well as promulgations of rules by departments and agencies. H.R. 5795 goes even further and would encompass attempts to influence those whose principal responsibility or job description includes drafting or revising or letting of government contracts.

We think such coverage ought to be deleted because:

(1) Any extension outside the legislative branch will multiply coverage exponentially, and work directly contrary to the Administration's announced intention of reducing paperwork and lessening the burden of government regulation on the people;

(2) Legislation regulating lobbying is not the proper vehicle for exercising control over attempts to influence the letting of government contracts. The DOD code of conduct is considerably more appropriate for this purpose and is quite detailed in nature (a copy is supplied the committee, for the record). Note that under this DOD Directive (5500.7, 32 CFR Part 40) it is spelled out that the acceptance of gratuities by DOD personnel or their families, no matter how innocently tendered and received, from those who have or seek business with the Department of Defense and from those whose business interests are affected by Department functions (1) may be a source of embarrassment to the Department, (2) may effect the objective judgment of the DOD personnel involved and (3) may impair public confidence in the integrity of the government.

There follows a very explicit recitation of what is and is not acceptable conduct which includes a prohibition against accepting gifts or promotional items which are worth \$5.00 or more in retail value.

(3) Rules governing employee conduct and ex parte communications are already widely in use among the independent federal agencies and do not need to be fortified by lobby legislation.

There is considerable mischief which can be accomplished by enactment of a loosely phrased statute, of broad coverage and indefinite application. We submit that if Congress succeeds in stifling communication it has failed in purpose. We would respectfully ask that the subcommittee to please keep in mind that nobody wants to be labeled a lobbyist—it's not the kind of response your child gives to the question, "What does your father do." If normal communication with the Department of Defense and the regulatory agencies cause this stigma to be attached, less communication will take place. However, nobody will be benefited and the First Amendment will have been weakened. Lest I be misunderstood by my lobbyist friends, let hasten to add that lobbying is an honorable profession which could greatly benefit from a change in nomenclature.

Indirect Lobbying—Solicitation—H.R. 1180 and H.R. 5795 would make soliciting others to lobby, a reportable event; H.R. 6202 would not. We endorse the latter position. We believe strongly that the right of an organization to address the general public as well as its members is deeply rooted in the constitutional right of free speech and this right cannot be interfered with because the communication is "solicited" or contains an exhortation to action. In truth, one of the basic reasons for the existence of literally thousands of organizations in this country is to inform and educate their memberships concerning proposed actions by the federal government which will have an impact on them and to urge that they do something about it. This is a healthy process which should not be impeded by imposition of unreasonable registration, recordkeeping and reporting requirements.

The U.S. Court of Appeals addressed this same issue in interpreting Section 308 of the Federal Election Campaign Act of 1971, in *United States v. National Committee for Impeachment*, 469 F.2d 1135 (2nd Cir. 1972). In narrowly construing the section of the 1971 Act which required disclosure of activities aimed at the public by political committees, the Court held that a broader reading of the statute would result in coverage of an enormous number of activities protected by the First Amendment:

... every position on any issue, major or minor, taken by anyone would be a campaign issue and any comment upon it, in, say, a newspaper editorial or an advertisement, would be subject to proscription unless the registration and disclosure requirements of the Act in question were complied with. Such a result would, we think, be abhorrent; ... Any organization would be wary of expressing any view-point lest under the Act it be required to register, file reports, disclose

its contributors, or the like . . . The dampening effect on First Amendment rights and the potential for arbitrary administrative action that would result from such a situation would be intolerable.⁴

In dealing with a situation where a labor union representative was prosecuted for having delivered a speech before registering as a union organizer, the U.S. Supreme Court held it to be impermissible to require registration as a condition precedent to the exercise of freedom of speech. The case was *Thomas v. Collins*, and the court said:

If one who solicits support in the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religion or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.⁵

We believe that to include solicitation of others either as a threshold criterion or a reportable event will have a dampening effect on the exercise of the right of free speech and is therefore constitutionally suspect.

Disclosure of Membership Lists and Dues

Some of the pending lobbying bills require identification of members of a voluntary membership organization and their individual contributions. NAM firmly believes that such provisions violate the First Amendment guarantees of freedom of association and expression. The fact that H.R. 5795 calls for disclosure within categories of income paid to an organization by members or individuals does not make the requirement less objectionable.

Several Supreme Court cases have held that compulsory membership disclosure impedes the freedom of association rights guaranteed by the First Amendment to members and future members of voluntary membership organizations.

In *Gibson v. Florida* 372 U.S. 543 (1963) a legislative committee was investigating as asserted infiltration of the NAACP by communists. The NAACP refused to produce its organization's membership lists on the grounds that it interfered with the free exercise of associational rights of members and future members of NAACP, guaranteed by the First Amendment, and made applicable to the States by the Fourteenth. The Supreme Court supported the NAACP's refusal, applying the very strict standard of constitutionality utilized in abridgement of "fundamental freedoms" cases:

There must be a substantial relation between the information sought, and a subject of *overriding, and compelling state interest*—whether the committee has demonstrated so cogent an interest in obtaining and making public the membership information sought to be obtained so as to justify the *substantial abridgement of associational freedom* which such disclosures will effect.⁶ (emphasis supplied)

The Supreme Court held that there was no overriding, compelling justification for inhibiting this important freedom.

NAM believes that such a membership disclosure requirement as provided in H.R. 5795 and other bills would unduly inhibit the members' (and prospective members') freedom of association, as well as freedom of expression. For example: there may be some persons who join voluntary membership organizations solely to have a forum to air their views; these views may differ with the predominating points of view of the association. If the identities of these members are going to be disclosed (as H.R. 5795 and other bills would require) they may decide not to join, or if they have already joined, they may withdraw. This would result in a hampering of valuable ideas and views which are needed by the association, and would impede the association from having a diversified membership.

The Supreme Court has held that the First Amendment rights of free speech and free association are protected not only "against heavy-handed frontal attack," but also "from being stifled by more subtle governmental interference."⁷ And whether the beliefs are economic, religious, cultural or political, the Court has held the members have a right to be secure in their association.⁸

⁴469 F. 2d 1142.

⁵323 U.S. 516, 530 (1945).

⁶*Gibson v. Florida Legislative Investigation Committee*, 373 U.S. 543 (1963).

⁷*Bates v. Little Rock*, 361 U.S. 516, (1960).

⁸*N.A.A.C.P. v. Alabama*, 357, U.S. 499 (1959); *Griswald v. Connecticut*, 381 U.S. 479 (1965).

Inasmuch as the provisions in H.R. 5795 and related bills requiring disclosure of membership rolls interfere with the freedom of association and expression guaranteed by the First Amendment to members and prospective members of voluntary membership organizations, these provisions should be deleted. There is no compelling overriding justification for their intrusion upon these important First Amendment guarantees.

Thresholds for Coverage

Imposing registration requirements on organizations rather than individuals is a favored approach; however, the threshold of H.R. 1180 and H.R. 5795 determining when an organization becomes a lobbyist are set too low. Section 3(a)(1) of each bill should set a quarterly expenditure threshold of \$2,500, instead of \$1,250, so that hiring someone outside the organization to "influence legislation" becomes a matter of significance rather than an incidental or entirely parochial action.

Having already noted objections to coverage of government contracts and the promulgation of rules and rulemaking (which also are part of Sec. 3(a)(1)) of these bills we would add a similarly strenuous objection to the closing provision of this section which extends coverage to hiring another "for the express purpose of preparing or drafting any such oral or written communication." This literally means that individuals who never see Washington or ever buttonhole a Congressman can be involved in lobbying activity. Certainly this will work a disincentive within the academic and scientific community, depriving Congress and the public of some of our best thinking.

Section 3(a)(2) of H.R. 1180 would qualify an organization as a lobbyist if it employs at least one individual who spend 20% or more of his time in covered activities. In H.R. 5795 the criterion becomes employment of one individual who spends 30 or more hours, or two individuals who spend 15 or more hours in a quarter making lobbying communications or solicitations. The criteria for both bills are defective, we think, because they call for subjective judgments coupled with excessive record keeping. In calculating the 20% figure, does one measure minutes on the telephone, hours on an airplane, time spent in the Congressman's outerroom waiting for admittance? How should work done on weekends or after hours be counted? In determining whether the 15 or 30 hour test per quarter has been met do we all become clock watchers, shortening sentences and omitting greetings to save time. Both schemes are impractical to administer and burdensome to comply with.

The bill sponsored by Congressman Kindness and Moorhead (H.R. 6202) seems to strike a fair compromise. Hiring someone outside your organization to make lobbying communications and paying \$2,500 or more within a quarter for those services means the hiring organization must comply with the registration requirements of the bill and report activities for that quarter. It also contemplates operations at a \$10,000 expenditure level on an annual basis, which is not an insubstantial amount.

Use of the organization's own officers, directors, agents or employees to make twelve or more oral lobbying communications also triggers registration and reporting under H.R. 6202. This twelve "occasions" test is preferable because of its ease of application. Attempts to influence legislators or their staffs are not something undertaken lightly or without prior thought. (It's like throwing a brick through a window: When you do it you know it.) This kind of activity becomes easy to count and calls for the least subjective judgment.

H.R. 6202 is further recommended because in setting forth applicability it seems likely to sweep within its ambit the more noticeable of the public interest volunteers, such as Ralph Nadar.

Exemptions

Exemptions are treated variously by H.R. 1180, 5795 and 6202. We prefer the approach outlined below and endorse it where it appears.

(1) Individuals should be free to contact every Member of Congress and all Congressional staff without reservation when acting solely on their own behalf. Similarly, they should be free to write and talk on any subject to the elected Members of the House and Senate (and their staffs) who represent their state. How else can these officials work in Washington and stay in touch with those back home? We believe also that communications on behalf of an organization should not be covered, if directed to Members of Congress who represent the state where the organization has its principal place of business, or where the individual doing the communicating happens to live.

H.R. 5795 would seem to be defective in that it would not exempt communication by an individual if requested by an organization. This means for instance that any company or association employee would be forestalled from claiming a personal exemption simply because they happened to read a newsletter or bulletin. In such circumstance the First Amendment rights of the employee are transgressed. Section 3(b)(3) should be amended accordingly.

(2) A communication made at the request of a Member of Congress or committee staff should be exempt, as should testimony or a statement given or submitted to a Congressional committee for inclusion in the record. (H.R. 1180 and 5795 are satisfactory in this respect: Section 3(c)(5) of H.R. 6202 should be expanded to embrace this concept.)

(3) A communication which deals only with the status of an issue or seeks to determine its subject matter should be exempt. (See the language of Section 3(c)(4) of H.R. 6202.)

(4) Communication made by means of a newsletter or other written material emanating from a voluntary membership organization should be treated in exactly the same manner as a speech, newspaper or book. All should be exempt communications because all are grounded in the First Amendment (See Section 3(c)(7) of H.R. 6202.)

Registration

This requirement should be kept as simple as possible and care taken to preserve the rights of the registrant. H.R. 5795 is objectionable in this respect in that it would cause disclosure of the names of contributors and, by category, the amount contributed to organizations covered by the Act. We believe that the restrictions of the Gibson case⁹ pertain, and that no overriding and compelling state interest mandating disclosure in this fashion has been shown. Of all the proposals for membership and contributions disclosure before this subcommittee, Section 4(b)(5) of H.R. 6202 seems more likely than the rest to withstand constitutional challenge, since it is limited, but this is by no means certain.

The suggestion (in Section 4(d) of H.R. 5795) that the Comptroller General should be empowered to waive disclosure on the grounds that it would violate a contributor's religious beliefs or impose an undue hardship or hazard, begs the question. Rather than saddle the Comptroller General with this impossible task of decision-making, the disclosure requirement should simply be deleted. We cannot envision any fair method of administration.

Recordkeeping and Reporting

Recordkeeping should be limited to three years to minimize the burden: Reporting requirements should not be extended to cover expenditures or gifts for Federal officers or employees service, these are now specifically covered by "Codes of Conduct" adopted by the House and Senate.

As an organization which now reports under the 1946 Regulation of Lobbying Act we would urge that the requirement for reporting "total expenditures" in connection with lobbying be eliminated from current legislation because it is difficult or impossible to comply with. We would suggest that it serves no congressional purpose to see that minor allocations of rent, heat, and electricity are made and reported; nor should a covered organization be put to the task of attempting to determine how much, if any, of the work product of employees or agents not directly concerned should be considered a reportable item. It is precisely in this area that Comptroller General regulations would have to be quite intricate and therefore quite burdensome.

We note that under Section 6 of H.R. 5795, where a principal operating officer spends more than fifteen hours on lobbying communications (or solicitations) his organization must identify each issue with which he was concerned. The requirement would be burdensome in the extreme and could force a ludicrous amount of detailed recordkeeping upon individuals.

In Section 6(c)(3) of H.R. 6202 we would urge addition of an exemption for personal travel expenses so that officers, directors, agents or employees of an organization are treated the same as legislative agents in this respect.

In general we would urge that very serious consideration be given to each item of information required so that when produced it serves a genuine and legitimate need. A bill of this kind is not a fit vehicle to use to satisfy the idle curiosity of various pressure groups who would like the government to collect and arrange information on what their "competitors" are doing. Every required report item is a burden; every regulation will make it more difficult for citizens to speak out. Communicating with the elected representatives of government and those who work further is a matter of extreme importance; and the Constitution demands that any impedeance of this process be kept at a minimum and be for the purpose of satisfying a compelling governmental interest.

Advisory Opinions—Sanctions

We believe that providing for advisory opinions by the Comptroller General concerning recordkeeping, registration, or reporting requirements is an excellent safeguard.

⁹ *Gibson v. Florida Legislative Investigating Committee, op. cit.*

Such advisory opinions should have general applicability to other individuals or organizations similarly situated.

In view of the fact that the courts would have authority to affix a civil penalty of \$5,000 for each violation, and the Justice Department could seek a mandatory injunction or such other equitable relief as the court might deem appropriate, we do not feel that criminal penalties are either necessary or proper, particularly when free speech is being regulated.

Conclusion

With the American Civil Liberties Union, we believe that a law which regulates lobbying should not extend coverage to indirect efforts to influence the legislative process; neither should it sweep within the ambit of its coverage, the Executive Branch in general or the field of government contracting in particular. We agree emphatically that the right to associate together for a common purpose carries with it the right to have one's identity and the size of one's contribution remain confidential.

We urge reporting requirements that impose minimum burden, and exemptions broad enough to enable citizens to speak to any Member of Congress about matters of personal concern, without fear. Similarly, organizations should be allowed to communicate freely with their own membership and the public and not give rise to a "reportable event".

We agree that a workable alternative to the present law must be found, but would prefer no new law to an unconstitutional one. We believe that with the changes here offered H.R. 6202 is such a workable alternative, and are pleased to endorse that legislation.

Thank you and I will be glad to answer questions.

Mr. DANIELSON. Thank you very much
Ms. Jordan of Texas.

Ms. JORDAN. Thank you, Mr. Chairman.

I thank you, Mr. Godown, for your testimony; and I can assure you that the points you have covered will be covered very carefully by this committee as we go into markup.

I thank you for coming down hard, specifically, on the revelation of membership lists and the amount of dues paid. I have a great sensitivity on that issue and the history of the revelation of membership lists probably tells you why I would have that sensitivity.

Mr. GODOWN. Yes, m'am.

Ms. JORDAN. Mr. Chairman, I don't have any further questions. In light of our time constraints I hope that Mr. Godown will remain available to the committee in the future for any questions we may have to propound.

Mr. GODOWN. I will be most happy to, and I thank you for your comments.

Mr. DANIELSON. Thank you, Ms. Jordan.

Thank you, Mr. Godown.

Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

Thank you, Mr. Godown.

I have no questions and give back the balance of my time.

Mr. DANIELSON. Mr. Harris?

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. Godown, are you a lobbyist?

Mr. GODOWN. I'm not, personally, sir.

Mr. HARRIS. You're not registered personally, but your organization is?

Mr. GODOWN. Yes, sir, and about one dozen people in NAM are registered, and as general counsel I am the person who has oversight and overview control of who's registered and for what reasons.

Mr. HARRIS. You decide, within NAM, who gets registered and who doesn't, and you decided you didn't.

Mr. GODOWN. Yes, sir.

Mr. HARRIS. Who prepares the form for them? Do you prepare the form for them?

Mr. GODOWN. No, sir, they prepare their forms and they're reviewed by the law department. The Association's quarterly report form is prepared by the law department.

May I add to the record, just for a second, and explain why I'm not registered? Because it is not one of my principal purposes to direct or influence legislation by personal contact with the legislators—Members of Congress—asking them for their vote. I don't do that 51 percent of the time; I don't do it 2 percent of the time. In fact, I hardly ever do it.

Mr. HARRIS. I didn't mean to suggest that you should be. I was just noting—just wondering how you all do it.

You don't prepare the form for them? They have to prepare their own forms?

Mr. GODOWN. Yes, sir, they have other legal counsel, but they literally prepare their own forms.

Mr. HARRIS. Do you say that they are ashamed to be called lobbyists. Is that what you said?

Mr. GODOWN. I said that nobody welcomes that stigma.

Mr. HARRIS. I was a lobbyist for 20 years, Mr. Godown, and the first time I ran for election my opponent accused me of being a lobbyist. And I told him and the group that that was true, that I was not only a lobbyist, I was a registered lobbyist and that was the very best kind. [Laughter.]

Mr. DANIELSON. Thank you, Mr. Harris.

And I have no questions. You've answered them all. I appreciate very much help, and we're going to be counting on you, as with other witnesses, to respond to questions that may come before us.

Mr. GODOWN. I'd be glad to help you in any way. Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you. And I do apologize to you and the others for the pressure of speed that I've put upon you.

Yes, we do want that. Whatever that document is, we'll receive it for the record.

The next witness, and the last witness, is Mr. Fred Krebs, Attorney in the office of the general counsel of the Chamber of Commerce of the United States.

Mr. Krebs, please come forward. We're going to, again, receive your statement in the record unless there are objections. Hearing none, so ordered.

You may proceed, Mr. Krebs. And while you're sitting down we'll say that, probably, if nothing else, you've got probably the best looking statement I've ever seen.

Mr. KREBS. Thank you, Mr. Chairman.

TESTIMONY OF FREDERICK J. KREBS, ASSISTANT GENERAL COUNSEL, CHAMBER OF COMMERCE OF THE UNITED STATES.

Mr. KREBS. My name is Frederick Krebs. I'm assistant general counsel of the Chamber of Commerce of the United States.

I appreciate this opportunity to comment on behalf of the National Chamber and its members of H.R. 1180, the Public Disclosure of

Lobbying Act, and other proposals before this committee, which are designed to replace the Federal Regulation of Lobbying Act of 1946.

I'd just like to state that the Chamber has been active in this issue for a number of years. As you all know, we've been working with many groups down town, talking. We've talked with Members of Congress.

We have our own ad hoc lobby group, which is composed of various members of the business community, in which we try to coordinate and just exchange information among ourselves.

At the outset I'd like to state our position. The Chamber of Commerce recognizes the inadequacies of the 1946 Act and supports the enactment of a new law, provided the following criteria are met:

First. The legislation should be limited to direct lobbying of Congress.

Second. The legislation should not require the compulsory disclosure of membership and dues information.

Third. Legislation should be fair, equitable, and cover all those who engage in substantial efforts to influence legislation whether or not they are paid.

Fourth. Reporting requirements should be simple and easy to comply with, and the legislation should clearly limit and specify the authority of the administering agency.

Many of the bills which have been introduced raise serious constitutional questions concerning freedom of association and the right to petition the Government.

In addition, the potential burdens and practical difficulties which would result from many of these bills is staggering.

In view of the fact that several bills have been introduced, in my desire to be brief I will discuss six basic issues and the Chamber's position with respect to them. These remarks will summarize my written statement.

At the conclusion of my remarks, I'd be happy to answer any questions you may have with respect to these specific bills.

First, executive branch coverage: The inclusion of executive branch coverage in legislation designed primarily to cover the Congress, suffers from a basic conceptual flaw. It must be recognized that these two branches of the Government operate differently and perform different functions.

There are myriad regulatory and executive agencies, each of which has its own specific procedures, rules and regulations. Any attempt to provide more complete disclosure of activities before these agencies should be dealt with in separate legislation designed for that specific purpose, not by a law whose paramount purpose is the regulation of attempts to influence legislation.

With respect to grass roots or indirect lobbying, it should be emphasized that the proponents of this type of coverage have not provided a compelling or valid reason to justify the inclusion of grass roots lobbying in any new legislation.

The mere fact that groups may engage in this type of activity is not a sufficient reason. It is exactly this exercise of rights which is protected by the first amendment—the right to appeal to the people without fear of Government harrassment or intrusion.

This right was recognized and affirmed by the Supreme Court in both *United States v. Harriss* and the *United States v. Rumely*. Any legislation which is enacted should be limited to direct lobbying.

With respect to the compulsory disclosure of membership and dues information, as the ACLU and others have so effectively noted, the constitutional implications of this type of disclosure cannot be ignored.

In numerous cases the Supreme Court has held that the involuntary disclosure of memberships lists is unconstitutional. Other decisions have affirmed the right of anonymous speech.

The principles enunciated in these cases can only lead to the conclusion that compulsory disclosure would not meet tests of constitutionality despite statements to the contrary by its proponents.

In addition it should be emphasized—and this point, I don't think, has been raised here today—that disclosure of dues payments would create serious problems for trade associations, many of whom base their dues schedules on confidential and proprietary information such as sales figures and units of production.

With respect to the group or the class that we've called the professional volunteer, it is our position that just as a matter of fairness and equity, any legislation which is enacted must include coverage of those who engage in significant and substantial efforts to influence legislation whether or not they are paid.

With respect to the recordkeeping, keeping and burden aspect, I would like to emphasize that the real concern of the business community and the Chamber is not with the consent of reasonable disclosure, but with costly and complex recordkeeping and reporting requirements.

We just ask that you must consider the impact of any reporting and recordkeeping requirements on all groups that seek to express their views.

Finally, with respect to the administration of the act, the experience of the past few years has shown that many agencies charged with the implementation of regulatory statutes have a tendency to go far beyond the legislative intent of Congress when implementing such legislation.

While the Chamber has no preference as to which agency is given such authority, it is our belief that any legislation which is adopted must clearly delineate and limit the powers of the agency.

In conclusion, I would just like to state that any legislation which is enacted, which meets these requirements, will provide the public with sufficient information about the activities of those who seek to influence the Congress without infringing upon their right to do so.

At this time none of the bills which have been introduced meet the criteria that I have described. However, two bills which are positive steps in the right direction are H.R. 5578 and H.R. 6202.

We do not agree with everything contained in either of these bills, but I would like to commend the sponsors for the reasonable and realistic approach which they have taken toward this legislation.

I'd like to thank you for this opportunity, and I'd be glad to answer any questions.

[The prepared statement of Mr. Krebs follows:]

SUMMARY OF THE STATEMENT OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

The Chamber recognizes the inadequacies of the existing law and it supports the enactment of lobby reform legislation which meets the following conditions:

1. The legislation should be limited to direct lobbying of the Congress;
2. The legislation should not require the compulsory disclosure of membership and dues lists;
3. The legislation should be fair, equitable and cover all those who engage in substantial efforts to influence legislation, whether or not they are paid;
4. The reporting requirements should be simple and easy to comply with; and,
5. The legislation should clearly limit and specify the authority of the administering agency.

Legislation which meets these requirements will provide the public with sufficient information about the activities of those who seek to influence legislation without infringing upon their right to do so.

STATEMENT BY FREDERICK J. KREBS, ASSISTANT GENERAL COUNSEL, CHAMBER OF COMMERCE OF THE UNITED STATES

My name is Frederick J. Krebs. I am the Assistant General Counsel of the Chamber of Commerce of the United States.

I appreciate this opportunity to comment, on behalf of the National Chamber and its members, on the objectionable provisions of H.R. 1180, the Public Disclosure of Lobbying Act of 1977, and other proposals before this Committee to amend, revise or otherwise replace the Federal Regulation of Lobbying Act of 1946.

INTRODUCTION

At the outset, let me state our position for the record: The Chamber of Commerce of the United States recognizes the inadequacies of the 1946 Act and supports the enactment of a new law, provided the following criteria are met:

1. The proposed lobbying law must be simple, easy to understand, and constitutional.
2. The proposed lobbying law must not have a chilling effect upon the exercise of First Amendment rights by citizens;
3. The proposed lobbying law must be fair and equitable in its coverage—certain individuals or groups should not be excluded because they represent someone's subjective idea of a worthwhile cause.
4. The proposed lobbying law must not be so unduly burdensome that the cost of compliance exceeds any public benefit which might be derived.

We must never forget—in the passion for "reform"—that the right to petition the government is the most basic of all our constitutional rights. The First Amendment says "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Why is this so important? Because the line between legitimate disclosure and the infringement of basic rights—such as freedom of speech, freedom of association and freedom from government harassment—is very fine.

Consequently, the Supreme Court has ruled that First Amendment rights "are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect." (emphasis added) *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 639 (1943).

Thus, as you review this legislation you should keep the following questions in mind:

1. What is the overriding interest which you are seeking to protect?
2. What is the grave and immediate danger to that interest?
3. Is there a substantial relation between the government interest and the information required to be disclosed?
4. What are the deterrent effects on First Amendment rights which result from this legislation?
5. Is there a less drastic or less restrictive means to achieve the desired result?

In view of the fact that several bills have been introduced, the remainder of my testimony will discuss certain basic issues or problems which the various proposals create. When appropriate, I will refer to specific bills. Attached in Appendix A are summaries of four of the major bills.

EXTENT OF COVERAGE

Many of the proposals provide that certain communications with the Executive Branch would be subject to the recordkeeping and reporting requirements. Both H.R. 1180

and H.R. 5795 treat as lobbying, communications on matters such as rules, rulemaking and government contracts. H.R. 1180 would cover communications on these matters with officials who are political appointees (Levels I through V on the Executive Pay Schedule). H.R. 5795 would cover communications with those officials, all officials GS-15 and above, members of the armed forces with a rank of colonel and above, and any other person "whose principal responsibility or job description includes the drafting, revising or letting of government contracts."

The inclusion of the Executive Branch in legislation designed primarily to cover the Congress suffers from a basic conceptual flaw. It must be recognized that these two branches of the government operate differently, and perform different functions.

There are myriad regulatory and executive agencies, each of which has its own specific procedures. Any attempt to provide more complete disclosure of the activities before these agencies should be dealt with in separate legislation designed for that specific purpose, not by legislation whose paramount purpose is the regulation of attempts to influence legislation.

Executive Branch coverage will not solve any of the real or imagined problems that may exist. This type of coverage is potentially very burdensome; it is duplicative of legislation such as the Freedom of Information Act and the Sunshine Act; and, it creates tremendous practical difficulties for those organizations which must comply with the law.

For example, how is an individual to know when he is communicating with an official who falls within the scope of either H.R. 1180 or H.R. 5795? Must he or she carry a copy of the U.S. Code? Must he or she ask the official what his GS level is? Must he or she ask to see the government employee's job description?

This would be necessary to enable a person to comply with the reporting requirements.

Furthermore, if communications on government contracts of greater than \$1 million dollars are to be covered as lobbying communications, does this mean that the contract manager is lobbying when he attempts to implement the agreement? Does this mean that sales personnel who make hundreds of contacts with respect to government contracts are lobbying? What about the organization which operates a government owned facility? Is a university which seeks to obtain a research grant lobbying?

If H.R. 5795 is enacted, the answer to all these questions would be yes.

This approach fails to consider the practical burdens which may result from such coverage. A company would be required to monitor and account for the activities of its salesmen and contract managers, even after a contract has been awarded. Hundreds of employees would be listed in the reports, and their expenditures accounted for, despite the fact that by no conceivable stretch of the imagination should they be considered to be "lobbyists".

Our position is that any lobbying reform legislation should be limited to direct attempts to influence the legislative process. Abuses of the administrative process, if any, should be dealt with in legislation specifically designed for that purpose.

"GRASSROOTS" OR INDIRECT LOBBYING

In addition to requiring an organization to register and report because of its direct lobbying activities, many of the bills would also cover, in varying degrees, indirect lobbying—the so-called "lobbying solicitations". H.R. 1180 would require an organization, which has already been required to register because of its direct lobbying activities, to provide copies of all solicitations which are intended to reach more than a specified number of persons. In addition to requiring copies of an organization's "lobbying solicitations", H.R. 5795 provides that such activities may trigger the initial reporting and registration requirements.

Publications, newsletters and other communications which solicit, request or urge the recipient to contact an elected representative to express personal opinions on a particular matter would be included within this type of coverage.

This means that an organization which never directly contacts Congress could be required to register as a "lobbyist", file reports, and, conceivably, disclose in these reports the names and amounts of money given by its contributors merely because the organization sought to influence public opinion through its newsletters, mailings, advertisements, or other "lobbying solicitations".

This attempt to impose these requirements upon persons engaged in "indirect" lobbying activities, according to proponents, is designed to close one of the so-called "gaping holes" created by the Supreme Court in *United States v. Harriss*, 346 U.S. 612, (1954). But, in *Harriss*, the Supreme Court construed "lobbying activity" to mean "direct" lobbying in order to avoid constitutional difficulties.

In *United States v. Rumely*, 345 U.S. 41 (1953), the Supreme Court determined that:

... the phrase "lobbying activities" readily lends itself to the construction placed upon it below; namely, "lobbying in its commonly accepted sense," that is, "representation made directly to the Congress, its members, or its committees," . . . and does not reach . . . attempts "to saturate the thinking of the community." 345 U.S. at 47 (citations omitted).

This interpretation was used in *Rumely* "in order to avoid serious constitutional doubt", 345 U.S. at 47—the identical rationale, as previously noted, subsequently used by the Supreme Court in *Harriss*. 347 U.S. at 620.

It should be emphasized that the proponents of this type of coverage have not provided a compelling or valid reason to justify inclusion of "grassroots" lobbying in any new legislation. The mere fact that groups may engage in this type of activity is not sufficient.

It is exactly this exercise of rights which is protected by the First Amendment—the right to appeal to the people without fear of government harassment or intrusion.

One of the paramount reasons for the existence of voluntary membership organizations—trade associations, citizens' groups, environmental groups and others—is that they are able to provide their members with valuable information about what is happening in Washington. They also inform their members of the most opportune time to communicate their own views to their elected officials.

Groups such as these provide a vital service to their members. It is virtually impossible for people to be aware of all that is happening in Congress of special concern to them without such assistance.

There is no public interest in disclosing information about an organization's communications with its members. Such a requirement merely places unconstitutional burdens on those organizations which seek to inform their members and the public about what is happening in Washington.

PUBLICATION OF MEMBERSHIP AND DUES INFORMATION BY CERTAIN VOLUNTARY ORGANIZATIONS

One of the most questionable and highly discriminatory provisions of these bills is the requirement that voluntary membership organizations report (and, hence, make public) the names of members who contribute in excess of a specified amount and/or a percentage of the organization's budget. In addition, many of the bills require disclosure of either the actual amount contributed, an indication of the amount by category, or a listing of the top ten contributors. H.R. 1180, H.R. 5795 and H.R. 6202 all contain some form of compulsory membership disclosure provision.

The major impact of this provision would be upon business associations—trade associations and state, regional and local chambers of commerce, in particular. Some labor unions could also be affected, as well as civil rights groups, public interest organizations and, even some colleges or universities.

Some organizations publish their membership and contributor lists. Others do not, for good and practical policy reasons. Individual dues data, however, are treated as privileged and confidential by many trade associations. In these associations the dues may be based on production, sales, or shipments. Hence, publication of dues information which could readily be translated into one or more of these factors could not only breach essential confidentiality, but present a hazard under the antitrust laws.

Further, to publish names of members with dues allocations attributed to them for efforts to influence legislation would convey an unwarranted implication that each listed member supported, without reservation, any and all positions taken by the association. Indeed, some members may join and support the organization specifically because of programs and purposes unrelated to any so-called "lobbying" of the Legislative or Executive Branch.

Furthermore, it should be emphasized that the disclosure requirements of these provisions are triggered, notwithstanding the fact that a substantial portion of the actual dues or contribution may be used for purposes unrelated to lobbying. For example, while the specific trigger provisions may vary (e.g., \$2500 for H.R. 1180; \$3000 for H.R. 5795) the organization would be required to disclose the required information when the money is used "in whole or in part" for lobbying.

No legitimate and responsible organization will object to providing information on the procedures by which policy decisions constituting positions of the organization are reached, or upon the type of membership which it represents. This is a basic element in the evaluation of representations made on behalf of membership organizations. However, such information can be obtained readily without superimposing any new mandatory requirements for reporting and disclosure, including membership lists.

Finally, as the American Civil Liberties Union (ACLU) and others have so effectively noted, the constitutional implications of this provision cannot be ignored. In numerous cases, the Supreme Court has held that the involuntary disclosure of membership

lists is unconstitutional. Other cases have affirmed the right of anonymous speech. The principles enunciated in these cases can lead only to the conclusion that the provision in question does not meet the test of constitutionality, despite the statements to the contrary by the proponents of this type of disclosure.

PROFESSIONAL VOLUNTEERS

During the hearings and the debates of the last session and this session, it is apparent that the primary intent of the sponsors of this legislation is to cover paid employees and the so-called "hired guns" who lobby on behalf of an organization or its members. The net result is to exclude the so-called "professional volunteers" or activists who lobby extensively on various issues without receiving any compensation for their efforts.

It is unrealistic, probably unconstitutional, and certainly undesirable to include all private citizens who communicate with Congress in the coverage of any bill. As a matter of fairness and equity, however, the coverage must include those who exert significant and substantial efforts to influence legislation, whether or not they are paid.

The First Amendment will not tolerate the creation of a lobbying law which will cover the corporate or organization executive but exempts individuals, who may or may not be paid, who exercise a substantial degree of control or influence over the activities of organizations which engage in a substantial amount of lobbying.

Any arguments that this legislation should be limited to those who are paid to exercise their First Amendment rights should be rejected. Numerous court cases have recognized that one does not forfeit these rights merely because he is paid to exercise them.

REGISTRATION, RECORDKEEPING AND REPORTING

I want to emphasize that the real concern of the business community is not with the concept of any reasonable disclosure per se, but rather with the complex, costly and time-consuming recordkeeping and reporting requirements. These requirements are compounded by the need for constant and intensive consideration of specific "communications", "solicitations" or other "activities" in order to determine whether or not they are covered by the proposed law, and, if so, how properly to account for the related expenditures or receipts.

Appendix A contains a summary of the various registration, recordkeeping and reporting requirements contained in four of the major bills. I urge the Committee to consider these provisions in the context of the day-to-day life of each individual citizen who desires to make an oral or written presentation to a Senator, Representative or to an officer or employee of some Federal agency or department. Similar consideration should be given to the impact upon legitimate business and other organizations and their representatives.

The potential burdens and practical difficulties which could result from attempts to comply with these various proposals are staggering.

For example, H.R. 5795 requires that a "lobbyist" must include in its quarterly reports an identification of each person who lobbies on its behalf and a "description of each issue as to which that person" lobbied. That provision does not seem to be unreasonable until it is viewed in light of the definition of issue. Issue is defined as "the whole or any part, portion, or element of, or any amendment to or revision of, any bill, resolution, treaty . . . report . . . rulemaking . . . or a government contract. . ."

As a result, someone working on a complex legislative issue, such as tax reform, could conceivably be required to list hundreds of issues. A general description of the areas of interest to the organization would be more reasonable and much less burdensome to the organization.

All of the bills require organizations to provide information on their total lobbying expenditures. However, some bills, including H.R. 5795, require that the income of individuals who lobby on behalf of the organization be disclosed.

To many individuals, the amount and source of income is confidential information. Indeed, the Internal Revenue Code imposes strict limitations upon access to information contained in tax returns and provides significant penalties for divulgence of such information by government employees.

In light of this tradition of confidential treatment of income-related data, this, at the very least, borders on an intrusion into an individual's privacy. While one may justify the making public of income related to the "lobbying activity" of individuals, total income statistics need not and should not be revealed to further some vague and ill-defined "public interest".

Another problem for a large organization is created by the difficulty in accounting for the lobbying activities of all its employees, no matter how insignificant such activities may be. Is a company required to account in its reports for all communications by its employees? If so, does this apply to the individual who expresses his opinion without any instigation by the company?

These potentially burdensome results could be avoided by establishing thresholds below which an employee's activities (and expenditures incidental thereto) need not be reported. This would reduce the administrative burden for the organization by eliminating the necessity to track the activities of all its employees.

ADMINISTRATION

Nearly all of the bills give the Comptroller General (GAO) the responsibility for implementing this legislation. While the Chamber has no preference as to which agency is given such authority, it is our belief that any legislation which is adopted must clearly delineate and limit the powers of the agency. The experience of the past few years has shown that many agencies charged with the implementation of regulatory statutes have the tendency to go far beyond the legislative intent of Congress when implementing such legislation.

First, the GAO, or whoever is responsible for administering the Act, must be subject to the Administrative Procedure Act.

Second, it must be clearly indicated in the statute that the administering agency only has the authority to require that an organization maintain those records which are essential for the implementation of the Act.

Third, the law should state that the agency may require disclosure of only that information specifically delineated by the statute. The statute must specifically provide that the agency's authority is of a procedural rather than substantive nature.

Fourth, the statute should provide that all advisory opinion requests, advisory opinions, rules and similar pronouncements by the administering agency must be published in a timely manner in the Federal Register.

Fifth, enforcement of criminal violations of the Act should be vested with the Justice Department. In addition, the legislation should specifically state that criminal sanctions may be employed only for "knowing and willful" violations.

CONCLUSION

The Chamber supports the enactment of lobby reform legislation which meets the following conditions:

- (1) The bill should be limited to direct lobbying of the Congress;
- (2) The reporting requirements should be simple and easy to comply with;
- (3) The bill should not require the compulsory disclosure of membership and dues information;
- (4) The bill should be constitutional and it should not have an impermissible chilling effect on First Amendment rights;
- (5) The bill should be fair, equitable and cover all those who engage in substantial efforts to influence legislation, whether or not they are paid; and
- (6) The bill clearly and specifically defines and limits the authority of the administering agency.

Legislation which meets these requirements will provide the public with sufficient information about the activities of those who seek to influence legislation without infringing upon their right to do so.

APPENDIX ¹

SUMMARIES OF H.R. 1180, 5578, 5795, 6202

Highlights of H.R. 1180—"Public Disclosure of Lobbying Act of 1977" (Rodino, D. N.J.)

I. COVERAGE

Organizations are required to register and report as "lobbyists" if they

- (1) Spend \$1,250 in any quarterly period to retain outside persons or firms to make oral or written lobbying communications on their behalf or "for the express purpose of preparing and/or drafting" such communications; or
- (2) Employ one person who spends 20% of his time engaged in activities described above.

¹ Appendix to Statement of the Chamber of Commerce of the U.S.

Lobbying communications include oral or written communications to Members or employees of Congress and certain members of the Executive Branch (Levels I-V—essentially political appointees) which are intended to influence matters before Congress, rules, rulemaking, investigations and the award of government contracts.

Among the activities specifically excluded from the Act are:

(1) Communications on any subject affecting an organization with the two Senators and Representative (and their staff) who represent the organization's principal place of business so long as the organization

- a. Acts on its own initiative; and,
- b. The costs are not paid by another person;

(2) Communications by an individual for redress of personal grievances; and

(3) Communications made for or on the public record;

(4) Communications made at the request of a Federal Officer or employee;

(5) A regular publication of a voluntary membership organization if it is published in substantial part for purposes unrelated to lobbying;

(6) Communications or solicitations made through newspapers, magazines, books published for distribution to the general public or through a radio or TV Broadcast (excluding paid advertisements);

(7) Activities regulated by the Federal Election Campaign Act.

II. REGISTRATION AND REPORTS

An organization which is a "lobbyist" must register annually and file quarterly reports. The registration must

(1) Identify the organization;

(2) Provide a general description of the methods by which the organization arrives at its position with respect to a particular issue; and

(3) Identify persons retained to lobby and employees who spend more than 20% of their time on covered activities (making or preparing for lobbying communications).

The quarterly reports must contain the following information:

(1) Total lobbying expenditures of the organization;

(2) An identification of persons retained to make or prepare covered communications and the total amount paid or the portion of that amount attributable to lobbying;

(3) A description of the primary issues on which the organization spent significant amount of its efforts;

(4) A description of solicitations which are transmitted to more than 500 persons, 100 employees, 25 officers or directors or 12 affiliates (this may be satisfied by providing a written copy of the solicitation);

[Note: A solicitation is defined as an oral or written communication directly urging, requesting or requiring another person to advocate a specific position on a particular issue and to seek to influence a Federal officer or employee. Communications between organizations registered under this Act are excluded.]

(5) A disclosure of any expenditure for a dinner or reception for Federal officers or employees where the cost exceeded \$500;

(6) An identification of each person (individual and organization) who contributed income to the organization (and the amount) when the contribution exceeds \$2,500;

(7) Itemization of each expenditure "made to or for the benefit of any Federal officer or employee" which exceeds \$25.00. The GAO will refer for investigation by the House Ethics Committee any expenditures to a Federal officer or employee (under the Committee's jurisdiction) which exceed an aggregate annual total of \$100; and,

(8) Additional information concerning the relationship between the lobbying organization and a Federal officer or employee where such relationship is or could be considered a conflict of interest (e.g., partner, member of the organization's governing body). This relationship is defined as a "direct business contact."

III. ENFORCEMENT

The Comptroller General (GAO) will have responsibility for implementing the Act. The GAO will have the authority to promulgate rules and regulations and issue Advisory Opinions.

Civil and criminal sanctions can be imposed for violations of the Act. Apparent criminal violations will be referred to the Department of Justice for prosecution.

Highlights of H.R. 5578—"Lobbying Disclosure Act of 1977" (Edwards, D. Calif.)

I. COVERAGE

Organizations are required to register and report as "lobbyists" if, during any quarterly period they:

(1) Spend more than \$2,500 for the retention of another person to make lobbying communications (or for the research or preparation of such communications); or,

(2) Spend more than \$2,500 on lobbying communications (or research and preparation) and employ one person who spends 20 percent of his time engaged in making lobbying communications (or research and preparation).

Communications with Members of Congress (and staff) are excluded if the organization's principal place of business is located:

(1) In the state or Congressional District represented by such Member; or

(2) In a standard metropolitan statistical area within which the state or Congressional district (or any portion thereof) of such Member is located.

Lobbying communications include oral or written communications to Members or employees of Congress which are intended to influence any pending or proposed bill, resolution, hearing or similar matter in Congress.

Specifically, excluded from the definition are:

(1) Communications by an individual acting on his own behalf for redress of personal grievances or to express his own personal opinion;

(2) A communication which deals only with the existence or status of any issue;

(3) Testimony made for or on the public record;

(4) Communication made through a speech, address, newspaper, book or magazine published for distribution to the general public or the membership of an organization or through radio on TV; and,

(5) Communication by or on behalf of a candidate, as defined in the Federal Election Campaign Act.

II. REGISTRATION AND REPORTS

An organization which is a "lobbyist" must register annually and file quarterly reports. The registration must:

(1) Identify the organization;

(2) Provide a general description of the types of issues on which the organization, as of the date of filing, will lobby;

(3) Provide the approximate number of individuals and organizations who are members of the organization; and,

(4) Identify persons retained to lobby and employees who spend 20 percent of their time on covered activities (making or preparing for lobbying communications).

The quarterly reports must contain the following information:

(1) Total lobbying expenditures of the organization;

[Note: Charitable organizations acting pursuant to the provisions of Sec. 501(i) of the IRS Code may file a copy of the information provided to the IRS in lieu of total expenditures.]

(2) Itemized listing of each expenditure in excess of \$25 made to or for the benefit of any member or employee of Congress (or their family);

(3) Identification of persons retained to lobby and employees who spend 20 percent of their time lobbying and the total amount paid to them or the portion of that amount attributable to lobbying;

(4) A description of the 10 issues which the organization estimates accounted for the greatest proportion of its lobbying communications; and,

(5) When an organization retains a person to lobby (A) a description of each issue on which the person lobbied and (B) the retained person's expenditures on behalf of the organization in connection with each issue.

Members and employees of Congress must file an itemized list of cash expenditures in excess of \$25 made to or for the benefit of the Member or his staff (and their families). (Campaign contributions are excluded.)

Information about a voluntary membership organization's membership or contributor list is specifically excluded.

III. ENFORCEMENT

The Comptroller General (GAO) will have the responsibility for implementing the Act. The GAO will have the authority to promulgate rules and regulations and issue Advisory Opinions.

Civil and Criminal Sanctions can be imposed for violations of the Act. Apparent criminal violations will be referred to the Department of Justice for prosecution.

Highlights of H.R. 5795—"Public Disclosure of Lobbying Act of 1977" (Railsback, R. Ill. and Kastenmeier, D. Wis.)

I. COVERAGE

Organizations are required to register and report as "lobbyists" if, in any quarterly period, they:

(1) Spend \$1,250 to retain another person (A) to make a lobbying communication or solicitation or (B) for the express purpose of preparing or drafting any such communication; or

(2) Employ (A) one individual who spends 30 hours or (B) two or more individuals each of whom spends 15 hours making lobbying communications or solicitations on behalf of the organization or its members.

The hour threshold in paragraph 2 applies after the position of the organization has been decided and only with respect to the activities of the employees assigned the responsibility to "implement the decision."

Lobbying communications include oral or written communications to Members or employees of Congress and Members of the Executive branch (Levels I-V, executive pay schedule, GS-15 and above, military commission-pay grade O-6 and above, and any person whose principal responsibility or job description includes the drafting, revising or letting of government contracts) which are intended to influence matters before Congress, rules, rulemaking, investigations or government contracts (of greater than one million dollars).

Lobbying solicitation means any oral or written communication urging, requesting or requiring another person to make a lobbying communication (communications between registered organizations are excluded).

Activities specifically excluded from the Act include:

(1) Communications made at the request of a Federal officer or employee;

(2) Communications made for or on the public record;

(3) Communications in response to a published notice of opportunity to comment on a proposed agency action;

(4) Communications by an individual for redress of personal grievances (including communications made on organization stationery so long as it does not purport to represent the position of the organization and was not requested by the organization);

(5) A regular publication of a voluntary membership organization if it is published in substantial part for purposes unrelated to lobbying;

(6) Communications or solicitations made through newspapers, magazines, books published for distribution to the general public or through a radio or TV Broadcast (excluding paid advertisements);

(7) Activities regulated by the Federal Election Campaign Act; and,

(8) Communications on any subject affecting an organization with the two Senators and Representative (and their staff) who represent the organization's principal place of business so long as the organization:

a. Acts on its own initiative or in response to an exempt communication or solicitation as described in paragraph 5 or 6; and,

b. The costs are not paid by another person.

II. REGISTRATION AND REPORTS

An organization which is a "lobbyist" must register annually and file quarterly reports.

The registration must:

(1) Identify the organization;

(2) Provide a general description of the methods by which the organization arrives at its position with respect to a particular issue;

(3) Identify persons retained to lobby and employees who exceed the hour thresholds described above; and,

(4) Provide an identification of each person (individual or organization) who contributed more than \$3,000 to the organization and an indication, by category, of the amount. (Categories are \$3,000 to \$9,999; \$10,000 to \$24,999; \$25,000 to \$49,999; above \$50,000.)

The quarterly reports must contain the following information:

(1) Total lobbying expenditures of the organization;

(2) An itemized listing of each expenditure in excess of \$35 made to or for the benefit of any Federal officer or employee;

(3) A disclosure of any expenditure for a dinner or reception for Federal officers or employees where the cost exceeded \$500;

(4) Identification of persons retained to lobby and employees who exceed the hour thresholds described above and the total expenditures made to such persons;

(5) As to the persons identified under paragraph 4, an identification of each issue on which that person lobbied;

[Note: Issue is broadly defined as "the whole or any portion or element of, or any amendment to or revision of" any matter before Congress, rules, rulemaking, hearings, investigation or government contract.]

(6) An identification of any chief executive officer or principal operating officer who engaged in lobbying activities and, in certain cases, the issues on which they lobbied; and,

[Note: Principal operating officers are (A) employees with managerial responsibility who report directly to the CEO or (B) members of the organization's highest managerial policymaking body.]

(7) A description of solicitations which are transmitted to more than 500 persons, 100 employees, 25 officers or directors or 12 affiliates (this may be satisfied by providing a written copy of the solicitation).

III. ENFORCEMENT

The Comptroller General (GAO) will have responsibility for implementing the Act. The GAO will have the authority to promulgate rules and regulations and issue Advisory Opinions.

Civil and criminal sanctions can be imposed for violations of the Act. Apparent criminal violations will be referred to the Department of Justice for Prosecution.

Highlights of H.R. 6202—"Regulation of Lobbying Act of 1977" (Kindness, R-Ohio and Moorhead, R-Calif.)

I. COVERAGE

Organizations are required to register and report as "lobbyists" if, in any quarterly period, they:

(1) Spend more than \$2500 to retain a person to make one or more lobbying communications for the organizations; or

(2) Make, through their officers, directors, agents or employees, 12 or more oral lobbying communications.

Lobbying communications include oral or written communications to members and employees of Congress which are intended to influence any bill, resolution, hearing, nomination or similar matter before the Congress.

Activities specifically exempt from the Act include:

(1) Communications by an individual acting on his own behalf for redress of personal grievances or to express his personal opinion;

Communications with a Member of Congress (or his staff) representing the state where the individual resides;

(3) Communications on behalf of an organization with a Member of Congress (or staff) representing the state in which such organization has its principal place of business or in which its officers, directors, agents, or employees have their principal personal residence;

(4) Communications which deal only with the existence or status of any issue;

Testimony given for the public record;

(6) Communications by Members or employees of Congress in their official capacity;

(7) Communications made through a speech, newspaper, newsletter or other written material for distribution to the general public or to the membership of an organization or through a radio or TV broadcast; and

(8) Communications by or on behalf of a candidate for public office or a political party.

II. REGISTRATION AND REPORTS

An organization which is a "lobbyist" must register annually and file quarterly reports. The registration must be filed within 15 days after the organization becomes a lobbyist and,

(1) Identify the organization;

(2) Provide a general description of the methods by which the organization arrives at its position with respect to a particular issue;

(3) Identify persons retained to lobby and officers, directors, employees or agents who make lobbying communications;

(4) Give the number of individuals and organizations who contribute income to the organization where such income was used in whole or in part for lobbying;

(5) Provide the dues schedule of the organization (if the majority of its income is from dues);

(6) Identify the 10 largest contributors if a) the dues or contribution exceed \$2500 in a year; b) such income was greater than 1% of its total dues or contributions; and c) the income was expended in whole or in part for lobbying.

The quarterly reports must contain the following information:

1. A disclosure of any expenditure for a reception or dinner for any Member or employee of Congress which exceeded \$500;

2. When the organization retains a person to lobby on its behalf it must provide; with respect to each issue:

(1) A general description of the issue;

(2) The amount paid for making such communications; and

(3) An identification of each person who received income to make one or more lobbying communications.

When the organization lobbies through its own officers, directors, agents or employees, it must provide:

(1) A general description of each issue on which it lobbied;

(2) An identification of each person who made 12 or more oral lobbying communications and the 5 issues which accounted for the greatest proportion of his lobbying;

(3) An estimate of lobbying expenditures (excluding wages and salaries);

(4) An estimate of expenditures for salaries and wages of those persons who have the primary responsibility for making lobbying communications.

III ADMINISTRATION AND ENFORCEMENT

The Comptroller General (GAO) will have responsibility for implementing the Act. The GAO will have the authority to promulgate rules, regulations and issue advisory opinions.

Civil sanctions may be imposed for violations of the Act.

The Act also contains a provision for Congressional veto of regulations.

Mr. DANIELSON. Thank you, sir. I just noticed that my subcommittee seems to be dwindling, so we can't stay very long. But I thank you for your statement. It is very well prepared, which makes it a lot easier to be of help to us.

I don't know where we're going to wind up in this bill. I feel that there are in existence the needs for the Congress to enact a lobbying bill, but the real agonies are going to come in markup as to the questions to be included, and we may get in touch with you then.

Mr. KREBS. The Chamber of Commerce would certainly be glad—

Mr. DANIELSON. I would also recommend that you might like to get in touch with your counterparts in some of these other organizations and see if you can't thrash out your mutual problems which are also our problems.

Mr. KREBS. If I may respond to that, we have been—I have been, personally, in discussion with members from just about every group in town, including the labor unions and public interest groups and other business groups.

Mr. DANIELSON. Thank you. I'm going to—following an announcement, this subcommittee will adjourn.

On this particular subject, due to the very great cooperation of all the witnesses and members, we did conclude our agenda for this morning.

This subcommittee will again meet on the subject of lobbying on Friday, April 29, a week from tomorrow, at 9:30 a.m.

At that time we have scheduled the following organizations or witnesses: the AFL-CIO, Public Citizen, the League of Women Voters, the Sierra Club, the Christian Science Church, and the National Newspaper Association.

So, there being no other and further business to come before the subcommittee, time having run out, the subcommittee will now stand adjourned until further call of the Chair.

[Whereupon, at 11:20 a.m., the hearing was adjourned, subject to the call of the Chair.]

STATEMENT OF THE ASSOCIATION OF AMERICAN PUBLISHERS

The Association of American Publishers (AAP) has over 327 publishing organizations in its membership, and they include trade houses (large and small), school and college textbook publishers, book clubs, university presses and the publishing departments of religious denominations.

AAP would like to bring to the attention of the Committee two areas of H.R. 1180, the Public Disclosure of Lobbying Act of 1977, which would have a very negative impact upon this Association.

Under this bill, quarterly reports from qualifying organizations would have to be filed with the Comptroller General concerning lobbying activities. Section 6(8)(A) provides that such report must identify each organization from which the reporting organization received income during such period, including the amount of income provided by the member where any part of the income was used to engage in lobbying activities, and where the amount received from the member organization totals \$2500 or more during the calendar year.

For a trade association such as AAP, which subsists wholly on dues income, and where dues are determined on the basis of gross receipts by the member companies, and where these member organizations are guaranteed confidentiality of the dues that they pay, it would simply be disastrous. AAP dues are assessed on the basis of net revenues (which are reported to a confidential agent) from the sale of books, primary journals, tests, maps and other printed materials and from copyrighted audiovisual and other materials, but not from the sale of services or equipment.

AAP expends less than one and a half percent of its total income on governmental relation activities and even less on the type of activities defined under the Act as "lobbying." Under this law, AAP would undoubtedly lose many members who would not be willing to disclose to their competitors the dues that they pay since this could be used to determine the net revenues of the competitors. The bulk of AAP member companies are not publicly held and their total revenues are not reported to anyone except IRS and their individual owners.

Such compulsory disclosure is of dubious constitutional validity and certainly would add nothing to the avowed purposes of this measure as long as the trade association, such as AAP, discloses its total income and the names of all its members. Therefore, the requirement to disclose the name and amount of dues of all members who contributed more than \$2500 is meaningless.

Another problem is Section 6(3) which requires "a disclosure of those expenditures for any reception, dinner, or similar event paid for, in whole or in part, by the reporting organization for federal employees or employees regardless of the number of persons invited or in attendance, where the total cost of the event exceeds \$500;". AAP regularly sponsors Publishers Forum dinners in Washington, D.C. A few guests at each dinner are very apt to be from the Federal Executive or Legislative Branch, even though the overwhelming majority of those in attendance are not associated with the government in any capacity. This has also been true of receptions that AAP has held from time to time during the course of its meetings and seminars held in Washington. Just because a member of Congress, a committee staff person, or a civil servant, or federal employee of any kind is perchance in attendance, it seems quite unwarranted to require a report to be made on the entire affair.

It is our hope that the Committee will take into consideration the above points during its deliberation on legislation to reform the present law governing lobbying activities.

LOBBYING AND RELATED ACTIVITIES

FRIDAY, 29 APRIL 1977

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:10 a.m. in room 2141 of the Rayburn House Office Building, Hon. George E. Danielson (chairman of the subcommittee) presiding.

Present: Representatives Danielson, Flowers, Jordan, Harris, and Kindness.

Staff members present: William P. Shattuck, counsel; Jay Turnipseed, and Timothy J. Hart, assistant counsel; Alan F. Coffey, Jr., associate counsel.

Mr. DANIELSON. The hour of 9:30 having come and gone, the subcommittee will be in order.

We resume today our hearings on H.R. 1180 and related bills to regulate lobbying and related activities. This will be our final day of general testimony on the bill, and we have a rather outstanding lineup of witnesses.

Our first witness this morning will be Mr. Andy Biemiller, former Member of Congress and currently an outstanding leader in the labor movement with the AFL-CIO.

Andy, why don't you just proceed. I will let you know one thing. In this subcommittee, if you would like to feel relieved of absolute attachment to your prepared statement, we will receive it in the record without objection. You can feel free to present your best argument.

TESTIMONY OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, ACCOMPANIED BY KENNETH YOUNG, ASSISTANT DIRECTOR, DEPARTMENT OF LEGISLATION, AND, LAURENCE GOLD, SPECIAL COUNSEL, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS.

Mr. BIEMILLER. The statement is very short, Mr. Chairman, so I think we will just stay with it.

For the record, my name is Andrew J. Biemiller, and I am director of the Department of Legislation of the AFL-CIO. I am accompanied by Mr. Laurence Gold, special counsel for the AFL-CIO, and Mr. Kenneth Young, assistant director of the legislative department.

Mr. Chairman, in these hearings, your subcommittee returns to a subject—replacement of the outmoded and ineffectual Federal Regulation of Lobbying Act—that the 94th Congress considered extensively.

At this stage in the evolution of lobby reform, it does not appear to us necessary to reargue first principles. One of the beneficial consequences of the last Congress endeavors is that there is general agreement on the factors that must be taken into account in establishing a sound regulatory system:

First, the right of individuals and groups to petition the Government is a basic constitutional right.

Second, there is a countervailing right in the people to know how their Government works, which includes the right to information on the activities of organizations heavily engaged in the legislative process.

Third, the further the right to information is pressed, the more it impinges on the right to petition. The more complex and time-consuming the law's registration, recordkeeping and reporting requirements are, the more likely it is that those who are regulated will forego their right to make their views known to the Government. And, of course, those who are the most poorly financed or who participate only intermittently and on a minimal basis in the legislative process are the most likely to opt out.

Fourth, there is a reason for legislative restraint quite separate from the chilling effect of over-regulation. There is more than a grain of truth in the view that telling everything is as effective a method of defeating effective public scrutiny as telling nothing. Obfuscation is as time-honored a method of nondisclosure as silence. Significant facts tend to be buried in voluminous compilations of trivia.

In sum, at this point there is a consensus that the present law is inadequate. A new law requiring organizations represented by professional lobbyists to register and to report in reasonable detail is necessary. On every side there are honeyed words of support for such legislation. But, Mr. Chairman, this support, while a mile wide, is unfortunately even less than an inch deep.

Everyone agrees that professional lobbyists should register, but few are willing to admit to that honorable title. Everyone agrees that organizations heavily involved in the legislative process should report. But even the most modest proposals for information in addition to that presently provided are rejected by a majority of those who would be covered. They claim these proposals would impose intolerable recordkeeping burdens, or would create unwarranted intrusion into their internal affairs.

The problem of enacting a sound lobbying law is further exacerbated by the fact that the House and Senate bills passed in the last Congress, H.R. 15 and S. 2477, reflect fundamentally different approaches. The basic point of divergence is the extent to which organizations at the margin of significant legislative involvement should be covered, and the proper means for measuring such involvement. There are also major differences between the scope and detail of the reporting required of covered organizations by the two bills.

Against this background, it seems to us, that the time for philosophic discussion is over. What is needed, we are convinced, is a creative compromise between the concrete proposals contained in last year's House and Senate bills. We have come to this conclusion even though we supported and actively worked for last year's House bill and opposed last year's Senate bill.

We believe that the two bills can be harmonized in a principled fashion. We realize that the suggestions we advance will, as compared to H.R. 15, increase the reporting requirements on us.

The prime issue in enacting this legislation has been determining its scope. That issue has been particularly difficult to resolve because of the assumption that all of the covered organization, whether large or small, or very active or only marginally so, must fulfill identical reporting requirements. This scheme was too rigid to take proper account of the relevant competing considerations.

The aims of lobbying regulation can be better accomplished by dividing the diverse organizations into two categories—organizations which regularly engage in substantial lobbying activities, and organizations which engage in lobbying activities to a lesser but still significant extent. The first group should file more extensive registration and reporting forms than the second.

This approach recognizes the argument, decisive in the Senate last year, that covering only the most active lobbyists distorts the overall picture by failing to record the role of an important group of lobbying organizations. At the same time it recognizes the validity of the House position that the occasional lobbyists are typically without the resources necessary to comply with substantial recordkeeping and reporting requirements.

This so-called tier approach, obviously, is only as good as the measure used to delineate the group of occasional lobbyists required to file abbreviated reports, and the group of major lobbyists who must meet more extensive reporting requirements. We suggest that last year's Senate bill which used the number of oral lobbying contacts made by the organization, other than contacts with the representatives from the organization's home area, sensibly describes the organizations which should be required to file abbreviated reports.

Since an organization's members or employees are normally drawn from the surrounding area, not the single congressional district in which the organization is located, all the representatives from that standard metropolitan statistical area should be included in the so-called hometown exemption. Such an exemption assures that an organization which confines itself to occasional statements of views to its own representatives would not be covered.

If this approach is followed, the AFL-CIO would support a test of 20 oral lobbying communication to Members of Congress outside their home state or SMSA as a sound measure of when an organization should file the abbreviated report.

Moreover, we believe that major lobbyists can best be defined by two tests. First, the retention of an outside representative who is paid more than \$1,250 in a quarter. Second, the employment of one or more individuals who spend a substantial portion of their time making lobbying communications.

The choice between a test based on percentage of time preparing and making such communications, or a test based on the number of hours spent actually making either oral lobbying communications, or both written and oral communications is a close one.

The percentage-of-time test and the hours test require essentially the same type of recordkeeping. Because the hours test covers a narrower range of activity and is somewhat more exact, we believe

it is superior. If both written and oral lobbying communications are included, the 30 hours in a quarter measure suggested in H.R. 5795 appears sound.

Last year's House and Senate bills were closer with regard to the reporting required or covered organizations than they were with regard to the scope of coverage. As part of the overall compromise we favor, we would support two additions drawn from S. 2477 to the reporting requirements for major lobbyists which were included in H.R. 15.

First, we do not believe that it would significantly add to the burden imposed on these organizations to enumerate and specify the major issues upon which they lobbied, up to a maximum of 25. It would also make sense to require these organizations to state, in connection with each major issue, the names of their employees who specialize in lobbying, and their chief executive officers who made lobbying communications on that issue.

While we are otherwise firmly opposed to any reporting of the activities on unpaid volunteers, we agree with the view that any unpaid chief executive officer should be included in such reports.

Second, the technique of lobbying by generating grassroots activities is becoming increasingly important. Reporting of extensive solicitations by major lobbying organizations should, if the disclosure purposes of the legislation are to be achieved, include a description of the issue covered, the means employed, and identification of any person retained, the approximate number of individuals and organizations reached, the name of any newspaper or other publication or radio or television station used, an indication of whether those solicited were in turn asked to solicit others and the amount expended, if that amount is in excess of \$7,500.

Turning now to the reporting which should be required of the occasional lobbyist on the abbreviated form, we suggest that an identification of the reporting organization, a description of the major issues up to a maximum of 10 upon which the organization lobbied, an itemization of gifts made, copies of written lobbying solicitations, and descriptions of paid radio or television lobbying solicitations, is more than sufficient to provide an accurate picture. These requirements do not impose a burden which would dissuade such an organization from stating its views.

In conclusion, Mr. Chairman, the AFL-CIO would remind this committee that, over the years, we have faithfully and fully complied with all of the requirements of the present lobbying law. We have never been ashamed, nor have we attempted to hide, our role on Capitol Hill in protecting and advancing the interests of working people. Quite the contrary.

It is for this reason that we actively supported and worked for the adoption of H.R. 15 last year. And, we might add, we were one of the very few major organizations that took that position, not only during the long night of debate and amendments that preceded passage of H.R. 15, but in the next few days when efforts were made to go to conference with the Senate.

Consistent with this position, Mr. Chairman, the AFL-CIO renews its call for lobby reform legislation. We are ready to support strong legislation reported by this committee, and to work for its enactment.

Mr. DANIELSON. Thank you very much, Mr. Biemiller. I note that you devote your presentation almost entirely to the item of thresholds—as to what is the qualifying amount of activity to put someone within the purview of whatever law we pass. That is a very difficult issue, and I thank you for your help.

I will first yield to the gentleman from Alabama, Mr. Flowers, who carried the ball during that long night of debate which you refer to in your statement.

Mr. Flowers.

Mr. FLOWERS. I thank my distinguished chairman for yielding to me.

I want to of course say hello to our friend Andy and Ken and Larry and state once again my deep appreciation for the constructive efforts that you all have made for a couple of years now as we worked along on this legislation. I don't think we would be where we are now if you had not participated as you have.

I deeply appreciate personally and as a spokesman for this committee. I think that you have made a vital contribution here this morning, too, Andy. I think everybody now fully understands that there will be a new law passed this year. In my opinion, it's a foregone conclusion. The forces are just at work that require that. We probably should have gotten it done last year, but we just got caught in the crunch at the last and didn't quite put it together.

Had we been given a couple more days last year, I think we would have been able to work something out then. But let's get it behind us soon. I think we on this committee have a good idea of all of the proposals of the various interested groups, and in many respects you have been able to compromise and also factors in what you know to be some important considerations that the Senate has.

We are just going to have to sit down in markup and, realizing all those things, settle a few of the differences for you that remain. I think the framework of what we have is a very strong, progressive proposal. I don't think I have any questions. We have talked about this so many times that I could answer for you my own question to you.

I'm not going to take the time of the rest of the committee with this. Let me say again that because I was so involved in it last year and received such great cooperation from our present chairman and other members of the subcommittee, I want to say that I appreciate your scheduling this important legislation in the priority position that you have for this year's consideration.

And I think that before the long, hot summer's anywhere near over with that the House and the Senate will have adopted strong lobbying disclosure legislation.

Thank you very much.

Mr. DANIELSON. Thank you very much, Mr. Flowers.

Mr. Kindness of Ohio.

Mr. KINDNESS. Thank you, Mr. Chairman and thank you, Mr. Biemiller. I certainly appreciate your constructive suggestions here today which are very helpful. I would like to examine a couple of them with you.

One, the concept of the maximum number of issues, 25 in the case of major lobbying organizations and 10 in the case of secondary.

What is the justification or the rationale for establishing a maximum in your view? If there happen to be 50 issues, for example, why would it not be important to list them?

Mr. BIEMILLER. Mr. Gold.

Mr. GOLD. Mr. Kindness, our view on that is that in the area of reporting issues, there is a point at which an organization puts in so relatively little time and effort that the burden of reporting is unwarranted. If you require an itemization of every issue in an organization like ours, we would go on and have to check with every one to see whether somebody made a single call or spent an hour on a particular matter, which is of peripheral interest.

We, just in this proposal and last year's bill as it came out of committee, came up with the view that 25 issues from our experience was as much as any organization which is presently engaged in lobbying put in any substantial amount of time on.

Mr. KINDNESS. Would a number of contacts test perhaps be rational, reasonable on determining what issues should be reported?

Mr. GOLD. Well, the argument against that, I think, is that you get into a whole additional range which we think is unwarranted. The vision we have of 25 issues would be that at the close to the end of the quarter we would have to sit down and go through in our own minds from the letters we have sent up to the Hill and other sources what our major issues were and rank them.

But if there was a cutoff in terms of number of contacts, that means that everybody would have to keep track of every contact so that we would know we would be complying with that portion of the requirements.

We think that at a certain point the trade-off between greater specificity and giving a sound picture of major issues is best served by this cutoff of up to 25.

Mr. YOUNG. Congressman, if I could get in on that for a minute.

Mr. DANIELSON. Sir, would you state your name for the record?

Mr. YOUNG. I am Kenneth Young. It seems to me that if you're asking is the number frozen, obviously the number is an arbitrary number. It seems to me that in your own bill, in the reporting requirements, you attempt to do somewhat the same thing wherein you list the people that are in effect triggered in, and then as I understand it, have them list up to five issues. So what we're saying basically is a different approach of saying the organization lists the major issues that it worked on.

It then, by listing it's again triggered people, and tying them to those issues, provides an opportunity of showing what the really major issues were.

Mr. KINDNESS. Right. I just feel that in listening to these suggestions there are some very good thoughts here, but I sure want to test validity of the basis of selecting an arbitrary number. But I know we have got to select an arbitrary number with this legislation, it's quite apparent.

Mr. YOUNG. As I recall, your provision is up to five issues for people that meet the contact test.

Mr. KINDNESS. Right. And that may be too low. That is what I was trying to examine, that range. In the secondary reporting, that is, the occasional lobbying, there is not a provision in your suggestion

for the identification of people who determine the policy of the organization, such as a board or officers or whatever controlling group there may be of an organization. Would you care to comment on whether it's important, paid or voluntary, to know the identification of who's running things in that organization and who's making the lobbying contacts?

Mr. BIEMILLER. Mr. Gold.

Mr. GOLD. What we visualized was that the organization in its identification would have list its officers. But that in every case, what we see as the important point on the reporting forms for the occasional lobbyist is that we come as close to a purely mechanical process as we can so that the people affected would be the lightest post-reporting burden consistent with coverage and consistent with providing important information. It appears to us that so long as the organization in its registration, and that is what we understand, would have to list its officers, that that would suffice and that the added staff of stating how they reach policy judgments for at least a bit of descriptive procedures, and we ought to leave that for the major organizations.

Mr. KINDNESS. With regard to grassroots lobbying or the secondary lobbying, I have, I think we all should have, a great concern as to how close you're coming to first amendment rights and restrictions on them.

I am wondering whether you would care to express a feeling as to whether your suggestion on grassroots lobbying—lobbying solicitations—is included here because you feel that it's really needed, or rather because it is one of the things that is in controversy and needs to be apparently compromised?

I don't see an evil that needs to be overcome in that area. Would you care to comment on that?

Mr. GOLD. Well, we view the matter differently, particularly if you have organized solicitation through wires or letter to groups in the field. There is no way for people not connected with the organization to know of that. And a campaign of solicitation which brings forth identical or nearly identical or similar communications back home appears to us to be every bit as much lobbying, lobbying which has a direct and immediate effect on the process, as the activities which Mr. Biemiller and Mr. Young engage in every day.

There is plenty of room for debate as to which is the best way for an organization to make its views known on the Hill. And it seems to us that it is a very important part of the bill, if the bill is to present a fair and complete picture of what is going on to cover lobbying solicitations.

I would point out that the suggestion made in our testimony requires that in a major lobbying organization under another test before you have to report solicitations, that you report quite large-scale solicitations, only those that reach in last year's bill 300 individuals, 100 organizations, I can't remember all the numbers, but they are there, and that you don't get into financial reporting unless on a particular solicitation issue you have spent \$7,500.

I think that that steers well away from any potential first amendment problems.

Mr. DANIELSON. The time of the gentleman has expired.

The young lady from Texas, Ms. Jordan.

Ms. JORDAN. Thank you, Mr. Chairman.

Mr. Biemiller, your suggestions are helpful to the committee, but I am just a little bit troubled by the two-tier approach. It would appear that we are building in confusion, where there need necessarily be no confusion. Two sets of forms, two classifications of lobbyists, a more abbreviated form for people who want to do it quickly, a more extensive form for those who are required to provide more information.

In your statement you defined one tier as the lobbyist who engages in lobbying activity to a significant extent; and, on the other hand, organizations which engage in lobbying activity to a lesser than substantial extent or significant extent.

Now, that to me, is building in some potential for confusion and conflict where there need be none. That if we are going to have a strong bill, that we would have the capability as a Congress, with you helping us, to draw up a set of forms that would not be so complicated that they frighten people from identifying themselves as lobbyists, but that they be simple enough to extract the information that we claim the public wants to know, informative, but not so woefully complicated.

So, will you please help allay my fears that this is going to be a more complicated and confusing process?

Mr. BIEMILLER. Mr. Young is working on this at great length.

Mr. YOUNG. Congresswoman, I think you have got a valid point, but what we were trying to do is meet two tests of our own really. One, that the active Washington-type major organizations report sufficient information so that they are not simply giving name, rank, and serial number and little else. And therefore, really have a strong bill.

We were concerned about organizations in the field who do a fairly important amount of lobbying, but who do not have the resources nor the ability to comply with the type of reporting that, say, the AFL-CIO itself could comply with.

Ms. JORDAN. Let me just interrupt you there, Ken.

How do we know that they won't have the resources to comply with the reporting that will be required under a new lobbying law.

Mr. YOUNG. Well, we don't unless we assume that the major organizations are going to have to do the type of reporting that we have outlined in our testimony for what you would call the tier-one type lobbying organization.

The lesser lobbying organizations which may have one person on staff, may or may not have a secretary, yet may get involved and meet the tests that we have suggested would find that I think so burdensome and would be so concerned, that they might stop their lobbying operations. It would then have a chilling effect. Whether those groups agree or disagree with us, we think that is wrong for the American system. So, we are caught in the situation where if we want to make sure there is not a chilling effect around the country, we want very simple forms. And simple information. And at the same time, we are convinced that that type of information is inadequate to take care of the major lobbying organizations that operate full time in this area.

Ms. JORDAN. Andy, you or anyone can answer this.

Do you have any problem with extending whatever lobbying reporting requirements we have to the executive branch of Government?

Mr. BIEMILLER. We have no problem with that. We are not usually spending a great deal of time with the executive branch. We have got no trouble reporting it.

Ms. JORDAN. I know. [Laughter.]

All too well I know. I do endorse your position on the home State exemption, not being limited to a single congressional district, when we do have areas such as Houston where we have four and a part of another Member of Congress representing that one area. There are even more Members involved if we take in the standard metropolitan statistical area. And I really think that that's the only thing that makes sense and I hope no one deters you from your support of that position.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Ms. Jordan.

You covered happily all of the points that I had put down here. I am delighted to note that there seems to be one consensus coming out of these hearings, and that is that the home area exemption based upon standard metropolitan statistical area now seems to have rather broad support.

I yield.

Mr. KINDNESS. Mr. Chairman, there is one area that I'd sought to question. What if a congressional district contains parts of several standard metropolitan statistical areas?

My district, for example, has two, at least, involved. What would be your view on that situation?

Mr. BIEMILLER. What are the two areas, Columbus-Dayton?

Mr. KINDNESS. Hamilton-Middletown in Butler County, Ohio, and Dayton.

Mr. BIEMILLER. Hamilton isn't a district, a statistical district by itself, is it?

Mr. KINDNESS. No—no, that is a very common misconception, but there is a SMSA called Hamilton-Middletown, and then Dayton?

Mr. DANIELSON. If the gentleman will yield back, I appreciate your bringing up this point.

Every time you solve one problem you identify another.

But I am glad you brought it up. It will have to be considered in markup and we are going to have to make some provision for that. Fortunately, I think it is a unique situation.

Mr. KINDNESS. Well, there are a lot of them.

Mr. DANIELSON. Well, let's make it as unique as possible—a situation where a district is located in part in more than one standard metropolitan statistical area.

I wasn't aware of it. I am glad you brought it forward. I want to go just a little farther on the limitation of your bill to Congress, to the legislative branch.

At the inception it seemed like all of the bills and nearly all of the witnesses wanted the lobbying legislation to apply to the executive branch, as well as the legislative branch. That seems to be falling away. In a rulemaking process, we do know that interested parties frequently have ex parte communications with those involved in the rulemaking. And it would seem that that is a sensitive area.

Would you comment a little on that, Mr. Biemiller?

Mr. BIEMILLER. Well, if you take as an example OSHA, most of the OSHA regulations go through the Administrative Procedures Act, there are formal hearings held. And it is true that both the AFL-CIO and many of its constituent unions testify at those hearings. On top of it I have no doubt you are quite right. It happens to be an area in which I don't operate much, that is, contact with the OSHA people.

But certainly we do from time to time talk with them; and I don't see any objection to including that type of thing in any legislation that your subcommittee may develop.

We certainly make no secret of the fact that we are in touch with them, it is just that we don't spend enough time, I suppose that it impinges on our mind.

Now, we do have other people, for example, in our structure, and I will stick to OSHA because you want an example somewhere, we have a member of our research department who spends practically his entire time on OSHA. He really does nothing on the Hill. He simply works with the executive department on the development of OSHA regulations and/or enforcement.

Now, I have got no objection to our reporting that fact. It is a well-known fact anyhow.

Mr. DANIELSON. Well, Mr. Biemiller, I might comment that you are among a category of lobbyists who doesn't mind reporting because you are recognized as just an essential part of your operation.

Mr. Young, did you have a comment?

Mr. YOUNG. Mr. Chairman, I think, again, when you are talking executive branch, one of the key points is the question of who you are contacting. In other words, at what level. If, and sticking again with OSHA, if someone within the AFL-CIO structure calls a person on the OSHA staff and asks a question or discusses something, that may be one point.

If we call Dr. Eula Bingham, I would assume we are trying, we are lobbying. I think there is a definite difference between at what level the contacting is being done.

Mr. DANIELSON. I thank you, Mr. Young—

Mr. YOUNG. I think that is an important point in consideration of when the committee is marking up the bill, the distinction between actual lobbying on an issue in the executive branch, and the many, many calls that our organization or others are making.

Mr. DANIELSON. Thank you very much, Mr. Young.

Thank you, Mr. Biemiller and your entire staff.

Your comments and your advice here are going to be helpful throughout this process.

If you have further ideas which you feel will be of help to us, we would welcome them.

Mr. BIEMILLER. Thank you; and as you recognize, our staff is at your disposal for any help we may be able to give you. Certainly, we want to solve the problem Mr. Kindness raised. I wasn't aware that this was much of a problem anywhere, but we agree, it's got to be solved.

[The prepared statement of Mr. Biemiller follows:]

STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION,
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

In these hearings, the Subcommittee returns to a subject—replacement of the out-moded and ineffectual Federal Regulation of Lobbying Act—that the 94th Congress considered extensively. At this stage in the evolution of lobby reform, it does not appear to us necessary to reargue first principles. One of the beneficial consequences of the last Congress' endeavors is that there is general agreement on the factors that must be taken into account in establishing a sound regulatory system:

First, the right of individuals and groups to "petition the government" is a basic Constitutional right.

Second, there is a countervailing right in the people to know how their government works, which includes the right to information on the activities of organizations heavily engaged in the legislative process.

Third, the further the right to information is pressed, the more it impinges on the right to petition. The more complex and time-consuming the law's registration, recordkeeping and reporting requirements are, the more likely it is that those who are regulated will forego their right to make their views known to the government. And, of course, those who are the most poorly financed or who participate only intermittently and on a minimal basis in the legislative process are the most likely to opt out.

Fourth, there is a reason for legislative restraint quite separate from the chilling effect of over-regulation. There is more than a grain of truth in the view that telling everything is as effective a method of defeating effective public scrutiny as telling nothing. Obscuration is as time honored a method of nondisclosure as silence. Significant facts tend to be buried in voluminous compilations of trivia.

In sum, at this point there is a consensus that the present law is inadequate. A new law requiring organizations represented by professional lobbyists to register and to report in reasonable detail is necessary. On every side there are honeyed words of support for such legislation. But, Mr. Chairman, this support, while a mile wide, is unfortunately even less than an inch deep. Everyone agrees that professional lobbyists should register, but few are willing to admit to that honorable title. Everyone agrees that organizations heavily involved in the legislative process should report. But even the most modest proposals for information in addition to that presently provided are rejected by a majority of those who would be covered. They claim these proposals would impose intolerable recordkeeping burdens or would create unwarranted intrusion into their internal affairs.

The problem of enacting a sound lobbying law is further exacerbated by the fact that the House and Senate bills passed in the last Congress (H.R. 15 and S. 2477) reflect fundamentally different approaches. The basic point of divergence is the extent to which organizations at the margin of significant legislative involvement should be covered, and the proper means for measuring such involvement. There are also major differences between the scope and detail of the reporting required of covered organizations by the two bills.

Against this background it seems to us, that the time for philosophic discussion is over. What is needed, we are convinced, is a creative compromise between the concrete proposals contained in last year's House and Senate bills. We have come to this conclusion even though we supported and actively worked for last year's House bill and opposed last year's Senate bill. We believe that the two bills can be harmonized in a principled fashion. We realize that the suggestion we advance will, as compared to H.R. 15, increase the reporting requirements on us.

The prime issue in enacting this legislation has been determining its scope. That issue has been particularly difficult to resolve because of the assumption that all of the covered organization, whether large or small, or very active or only marginally so, must fulfill identical reporting requirements. This scheme was too rigid to take proper account of the relevant competing considerations. The aims of lobbying regulation can be better accomplished by dividing the diverse organizations into two categories—organizations which regularly engage in substantial lobbying activities and organizations which engage in lobbying activities to a lesser but still significant extent. The first group should file more extensive registration and reporting forms than the second.

This approach recognizes the argument, decisive in the Senate last year, that covering only the most active lobbyists distorts the over-all picture by failing to record the role of an important group of lobbying organizations. At the same time it recognizes the validity of the House position that the occasional lobbyists are normally without the resources necessary to comply with substantial recordkeeping and reporting requirements.

This so-called "tier" approach, obviously, is only as good as the measure used to delineate the group of occasional lobbyists required to file abbreviated reports and the group of major lobbyists who must meet more extensive reporting requirements. We suggest that last year's Senate bill which used the number of oral lobbying contacts made by the organization, other than contacts with the representatives from the organization's home area, sensibly describes the organizations which should be required to file abbreviated reports.

Since an organization's members or employees are normally drawn from the surrounding area, not the single congressional district in which the organization is located, all the representatives from that Standard Metropolitan Statistical Area should be included in the so-called "hometown" exemption. Such an exemption assures that an organization which confines itself to occasional statements of views to its own representatives would not be covered. If this approach is followed, the AFL-CIO would support a test of 20 oral lobbying communication to members of Congress outside their home state or SMSA as a sound measure of when an organization should file the abbreviated report.

Moreover, we believe that major lobbyists can best be defined by two tests. First, the retention of an outside representative who is paid more than \$1,250 in a quarter. Second, the employment of one or more individuals who spend a substantial portion of their time making lobbying communications.

The choice between a test based on percentage of time preparing and making such communications or a test based on the number of hours spent actually making either oral lobbying communications or both written and oral communications is a close one.

The percentage of time test and the hours test require essentially the same type of recordkeeping. Because the hours test covers a narrower range of activity and is somewhat more exact, we believe it is superior. If both written and oral lobbying communications are included, the 30 hours in a quarter measure suggested in H.R. 5795 appears sound.

Last year's House and Senate bills were closer with regard to the reporting required of covered organizations than they were with regard to the scope of coverage. As part of the over-all compromise we favor, we would support two additions drawn from S. 2477 to the reporting requirements for major lobbyists which were included in H.R. 15.

First, we do not believe that it would significantly add to the burden imposed on these organizations to enumerate and specify the major issues upon which they lobbied, up to a maximum of 25. It would also make sense to require these organizations to state, in connection with each major issue, the names of their employees who specialize in lobbying and their chief executive officers who made lobbying communications on that issue. While we are otherwise firmly opposed to any reporting of the activities on unpaid volunteers, we agree with the view that any unpaid chief executive officer should be included in such reports.

Second, the technique of lobbying by generating grassroots activity is becoming increasingly important. Reporting of extensive solicitations by major lobbying organizations should, if the disclosure purposes of the legislation are to be achieved, include a description of the issue covered, the means employed, and identification of any person retained, the approximate number of individuals and organizations reached, the name of any newspaper or other publication or radio or television station used, an indication of whether those solicited were in turn asked to solicit others and the amount expended, if that amount is in excess of \$7,500.

Turning now to the reporting which should be required of the occasional lobbyist on the abbreviated form, we suggest that an identification of the reporting organization, a description of the major issues up to a maximum of ten upon which the organization lobbied, an itemization of gifts made, copies of written lobbying solicitations, and descriptions of paid radio or television lobbying solicitations, is more than sufficient to provide an accurate picture. These requirements do not impose a burden which would dissuade such an organization from stating its views.

In conclusion, Mr. Chairman, the AFL-CIO would remind this committee that over the years we have faithfully and fully complied with all of the requirements of the present lobbying law. We have never been ashamed, nor have we attempted to hide, our role on Capitol Hill in protecting and advancing the interests of working people. Quite the contrary.

It is for this reason that we actively supported and worked for the adoption of H.R. 15 last year. And, we might add, we were one of the very few major organizations that took that position not only during the long night of debate and amendments that preceded passage of H.R. 15, but in the next few days when efforts were made to go to conference with the Senate.

Consistent with this position, Mr. Chairman, the AFL-CIO renews its call for lobby reform legislation. We are ready to support strong legislation reported by this committee and to work for its enactment.

Mr. DANIELSON. That is one of the benefits of hearings. We keep learning more about the problems. Thank you very much.

We now have another Andrew; this time, Mr. Andrew Feinstein, who is here representing Citizen Action Group, and who, as I understand it, is accompanied by Mr. Alan B. Morrison, Director of Public Citizen Litigation.

TESTIMONY OF ANDREW A. FEINSTEIN, PUBLIC CITIZEN CONGRESS WATCH, ACCOMPANIED BY ALAN B. MORRISON, DIRECTOR OF PUBLIC CITIZEN LITIGATION.

Mr. FEINSTEIN. Good morning.

Mr. DANIELSON. You have filed with us a statement which, without objection, will be received in the record. I know you have been attending these hearings, and if you would like to be emancipated from following the printed word, we would appreciate hearing your arguments.

Mr. FEINSTEIN. For the record, I am with Public Citizen Congress Watch, not Citizen Action Group.

I hope to highlight the most salient points of our testimony rather than reading the entire statement, but ask it be inserted in the record.

Mr. DANIELSON. I think it is far more useful.

[The prepared statement of Mr. Feinstein follows:]

SUMMARY OF STATEMENT BY ANDREW A. FEINSTEIN OF PUBLIC CITIZEN CONGRESS WATCH ON LOBBYING DISCLOSURE REFORM

1. A subordinating governmental interest for disclosure of lobbying activities must be articulated both to make the statute constitutional and to establish the scope of permissible disclosure requirements.
2. The passage of lobbying disclosure legislation can provide citizens with a better understanding of the legislative process, encourage countervailing lobbying, spotlight issues on which only one side has been lobbied, and expose the practice of lobbyists giving gifts to members of Congress.
3. Small organizations which make merely incidental contacts with Congress should not be covered by this bill because, if they were covered, many would cease expressing their views to the government, a constitutionally protected activity.
4. To cover significant lobbyists but not smaller groups, a threshold based on a 20% test, based on Washington presence, or based on thirty hours a quarter of oral lobbying would be appropriate.
5. No obligations whatsoever should be placed on volunteers because the agent registration purpose of the statute does not justify their inclusion, because coverage of volunteers is probably unconstitutional, and because coverage of volunteers would reverse an established governmental policy of encouraging volunteerism.
6. Appropriate reporting requirements include identification of the organization and its paid lobbyists and disclosure of the organization's direct expenses for lobbying, the issues on which it works, its gifts to members of Congress, and whether any member of Congress has a significant interest in the organization.
7. Forced disclosure of the contributors to an organization raises serious constitutional questions and should therefore be strictly limited. If names are required to be disclosed, only the largest contributors who exercise control over the organization should be listed. We prefer that there be no disclosure of names but that the dues schedule and the number of large contributors be listed.
8. Disclosure of efforts by a lobbying organization to encourage others to lobby on an issue raises serious constitutional and public policy questions.
9. Requiring that lobbyists log each contact with members of Congress is onerous and produces information of little value because of its quantity and because of its misleading nature.

10. While we support a requirement that high level Executive Branch officials keep public calendars, we opposed combining executive branch coverage with congressional coverage in a lobbying bill because it is a trap for the unwary. Furthermore, requiring the reporting of ex parte contacts on pending rule-making proceedings condones a practice which possibly should be eliminated.

11. A geographic exemption based on the standard metropolitan statistical areas and not just the district, where the organization has its principal place of business, is preferable because it does not discriminate against citizen groups.

Mr. Chairman, Members of the Subcommittee: My name is Andrew A. Feinstein and I am a registered lobbyist with Public Citizen Congress Watch.¹

I am pleased to be testifying before you today. Last year, this subcommittee, under the strong leadership of then-Chairman Walter Flowers, demonstrated the best of the legislative process by working in close cooperation with outside organizations to minimize the adverse impact of the proposed lobbying disclosure legislation on them. As a result, H.R. 15, overwhelmingly passed by the House, was a bill superior to the Senate version. Still, H.R. 15, introduced this year as H.R. 1180 by Chairman Rodino, can be amended and improved in several important respects.

Compelling Reason Needed to Impinge on First Amendment Rights

The third paragraph of the sheet attached to our invitation to testify said, "Kindly state your reasons as to why the proposed legislation is necessary." The Supreme Court, in *Buckley v. Valeo*, 424 U.S.1 (1976) said that the necessity for legislation which compels disclosure must meet a very high standard:

We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *Alabama* [i.e. *NAACP v. Alabama*, 357 U.S. 449 (1958)] we have required that the subordinating interest of the State must survive exacting scrutiny. We also have insisted that there be a "relevant correlation" or "substantial relation" between the governmental interest and the information required to be disclosed. 424 U.S. at 64. [Footnotes omitted.]

Note that this language requires not only a subordinating governmental interest to mandate disclosure but also requires that the disclosure mandated had to be closely correlated with the subordinating interest. If, for example, Congress determines that bribery and purchasing of influence are the abuses to which lobbying disclosure is addressed, the legislation cannot require that an organization submit copies of its publications because there is not a sufficient nexus between the evil of bribery and disclosure of publications. Thus, the articulation of a subordinating governmental interest for lobbying disclosure legislation is essential not only for making the statute constitutional but also for determining the scope of the statute.

What then is the need for this legislation? Some have suggested that the information reported under the statute will establish an encyclopedia on lobbying, a reference tool for those who are interested in lobbying. However interesting such a reference work might be, academic curiosity is not a subordinating governmental interest.

The strongest justification for this legislation, in our view, is that it will provide citizens with the opportunity to discover, through their own research, which institutions in American society are expending significant efforts to influence legislation. By knowing the kind of effort which the organization is putting forward and the outcome of a piece of legislation, citizens and the press can gain a heightened understanding of the legislative process. This understanding can both inspire countervailing citizen lobbying and can encourage Congress itself to reach out to involve non-participating but interested communities. If lobbying on an issue has been massively one-sided, a chairman, committee, or individual member may then know to make an affirmative effort to solicit the views of unorganized but important communities affected by the legislation.

Lobbying disclosure will allow citizens to determine if certain members of Congress may be unusually sensitive to the views of any one lobbyist, if the citizens are willing to correlate the member's votes with the organization's positions. While lobbying disclosure would be unlikely to deter bribery, it can expose the day to day favor-giving and gift-buying types of lobbying activities which can influence the legislative process. While lobbying disclosure will not provide contemporaneous information about attempts to influence legislation, it will yield a useful record of which organizations were active on major public policy issues. While lobbying disclosure will not guarantee increased public participation in the legislative process, the information it provides can make

¹Public Citizen is an umbrella organization for a number of Washington based public interest groups, of which Congress Watch is one. Public Citizen raises funds through direct mail solicitations. The President of Public Citizen is Ralph Nader. Public Citizen has no affiliated organizations outside of Washington, although one of our objectives is to encourage citizens to organize action groups.

members of Congress more accountable to their constituents. For in a democracy, knowledge is an important element of accountability. As Thomas Jefferson said, "Knowledge will forever govern ignorance. And a people who mean to be their own governors must arm themselves with the power knowledge gives."

We therefore strongly support the concept of a workable, constitutional lobbying bill that discloses the major sources of influence in Congress. A poorly designed and drafted version of lobbying disclosure could, however, have a major chilling effect on the exercise by some people of their right to petition the government. As the Supreme Court told us in *United States v. Harris*, 347 U.S. 612 (1953), lobbying disclosure directly affects First Amendment rights. Thus, certain organizations which would otherwise communicate with Congress about an issue would not do so if they had to comply with the lengthy disclosure requirements of the proposed lobbying bills. These organizations would opt out of the political process for any of a number of reasons: the cost of compliance; the stigma of being labeled a lobbyist; the fear of government meddling in the organization's affairs; the assessment by the organization that the benefit of contacting Washington might be outweighed by the burdens of complying with the registration and reporting requirements. The organizations which are likely to cease communicating with Washington are not the organizations which have testified before you. Public Citizen, Common Cause, the AFL-CIO, the Chamber of Commerce, and the National Association of Manufacturers will all continue to lobby. The organizations which will opt out if they are covered are small business, local labor unions and grass roots citizen organizations. If these groups abandon the legislative process, the fundamental basis of our democracy is under challenge. For them, the First Amendment is rendering hollow. Government policy will soon reflect only the views of those interest groups which can afford to continue contacting Washington.

The Congress, therefore, has a choice. It can write a bill which seeks to disclose every attempt to influence legislation at the risk of freezing some organizations out of the legislative process. Or it can write a bill which will disclose the lobbying efforts of the organizations which spend significant effort and money on lobbying while protecting the constitutional rights of all who would like their voice heard in Washington. Because we are dealing with First Amendment rights, we firmly believe that the Congress, if it must err, should err on the side of under-inclusiveness and not on the side of over-inclusiveness. To do otherwise is to risk an unworkable, if not unconstitutional, bill. The lobbying disclosure statute should only impose burdens on those organizations which can afford to shoulder the burdens and which engage in a level of lobbying activity sufficient to warrant their coverage.

Threshold

We believe that the lobby bill should be drafted to cover only those lobbying organizations which commit significant resources to attempting to influence legislation. No obligations whatsoever should be imposed on small organizations which have merely incidental and infrequent contacts with Washington. A variety of ways have been proposed which accomplish this objective. H.R. 15 as passed established a reasonable separation between major lobbyists and those who should not be covered by using a 20% test. The Metcalf substitute to S. 2477 achieved the same objective by using presence in Washington as its threshold. As a third alternative, we recommend that coverage should be limited to organizations which have at least one employee who spends at least thirty hours a quarter in direct oral communication with the Congress. Any of these three thresholds would assure coverage of the major, effective lobbyists while protecting the rights of those who make merely incidental contacts.

Volunteers

One of the primary justifications for a lobbying disclosure statute is that it will reveal on whose behalf each lobbyist is working. Lobby registration is, in theory, a type of agent registration so that members of Congress and the public can determine for whom the lobbyist is advocating his or her position. Hence, last year's House bill covered organizations which employed people to lobby or contracted out for lobbying services. Once the organization came under the jurisdiction of the Act, the reporting requirements elicited information about the organization generally as well as information about the individual paid lobbyists. H.R. 15, as passed, appropriately placed no requirements on unpaid people who petition their government. By law, logic, and experience, only paid people can be bona fide agents. Of course, volunteer members may advocate the organization's position; but they are essentially free to advocate any position. A paid employee or someone who is retained to lobby does not have this sort of freedom. Hence, the agent registration purpose of the lobby disclosure statute fails to justify any coverage of volunteers.

Not only is volunteer coverage unwarranted by the purposes of the legislation, it is also constitutionally suspect. In the *Harriss* case, the Supreme Court, upholding the 1946 Act as constitutional, relied on the fact that the Act covered only those who attempted to influence legislation for hire. This decision indicates that the court would have probably struck down the 1946 Act if burdens had been placed on unpaid citizens who petition the government.

Coverage of volunteers would also reverse a two hundred year old societal policy of encouraging citizens to form volunteer organizations to address their concerns. Our law and our ethos encourage volunteerism in all fields: political parties, hospitals, charities, social service organizations. To now place unnecessary burdens on any unpaid members of organizations which petition the government would tend to discourage volunteering and would imply that the business of our society should be left to paid professionals. To breach the principal of volunteerism is to jeopardize it entirely. We do not think that Congress intends to or should make such a statement.

Appropriate Reporting Requirements

Once legislation establishes who shall be covered, it still must be determined what obligations should flow to those who are covered. This decision must be made with the words of the *Buckley* case, previously quoted, in mind. A relevant correlation must exist between the purpose of the statute and any reporting requirements mandated.

The lobby statute should properly elicit the following information from the lobbying organization:

1. What the organization is, who runs it, where it is located, why it exists.
2. Who the main lobbyists which the organization employs or retains are.
3. What the organization's direct out of pocket expenses for lobbying activities, such as mailings or briefing books, are. (Disclosure of individual salaries does not provide useful information and invades the employees' privacy.)
4. What issues the organization works on.
5. What gifts the organization or its lobbyists give to members or staff of Congress, including meals, transportation, and hunting trips.
6. If any members of Congress or staff have an economic interest in the lobbying organization or are otherwise closely tied to it.

Some of the proposed lobbying disclosure bills mandate disclosure of the names of the contributors to an organization and of the organization's communications to its members and the general public. Each of these subjects of disclosure is fraught with constitutional and public policy dangers.

Contributor Disclosure

The conflict between disclosure and the protection of First Amendment rights is nowhere sharper than in the area of forced disclosure of contributors to an organization. Organizations required to disclose its contributors will, as a result, find fund raising more difficult. Many would-be contributors will withhold their contributions due to fear of harassment. As the Supreme Court recognized in the line of cases starting with *NAACP v. Alabama*, the disclosure of contributors can subject those contributors to harassment and embarrassment. A contributor to liberal causes can be fired if his/her name is discovered on the lobbying reports by a conservative employer. A contributor to a minority rights organization may be subject to ostracism if his/her contributions become known.

Since the purpose of contributor disclosure is to find out who exercises some control over the organization, the key question is not who contributes but rather who contributes enough to control the organization. A percentage test will reveal control, although a minimum dollar threshold is needed to protect small contributors. Whatever minimum percentage is selected as a test should have an evidentiary basis. The problem of determining what percentage of the organization's budget a person need contribute before he/she exercises control is roughly analogous to the question of what percentage of stock ownership gives control over a corporation. In prohibiting short term insider trading of securities, the Congress, in the Securities Exchange Act of 1934 (15 U.S.C. 78 p (a)), used a figure of ten percent ownership. For contributor reporting of lobbying organizations, we believe that a ten percent figure, coupled with a \$5000 minimum threshold, would be an appropriate minimum for reporting. Anything less would discourage giving for the benefit of largely useless information.

Even this formula forces certain contributors to have to decide between facing the possibility of harassment from continued contributions to an organization and ceasing to exercise a First Amendment right to contribute to an organization in which he/she believes. The Congress can avoid imposing this dilemma on contributors by merely requiring that each lobbying organization reveal its dues or contribution schedule, if it has one, and the number, but not the names, of contributors who give over

ten percent of the organization's budget. In this way, the public can determine which lobbying organizations have broad support and which are merely the mouthpiece of a few large contributors.

Solicitations

One of the reasons often cited for reform of the lobbying disclosure laws is that the 1946 passed law failed to cover indirect lobbying, where the lobbyist gets another person to contact the member of Congress. A close reading of the *Harriss* case and of the scant legislative history surrounding the passage of Title III of the Legislative Reorganization Act of 1946 leaves the very strong impression that Congress intended to cover such indirect lobbying and that the Supreme Court, in interpreting the 1946 Act to meet Constitutional standards, construed the Act to only cover direct communications. Since the Supreme Court did not directly speak to this point, it is not clear that the coverage of attempts to inform and activate the general public would be constitutional.

When Public Citizen or another organization sends out information to its supporters or to the general public about issues pending in the legislature, that organization is performing a valuable and essential public function. Regular publications and electronic news provide only a limited amount of news of the actions of Congress. It is the publications of national organizations whether they are comprised of union members, citizen groups, or shareholders which inform millions of Americans about pending legislation of interest to them. Citizens need this information to make informed electoral decisions. And members of Congress need to have an informed electorate in order to support their decisions when they decide to buck the special interests.

By placing such burdens on the distribution of information about the legislative process, the Congress is making it more difficult for the people to find out about the workings of their government. Furthermore, requiring disclosure of solicitations places costs on the exercise of the rights of free speech. Whatever interest Congress has in finding out who is directly attempting to assert influence does not exist when Congress wants to find out who is trying to activate citizens on legislative issues. Without a demonstrable public interest in information about indirect lobbying, the Congress has no right to the information.

Logging of Contacts

A number of the proposed bills would require a registered lobbyist to report every contact between him/her and a member of staff of Congress. We strongly oppose such a proposal and urge the committee to include in its report language which clearly instructs the enforcing agency that Congress did not grant it the power to require by regulation that all contacts be logged. Any person who is seriously lobbying the Hill is very likely to talk to dozens of members of Congress and staff a day. For the organization to compile and then to retype all these contacts for the reporting forms could easily consume many hours a week. It is apparent to all who know how lobbying organizations work that this sort of requirement creates a monstrous paperwork burden—which would produce little information of value. In the first place, the amount of information reported will be so massive that intelligent indexing will be precluded. Second, the logs may be very misleading. If a lobbyist really has excessive influence with a member of Congress, that lobbyist need spend little time talking to that member. The members of Congress most lobbied on an issue are often those who are last to make up their minds.

Executive Branch Coverage

H.R. 1180 would make an organization a lobbyist by virtue of having at least one paid person who spends at least one-fifth of his/her time engaged in certain activities. Covered activities include ex parte contacts with high level Executive Branch officials regarding pending rule and rule-making proceedings, as well as contacts with members and staff of Congress. We endorse legislation which will require that high level federal officials keep public calendars of their appointments. However, mixing executive branch contacts with Capitol Hill contacts in one bill is combining two dissimilar activities. The process of lobbying five hundred thirty five members of Congress is a significantly different operation from trying to influence the seven Federal Communications Commissioners or the one Food and Drug Administrator. Combining of Executive Branch with Congressional coverage is a trap for the unwary. It will sweep within its coverage non-lobbying organizations, such as public charities classified under Section 501(c)(3) of the Internal Revenue Code which, up until recently, would lose their special tax status if they lobbied Congress but were permitted, under the tax laws, to participate in federal agency actions. These organizations will then be subject to a whole range of reporting requirements which are primarily directed at congressional lobbying.

By requiring reporting of ex parte contacts dealing with rulemaking, Congress would be, in effect, condoning the practice. If Congress wants to allow this activity, it should do it directly, not by indirection. There is debate ongoing about whether high Executive Branch officials should see a party to a proceeding without the presence of the other party and without a record being kept. Certainly such a practice would never be allowed in a federal court, even a federal court deciding basically the same issue that the agency considered. Recently the D.C. Circuit Court of Appeals, in its decision in the case of *Home Box Office Inc. v. FCC* F 2d (No. 75-1280, C.A.D.C., March 25, 1977) ruled that such ex parte contacts should be eliminated. The court reversed the FCC decision on cable television due in part to the prejudice to the proceedings that the stream of ex parte contacts created. We are very interested in seeing the Congress examine this area in order to determine whether these ex parte contacts should be banned or whether they should be logged. In either case, the type of incidental and inappropriate coverage which they are given in H.R. 1180 creates more harm than good.

Geographic Exemption: Use of Standard Metropolitan Statistical Area

One other significant change which should be made to H.R. 1180 involves the geographic exemption. Members of Congress want to do nothing to cut off communications with their constituents and exempting certain communications on the basis of geographic location is a very visible way to make that point. Accepting the political fact that there will be a geographic exemption, we advocate one that does not discriminate in favor of certain types of business, especially franchises, and to the detriment of citizen organizations. Citizen organizations are generally formed on a city wide basis, while certain corporations and trade associations have a subsidiary, franchisee, or corporate member in every single Congressional District in the nation. Hence, an exemption for communications to the one member of Congress and the two Senators who represent the district in which the organization's principal place of business is located, works to the detriment of citizen groups even though they have individuals who are members from every district in the metropolitan area. We therefore urge this committee to draft this exemption to work on the basis of standard metropolitan statistical areas. These areas are established by the Office of Management and Budget based on neutral criteria. We have prepared a chart that lists which and how many congressional districts are contained within each standard metropolitan statistical area. We request that this chart be printed in the hearing record.

* * * * *

The lobby disclosure issue is a difficult and complex one. Each provision has potentially serious ramifications for small citizen groups. We therefore intend to continue working with the excellent staff of this subcommittee to express our view on the intricacies of this legislation. We thank you for this opportunity to testify.

Mr. FEINSTEIN. May I ask in the interest of time that members of the committee interrupt me at any point to ask questions on that issue raised in that part of the testimony.

Mr. DANIELSON. Without objection, that's the way we will do it.

Mr. FEINSTEIN. I am Andrew Feinstein, a registered lobbyist with Public Citizen Congress Watch. I am accompanied by Alan B. Morrison, director of Public Citizen Litigation. We are pleased to be testifying before you here today.

Last year this subcommittee, under the strong leadership of then-Chairman Walter Flowers, demonstrated the best of the legislative process by working in close cooperation with outside organizations to minimize the adverse impact of the proposed lobbying disclosure legislation on them. As a result, H.R. 15, overwhelmingly passed by the House, was a bill far superior to the Senate version. Still, H.R. 15, introduced this year as H.R. 1180, by Chairman Rodino, can be amended and improved in several important respects.

The third paragraph of the sheet attached to our invitation to testify said, "Kindly state your reasons as to why the proposed legislation is necessary." The Supreme Court, in *Buckley v. Valeo*, said that

the necessity for legislation which compels disclosure must meet a very high standard:

We long have recognized that significant encroachments on first amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *NAACP v. Alabama*, we have required that the subordinating interest of the State must survive exacting scrutiny. We also have insisted that there be a "relevant correlation" or "substantial relation" between the governmental interest and the information required to be disclosed.

Note that this language requires not only a subordinating governmental interest to mandate disclosure, but also requires that the disclosure mandated had to be closely correlated with the subordinating interest. Thus, the articulation of a subordinating governmental interest for lobbying disclosure legislation is essential not only for making the statute constitutional, but also for determining the scope of the statute.

The strongest justification for this legislation, in our view, is that it will provide citizens with the opportunity to discover, through their own research, which institutions in American society are expending significant efforts to influence legislation. By knowing the kind of effort which the organization is putting forward, and the outcome of a piece of legislation, citizens and the press can gain a heightened understanding of the legislative process.

This understanding can both inspire countervailing citizen lobbying and can encourage Congress itself to reach out to involve non-participating but interested communities.

While lobbying disclosure would be unlikely to deter bribery, it can expose the day-to-day favor-giving and gift-buying types of lobbying activities which can influence the legislative process. While lobbying disclosure will not provide contemporaneous information about attempts to influence legislation, it will yield a useful record of which organizations were active on major public policy issues. While lobbying disclosure will not guarantee increased public participation in the legislative process, the information it provides can make members of Congress more accountable to their constituents.

We, therefore, strongly support the concept of a workable, constitutional lobbying bill that discloses the major sources of influence in Congress. A poorly designed and drafted version of lobbying disclosure could, however, have a major chilling effect on the exercise by some people of their right to petition the government.

As the Supreme Court told us in *United States v. Harriss*, lobbying disclosure directly affects first amendment rights. Thus, organizations which would otherwise communicate with Congress about an issue would not do so if they had to comply with the lengthy disclosure requirements of some of these proposed lobbying bills, especially if the requirements become accompanied with such regulations as have accompanied the Internal Revenue Code or Federal Election Campaign Act.

These organizations would opt out of the political process for any of a number of reasons; the cost of compliance; the stigma of being labeled a lobbyist; the fear of government meddling in the organization's affairs; the assessment by the organization that the benefit of contacting Washington might be outweighed by the burdens of complying with the registration and reporting requirements. The organizations which are likely to cease communicating with Washington are not the organizations which have testified before you.

Public Citizen, Common Cause, the AFL-CIO, the Chamber of Commerce, and the National Association of Manufacturers will all continue to lobby. The organizations which will opt out if they are covered are small business, local labor unions and grass roots citizen organizations. If these groups abandon the legislative process, the fundamental basis of our democracy is under challenge. For them, the First Amendment is rendered hollow. Government policy will soon reflect only the views of those interest groups which can afford to continue contacting Washington.

The lobby disclosure statute should only impose burdens on those organizations which can afford the burdens and which can engage in lobbying activity sufficient to warrant coverage.

One of the primary justifications for a lobbying disclosure statute is that it will reveal on whose behalf each lobbyist is working. Lobby registration is, in theory, a type of agent registration so that Members of Congress and the public can determine for whom the lobbyist is advocating his or her position. Hence, last year's House bill covered organizations which employed people to lobby or contracted out for lobbying services.

Once the organization came under the jurisdiction of the act, the reporting requirements elicited information about the organization generally as well as information about the individual paid lobbyists. H.R. 15, as passed, appropriately placed no requirements on unpaid people who petition their government. By law, logic and experience, only paid people can be bona fide agents.

Of course, volunteer members may advocate the organization's position, but they are essentially free to advocate any position. A paid employee or someone who is retained to lobby does not have this sort of freedom. Hence, the agent registration purpose of the lobby disclosure statute fails to justify any coverage of volunteers.

Not only is volunteer coverage unwarranted by the purposes of the legislation, it is also constitutionally suspect. Coverage of volunteers would also reverse a 200-year-old societal policy of encouraging citizens to form volunteer organizations to address their concerns. To now place unnecessary burdens on any unpaid members of organizations which petition the government would tend to discourage volunteering, and would imply that the business of our society should be left to paid professionals. We do not think that Congress intends to or should make such a statement.

Contributor Disclosure: The conflict between disclosure and the protection of first amendment rights is nowhere sharper than in the area of forced disclosure of contributors to an organization. Organizations required to disclose its contributors will, as a result, find fund raising more difficult. Many would-be contributors will withhold their contributions due to fear of harassment.

As the Supreme Court recognized in the line of cases starting with *NAACP v. Alabama*, the disclosure of contributors can subject those contributors to harassment and embarrassment. A contributor to liberal causes can be fired if his/her name is discovered on the lobbying reports by a conservative employer. A contributor to a minority rights organization may be subject to ostracism if his/her contributions become known.

Even this formula forces certain contributors to have to decide between facing the possibility of harassment from continued contributions to an organization and ceasing to exercise a first amendment right to contribute to an organization in which he/she believes.

The Congress can avoid imposing this dilemma on contributors by merely requiring that each lobbying organization reveal its dues or contribution schedule, if it has one, and the number, but not the names, of contributors who give over 10 percent of the organization's budget. In this way, the public can determine which lobbying organizations have broad support and which are merely the mouthpiece of a few large contributors.

When Public Citizen or another organization sends out information to its supporters or to the general public about issues pending in the legislature, that organization is performing a valuable and essential public function. Regular publications and electronic news provide only a limited amount of information about the actions of Congress. It is the publications of national organizations, whether they are comprised of union members, citizen groups, or shareholders, which inform millions of Americans about pending legislation of interest to them. Citizens need this information to make informed electoral decisions. And Members of Congress need to have an informed electorate in order to support their decisions when they decide to buck the special interests.

A number of the proposed bills would require a registered lobbyist to report every contact between him/her and a member of staff of Congress. We strongly oppose such a proposal, and urge the Committee to include in its report, language which clearly instructs the enforcing agency that Congress did not grant it the power to require by regulation that all contacts be logged.

It is apparent to all who know how lobbying organizations work that this sort of requirement creates a monstrous paperwork burden, which would produce little information of value.

By requiring reporting of ex parte contacts dealing with rulemaking, Congress would be, in effect, condoning the practice. If Congress wants to allow this activity, it should do it directly, not by indirection. There is debate ongoing about whether high executive branch officials should see a party to a proceeding without the presence of the other party and without a record being kept. Certainly such a practice would never be allowed in a federal court, even a federal court deciding basically the same issue that the agency considered.

Recently the D.C. Circuit Court of Appeals, in its decision in the case of *Home Box Office, Inc. v. FCC*, ruled that such ex parte contacts should be eliminated. The court reversed the FCC decision on cable television due in part to the prejudice to the proceedings that the stream of ex parte contacts created.

We are very interested in seeing the Congress examine this area in order to determine whether these ex parte contacts should be banned, or whether they should be logged. In either case, the type of incidental and inappropriate coverage which they are given in H.R. 1180 creates more harm than good.

Geographic Exemption: We also endorse geographic exemption, working on the basis of standard metropolitan statistical areas. We have listed a chart which we ask be included in the hearing record.

Mr. DANIELSON. This is the statement to which you refer? I do have a statement which you presented cataloging congressional districts within standard metropolitan statistical areas.

Without objection, we will receive it in the record.

Incidentally, Mr. Kindness, can we interrupt?

Where are you in this?

Mr. KINDNESS. Mr. Chairman, I misspoke myself. I am in three of them; not two.

Mr. DANIELSON. The problem is compounding.

Without objection this will be received in the record.

[The standard metropolitan statistical area follows:]

SMSA	Population	Number of Senators	Number of Representatives (congressional district)
Abilene, Tex	122,164	2 (Texas)	1 (17).
Akron, Ohio	679,239	2 (Ohio)	2 (13, 14).
Albany, Ga	96,683	2 (Georgia)	1 (2).
Albany-Schenectady-Troy, N.Y	777,793	2 (New York)	3 (28, 29, 31).
Albuquerque, N. Mex	333,266	2 (New Mexico)	1 (1).
Alexandria, La	131,749	2 (Louisiana)	2 (5, 8).
Allentown-Bethlehem-Easton, Pa.-N.J.	594,124	4 (Pennsylvania and New Jersey)	3 (Pennsylvania—11, 15; New Jersey—13).
Altoona, Pa	135,356	2 (Pennsylvania)	1 (9).
Amarillo, Tex	144,396	2 (Texas)	1 (13).
Anaheim-Santa Ana-Garden Grove, Calif	1,420,386	2 (California)	6 (23, 25, 32, 34, 39, 42).
Anchorage, Alaska	124,542	2 (Alaska)	1 (A.L.).
Anderson, Ind	138,451	2 (Indiana)	2 (5, 10).
Ann Arbor, Mich	234,103	2 (Michigan)	2 (2, 6).
Anniston, Ala	103,092	2 (Alabama)	1 (3).
Appleton-Oshkosh, Wis	276,891	2 (Wisconsin)	2 (6, 8).
Asheville, N.C	161,059	2 (North Carolina)	1 (11).
Atlanta, Ga	1,597,816	2 (Georgia)	5 (4, 6, 7, 9, 10).
Atlantic City, N.J.	175,043	2 (New Jersey)	1 (2).
Augusta, Ga.-S.C	275,787	4 (Georgia and South Carolina)	2 (Georgia—10; South Carolina—3).
Austin, Tex	323,158	2 (Texas)	1 (10).
Bakersfield, Calif	329,162	2 (California)	2 (18, 36).
Baltimore, Md	2,070,670	2 (Maryland)	6 (1, 2, 3, 4, 6, 7).
Baton Rouge, La	375,628	2 (Louisiana)	2 (6, 8).
Battle Creek, Mich	180,129	2 (Michigan)	3 (3, 4, 5).
Bay City, Mich	117,339	do	2 (8, 10).
Beaumont-Port Arthur-Orange, Tex	345,939	2 (Texas)	2 (2, 9).
Billings, Mont	87,367	2 (Montana)	1 (2).
Biloxi-Gulfport, Miss	160,070	2 (Mississippi)	1 (5).
Binghamton, N.Y.-Pa	302,672	4 (New York and Pennsylvania)	2 (New York—27; Pennsylvania—10).
Birmingham, Ala	767,230	2 (Alabama)	3 (4, 6, 7).
Bloomington, Ind	84,849	2 (Indiana)	2 (7, 9).
Bloomington-Normal, Ill	104,389	2 (Illinois)	1 (21).
Boise City, Idaho	112,230	2 (Idaho)	2 (1, 2).
Boston, Mass	2,899,101	2 (Massachusetts)	10 (3, 4, 5, 6, 7, 8, 9, 10, 11, 12).
Bridgeport, Conn	401,752	2 (Connecticut)	3 (3, 4, 5).
Bristol, Conn	69,878	do	1 (6).
Brockton, Mass	150,416	2 (Massachusetts)	2 (10, 11).
Brownsville-Harlingen-San Benito, Tex	140,368	2 (Texas)	1 (15).
Bryan-College Station, Tex	57,978	do	1 (6).
Buffalo, N.Y	1,349,211	2 (New York)	4 (36, 37, 38, 39).
Burlington, N.C	96,362	2 (North Carolina)	1 (6).
Canton, Ohio	393,789	2 (Ohio)	2 (16, 18).
Cedar Rapids, Iowa	163,213	2 (Iowa)	1 (2).
Champaign-Urbana-Rantoul, Ill	163,281	2 (Illinois)	1 (21).
Charleston-North Charleston, S.C	336,125	2 (South Carolina)	1 (1).
Charleston, W.Va	257,140	2 (West Virginia)	1 (3).
Charlotte-Gastonia, N.C	557,785	2 (North Carolina)	3 (8, 9, 10).
Chattanooga, Tenn.-Ga	370,016	4 (Tennessee and Georgia)	3 (Tennessee—3; Georgia—7, 9)
Chicago, Ill	6,878,947	2 (Illinois)	17 (1-17).
Cincinnati, Ohio-Ky.-Ind	1,384,851	6 (Ohio, Kentucky, Indiana)	7 (Ohio—1, 2, 6, 8; Kentucky—4, 6; Indiana—9).
Clarksville-Hopkinsville, Tenn.-Ky	118,945	4 (Tennessee and Kentucky)	2 (Tennessee—6; Kentucky—1).

SMSA	Population	Number of Senators	Number of Representatives (congressional district)
Cleveland, Ohio	2,064,194	2 (Ohio)	7 (11, 13, 16, 20-23).
Colorado Springs, Colo.	239,288	2 (Colorado)	2 (3, 5).
Columbia, Mo.	80,911	2 (Missouri)	1 (8).
Columbia, S.C.	322,880	2 (South Carolina)	1 (2).
Columbus, Ga.-Ala.	238,584	4 (Georgia and Alabama)	2 (Georgia—3; Alabama—3).
Columbus, Ohio	1,017,847	2 (Ohio)	4 (6, 10, 12, 15).
Corpus Christi, Tex.	284,832	2 (Texas)	1 (14).
Dallas-Fort Worth, Tex.	2,377,979	8	3 (4, 6, 11, 12, 13, 17, 24).
Danbury, Conn.	115,538	2 (Connecticut)	2 (5, 6).
Davenport-Rock Island-Moline, Iowa-Illinois	362,638	4 (Iowa and Illinois)	2 (Iowa—1; Illinois—19).
Dayton, Ohio	850,266	2 (Ohio)	3 (3, 4, 7, 8).
Daytona Beach, Fla.	169,487	2 (Florida)	1 (4).
Decatur, Ill.	125,010	2 (Illinois)	2 (21, 22).
Denver-Boulder, Colo.	1,237,208	2 (Colorado)	4 (1, 2, 4, 5).
Des Moines, Iowa	313,533	2 (Iowa)	2 (4, 5).
Detroit, Mich.	4,431,390	2 (Michigan)	12 (1, 2, 6, 8, 12-19).
Dubuque, Iowa	90,609	2 (Iowa)	1 (2).
Duluth-Superior, Minn.-Wis.	265,350	4 (Minnesota and Wisconsin)	2 (Minnesota—8; Wisconsin—7).
Eau Claire, Wis.	114,936	2 (Wisconsin)	2 (3, 7).
El Paso, Tex.	359,291	2 (Texas)	1 (16).
Elmira, N.Y.	101,537	2 (New York)	2 (27, 39).
Erie, Pa.	263,654	2 (Pennsylvania)	1 (24).
Eugene-Springfield, Ore.	213,358	2 (Oregon)	1 (4).
Evansville, Ind.-Ky.	284,959	4 (Indiana and Kentucky)	2 (Indiana—8; Kentucky—1).
Fall River, Mass.-R.I.	169,549	4 (Massachusetts and Rhode Island)	3 (Massachusetts—10; Rhode Island—1, 2).
Fargo-Moorhead, N. Dak.-Minn.	120,238	4 (Minnesota and North Dakota)	2 (North Dakota—A.L.; Minnesota—7).
Fayetteville, N.C.	212,042	2 (North Carolina)	1 (7).
Fayetteville-Springdale, Ark.	127,846	2 (Arkansas)	1 (3).
Fitchburg-Leominster, Mass.	97,164	2 (Massachusetts)	2 (4, 5).
Flint, Mich.	507,416	2 (Michigan)	2 (7, 10).
Florence, Ala.	117,743	2 (Alabama)	1 (5).
Fort Collins, Colo.	89,900	2 (Colorado)	1 (4).
Fort Lauderdale-Hollywood, Fla.	620,100	2 (Florida)	3 (11, 12, 13).
Fort Myers, Fla.	105,216	do	1 (10).
Fort Smith, Ark.-Okla.	160,421	4 (Arkansas-Oklahoma)	3 (Arkansas—3; Oklahoma—2, 3).
Fort Wayne, Ind.	361,984	2 (Indiana)	2 (4, 10).
Fresno, Calif.	413,053	2 (California)	2 (15, 17).
Gadsden, Ala.	94,144	2 (Alabama)	1 (4).
Gainesville, Fla.	104,764	2 (Florida)	1 (2).
Galveston-Texas City, Tex.	169,812	2 (Texas)	1 (9).
Gary-Hammond-East Chicago, Ind.	633,367	2 (Indiana)	2 (1, 2).
Grand Rapids, Mich.	539,225	2 (Michigan)	3 (3, 5, 9).
Great Falls, Mont.	81,804	2 (Montana)	1 (2).
Greeley, Colo.	89,297	2 (Colorado)	1 (4).
Green Bay, Wis.	158,244	2 (Wisconsin)	2 (6, 8).
Greensboro-Winston Salem-High Point, N.C.	723,304	2 (North Carolina)	4 (4, 5, 6, 8).
Greenville-Spartanburg, S.C.	473,226	2 (South Carolina)	2 (3, 4).
Hamilton-Middletown, Ohio	226,207	2 (Ohio)	1 (8).
Harrisburg, Pa.	410,626	2 (Pennsylvania)	3 (9, 17, 19).
Hartford, Conn.	720,581	2 (Connecticut)	3 (1, 2, 6).
Honolulu, Hawaii	629,176	2 (Hawaii)	2 (1, 2).
Houston, Tex.	1,999,316	2 (Texas)	7 (2, 7, 8, 9, 10, 18, 22).
Huntington-Ashland, W. Va.-Ky.-Ohio	286,935	6 (West Virginia-Kentucky-Ohio)	3 (West Virginia—4; Kentucky—7; Ohio—10).
Huntsville, Ala.	282,450	2 (Alabama)	2 (4, 5).
Indianapolis, Ind.	1,109,882	2 (Indiana)	5 (5, 6, 7, 10, 11).
Jackson, Mich.	143,274	2 (Michigan)	2 (3, 6).
Jackson, Miss.	258,906	2 (Mississippi)	2 (3, 4).
Jacksonville, Fla.	621,519	2 (Florida)	3 (2, 3, 4).
Jersey City, N.J.	609,266	2 (New Jersey)	3 (9, 10, 14).
Johnson City-Kingsport-Bristol, Tenn.-Va.	372,876	4 (Tennessee and Virginia)	2 (Tennessee—1; Virginia—9).
Johnstown, Pa.	262,822	2 (Pennsylvania)	1 (12).
Kalamazoo-Portage, Mich.	257,723	2 (Michigan)	2 (3, 4).
Kankakee, Ill.	97,250	2 (Illinois)	1 (17).
Kansas City, Mo.-Kans.	1,271,515	4 (Missouri and Kansas)	5 (Missouri—4, 5, 6; Kansas—2, 3).
Kenosha, Wis.	117,917	2 (Wisconsin)	1 (1).
Killeen-Temple, Tex.	159,794	2 (Texas)	1 (11).
Knoxville, Tenn.	409,409	2 (Tennessee)	2 (2, 3).
La Crosse, Wis.	80,468	2 (Wisconsin)	1 (3).
Lafayette, La.	109,716	2 (Louisiana)	1 (7).
Lafayette-West Lafayette, Ind.	109,378	2 (Indiana)	1 (2).

SNSA	Population	Number of Senators	Number of Representatives (congressional district)
Lake Charles, La	145,415	2 (Louisiana)	1 (7).
Lakeland-Winter Haven, Fla	227,222	2 (Florida)	1 (8).
Lancaster, Pa	319,693	2 (Pennsylvania)	1 (16).
Lansing-East Lansing, Mich	424,271	2 (Michigan)	4 (3, 5, 6, 10).
Laredo, Tex	72,859	2 (Texas)	2 (2, 3).
Las Vegas, Nev	273,288	2 (Nevada)	1 (A.L.).
Lawrence-Haverhill, Mass.-N.H	258,564	4 (Massachusetts and New Hampshire)	3 (Massachusetts—5, 6; New Hampshire—1).
Lawton, Okla	108,144	2 (Oklahoma)	1 (4).
Lewiston-Auburn, Maine	72,474	2 (Maine)	1 (2).
Lexington-Fayette, Ky	266,701	2 (Kentucky)	2 (5, 6).
Lima, Ohio	210,074	2 (Ohio)	2 (4, 5).
Lincoln, Nebr	167,972	2 (Nebraska)	1 (1).
Little Rock-North Little Rock, Ark	323,296	2 (Arkansas)	1 (2).
Long Branch-Asbury Park, N.J	459,379	2 (New Jersey)	2 (3, 4).
Longview, Tex	120,770	2 (Texas)	2 (1, 4).
Lorain-Elyria, Ohio	256,843	2 (Ohio)	1 (13).
Los Angeles-Long Beach, Calif	7,032,075	2 (California)	16 (18, 20-35).
Louisville, Ky.-Ind	867,330	4 (Kentucky and Indiana)	4 (Kentucky—2, 3, 4; Indiana—9).
Lowell, Mass.-N.H	218,268	4 (Massachusetts and New Hampshire)	2 (Massachusetts—5; New Hampshire—2).
Lubbock, Tex	179,295	2 (Texas)	1 (19).
Lynchburg, Va	133,258	2 (Virginia)	2 (5, 6).
Macon, Ga	226,782	2 (Georgia)	2 (3, 8).
Madison, Wis	290,272	2 (Wisconsin)	1 (2).
Manchester, N.H	132,512	2 (New Hampshire)	2 (1, 2).
Mansfield, Ohio	129,997	2 (Ohio)	1 (17).
McAllen-Pharr-Edinburg, Tex	181,535	2 (Texas)	1 (15).
Melbourne-Titusville-Cocoa, Fla	230,006	2 (Florida)	1 (9).
Memphis, Tenn.-Ark.-Miss	834,006	6 (Tennessee, Arkansas, and Mississippi)	5 (Tennessee—6, 7, 8; Arkansas—1; Mississippi—1).
Meriden, Conn	55,959	2 (Connecticut)	1 (5).
Miami, Fla	1,267,792	2 (Florida)	3 (13, 14, 15).
Midland, Tex	65,433	2 (Texas)	1 (19).
Milwaukee, Wis	1,403,688	2 (Wisconsin)	3 (4, 5, 9).
Minneapolis-St. Paul, Minn.-Wis	1,965,159	4 (Minnesota and Wisconsin)	8 (Minnesota—1, 2, 3, 4, 5, 6, 8; Wisconsin—3).
Mobile, Ala	376,690	2 (Alabama)	1 (1).
Modesto, Calif	194,506	2 (California)	2 (14, 15).
Monroe, La	115,387	2 (Louisiana)	1 (5).
Montgomery, Ala	225,785	2 (Alabama)	2 (2, 3).
Muncie, Ind	129,219	2 (Indiana)	1 (10).
Muskegon-Norton Shores-Muskegon Heights, Mich	175,410	2 (Michigan)	1 (9).
Nashua, N.H	86,280	2 (New Hampshire)	2 (1, 2).
Nashville-Davidson, Tenn	699,144	2 (Tennessee)	3 (4, 5, 6).
Nassau-Suffolk, N.Y	2,553,030	2 (New York)	6 (1-6).
New Bedford, Mass	161,288	2 (Massachusetts)	2 (10, 12).
New Britain, Conn	145,269	2 (Connecticut)	2 (1, 6).
New Brunswick-Perth Amboy-Sayreville, N.J	583,813	2 (New Jersey)	3 (4, 5, 15).
New Haven-West Haven, Conn	411,287	2 (Connecticut)	3 (2, 3, 5).
New London-Norwich, Conn.-R.I	241,556	4 (Connecticut and Rhode Island)	2 (Connecticut—2; Rhode Island—2).
New Orleans, La	1,045,809	2 (Louisiana)	1 (2, 3).
New York, N.Y.-N.J	9,973,577	4 (New York and New Jersey)	25 (New York—6-26; New Jersey—7-9, 11).
Newark, N.J	2,054,928	2 (New Jersey)	6 (5, 10, 11, 12, 13, 15).
Newport News-Hampton, Va	333,140	2 (Virginia)	1 (1).
Norfolk-Virginia Beach-Portsmouth, Va.-N.C	732,600	4 (Virginia and North Carolina)	3 (Virginia—2, 4; North Carolina—1).
Northeast Pennsylvania	621,830	2 (Pennsylvania)	2 (10, 11).
Norwalk, Conn	127,516	2 (Connecticut)	2 (4, 5).
Odessa, Tex	91,805	2 (Texas)	2 (16, 19).
Oklahoma City, Okla	698,180	2 (Oklahoma)	3 (4, 5, 6).
Omaha, Nebr.-Iowa	540,142	4 (Nebraska and Iowa)	2 (Nebraska—2; Iowa—5).
Orlando, Fla	453,270	2 (Florida)	4 (4, 5, 9, 10).
Owensboro, Ky	79,486	2 (Kentucky)	1 (2).
Oxnard-Simi Valley-Ventura, Calif	376,430	2 (California)	2 (19, 20).
Parkersburg-Marietta, W. Va.-Ohio	148,132	4 (West Virginia and Ohio)	3 (West Virginia—1, 3; Ohio—10).
Pascagoula-Moss Point, Miss	87,975	2 (Mississippi)	1 (5).
Paterson-Clifton-Passaic, N.J	460,782	2 (New Jersey)	2 (8, 11).
Pensacola, Fla	243,075	2 (Florida)	1 (1).

SMSA	Population	Number of Senators	Number of Representatives (congressional district)
Peoria, Ill	341,979	2 (Illinois)	2 (15, 18).
Petersburg-Colonial Heights-Hopewell, Va	128,809	2 (Virginia)	1 (4).
Philadelphia, Pa.-N.J	4,817,914	4 (Pennsylvania and New Jersey)	13 (Pennsylvania—1, 2, 3, 4, 5, 7, 8, 13, 16; New Jersey—1, 2, 4, 6).
Phoenix, Ariz	967,522	2 (Arizona)	4 (1, 2, 3, 4).
Pine Bluff, Ark	85,329	2 (Arkansas)	1 (4).
Pittsburgh, Pa	2,401,245	2 (Pennsylvania)	6 (14, 18, 20-22, 25).
Pittsfield, Massachusetts	96,817	2 (Massachusetts)	1 (1).
Portland, Maine	170,081	2 (Maine)	1 (1).
Portland, Oreg.-Wash	1,009,129	4 (Oregon and Washington)	5 (Oregon—1, 2, 3.; Wash- ton—3, 4).
Poughkeepsie, N.Y.	222,295	2 (New York)	1 (25).
Providence-Warwick-Pawtucket, R.I.-Mass	905,558	4 (Rhode Island and Massachusetts).	4 (Rhode Island—1, 2; Massachu- setts—3, 10).
Provo-Orem, Utah	137,776	2 (Utah)	1 (11).
Pueblo, Colo	118,238	2 (Colorado)	1 (3).
Racine, Wis	170,838	2 (Wisconsin)	1 (1).
Raleigh-Durham, N.C	418,841	2 (North Carolina)	2 (2, 4).
Reading, Pa	296,382	2 (Pennsylvania)	1 (6).
Reno, Nev	121,068	2 (Nevada)	1 (A.L.).
Richland-Kennewick, Wash	93,356	2 (Washington)	2 (4, 5).
Richmond, Va	542,242	2 (Virginia)	4 (1, 3, 5, 7).
Riverside-San Bernardino-Ontario, Calif	1,143,146	2 (California)	4 (35, 36, 37, 43).
Roanoke, Va	203,153	2 (Virginia)	2 (6, 9).
Rochester, Minn	84,104	2 (Minnesota)	1 (1).
Rochester, N.Y.	961,516	2 (New York)	4 (33, 34, 35, 36).
Rockford, Ill	273,063	2 (Illinois)	1 (16).
Sacramento, Calif	800,592	2 (California)	4 (1, 3, 4, 14).
Saginaw, Mich	219,743	2 (Michigan)	3 (2, 8, 10).
St. Cloud, Minn	134,585	2 (Minnesota)	1 (6).
St. Joseph, Mo	98,828	2 (Missouri)	1 (6).
St. Louis, Mo.-Ill	2,410,163	4 (Missouri and Illinois)	9 (Missouri—1, 2, 3, 8, 9, 10; Illinois—20, 23, 24).
Salem, Oreg	186,658	2 (Oregon)	2 (1, 2).
Salinas-Seaside-Monterey, Calif	250,071	2 (California)	1 (16).
Salt Lake City-Ogden, Utah	705,458	2 (Utah)	2 (1, 2).
San Angelo, Tex	71,047	2 (Texas)	1 (21).
San Antonio, Tex	888,179	do	3 (20, 21, 23).
San Diego, Calif	1,357,854	2 (California)	4 (40, 41, 42, 43).
San Francisco-Oakland, Calif	3,109,519	do	8 (5-11).
San Jose, Calif	1,064,714	do	3 (10, 12, 13).
Santa Barbara-Santa Maria-Lompoc, Calif	264,324	do	1 (19).
Santa Cruz, Calif	123,790	do	1 (16).
Santa Rosa, Calif	204,885	do	2 (2, 5).
Sarasota, Fla	120,413	2 (Florida)	2 (8, 10).
Savannah, Ga	207,938	2 (Georgia)	1 (1).
Seattle-Everett, Wash	1,421,869	2 (Washington)	5 (1, 2, 3, 6, 7).
Sherman-Denison, Tex	83,225	2 (Texas)	1 (4).
Shreveport, La	334,642	2 (Louisiana)	1 (4).
Sioux City, Iowa-Nebr	116,189	4 (Iowa and Nebraska)	2 (Iowa—6; Nebraska—1).
Sioux Falls, S. Dak	95,209	2 (South Dakota)	1 (1).
South Bend, Ind	280,031	2 (Indiana)	2 (2, 3).
Spokane, Wash	287,487	2 (Washington)	1 (5).
Springfield, Ill	171,020	2 (Illinois)	2 (20, 21).
Springfield, Mo	168,053	2 (Missouri)	1 (7).
Springfield, Ohio	187,606	2 (Ohio)	1 (7).
Springfield-Chicopee-Holyoke, Mass.-Conn	541,752	4 (Massachusetts and Connecticut).	4 (Massachusetts—1, 2; Connecti- cut—2, 6).
Stamford, Conn	206,419	2 (Connecticut)	2 (4, 5).
Steubenville-Weirton, Ohio-W. Va	165,627	4 (Ohio and West Virginia)	2 (Ohio—18; West Virginia—1).
Stockton, Calif	290,208	2 (California)	1 (14).
Syracuse, N.Y.	636,507	2 (New York)	3 (30, 32, 33).
Tacoma, Wash	411,027	2 (Washington)	2 (3, 6).
Tallahassee, Fla	109,355	2 (Florida)	1 (2).
Tampa-St. Petersburg, Fla	1,088,549	do	4 (5, 6, 7, 8).
Terre Haute, Ind	175,143	2 (Indiana)	1 (7).
Texarkana, Tex.-Ark	112,392	4 (Texas and Arkansas)	2 (Texas—1; Arkansas—4).
Toledo, Ohio-Mich	762,741	4 (Ohio and Michigan)	5 (Ohio—4, 5, 9; Michi- gan—2, 15).
Topeka, Kans	180,619	2 (Kansas)	2 (2, 5).
Trenton, N.J.	303,968	2 (New Jersey)	3 (4, 5, 13).
Tucson, Ariz	351,667	2 (Arizona)	1 (2).
Tulsa, Okla	550,835	2 (Oklahoma)	3 (1, 2, 6).

SMSA	Population	Number of Senators	Number of Representatives (congressional district)
Tuscaloosa, Ala	116,029	2 (Alabama)	1 (7).
Tyler, Tex	97,096	2 (Texas)	1 (4).
Utica-Rome, N.Y.	340,670	2 (New York)	1 (31).
Vallejo-Fairfield-Napa, Calif	249,081	2 (California)	2 (2, 4).
Vineland-Milville-Bridgeton, N.J.	121,374	2 (New Jersey)	1 (2).
Waco, Tex	147,553	2 (Texas)	1 (11).
Washington, D.C.-Md.-Va	2,908,801	4 (Maryland and Virginia)	8 (District of Columbia—A.L.; Maryland—1, 4, 5, 6, 8; Vir- ginia—8, 10).
Waterbury, Conn	216,808	2 (Connecticut)	2 (5, 6).
Waterloo-Cedar Falls, Iowa	132,916	2 (Iowa)	1 (3).
West Palm Beach-Boca Raton, Fla	348,753	2 (Florida)	2 (10, 11).
Wheeling, W. Va.-Ohio	182,712	4 (West Virginia and Ohio)	2 (West Virginia—1; Ohio—18).
Wichita, Kans	389,352	2 (Kansas)	2 (4, 5).
Wichita Falls, Tex	129,941	2 (Texas)	1 (13).
Williamsport, Pa	113,296	2 (Pennsylvania)	1 (17).
Wilmington, Del.-N.J.-Md	499,493	6 (Delaware, New Jersey, and Maryland).	3 (Delaware—A.L.; New Jersey—2; Maryland—1).
Wilmington, N.C	107,219	2 (North Carolina)	1 (7).
Worcester, Mass	372,144	2 (Massachusetts)	2 (2, 3).
Yakima, Wash	144,971	2 (Washington)	1 (4).
York, Pa	329,540	2 (Pennsylvania)	1 (19).
Youngstown-Warren, Ohio	536,003	2 (Ohio)	2 (11, 19).

Mr. FEINSTEIN. The lobby disclosure issue is a difficult and complex one. Each provision has potentially serious ramifications for small citizen groups. We, therefore, intend to continue working with the excellent staff of this subcommittee to express our view on the intricacies of this legislation.

We thank you for this opportunity to testify.

Mr. DANIELSON. Thank you very much, Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman. Andy, let me say to you and your organization similar statements as I said to Mr. Biemiller and his.

You all have been both constructive and instructive, and I appreciate your kind comments.

I noticed that early on in your statement you were talking about volunteers, primarily. Could it be that any particular volunteer comes to mind when you are talking about your organization?

Mr. FEINSTEIN. We are concerned about all citizens who would without pay become involved in the legislative and political process.

Mr. FLOWERS. Well, I agree with you that there is and should be concern about all citizens, but as you well remember from last year, there is one particular volunteer that pops into a lot of people's minds when you start talking about this subject.

And I remember during that long night last year, I got wound up particularly about that, and let me just ask you straight out, do you think that you can distinguish between Ralph Nader as a volunteer and Joe Citizens as a volunteer, anywhere in the United States?

Mr. FEINSTEIN. We can distinguish between Ralph Nader as a volunteer and I as a paid lobbyist. I am getting paid to advocate a position. When I cease to advocate that position, when I advocate another position, I no longer get paid. The same is not true of an unpaid volunteer. Now, the lobby disclosure statute which passed last year in the House provided that the name of Ralph Nader would be included as identified as the chief executive officer of the organization. And so the question of whether he's covered by the statute was really something of a bogus question.

Mr. FLOWERS. Do you think a volunteer can be in effect an alter ego for an organization, and thus although not paid, should come under coverage of any law we pass?

Mr. FEINSTEIN. In the case of Public Citizen, is that what you are referring to?

Mr. FLOWERS. To get down to the bottom line now.

Mr. FEINSTEIN. There is no secret that Ralph Nader is the chief executive officer of that organization.

That activities of Public Citizen reflect the views of Ralph Nader and the information that would be reported in our lobby disclosure forms and which is reported now in our lobby disclosure forms reflects the views and positions of Ralph Nader.

Mr. FLOWERS. We are delighted to have you with us today. Alan participated in this in the early states, and it is good to have you back with us, Alan.

Mr. MORRISON. Thank you.

There are two things about this. One is we were talking about the alter ego of the organization. To the extent that the chief executive officer represents the alter ego of the organization, that representation

would be clearly depicted by requirements that we believe are proper in terms of the identification of the organization.

That is, it will say Public Citizen: Chief Executive Officer, Ralph Nader, member of the board of directors, Ralph Nader. So, in terms of having the public identification, it is there.

The question is can Mr. Nader be required consistent with the Constitution to keep records and fill out forms? This seems to me to be almost a reverse synergistic approach.

That is, you have two first amendment rights. First, the right to petition the Government as a citizen for redress of grievances. Nobody now is considering registering citizens. So that is one first amendment right. You also have a first amendment right to associate together for the redress of grievances, that is, by forming Public Citizens with other like-minded people. Mr. Nader and others, has exercised that first amendment right.

Then if you take the first two first amendment rights Mr. Nader is exercising, the right to petition his Government for redress of grievances and the right to association, you add them together and somehow you come up to a smaller right, a right that can be burdened by making him keep records. We don't understand how that can be done.

We are not trying to hide anything. What we are concerned about is that once you pass the threshold on volunteers and start saying, "Well, Mr. Nader, he's a special case for a volunteer." There are lots of special cases. What we are really concerned about is that only the volunteers not be discouraged, that it is not in the best interest of the public of the Congress or the people of the United States to do that.

That is why we feel we have to draw the line at first principles.

Mr. FLOWERS. I would totally agree with you that we have to be extremely careful, because we are getting close to the first amendment right here. I think what we did last year, at least what I tried to do last year, was to be very careful here.

You know, some of those that are most apprehensive about Mr. Nader right now can look forward to at least perhaps someday in the future, he won't be around and yet this law will be around.

There are a myriad of circumstances and conditions that it might apply to. If you catch Ralph Nader in the trap, you might also catch a lot of unknowing citizens out there anywhere in the country and create some real problems and cut off some critical communication.

Mr. Chairman, I am sorry I have taken so long.

Mr. DANIELSON. I observe that there is a roll call on. It is the motion to resolve into the Committee of the Whole. I would like to request, Mr. Flowers and Mr. Kindness, that we recess until we go over and have a chance to cast our votes and then return to hear the witnesses.

Would you be able to do that, Mr. Kindness?

[Pause.]

Mr. DANIELSON [Continuing.] If you could come back, would you be able to?

Fine.

We will take a recess then for between 10 and 15 minutes. As soon as we return, we can resume.

Thank you very much.

[Recess.]

Mr. DANIELSON. The quorum for taking testimony being present, we can continue.

Other members are returning. Pending their arrival, Mr. Feinstein, I would like to question you regarding solicitation aspects, briefly. I understand and fully support the fact that people who solicit and who send in letters to their Congressmen and the like, should be under no inhibitions whatsoever, no restraints.

However, comment please on whether there should be coverage for the organization which solicits such grass-root contact?

Let's pull out a commonly known example, the National Rifle Association. Most of its lobbying is done by means of encouraging its members or other citizens to write to their congressmen. Without passing any judgment on the pros or cons of gun control, that is a pretty good example.

Would you comment on that, briefly.

Mr. FEINSTEIN. It is my understanding that the National Rifle Association has a number of people here in Washington who are paid to lobby the Hill.

Mr. DANIELSON. Right.

Mr. FEINSTEIN. It is conceivable that an organization could be formed that would do nothing but solicit. It seems to me that that would be a rather ineffective way to engage in trying to influence legislation.

Mr. DANIELSON. Did you say "ineffective"?

Mr. FEINSTEIN. Ineffective. The process of lobbying necessitates people on Capitol Hill actually engaging in communications with members and staff of Congress. I think that with the great inhibiting power of coverage of solicitations and particularly of coverage of solicitations through a threshold, I think on balance we come done in opposition to including any coverage of solicitations for purposes of a threshold, unless an organization goes out and hires a firm to make solicitations and spends a good deal of money in doing that.

If the organization does nothing but solicit itself, send out its magazine or send out information on the legislative process, we don't think that organization should be covered as a lobbyist without doing more.

Mr. DANIELSON. Thank you.

I want to vary it just slightly.

We are dealing here with constitutional rights, the first amendment.

Let's shift gears and assume now we are dealing with what, in effect, is a religious matter, prayer in school. There are church groups which advocate strongly that there be some legislation to insure prayer in our schools.

Now, you are impacting the first amendment again through freedom of religion; and say that the type of lobbying that is carried out is that I receive letters from constituents at home.

Would you comment on that briefly? Perhaps you have a religious organization of the type which might otherwise be passing the threshold and qualifying as a lobbyist.

Mr. FEINSTEIN. If there is an organization at the top, which is otherwise qualifying as a lobbyist, then the question is whether those solicitation activities that that organization engages in should then

be reported. Again because of the constitutional problems, again because of public policy problems, we strongly lean away from extensive reporting requirements for solicitations. The minimal reporting requirements of last year's House bill may be appropriate in that situation.

One further point, I am not certain what the interest of the Government is in determining whether a batch of letters on a particular subject came as a result of a solicitation by a national organization or came merely in response to watching the news. In either case those letters are deserving of serious consideration and reflect the views of the writers of those letters.

Mr. DANIELSON. In essence, what you are saying is that if the hypothetical situation, which I described existed, then the fact that the parent organization is a religious organization invoking another one of the constitutional rights under the first amendment, you do not feel that in that hypothetical case that that should be a bar to requiring them to register as a lobbyist?

Mr. FEINSTEIN. The fact that they are a religious organization, the fact that the organization may be a city, may be a State, if they have people in Washington, who are working on an extensive basis lobbying, that organization should be subject to the same coverage that we are.

Mr. DANIELSON. Last, you made a comment in your original presentation that you as an employed person are a lobbyist, and I know that in the context in which everyone thinks of lobbying that would be true.

But under all of these bills, you wouldn't be the lobbyist, it would be your employer who would be the lobbyist and you would simply be the agent, isn't that a fact?

I don't think the public has grasped that yet. It is something that is rather illusive, but all of these lobbying bills are directed to an organization. Of necessity there must be two or more persons to form an organization which either employs someone like yourself as its paid agent or at least employs someone who devotes a certain portion of his or her time to the lobbying type activity.

Mr. MORRISON. Mr. Chairman, may I make two brief points about the solicitation question that you asked?

Mr. DANIELSON. Yes, sir.

Mr. MORRISON. First, I think the Congress perfectly well knows now even though indirect lobbying is not covered by the present law, when there are massive solicitation activities going on, you see lots of the same—

Mr. DANIELSON. I can assure you, sir, that you become aware of that within 30 days after being elected.

Mr. MORRISON. So that, therefore, in that sense, there is not much to be gained by requiring somebody else to report that which you already know.

Mr. DANIELSON. If I may, all through these hearings we have not been concerned about what the Members of Congress know, it is what the public knows.

Mr. MORRISON. I think the public knows that pretty well, to.

Mr. DANIELSON. Well that is an assumption.

Mr. MORRISON. Second, whatever coverage of solicitations there ought to be, a great deal of the problem can be eliminated if you do not include within a definition of a lobbying solicitation materials sent out in a regular publication of an organization.

Mr. DANIELSON. That's correct.

Mr. MORRISON. That would include, for instance, trade unions, monthly newsletters. Our quarterly reports, quarterly reports to stockholders. All of those kinds of things if you eliminate all of those then you eliminate much of the problems and I think that—

Mr. DANIELSON. That is correct. It is a very valid observation.

Mr. MORRISON. Thank you, sir.

Mr. DANIELSON. There was one additional point I had here. Maybe I should in all fairness let someone else cover it, but in case they fail, you mentioned two or three times in your statement that one of the things we must guard against is gifts to Members of Congress or favors and the like.

I want to remind you that we now have a rule in both the House and Senate, which prohibits gifts above, I think, \$35. You are familiar with the rule. Doesn't that sort of rule sort of cancel out the need for this gift clause in a lobbying bill?

Mr. FEINSTEIN. Let me just say in the first place this is merely a disclosure statute and not a regulation statute. It would prohibit nothing. There are a number of distinctions between the code of ethics provisions and a disclosure provision within a lobby statute which Mr. Morrison will cover.

Mr. MORRISON. The first is, of course, the time of reporting. The ethics provisions are an annual reporting provision whereas these would be reported quarterly. Second, the ethics provision requires reporting by the recipients, whereas what we are talking about here is reporting by the donors. So, that you have two different sets of figures and it is very difficult to piece them together.

Third, there is no reporting of nonmonetary items, things like entertainment and things like that, which we recommend ought to be reported because they are expenses of a lobbying organization. These items do not have to be reported by Members of Congress for one very obvious reason: that is the enormous bookkeeping, the practical difficulties of figuring out what the dinner somebody gave you was worth. There is a very different threshold amount, that is \$35 versus the \$10 in our recommendation.

Finally, the originating organization, Public Citizen, or whatever it would be, has to keep all these records in any event. There is no additional burden. You know what records you have to keep because you have to keep them for your own internal bookkeeping purposes. We think it is appropriate to keep all of these records, to have them disclosed on a quarterly basis and while there may be some overlap it is sufficiently different that we think both figures are useful.

Mr. DANIELSON. I wanted that in the record. That is precisely why I asked the question.

Mr. MORRISON. Thank you.

Mr. DANIELSON. I think the second point you touched upon is at least the most valid, namely, the new regulations which apply to Members of Congress are, in effect.

But there seems to be in my mind at least, no reason why a comparable regulation should not apply to the donor, as well as the donee.

Mr. FEINSTEIN. One other point in relation to gifts: In line with the point we have been making, that disclosure by its very nature discourages a certain type of activity, the disclosure of an activity discourages that activity, the inclusion of a strong gift disclosure provision has that effect as well. That is an effect we support. In other words, discourage the activity of buying favors and giving gifts.

Mr. DANIELSON. Thank you very much.

Mr. Kindness, I don't know if you have questioned these gentlemen or not. I can't remember but I yield.

Mr. KINDNESS. Thank you, Mr. Chairman.

I haven't yet, but I would like to clarify a couple of points here. I appreciate your testimony this morning, gentlemen. I would like to come back to your references to the line of cases starting with *NAACP v. Alabama*, through *Gibson v. Florida Legislative Committee*. The test laid down by the Supreme Court, in those cases, is whether or not there is a substantial relationship between the information sought, i.e. the membership list, and a compelling overriding State interest. That seems to me to be the rule that would apply to the question of whether a person who is a volunteer might be required to report certain information such as that contemplated in this bill, or these bills. For example, Mr. Nader, being specific, is identified most frequently as unpaid or a volunteer. But he undoubtedly makes a living through his interest in public matters, and is consistently and continually involved in such public matters. He clearly has an effect on legislation and executive branch actions, which is indistinguishable from someone who is paid for doing lobbying work.

Would you care to comment on whether that test would be met or breached if someone in the capacity of a Ralph Nader is brought under the coverage of this legislation?

Mr. FEINSTEIN. You started off with setting out the test based on a compelling State interest. It may be my problem, but I have not heard the articulation of a compelling State interest to warrant that inclusion.

Mr. KINDNESS. Let's back up; I need to clarify a bit perhaps.

The reason for legislation along this line, which does impinge upon or come very close to impinging upon first amendment rights, is that there is a compelling State interest, ill-defined though it may be, as to exactly what it is that we want the public to have available by way of information. But if there is a compelling State interest in having legislation like this at all, and I believe there is, then it's hard for me to distinguish between those who receive compensation and those who don't for the direct act involved.

Mr. FEINSTEIN. We see, as an essential part of that compelling State interest, the fact that a lobby disclosure statute will disclose who is the agent for what principal. In that regard, agents are traditionally paid people. That is the way that agents continually reflect the position of that organization. So, in the case of an unpaid volunteer, we are not talking about the same sort of agency relationship.

Mr. KINDNESS. Would you take the same position with respect to the chairman emeritus of the board of directors of General Motors?

Mr. FEINSTEIN. Not being paid? Yes.

Mr. KINDNESS. Would you take the same position with respect to the chairman of the Democratic or Republican National Committees?

Mr. MORRISON. They are, of course, excluded from the bill, but if they weren't excluded from the bill, we would say they are in the position.

Mr. FEINSTEIN. If they weren't excluded and weren't paid——

Mr. KINDNESS. Assuming they were not paid. OK.

Mr. FEINSTEIN. We see the line as being paid or unpaid as the distinguishing line that distinguishes volunteers from people who could be subject to coverage from this act.

Mr. KINDNESS. Do you know from what sources Mr. Nader's compensations are derived?

Mr. MORRISON. He derives most of his income from speaking and writing.

Mr. KINDNESS. Is he provided with office space by Congress Watch or any of the other organizations——

Mr. FEINSTEIN. He is not provided with office space by Public Citizen. He is not.

Mr. KINDNESS. Or Public Interest Research Group, or Public Citizens Litigation Group, or Center for Women's Policy Studies, or Public Citizens Visitors Center, or Health Research Group, or Citizens Action Group, or Aviation Consumer Action Project, or Capitol Hill News Service, or Center for Auto Safety, or Corporate Responsibility Accountability Research Group?

Mr. MORRISON. First, let me say some of these organizations he has no affiliation with. Second, some of the organizations with which he has affiliation are organizations which are funded out of his own personal resources. I think we ought to make it clear that he does not have an office at any of the places that you're talking about. He sometimes comes and sits in an office, at my office of the litigation group and he's there from time to time, but he receives no salary for that. He is the president of Public Citizen and he's entitled to use the facilities of Public Citizen, but he doesn't have an office set aside with a secretary or anything like that paid for by Public Citizen.

Mr. FEINSTEIN. The distinction is that Public Citizen is funded by mail contributions primarily and the funds paid out, none of them accrue to the benefit of Ralph Nader. His own offices are paid for out of his own pocket. He is a very active volunteer.

Mr. KINDNESS. Where is that office?

Mr. MORRISON. I'm sorry, where is it?

Mr. KINDNESS. You say he has an office.

Mr. MORRISON. Yes, he has several places.

Mr. KINDNESS. It's funny we never been able to find out where.

Mr. MORRISON. You can find him if you want to get in touch with him, there is no problem.

Mr. KINDNESS. I would be happy to be given some guidance in that respect as to where his office is.

Mr. MORRISON. Do you want to know a place where if you wanted to write him a letter you could reach him or you want the telephone number or what is it?

Mr. KINDNESS. I see that I am not going to get the answer voluntarily——

Mr. MORRISON. No, I'm just asking, I don't represent Mr. Nader personally, you understand. I represent Public Citizen.

Mr. KINDNESS. Right. What I would like to know, however, is did Mr. Nader hire either one of you?

Mr. MORRISON. He certainly did, I'm proud of it.

Mr. KINDNESS. That is the person to whom you would look to determine whether you would continue in your work, is that correct?

Mr. MORRISON. That's correct.

Mr. KINDNESS. Well, that reflects an element of control over the organization for which you work, isn't it?

Mr. MORRISON. We never denied that.

Mr. KINDNESS. Right. And that just because that person who controls the lobbying activity that we seek to have disclosed doesn't receive pay directly for that function, you think that's a basis for eliminating coverage of that activity from the bill?

Mr. MORRISON. I want to make this very clear, as clear as I possibly can. His coverage is not eliminated. It will say right in the lobbying reports that Ralph Nader is the chief executive officer and a member of board of directors of Public Citizen. He is covered. The only thing we are arguing about is whether he as a volunteer can be required to keep records as to how he spends his time. That is what the argument is about. I want to be sure that we understand that we are not opposing having his name listed as the control person, the person who can hire and fire me and who has control over policymaking decisions.

Mr. KINDNESS. But everyone else who receives pay for what they do of a very, very similar nature can be required, I take it, in your view, to keep records as to how they spend their time in pertinent activities?

Mr. FEINSTEIN. We see coverage running to those people who makes significant amount of contacts on the Hill. If there is a paid chief executive officer who sets policy for an organization which lobbies but does no lobbying himself, that person's name would have to be disclosed as the chief executive officer, but he would have to keep no records about how he spends his time.

Mr. KINDNESS. Would he not make 12 or more oral lobbying communications on issues of interest to your organization in a period of 3 months?

Mr. MORRISON. Mr. Nader? Mr. Nader, whenever he testifies, he testifies as Ralph Nader. He does not testify as the president of Public Citizen.

Mr. KINDNESS. We are really getting to the point now, aren't we?

Mr. MORRISON. You asked me the question, does he make 12 or more oral lobbying contacts in a quarter, absolutely.

Mr. KINDNESS. Would you say that that might have some effect on the outcome of consideration of legislation?

Mr. MORRISON. Hopefully.

Mr. KINDNESS. That is the purpose of it, isn't it?

Mr. FEINSTEIN. I would suggest when a constituent of yours writes you a letter that constituent has a hope that that letter is going to influence outcome of legislation as well. If you're suggesting coverage of that individual, that is a different matter. However, the discussions so far have not focused on covering of your constituents.

Mr. KINDNESS. Right. And there is an exemption provided in most of the bills, a "home town" exemption in some form. But, here, we are really talking about someone being able to organize a variety of pressure groups, under whose auspices he may speak and maintain a living. Or, however the income is derived, he could be a wealthy person to begin with, who simply receives no direct consideration for services to these groups but has a lot of vehicles through which to express his views.

And that is something in which I believe there is an overriding public interest to have disclosure.

Mr. FEINSTEIN. I think what you're suggesting is that at a certain point we put a price on volunteers exercising their first amendment rights as volunteers to petition the government. You're suggesting that as volunteers become more active that costs should go up for them and that their new prices should be attached to their activities.

We do not accept that principle and I think the majority of the Congress does not accept that principle, either.

Mr. KINDNESS. Well, I don't choose to characterize it in the same way that you do. But when a person spends full time attempting to influence public policy, the sophistication of how the compensation is routed through organizations is not really pertinent. Public interest, I think, is in getting the disclosure from all who engage in such activity on an equal basis.

Mr. MORRISON. Rather to the contrary, it is pertinent for the individual in terms of his or her own personal income taxes, the right to control the money, the way in which the money may be spent. It is very pertinent as to whether Mr. Nader is being compensated for writing and speaking as an employee of Public Citizen in which case he would owe the money to his employer or whether he's been compensated as an individual.

Mr. KINDNESS. I don't believe this will have any effect on the Internal Revenue Code directly, but if there is an overriding state interest in having the disclosure of information with respect to lobbying, then it ought to cover everyone who engages in that type of activity.

Mr. FEINSTEIN. Although I think this is an interesting discussion, I think the question is probably moot. In the *Harris* decision, the Court continually talks about upholding the law because it only covers people who lobby for hire, the term "for hire" is included every time they use the term "lobby." I think the question is academic. I think the Supreme Court has spoken on it.

Mr. DANIELSON. The time of the gentleman has expired. Mr. Harris of Virginia.

Mr. HARRIS. Thank you, Mr. Chairman. I want to compliment you on your statement, the analysis you have done on the bill.

I thought I would take just a minute to understand your position with regard to disclosure of membership or disclosure of contributions. The little while I have spent around this town, it seems to be of great benefit to the public and to the Congress to know what various organizations are.

I have seen so many committees come up and later to my dismay discover that the committee was a committee of one or of ten, and that while the committee was a committee for God and motherhood, it actually may have had a more precise interest in that.

It always seemed to me necessary for Congress to know who was speaking. I was wondering if there really isn't a strong public interest to be served to require disclosure of contributors to an organization, especially if they constitute a substantial part of the financing of that organization.

What would your stand on that be?

Mr. MORRISON. Well, I think that, Congressman Harris, you have hit upon what seems to me the only justification for any disclosure of contributors at all, and that is the question of control.

Are they a front for somebody else? Now, this committee last year had both a dollar and a percentage limitation on the bill as reported out.

When it got to the floor, the percentage limitation was deleted, so that anyone who gave money, a certain amount of dollars, to a lobbying organization, would be required to report.

That would, I suggest, bring forth the spector that the churches would all be required to report contributors in excess of \$2,500.

That all the universities that were able to find people to give them more than \$2,500 would put forth their names.

Without any relation between the amount of money given and control. Now, control, typically, in the law involves things such as percentages, percentages of control of stock or percentages of giving to a particular organization.

So that if any kind of test is going to be imported at all, it's got to have both a minimum dollar threshold and a percentage threshold to insure that we only get people who are really in back of the organization, that the organization is not a front for them.

We don't think there is any compelling necessity shown for disclosing the names of those, particularly when we are dealing with individuals.

Indeed, we would distinguish individuals and organizations. Individuals having a much stronger first amendment claim to nondisclosure than would organizations. Organizations can't be harassed and can't be picked on in the same financial way that individuals can.

We think it sufficient if the organization discloses whether, in fact, there are any control people defined as, let us say, 10 percent of the donors or contributors, or whatever.

And at that point, if the organization on its own is unwilling to make the further disclosure, that is the organizations's dilemma. Then you can decide whether you want to listen to it, based on that.

But forced disclosure runs directly contrary to the NAACP cases, and we don't think there is any showing on the record so far that there are these kind of organizations around that need to have the disclosure of individual contributors that has been suggested.

Mr. FEINSTEIN. When somebody comes into your office representing a Committee for Goodness, the Member of Congress can ask the person from that committee, who controls that committee, what that committee represents, where the committee gets its funds from. Then the committee has the alternative of either disclosing to you that information or protecting the rights of its members and contributors.

Mr. HARRIS. I would guess that there is a public perception of Congress and of the amount of lobbying and the type of lobbying that goes on here that creates the necessity for this type of legislation.

Wouldn't you say that is what the necessity is?

Mr. FEINSTEIN. That there is a public perception which we wish to change? I think that is one of the interests in this legislation. I wonder whether the desire to change our image is a compelling state interest, as the Supreme Court has defined it?

Mr. HARRIS. Well, I think it is. I had never even considered that it wasn't.

I can't imagine that having the people's confidence in the Government restored wasn't of a compelling interest. I just couldn't imagine that.

It occurs to me that people have a right to know what kind of pressure is being put on Congress with "hired guns," and who they really are. And I don't know whether it does much good for them to know that so and so law firm has registered as a lobbyist for such and such a committee, if they don't know really what they are representing and who they are representing.

Mr. MORRISON. There is no question about that. If we have not been clear on that, let me be as clear as I can on that now. If anyone goes out and hires another person, individual, or organization to represent that person, it is absolutely clear there has to be disclosure. We are not talking about that.

What we are talking about is whether a voluntary membership type organization is going to be required to list the names of people who make contributions. That is the question.

Mr. HARRIS. You know what a voluntary-type organization is, you are able to define that with clarity and precision?

Mr. MORRISON. The statute doesn't do that. It just refers to any organization. Under the statute that we are proposing, it doesn't have to disclose its contributors.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Harris. Thank you, gentlemen, for your presentation and for responding to our questions.

You have been very helpful.

Your responses may have provided the seed for some discussion during markup later on.

Thank you very much.

We next are favored with the presentation by Ruth C. Clusen, president of the League of Women Voters of the United States.

Won't you please come forward, Ms. Clusen and bring with you whomever are your associates and identify them for the record.

I might add, while the ladies are taking their seats, that in case there are any persons here who are not immediately interested in the legislation, everybody we have heard this morning is a lobbyist one way or another. They come in all varieties, and they are an essential part of our legislative process.

Ms. Clusen, are you ready?

TESTIMONY OF RUTH C. CLUSEN, PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, ACCOMPANIED BY PEGGY LAMPL, EXECUTIVE DIRECTOR

Ms. CLUSEN. I am ready, Mr. Chairman.

Mr. DANIELSON. You may, like all the others, feel free to be emancipated from your written statement and just give us the benefit of your real from-the-heart thoughts.

Ms. CLUSEN. With me is Peggy Lampl, executive director. She is the chief executive director of the staff. She is paid but does not influence policy.

I am following up on our previous conversation, you see.

I am the unpaid chief executive officer of the league and a full-time volunteer.

Mr. DANIELSON. Did you say you are the Ralph Nader of the League of Women Voters?

Ms. CLUSEN. I don't think I will get into that definition, we might have a little problem. My office is, and my desk is at 1730 M Street, NW. The League of Women Voters is a theoretical organization. We do lobby, of course. We have approximately 137,000 volunteers in 1,350 local leagues, 50 States, the District of Columbia, Puerto Rico and the Virgin Islands.

I think I hardly need detail our longstanding interest in lobby registration reform. Both because we are an organization which lobbies and because we believe in open government, accountable to the people. We are in line with those who believe that the Lobby Registration Act of 1946 is ineffective and needs to be reformed. We were involved in the efforts last year, as many of the members of this committee will note.

The league, of course, was founded on the premise that citizen participation in government is essential to the democratic process, and we have encouraged participation at all levels of government through many means, voting, lobbying, monitoring, running for elected office.

We believe the public should know as much as possible about how decisions are made and this includes knowledge about general and special interest groups.

We do not believe, however, that there is anything basically wrong with lobbying and, although we are not naive about the abuses, the influence peddling which sometimes occurs, we do not want to see legislation that has the effect of smothering legitimate activities, because of the massive amount of paper involved in registration and disclosure requirements.

In some ways we realize that the two objectives of the league, of encouraging citizen participation and disclosing lobbying activities, can be in conflict when they are translated into legislative language.

And this certainly seemed to be the case in last year's problems between the two Houses on the lobbying bills.

One area of conflict occurs when the legislation requires an inordinate amount of disclosure from small moderately funded citizen organizations.

I think reference has already been made this morning to the so-called "chilling effect" which this can have on an organization's willingness to participate in the lobbying process.

Basically, we think the costs and complexities in complying with the law must not be overwhelming. That the purpose must not restrict or regulate lobbying activities, but must be to provide reliable, useful assessment of how organizations try to influence the legislative process.

We hope the bill you pass this year achieves this purpose, to provide useful information without unduly burdening any organization.

It is our hope that whatever bill emerges will be a strong one, but not one which tries to dot every "i" and cross every "t," and cut citizens and others off from their elected representatives.

We are particularly interested in the question of whether volunteers should be covered, of course.

And on a couple of other matters, which I would like to call to your attention, we agree that exact threshold levels are a basic key to establishing just who is a lobbyist. In general, we would prefer starting discussion with the threshold limits found in H.R. 1180, the two-tier trigger with the money test and the subsequent time test. We do recommend that trigger be high enough so as to include those that devote a substantial amount of time and money to lobbying directly, but exclude those who lobby only infrequently and on such a small scale that reporting is a burden. Moreover, the basic example we think must be that the trigger must be easily quantifiable, either in time, money, or contacts, so that an organization that looks at the legislation may readily know whether or not they must register. We do object to any registration trigger or reporting requirement which would detail much logkeeping. With regard to coverage of attempts to influence rulemaking and award of contracts, I don't think that has been referred to yet this morning, and it is a matter of some concern to us.

Leagues at the local stage and national level frequently respond to request for comments which appear in the Federal Register either by letter or oral contacts.

We don't consider these activities as lobbying, in the sense that appears in the proposed bills we hope Members of Congress can concur with.

As a 501(c)(4) organization, the league does not compete for Federal grants or contracts, but we have a sister organization, the League of Women Voters Education Fund, which is a 501(c)(3) charitable trust, which does occasionally apply for Government grants for specific projects.

In the course of the application procedure, their representatives may well meet with agency officials to discuss the merits of the proposal.

We think this kind of activity is not and should not be considered lobbying and should not be covered in any legislation.

We question, in addition, whether a bill which is addressed primarily to lobbying activities of the Congress is the right vehicle for the disclosure of influencing efforts in rulemaking and particularly in the contract and grant awards.

While we do see that there needs to be more disclosure related to rulemaking and awards of contracts and grants, particularly when an organization makes contacts to influence that are not normally considered part of the public record or makes expenditures in the form of dinners, trips, gifts, and so forth, to executive officials, but it does seem to us that lobbying Congress and the executive branch are sufficiently different as to require separation into two bills.

This should be done so that the committee and the Congress can adequately consider each one, what they want disclosed, and how that disclosure will affect the organization engaging in that kind of activity.

Again, I would like to stress that the league deems it important that reporting requirements not be unduly burdensome.

For instance, we don't really think it is necessary that each individual who engages in lobbying activities on behalf of an organization, need to keep a log on all contacts made.

Of course, the record should show who lobbied for whom and for what, but in overall, not in nitpicking terms.

We think it is important that Congress be specific on expenditure reporting for organizations like ours where paid staff members are engaged in activities other than those which would come under the lobbying trigger.

Anything that you can do to strike a balance between overreporting and necessary reporting in this reform could be nullified if the guidance given is not clear.

The coverage of volunteers is perhaps the most difficult question.

We believe strongly that a bottom line in deciding whether or not an organization is a lobbyist for the purposes of a reform bill should be whether or not that organization pays someone or has a paid staff to engage in lobbying full or part time.

A 100-percent volunteer organization should not be covered, unless its members who lobby spend expense moneys at a level higher than accepted per diem rates.

We oppose counting a volunteer member's time or contacts in the threshold requirements, even if those members work in conjunction with paid staff, and we oppose reporting requirements which would include member activities.

We do think that an organization should report lobbying activities of an unpaid board of directors, such as ours, and that such reporting would be a useful disclosure. Our board, all unpaid, do lobby from time to time on issues of importance to the league, and we think that our activities should be a part of the public record.

I would add that we also have a paid professional staff who lobby and they are registered under the current law.

The problem is that the implications of a lobby law which would cover volunteers would be staggering to us, as well as to other voluntary membership organizations, both large and small.

For instance, if you were to enact the 20-percent time trigger, how would a volunteer's time be counted?

If a volunteer spends 10 hours on league work, 2 hours writing letters to Congress, would this member's time be required on all registration and reporting forms?

How should a volunteer keep records on his or her time, in order to prove that not more than 19.99 percent of it was spent on lobbying?

When the national league asks its chapters to lobby on a particular bill, we have absolutely no way in which to find out whether they have responded or not, and how they passed on the message to individual members.

Most important of all, would a volunteer's failure to keep records to the satisfaction of the comptroller place a volunteer under civil sanctions which appear in the proposed legislation?

It would be very hard to encourage our members to lobby with any threat of this kind hanging over them. In short, it would be impossible to maintain the viability of the league, if volunteers were

included in the lobby law. The very process of citizen participation in Government itself would be severely jeopardized.

There are just two other matters on which I would like to comment.

The league and many other organizations have structures which involve a national office either here in Washington or elsewhere.

A number of affiliates located throughout the country also. In our case, some 1,400 local and State chapters. It is important that the affiliations clause in the legislation be such that unless an affiliate is extremely active on its own, that that affiliate's coverage would be subsumed into ours; that is, that of the national organization.

Our affiliates lobbying at the national level is primarily through our suggestion and initiative and, therefore, we believe that we are the ones who should register and report.

We also believe that nothing should be done in this legislation which would interfere with any organization's right to freely contact Members of Congress representing the district and State where that organization is located.

And, indeed, perhaps the SMA definition is the correct way to go.

This is a right which applies to organizations, as well as to individuals.

We commend you for your work.

We would like to do anything we can to help you make reform possible this year.

Mr. DANIELSON. Thank you very much. I am going to recognize first the gentleman from Virginia, Mr. Harris.

Meanwhile, I want to thank you for your testimony here, the suggestions you made to us, and to assure you that during markup, if you have added information you feel will be of help to us, it is invited.

We will feel free to get in touch with you.

Mr. Harris.

Mr. HARRIS. Thank you very much, Mr. Chairman. I would like to add my compliments for the statement and to the organization. It just happens that I go clear back to Betty Douglas' days. I have long admired the work you do. I wish you all would get more active during campaign time. Unfortunately, you have trouble getting consensus at campaign.

Ms. CLUSEN. If you are referring to candidates, we never do reach consensus.

Mr. HARRIS. I am familiar with that, although the ratings are fine. I appreciate that.

I am particularly interested in the problem of disclosure of membership lists, some sort of measure by which we can require organizations heavily financed by one or a small number of organizations to disclose that fact and for organizations not being used as a method of covering up what may be a very limited lobbying organization.

Do you have any further comments on that that you would make as to whether this is bad or what is the best way to do it?

Ms. CLUSEN. Of course, as far as we are concerned, actually our membership list is open to anyone who wants to come to our office and see it.

We do not give it to anybody who simply asks for it, simply as a protection to our members, particularly from the standpoint of junk mail.

Mr. HARRIS. Well, not just junk mail; it is a good mailing list.

Ms. CLUSEN. As far as our funding is concerned, in the League of Women Voters of the United States, our primary source of funding is our own membership, about 75 percent of that.

Ms. LAMPL. Yes, I think the question you are asking is at what level should you start disclosing contributions. I think we would have a problem, for example, with just a flat dollar figure that in itself would cover dues from, say, a local or State chapter and the dues are on a per capita very small amount. We would have no problem with the provision that went to the question of a substantial contribution from one source, either individual or another group.

Five percent of the total budget, 7 percent, 10 percent.

I think we would favor something that had a definition of substantiality in terms of the total budget of the organization.

Mr. HARRIS. Do you feel a provision like that is necessary, just a membership disclosure provision is necessary for effective lobby registration law?

Ms. LAMPL. It depends which membership you are talking about.

If you are talking about a citizens organization in which the membership are individuals, as opposed to, let's say, a trade association in which there are other criteria—

Mr. HARRIS. My question is very precise. Does a lobby registration law have to have or should it have a provision in it that requires an organization to disclose membership if, in fact, the contributions from one or two individuals may be substantial in that organizations operations?

Ms. CLUSEN. Well, it is how substantial.

Mr. HARRIS. I understand. I am not asking you to draw the line. I am asking you, is it necessary for us to open up that deck of cards, if you will, in this act. Should we have a provision in there that goes to this point? That requires this kind of disclosure?

Ms. CLUSEN. I don't honestly think that volunteer organizations, organizations composed primarily of volunteers, should have to disclose their membership, although we certainly would have no objection to doing so.

Ms. LAMPL. Large contributions.

Ms. CLUSEN. If the percentage of large contributions reached a limit, then I can see that it might—it is hard to deal with this, because I keep seeing it in terms of my own organization, where you know we just don't get that kind of money.

Nobody's trying to buy us lately. It is just unlikely that any one member, even, would give us a substantial amount.

So it is just not applicable.

So I don't see this as a major problem, but when you look beyond to other kinds of organizations, which may or may not be voluntary or may be organizations not of individuals, but of associations, I think you may well be dealing with a different case.

Mr. HARRIS. Thank you very much, Mr. Chairman.

Mr. DANIELSON. Mr. Flowers of Alabama.

Mr. FLOWERS. Thank you, Mr. Chairman. I think our witness hit the nail on the head, when she said that she looks at it primarily from the point of view of her organization, and that is what we are faced with.

Ms. CLUSEN. Everybody is.

Mr. FLOWERS. That is the point of reference for everyone. To be a tribunal that tries to measure it all together is difficult, indeed, but we are going to try once more, and we will, of course, be cognizant of what the problems of the league are and appreciate the efforts that you have made in behalf of lobbying reform in the past.

Thank you, Mr. Chairman. I have no questions.

Mr. DANIELSON. Thank you very much, Mr. Flowers.

I want to take this opportunity to commend the league through you for your bringing us the debates during the last Presidential election. I think that was one of the most useful public services that I have ever seen any volunteer group perform.

And I hope that you will be able to repeat again 3 years from now.

I know you have got some fiscal problems there, but maybe if we hold our breath and hope, we can work them out.

I have one question that I wish to propound. In your statement, you have one point of departure from some of the others, and that is that even though you yourself and the members of your board of directors are unpaid, in effect, volunteers, but you are in a position of policy formation and policy direction, you feel that your activities should be reported.

Ms. CLUSEN. Basically, what I have said is that we are willing to, we have no objection to. All of our board spends some time lobbying. I myself spend what I would call a substantial part of time lobbying in one way or another.

I think an organization that is in that framework, you could make a legitimate case for disclosure of days.

Mr. DANIELSON. Would that be based on an apparent fact that you, to be an unpaid volunteer member of the board of directors, president, in your case, necessarily implies a very high degree of dedication of your time and effort to the work of the organization?

Ms. CLUSEN. It is full time.

Mr. DANIELSON. That is quite a lot. On the financial disclosure, I want to raise one point. If you had a threshold amount of a certain percent, let's just say 10 percent, who would possibly determine that until after the end, the close of the fiscal year?

Contributions, hopefully, keep coming in all year long, and whether or not someone has put in 10 percent depends not on the momentary interlocutory period, but what has resulted as you close your books.

I think there is a real problem there. And I can think of only one solution and that would be to have it pertain to the percentage contributed in the previous fiscal year.

Many States impose a franchise tax, for example, on corporations which is based upon their income in the previous fiscal year.

The only one that I can ascertain.

Would you care to comment on that, either of you?

Ms. CLUSEN. I think it is a rational approach to use the previous year's figures.

Ms. LAMPL. Yes, I mean we could determine quarterly what the levels of contributions would be, and I suppose if something like that were in effect, we would have to do as you do on income tax, file an amended report at the end of our fiscal year, if the contributions exceeded what seemed to, you know.

Mr. DANIELSON. I think there is one problem inherent in there. As the year goes by, if a person makes one contribution, his percentage continually decreases.

So you couldn't unring the bell and unreport the person once you have done it. I won't belabor the point, because I think we all know the problem there.

Mr. Kindness of Ohio.

Mr. KINDNESS. Thank you, Mr. Chairman.

I have no questions at this point, but thank you very much for your very helpful testimony.

Ms. CLUSEN. Thank you.

Mr. DANIELSON. Well, thank you.

Thank you, ladies, that will conclude your testimony. It is of great value to us, and we will certainly include it in our thinking during markup.

[The prepared statement of Ms. Clusen follows:]

SUMMARY OF STATEMENT BY RUTH C. CLUSEN, PRESIDENT, LEAGUE OF WOMEN
VOTERS OF THE UNITED STATES

The LWVUS joins those who feel the 1946 statute is ineffective and needs to be reformed.

We were founded on the tenet that citizen participation in government is an essential ingredient of the democratic process. We encourage such participation, one form of which is lobbying. At the same time, the LWVUS believes in an open, accountable government. Lobby disclosure is necessary if governmental decisionmaking processes are to be understood. We do not want to see these two objectives—encouraging citizen participation and disclosing lobbying activities—to be at odds with each other. In other words, we want useful disclosure, disclosure that is not so burdensome as to have a "chilling effect" on citizens and organizations who want to lobby the government.

Thresholds The LWVUS would prefer starting discussion with the triggers found in HR 1180. Triggers should be *easily quantifiable*—time, money or contacts. We object to any triggers which require detailed logging.

Rulemaking and Contracts We do not consider replying to notices in the Federal Register lobbying. We do not consider any activity that is an accepted part of the application process for award of grants and contracts to be lobbying. We question whether this bill should cover rulemaking and award of grants and contracts and would prefer these considerations dealt with in another bill.

Reporting Requirements Reporting requirements should not be unduly burdensome. Logging should not be required. Congress should provide clear guidance to the Comptroller on the reporting to be required.

Volunteers We oppose coverage of volunteers both in triggers and in reporting. The only exception we would make in the trigger is when members of an organization spend "expense" monies above acceptable per diem rates. We would expect to report lobbying activities of an unpaid board of directors. They should not be considered in the trigger, however.

Further, it is important that an "affiliations clause" be in the legislation such that unless an affiliate was extremely active on its own, that affiliate's coverage would be subsumed into ours. Also, nothing should be done in this legislation which would interfere with any organization's right to freely contact members of Congress representing the district and state where that organization is located.

STATEMENT BY RUTH C. CLUSEN, PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE
UNITED STATES

Mr. Chairman, members of the Committee, I am Ruth C. Clusen, President of the League of Women Voters of the United States, a political organization composed

of approximately 137,000 volunteers in 1,350 local Leagues and in 50 state Leagues, the District of Columbia, Puerto Rico and the Virgin Islands. I am here today because of the League of Women Voters' interest in lobby registration reform. It is of interest to us because we are, after all, an organization which lobbies and because we believe in an open government accountable to the people.

We join those who believe the Lobby Registration Act of 1946 is an ineffective statute with inadequate enforcement provisions and therefore must be reformed. The League was fully involved in efforts to reform the legislation last year. We plan to be this year as well.

The League of Women Voters was founded on the tenet that citizen participation in government is an essential ingredient of the democratic process. We encourage participation at all levels of government: through voting, lobbying, monitoring and running for elected office. We believe, further, that the public should know as much as possible about how the decisions are made which affect their lives—and that this includes knowledge about the general and special interest groups which line up and work for various sides of an issue. We do *not* believe, however, that there is anything intrinsically wrong with lobbying and, while not naive about abuses and so-called influence peddling, do not want to see legislation that would have the effect of smothering legitimate activities under a paper mountain of registration and disclosure requirements.

We are aware that these two League objectives—encouraging citizen participation and disclosing lobbying activities—can conflict as they are translated into legislative language. This was certainly the case, at times, in last year's Congressional deliberations on lobbying bills.

One area of conflict occurs when the legislation requires an inordinate amount of disclosure, particularly from small, moderately funded citizens organizations, that is so excessive as to have a "chilling effect" on the organization's willingness to participate in the lobbying process. Simply put, the costs and complexities of complying with the law become too overwhelming. The League wants to ensure that such a "chilling effect" will not take place.

The purpose of a lobby disclosure law is not to restrict or regulate lobbying activities. It is to provide a reliable, useful assessment of when and how organizations seek to influence the legislative process so that Members of Congress and the public may know the source of pressures exerted on an issue or a particular piece of legislation. Every effort must be made to see that the bill you will pass this year achieves this purpose—to provide useful information—without unduly burdening any organization.

Having been an active lobbyist on lobby reform last session, we are well aware of the different points of view that Congress must contend with in coming up with an equitable and effective bill. All of them may not be reconcilable. It is our hope, however, that whatever bill emerges be a strong one but not one which, in an effort to dot every "i" and cross every "t", cuts citizens and others off from their elected representatives.

The invitation for these hearings asked that witnesses address themselves to a particular set of questions relating to reform. The League is especially interested in one of the questions—that of whether or not volunteers should be covered in the disclosure bill—but I will first touch lightly on the other questions as well.

Thresholds—Obviously, exact threshold levels are the key ingredient in establishing just who is a lobbyist. In general, we would prefer starting discussion with the threshold limits found in HR 1180—a two tier trigger with the first tier a money test (\$1,250 spent for the retention of a lobbyist in a quarter) and the second a time test (20 percent of paid—staff time spent in lobbying activities in a quarter). We would recommend that the trigger be high enough so as to include those that devote a sizable amount of time and money to lobby directly but exclude those who either lobby infrequently or on such a small scale as to make reporting a real burden. The trigger should be easily quantifiable—time, money, or contacts—so that organizations may readily know whether or not they must register. Further, the League objects to any registration trigger or reporting requirement which would entail detailed logging.

Coverage of attempts to influence rulemaking and the award of contracts—Leagues frequently respond to requests for comments which appear in the Federal Register, by letter and by oral contacts. We don't consider these activities as lobbying in the sense covered by proposed bills and would hope that Members of Congress concur in this opinion. I would assume that if Congress decided otherwise the Register would have to print a caveat warning persons that commenting may be hazardous to their lobbying status.

As a 501(c)4 organization, the League of Women Voters of the United States does not compete for federal grants or contracts. However, we have a sister organization, the League of Women Voters Education Fund, a 501(c)3 charitable trust, which

does occasionally apply for government grants for specific projects. In the application procedure, their representatives may well meet with agency officials to discuss the merits of the proposal. This kind of activity cannot be considered lobbying and should not be covered in any legislation.

We question, furthermore, whether a bill addressed primarily to lobbying activities in the United States Congress is the proper vehicle for disclosure of influencing efforts in rulemaking and particularly in contract and grant awards. We don't deny that there needs to be more disclosure related to rulemaking and awards of contracts and grants, particularly when an organization makes contacts to influence that cannot be considered part of the public record and/or makes expenditures in the form of dinners, trips, gifts, etc., to executive officials. But it seems to us that lobbying Congress and the Executive Branch are sufficiently different as to require separation into two bills. This should be done so that the Committee and the Congress can adequately and carefully consider exactly what they are seeking to disclose and how that disclosure will affect the organizations which engage in that type of activity.

Reporting requirements—Again, I would like to stress that the League deems it important that reporting requirements not be unduly burdensome. We don't think it necessary, for example, that each individual who engages in lobbying activities on behalf of an organization keep a "log" on all contacts made. Of course, the record should show "who" lobbied for "whom" and for "what," but in over-all, not nit-picking, terms.

We think it is important, too, that Congress be specific on expenditure reporting particularly for organizations such as the League where paid staff members are engaged in activities other than those which would come under the lobbying trigger. All efforts of Congress to strike a balance between overreporting and necessary reporting in this reform could be nullified if clear guidance is not given to the Comptroller for the promulgation of regulations.

Coverage of volunteers—We believe strongly that a bottom line in deciding whether or not an organization is a lobbyist for the purposes of a reform bill should be whether or not that organization pays someone or has a paid staff to engage in lobbying—either full or part time. A 100 percent volunteer organization should not be covered unless its members who lobby spend "expense" monies at a level higher than accepted per diem rates.

Further, the League opposes counting a volunteer member's time or contacts in the threshold requirements, even if those members work in conjunction with a paid staff, and we oppose reporting requirements which would include member activities.

We do think, however, that an organization should report lobbying activities of an unpaid board of directors and that such reporting would be a useful disclosure. Our board, all unpaid, do lobby from time to time on issues of importance to the League, and we believe their activities should be part of the public record. I would add that we also have a paid professional staff who lobby. They are registered under the current law.

The League, as I said in my opening, is an organization of approximately 137,000 volunteers. The implications of a lobby law which would cover volunteers would be staggering to us, as well as to other voluntary membership organizations both large and small. For instance, if you enact a 20 percent time trigger as is found in HR 1180, how would a volunteer's time be counted? If a volunteer spends 10 hours a month on League work, two hours of which are spent writing letters to Congress—would this member's name be required on all registration and reporting forms? How would a volunteer keep records on his or her time in order to prove that not more than 19.99 percent of it was spent on lobbying activities? When the League asks its chapters to lobby on a particular bill, it has absolutely no way in which to ascertain (a) whether they responded or not or (b) how the message was transmitted to the membership.

And, most important, would a volunteer's failure to keep records to the satisfaction of the Comptroller place a volunteer under the civil sanctions found in the bill? It would be very hard indeed to encourage our members to lobby with the threat of civil sanction hanging over their heads.

In short, it would be patently impossible to maintain the vitality of our organization if volunteers are included in the lobby law. The very process of citizen participation in government itself would, in fact, be severely jeopardized by the effect of such coverage; and we would doubt seriously the constitutionality of such a provision.

Before concluding I would like to add a comment on two other issues of concern to the League in this reform. The League and many other organizations have structures which involve a national office either here or elsewhere and a number of affiliates located throughout the country—in our case, some 1400 local and state chapters.

It is important that an "affiliations clause" be in the legislation such that unless an affiliate was extremely active on its own, that affiliate's coverage would be subsumed into ours. Our affiliates' lobbying at the national level is primarily through our suggestion and therefore we believe we are the ones who should register and report.

Further, we believe strongly that nothing should be done in this legislation which would interfere with any organization's right to freely contact members of Congress representing the district and state where that organization is located. This is a constitutional right which, we believe, applies to organizations as well as to individuals.

In conclusion, the League of Women Voters commends you in your efforts to enact this needed reform. It is not easy to legislate in this area, as most of you will recall from last year. The reason it is not easy is because it deals with very complex questions, the answers to which are found only through a very careful deliberative process. The wrong answers could spell the difference between a good disclosure law and a repressive nightmare of red tape.

Thank you.

Mr. DANIELSON. Our next witness is Mr. Allen Smith, controller of the Sierra Club.

TESTIMONY OF ALLEN E. SMITH, CONTROLLER, SIERRA CLUB.

Mr. SMITH. Thank you.

Mr. DANIELSON. Do you have an associate?

Mr. SMITH. No, I do not.

Mr. DANIELSON. You may proceed. We have your statement. Without objection, it will be received in the record.

Mr. SMITH. Thank you, Mr. Chairman

Mr. Chairman, members of the subcommittee, I appreciate this opportunity to speak today and as I understand it you will enter my written testimony as given into the record.

Mr. DANIELSON. We will.

[The prepared statement of Mr. Smith follows:]

STATEMENT OF ALLEN E. SMITH, CONTROLLER, SIERRA CLUB

Mr. Chairman, Members of the Subcommittee on Administrative Law and Governmental Relations, I am Allen E. Smith, Controller of the Sierra Club. I wish to thank you and your staff for the opportunity to testify on this important issue today.

The Sierra Club is a voluntary membership organization of over 174,000 members with the public interest purpose "to restore the quality of the natural environment and to maintain the integrity of its ecosystems." We are engaged in a broad range of environmental issues through a diversity of educational, research, publication, outdoor, legal, and public-policy-influencing programs. (See Attachment A)

The Sierra Club supports H.R. 5578 introduced by Mr. Don Edwards of California. We believe that all the other legislative proposals, including that passed last year, go too far and are too burdensome. We support the position of the American Civil Liberties Union outlining the First Amendment and Constitutional issues.

We believe that there is a basic problem of a wrong approach to regulating lobbying, that the government has not made its case for the need for this legislation, that the government has not fully examined and assessed the impact of this and other related proposed legislation on the non-profit sector, that the government has not fully defined what a lobbying abuse is, and that the real issue of lobbying abuse is the ethics of those being lobbied not how much money is spent participating in the processes of our government.

We urge Congress to adopt the approach of H.R. 5578, if it feels it must have a new law soon. However, we urge a careful examination of the conflicting trends of proposed federal and state legislation to regulate the non-profit sector first. (See Attachments B & C where I have outlined this problem.)

If much of the contemplated legislation affecting the non-profit sector at the federal and state level becomes law very few will be able to participate fully in their government. Many non-profits will be out of compliance and will not have the resources to comply with complex, conflicting reporting requirements. We need to avoid a plethora of knee-jerk legislative remedies to specific areas of abuses in lobbying, fund raising, the use of the postal system, philanthropy, accounting, and tax law which

could have a collective cost and impact of putting the public interest sector out of business.

There is a very real need for Congress to examine these regulatory accounting and reporting requirements on a consolidated basis, not individually. Any reporting system should be aimed at being very simple, should be consistent with existing tax reporting, and should not be a conflicting duplication of other reporting.

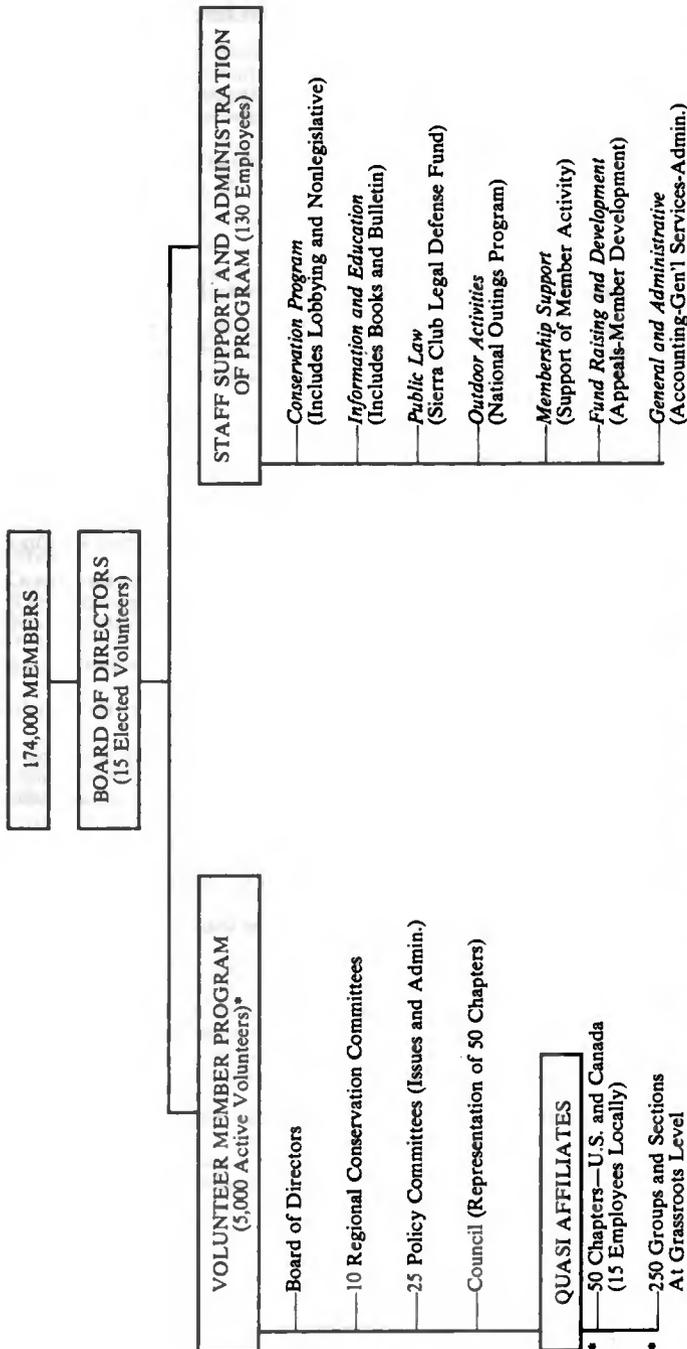
Executive Branch lobbying considerations pose additional specific problems. First, the Internal Revenue Code does not define lobbying to include Executive Branch, hence any reporting systems for non-profits would have to be bifurcated on that point alone, particularly if a tax-deductible 501(c)(3) organization had elected to lobby under the new provisions of the Tax Reform Act of 1976. The states only further compound this issue. Second, extensive reporting of lobbying of the Executive Branch could impede the willingness of the Executive to be open with the public. Where is the line between drawing on the huge reservoir of technical expertise of our government executives and trying to influence them? The real issue again is one of ethics, which can only be dealt with in ways other than regulating lobbying. Would the regulation of lobbying have disclosed that an IRS agent had his vacations paid for by a large corporation?

The Justice Department and the General Accounting Office have documented the problems with existing lobbying law. To this extent there is a clear need for change. We support H.R. 5578 and urge its adoption for that purpose as a reasonable solution. At the same time we urge Congress to review and examine the total reporting problem and work towards the resolution of that problem.

We have testified on proposed lobbying legislation in the past and have previously outlined the problems of compliance for a highly decentralized, grass-roots, volunteer membership organization. The problems of compliance are largely in the application of complex threshold criteria and detailed reporting requirements of our 5,000 active volunteers at the chapter and group level. (See Attachment A) It is here that the assumptions that an accounting system can be geared to capture complex reporting data breaks down. We believe that H.R. 5578 is the only legislative approach that offers a resolution of these problems to us.

I will be happy to answer any questions you may have. Again, may I thank you for this opportunity to express our views.

SIERRA CLUB
ORGANIZATIONAL STRUCTURE



Chapters and Groups report summary financial information at year end only for purposes of 990 Tax Return—All other Club program is reported centrally monthly.—The highest cost of regulatory accounting would be in our Chapters and Groups.
 *Estimate of cost to Sierra Club to set up accounting systems and staffing to comply with the old 1976 version of S2477 was \$250,000.

Staff lobbying activities can be reasonably accounted for in the aggregate. Further refinement would add further cost. Sierra Club is one corporation organized under Section 501(c)(4) of the IRC with two affiliated corporations organized under Section 501(c)(3) of the IRC (Sierra Club Foundation and Sierra Club Legal Defense Fund)

SIERRA CLUB—THE WEB OF PHILANTHROPIC-PUBLIC INTEREST REGULATORY REPORTING

Taxes—Sales, Payroll and Property Taxes at Federal, state, county and city levels.

Income Tax—Federal 990, Federal Unrelated Business Income, California Franchise Tax Board, District of Columbia, *Potential for Other State Requirements (49).

Charitable Trusts—California, New York State,* Potential for Other State Requirements (48).

Financial—External Financial Statements—ACIPA Standards & Audit, Internal Management Information, Planning & Control.

*Proposed and emerging requirements.

Lobbying—Federal Regulation of Lobbying, California—FPPC, Potential for Other States.

Fund Raising—Federal Truth in Contributions Legislation, Post Office Regulation of Organizations Soliciting Contributions by Mail, States—Diverse Legislative Movements to Regulate Philanthropic Organizations by Fixed Ratios of General & Administrative Expense and Costs of Fund Raising.

Summary of Problems (Detailed below).

Definitions—Conflicting.

Reporting—Overly complex, multiplicity.

Costs—Excessive to nonprofits and government.

Public Policy—Infringement on rights and public interest purposes.

PROBLEMS RAISED BY PROPOSED & EMERGING REGULATORY REPORTING REQUIREMENTS

Definitions—Lobbying is being defined differently from the Internal Revenue Code for Federal Regulation of Lobbying and differently again in each of the states for lobbying reporting leading to the requirement to encode expenses by several different criteria for reporting for different purposes.

This is true also of the definitions of fund raising and general and administrative expenses for proposed fund raising regulation.

Inclusion of the Executive Branch in lobbying reporting is at variance with the definition of lobbying under the Internal Revenue Code.

Reporting—A multiplicity of Federal and state(s) agencies requiring reporting the *same data* many different ways for many different purposes using different definitions and criteria.

External reporting requirements begin to impinge on internal management information reporting and control requirements.

Ability to comply will be reduced by a multiplicity of divergent agency and audit standards which conflict with each other.

Standards, definitions and reporting formats adopted by AICPA will also differ from regulatory reporting as well.

Costs—The cost of general and administrative structures will be substantially increased to handle the multiplicity of reporting requirements.

The costs of government will be increased for each of the facets of regulatory reporting and auditing added.

Public Policy—Raising the general and administrative costs of philanthropic organizations by increasing their regulatory accounting costs could raise those costs to where an organization's General & Admin. ratios exceeds that allowed by state adopted laws—hence an organization would have to cease operating or change its operations to continue. This is not in the public interest.

Raising the cost of government by having several agencies regulating and auditing the same activity many times over is not in the public interest.

The inability of many philanthropic public interest organizations to comply with this multiplicity of regulatory reporting could force their silence, an infringement on their rights.

Mr. SMITH. A lot of the debate I have heard thus far this year and last year has dealt with the issue on the level which deals with attorneys and lobbyists. You have not heard from the people who have to make it work in a real administrative sense as I go back over the record. I am not an attorney, I am not a lobbyist, I am a person who has to make all the reporting requirements for a very large nonprofit voluntary membership organization with 174,000 members at work. And in looking at the lobbying disclosure clause that we are looking at, it's only one part of a larger puzzle.

I would first like to say that the bill we support is H.R. 5578, introduced by Congressman Edwards from California. That bill is the only one which allows for the amelioration of a lot of conflicting directions which are now going on with nonprofit accounting. First in 1976 was a tax reform act which allowed, section 501(c)(3), nonprofit organizations to elect to lobby up to prescribed limits of their budget.

Heretofore, the tax code included the term which I have heard over and over again this morning even, "substantial extent." If no substantial extent of your budget is engaged in lobbying then you can qualify as a section 501(c)(3) organization.

The Sierra Club has an interesting history here, in that back in the 1966-68 era we lost our section 501(c)(3) tax status on that very point because no one would define what is substantial. And herein I have a problem with the two-tier testing.

How do you define, where is the level at which a person should report? It's often easier just to say this is a class of expenditures that everyone should report than it is to try and get into very complex formulas of differentiation as to what should be reported. I fail to see how large, well-established organizations can appreciate the problems of the smaller organizations as well.

On this point I would like to point out that other like organizations which support H.R. 5578 are the National Wildlife Federation, EDF, National Audubon, Nature Conservancy and Natural Resources Defense Council. Further, the National Health Council has recommended to its members that they endorse this as well.

The issue goes beyond lobbying relations. It goes to the whole plethora of very well-meaning, well-intentioned and needed directions in reform for a large part of how we operate in the public sector in this country.

There is a requirement beyond the obvious reform of the lobbying legislation to have a reform in how the postal system is used for fund raising, there is a requirement for Truth in Contributions Act.

Yet all of these are going in a direction which is not thought out in a total context. How is an organization supposed to look at Federal tax law, a State tax law, charitable trust reporting at a Federal and State level, lobbying disclosures at a Federal and State level, all of which use different definitions of lobbying, all of which use different criteria of what you do and don't include in lobbying.

I submit that the smaller organizations don't have the capability if much of this legislation passes to even comply. They are going to have to make choices, because of the cost of reporting and the conflicting directions of some of this legislation, they are going to have to make choices as to what they do and don't do.

While it is necessary to have some understanding of how the legislative process is influenced, I fail to see that a full disclosure of all of the transactions in detail really tells the meaning. I don't think anyone should object to reporting in aggregate and in a major issue sense what they are engaged in.

Mr. DANIELSON. Thank you, Mr. Smith. I am going to interrupt because that is the second bell on this vote. For the information of the members, this is a vote on the Baucus amendment which would ban surface mining. I think we all better go and record our wishes on that. I hope that we can come back and conclude. Will you be able to come back?

Thank you, Mr. Kindness. Mr. Harris, will you be unable to return?

Mr. HARRIS. I couldn't keep myself from coming back.

Mr. DANIELSON. That's wonderful. We will be back in around 10 minutes.

Thank you. We now stand in recess.

[Recess.]

Mr. DANIELSON. A quorum is again present. We will continue.

Mr. Smith, you are with us from the Sierra Club.

Mr. SMITH. Thank you, Mr. Chairman. I will try to be brief considering that I am on jet lag and I'm sure everyone's appetites are starting to get in the way of their train of thought.

Mr. DANIELSON. Everybody is going to look a lot better after today; more exercise and less food.

Mr. SMITH. To continue the discussion I was pursuing with regard to the multiplicity of reporting, there are several characteristics of this which I outlined in the appendix, the attachment to my written testimony.

As Attachment B, specifically, that there is already a large amount of multipurpose reporting which all nonprofit membership organizations engage in, and that there is proposed in the emerging certain of requirements, both of a lobbying and fund-raising characteristic which tends to lead everyone who is trying to comply with this into the situation that the best way I can describe it is to use analogy.

I grew up in the trades, and we used to kid about some of the expressions like "keep your eye on the ball," "your shoulder to the wheel," "your nose to the grindstone," "your ear to the ground," and "your feet on the ground." Now, try to work in that position.

I think that when we look at the overall picture of total reporting requirements, that it needs to be consolidated. No one is arguing that there isn't a need for some of this. I think most of the arguments we have is the way in which it is to be done. And the level of detail.

From an accounting or reporting purpose, you know, what is the meaningful level of detail that tells the picture of what you are trying to get at? What is the lobbying abuse? To separate this into two parts, if you can define what the abuses are, very specifically, and I think you can determine what the type of information is that you want to get at to disclose those abuses.

On the subject of gifts, I think that your gifts clearly is something which is one of the largest areas where abuse can occur. Frankly, our feeling is they ought to be just straight banned. No gifts. However, if you are trying to achieve more than just disclosing the abuses

through a lobbying disclosure act, you know, what is it specifically that you are trying to achieve? Is it that you are trying to achieve a disclosure of how a variety of interests influence the process? Then if that is true, then I don't think that a large amount of laboriously put together detail is going to tell.

I think there are overall types of reporting, macro types rather than micro types of reporting which—such as suggested in H.R. 5578 which speak to the issue of how much has someone committed in terms of money and resources to that process. And what is the broad area of issues that they are dealing with, not did this person or did that person engage in this.

From perspective of the Sierra Club, if someone working on behalf of a piece of legislation, whether staff or volunteer, goes to lobby, they identify themselves clearly as to who they are operating on behalf of. People, as I say, they are on behalf of the Sierra Club, whether staff or volunteer. I don't think that is a problem of disclosure from our standpoint. What is a problem is, and here we come to the issue of the volunteers, we have about 5,000 active volunteers in the Sierra Club. I estimate that they probably give us somewhere in the neighborhood of 1 to 1½ million hours of volunteer time, collectively, over the course of a year, on a variety of programs; from outings to our newsletters, even to our legislative initiatives at a State and local and Federal level.

To try and capture the transactions of 500 active volunteer people is just an absurdity. It has another dimension to it too. It is going to increase the general administrative costs of every organization that tries to comply with this level of reporting. Ironically, the threads of certain legislation and actual laws at certain state levels now which prohibit certain nonprofit organizations from operating in their State if their general and administrative expense exceeds a certain percentage level. The irony is that if you force up the cost of reporting, you are going to force people over those ratios which have been set by State legislatures.

In the State of Washington, for instance, the cost of fund raising has been reduced to a ratio. You cannot operate in the State of Washington unless your fund raising expense is below 20 percent. I know of several organizations that have just said we can't operate that way. They may be 21; they may be 22 percent. So they had to write off wholesale operating in the State of Washington.

A different kind of approach is to say, okay, disclose what the people are spending on fund raising. And then let the public make up their mind about which way they want to go. In that regard, you let the public choose, and those who have a disproportionate ratio will be opted out. But I think that when you get down to very complex structures of two-tier tests as to who does and doesn't report, everybody's going to have to be measuring themselves to know whether or not they have to report.

So it is the same thing as if you say, okay, this is the way it is, this is the way it ought to be done.

There are several points dealing with the issue of the executive, issue of solicitations, the issue of a variety of constitutional points which we feel the ACLU has addressed quite adequately to the point that we support their testimony on this point. I don't wish to go into that at this time.

Mr. DANIELSON. There is no need, sir, to go into it because we are aware of their position. If you say you endorse it——

Mr. SMITH. We endorse their position on that, and I think it is sufficient for us to say that.

Mr. DANIELSON. Right.

Well, thank you, Mr. Smith. I really have no questions based upon your presentation.

Mr. Kindness.

Mr. KINDNESS. I have no questions. Thank you very much for your participation.

Mr. SMITH. I do have a current example that I could give you of a problem that we have right now, which I think is most useful.

Let us take the Redwood National Park Campaign, the Sierra Club is involved in endorsing the expansion of the Redwood National Park in the State of California. It involves adjacent private lands. To the extent that those adjacent private lands fall under the Board of Forestry of the State of California, all of our people, volunteers and staff alike, who are involved in that, have to make a differentiation between what they are working on. They may be working on one specific day on one specific issue related to that, and yet cross the lines of lobbying as defined under the Tax Code, lobbying, as defined by the Fair Political Practice Commission of the State of California, which, incidentally, includes the executive and lobbying as defined by the national or the Federal act.

How do we have an accounting system that can differentiate those kinds of transactions? I recently went through a process of trying to select a new computer service for the Sierra Club, and we had six outside vendors. Four of them had to be disqualified immediately because their software and systems could not handle the complexity of the types of reporting issues that we are looking at.

Imagine what the small 501 C3's would be like in this kind of position. They don't have the resources. I don't feel that on a cost benefit ratio anybody can justify that even the Sierra Club has the resources to get down to some of the level of reporting that is contemplated.

I think that there is a better way to do it, such that perhaps one form or two forms of reporting can be designed to cover a wide range of these needs, including the truth in contributions, the regulation of the use of mails for fund raising, lobbying regulations, the whole gambit of this type of legislation.

I think that one of the things that it will force out is the recognition and realization of just how much of an overlap there is in some of this reporting.

Mr. DANIELSON. We thank you.

Did you have any question, Mr. Harris?

Mr. HARRIS. I don't, Mr. Chairman.

Mr. DANIELSON. We are even with the Board then, and thank you very much, Mr. Smith, for your help.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. DANIELSON. The next witness is Mr. James Cregan of the National Newspaper Association.

Mr. CREGAN. Thank you. Would you come forward.

We have your statement, I believe.

TESTIMONY OF JAMES CREGAN, GENERAL COUNSEL, NATIONAL NEWSPAPER ASSOCIATION.

Mr. DANIELSON. I would like to suggest, since I am afraid we are going to have to start running back and forth again, that your statement will be received in its entirety in the record without objection, and would you just, being freed from that restraint, just proceed.

Mr. CREGAN. Yes, sir.

Mr. Chairman, we appreciate the time constraints.

[The prepared statement of Mr. Cregan follows:]

STATEMENT OF JAMES CREGAN, GENERAL COUNSEL, THE NATIONAL NEWSPAPER ASSOCIATION

My name is James Cregan. I am General Counsel for the National Newspaper Association, an organization of some 900 daily and 5,500 weekly newspapers with members in each of the 50 states, the District of Columbia, Guam and the Virgin Islands. Affiliate members of NNA include 50 state and regional newspaper associations throughout America.

We begin with two fundamental presumptions. First, a new lobbying disclosure law is needed. And second, the 95th Congress will enact such a law. As a national organization representing newspapers, our interest in—and concern about—this legislation is colored by two powerful, and in this case, sometimes conflicting, tenets.

First, NNA and America's newspapers are traditionally ardent advocates of maximum openness in government. One of the primary duties of a newspaper is to inform its readers of what the government is doing, how it is doing it and why it is doing it.

Second, NNA and America's newspapers are uniquely cognizant of, and sensitive to, constitutional issues—most particularly, of course, First Amendment issues.

On most issues upon which we take a position before the Congress, we have no difficulty arriving at, and enthusiastically supporting, a position consistent with these two fundamental precepts.

But with the legislation the Subcommittee has before it today, we find ourselves ill at ease, grappling with the inherent conflict of principles with which this legislation confronts us.

On the one hand, we believe the public has the right to know how the decisions which affect them and the laws which govern them are made. And there is no doubt that lobbying plays a pivotal role in shaping these decisions and molding these laws. We think also that Congress has the right to know—and must know—what special interest groups are exerting organized influence and pressure on its deliberations.

On the other hand, however, we believe that First Amendment rights are the very foundation of our governmental system. Any legislation which seeks to regulate, monitor or control the exercise of these fragile rights must be viewed with apprehension, if not alarm.

Our concept of a sound lobbying law is one which strikes the difficult and delicate balance between the right of the public to know and these First Amendment rights. The law currently in force, we believe, certainly does not chill any constitutional right, but neither does it effectively inform the public and the Congress.

The legislation under active consideration by this Subcommittee, we fear, may well go too far in the opposite direction, tipping the balance in favor of disclosure, but at the heavy, and to us, unacceptable price of chilling fundamental First Amendment rights.

The new law should guarantee that organized lobbying activities are carried on openly and as a matter of public record, just as the Congress itself should carry on all of its activities openly and as a matter of public record.

But, the new law should not result in any lessening in the volume or intensity of legitimate lobbying activity. Aside from being a constitutionally protected activity, lobbying is essential to the proper functioning of our political system, playing an invaluable role in ensuring the making of informed governmental decisions, and providing an irreplaceable barometer of public opinion.

Lobbying should be carried on in public, but it must be carried on.

With this general background of our interests and concerns in mind, I would like to comment on those specific aspects of the bills before the Subcommittee which most trouble us.

1. The four major bills before the Subcommittee all adopt basically the same framework, applying the term "lobbyist" only to organizations, and only to those organizations which meet "threshold" tests.

This approach, we think, is fundamentally sound. Organizations, not individuals, should be the focus of lobbying legislation.

Further in our view, the force of the legislation should be on those organizations which regularly engage in lobbying to a significant extent as part of a calculated and purposeful legislative program—not to those organizations which communicate with the Congress only occasionally, incidentally or irregularly.

The real interest should be in disclosure of the activities of organizations which employ or retain at least one person who has as one of his or her primary duties, "lobbying."

The new law should have as its goal the opening to public scrutiny of organized and professional efforts to influence the Congress, without dampening or deterring the communications of individuals and groups which do not engage in the "business" of lobbying. The registration and reporting requirements should be thorough, but reasonable.

It must also be remembered that, no matter what "threshold" is finally established, all organizations which communicate with the Congress, once the new law is in effect, are necessarily going to have to keep records regarding each and every communication. There is a "negative burden of proof" built into the fabric of these bills which, practically speaking, will obligate all prudent organizations to have, on hand, sufficient records to demonstrate their "innocence" should their failure to register or report be questioned. And so, the burden of record-keeping should not be such as to deter any organization from communicating with the Congress.

Thus, we believe the law's "threshold" should: (1) require "professional" or highly active lobbying organizations to comply with reasonable registration and reporting requirements; and (2) not "chill" the exercise of any organization's right to communicate with the Congress because of onerous record-keeping requirements.

Looking at the four major bills under consideration here (H.R. 1180, H.R. 5795, H.R. 5578, H.R. 6202) all of which use a somewhat different threshold, we see assets and drawbacks in each. H.R. 1180's "percentage of total time," test is the poorest, we feel. It would confront all organizations—especially small organizations—with a nightmare of record-keeping. Detailed time records of all activities—not just lobbying activities—would have to be kept. Then, at the end of each quarter, calculations and allocations would have to be made to determine if the "triggering" figure of 20% had been reached. H.R. 5578 would compound the record-keeping nightmare by using the 20% test, plus a test which would require allocation of time and expenses in researching, preparing and making lobbying communications.

The chilling effect of these bills' threshold would be staggering.

We think H.R. 5795 and H.R. 6202 recognize our concerns about the threshold, and in concept, make good attempts to resolve the problem. We believe that both the "hours" test, and the "oral communications" test are cleaner, simpler, more effective and far less chilling than the "percentage of total time" test. It is our position, however, that if either of these tests is adopted, the threshold figure must be higher. If, for example, using a "twelve oral communications" test an employee of an organization located in North Carolina spoke just once during a quarter with each of the 13 members of his state's delegation, that organization would be a "lobbyist."

Of the bills offered we tend to favor the concept of the "oral communications" test (the test approved by the Senate last year), but with a markedly higher threshold figure of perhaps 30.

2. All of the bills enumerate "exempt" communications. We have several comments here.

First, we strongly endorse the exemption for all communications or solicitations made through newspapers and other publications contained in H.R. 5578 and H.R. 6202. We believe that H.R. 1180 and H.R. 5795 are treading on dangerous First Amendment ground when they purport to regulate "paid advertisements" or "organizational newsletters." We are sure this Subcommittee is mindful of the constitutional protection now afforded even so-called "commercial speech."

Second, we strongly endorse the provisions of H.R. 5578 and H.R. 6202 which exempt "existence or status" communications. The fact that H.R. 1180 and H.R. 5795 would deem such communications "lobbying" is, to us, an outrageous abridgment of basic constitutional rights.

Third, we believe most strongly that communications by constituents to their Senators and Representatives should not be labeled "lobbying," and should not be subjected to government regulation. To do so would clearly violate the First Amendment, in our opinion.

We believe that all communications by an organization to the Senators and Representatives (and their staffs) representing the state in which the organizations principal place of business is located should be exempt. A statewide organization (such as a state trade association), speaking for members throughout the state, should be able to communicate with that state's delegation, without encumbrance, as a constituent.

We recognize the desire of some proponents of this legislation to bring to light the sophisticated "grassroots" lobbying campaigns which seem to be so effective in influencing the Congress. We believe that this goal, if it is to be attained, should be attained not by regulating the communications of constituents and organizational members, but rather by having those who regularly, purposefully and expressly solicit such communications report their solicitation activity.

3. With regard to enforcement, we are wary of any proposal which could potentially impose criminal penalties as a result of the exercise of First Amendment rights. We think, at a minimum, that criminal sanctions should be limited strictly to "willful and deliberate" violations of the Act, or better still, deleted entirely.

Any lobbying law which is enacted is going to have some chilling effect. Making it a criminal statute will only exacerbate the situation.

There is one final practical point of overriding importance which we hope the Subcommittee will keep in mind during its deliberations. The measure you adopt should not be counterproductive. Realistically speaking, the large, well-staffed and well-financed professional lobbies will be able to cope with the new law, no matter what its provisions. If necessary, they will merely hire additional staff or retain an outside firm to help with the record-keeping and form-filing. There will be no diminution of their activities.

But for small organizations, and state and regional organizations, we fear the result will be far different. Unless extraordinary care is taken in framing the new law in accordance with the considerations we have outlined here today, many of these organizations—which only occasionally communicate with Congress, but supply a unique perspective and valued information and input to the federal legislative process—are going to be driven off.

Many of these organizations—with very small staffs and totally foreign to the Washington world of the professional lobbyist—are simply going to be frightened away by the prospect of being labeled "lobbyists."

Others will be inhibited by the monumental record-keeping burden, being too small and too "unsophisticated" to cope. And, more will be deterred by the fear that if the "magic" threshold figure is reached, they will have to cope with what, for them, would be an impossibly voluminous reporting burden.

The result, we fear, would be that the Congress would hear just as much, if not more, from the "big" professional lobbies here in Washington and less from the small organizations and the state and local groups "back home"—with immeasurably increased influence for the "pro's."

This, we think, is exactly what Congress should not be seeking to do. Congress should be hearing more from small groups, and state and local groups, not less.

The focus of this legislation, we submit, should be on the true lobbyist—those organizations which hire or retain people to exert influence upon the legislative process, or whose officers, staff or agents engage in lobbying activity in a regular and significant manner.

This Subcommittee—and the Congress as a whole—must take care to see that, in "reforming" lobbying, you do not isolate yourselves from those people whom most need you—and whom, we respectfully submit, you need.

Thank you.

APPENDIX

RESOLUTION OF THE 91ST ANNUAL CONVENTION OF THE NATIONAL NEWSPAPER ASSOCIATION, OCTOBER 15, 1976

Whereas, the 95th Congress of the United States will have under consideration proposed legislation to regulate lobbying activities and open such activities to the public view; and

Whereas, the National Newspaper Association recognizes the public's right to know and has as part of its primary mission the maintenance and expansion of this right; and

Whereas, the National Newspaper Association also recognizes, and fully supports, the constitutional right of the public to petition the Congress, and the absolute right of constituents to communicate freely with their elected representatives; and

Whereas, the lobbying legislation being proposed necessarily entails a delicate balancing of these rights;

Therefore, Be It Resolved, That the National Newspaper Association endorses the concept of legislation designed to open lobbying activities to the public view; and

That the National Newspaper Association actively supports legislative proposals which would obligate all federal lobbyists to comply with effective registration, reporting and recordkeeping requirements, actively oppose legislative proposals which would chill or otherwise impinge upon the right of the public to petition the Congress and the right of constituents to communicate freely with their elected representatives; and

That the National Newspaper Association work with the 95th Congress toward perfecting and enacting lobbying legislation in conformance with the principles enunciated herein.

Mr. CREGAN. With your permission I will highlight some of the points we are most concerned with.

For the record, my name is James Cregan, and I am general counsel for NNA.

We are a national organization representing newspapers, some 6,500 newspapers.

As such, our interest in this legislation is somewhat unique, and we find ourselves somewhat at cross purposes.

On the one hand we have always been ardent advocates of maximum openness in government.

On the other hand, of course, newspapers and our organization are, we think, uniquely sensitive to constitutional considerations, especially first amendment considerations.

Therefore, we feel that it is essential that in arriving at a final version of this needed legislation, and it is needed, the difficult balance between the public's right to know, and the public's right to petition the Congress, and the other first amendment rights involved in this legislation be balanced.

It is a difficult job, but it is one which we think can be successfully accomplished.

The law currently in force we believe certainly does not chill any constitutional right, but neither does it effectively inform the public and the Congress of who and what forces are affecting the Congress' deliberations.

On the other hand, we do fear that the legislation under consideration may well go too far in the opposite direction, tipping the balance in favor of disclosure, but at the unacceptable price of chilling these fundamental first amendment rights.

Lobbying is an essential activity and it should be carried on in public, but it should be carried on.

With this background, I would just like to mention a couple of the substantive provisions which concern us.

Number one, the threshold provision. I think this is fundamental to the resolution of many of the other problems, other witnesses and the committee have been discussing today.

We feel that the focus of the legislation should be on those organizations which regularly engage in lobbying to a significant extent, as part of the legislative program. Not those organizations which communicate with the Congress only occasionally, incidentally, or irregularly.

The new law should have as its goal the opening to public scrutiny of organized and professional efforts to influence the Congress without dampening or deterring the communications of individuals and groups which do not engage in the business of lobbying.

It should be remembered that no matter what threshold is finally established, all organizations which communicate with Congress are going to have to keep records of each and every communication.

There is a negative burden of proof, we feel, built into the fabric of these bills which, practically speaking, is going to obligate any prudent organization to keep and have on hand sufficient records to demonstrate its innocence, if innocence is the word, should their failure to register or report be questioned, and so the burden of recordkeeping with regard to the threshold requirement should not be such as to deter any organization from communicating with the Congress.

We believe the threshold should accomplish two goals. No. 1, require professional or highly active organizations, lobbying organizations, to comply with reasonable registration and reporting requirements and, No. 2, not chill the exercise of any organization's right to communicate with the Congress.

Of the bills under consideration, we definitely feel that the so-called "percentage of total time test" is the poorest.

It would, in practicality, impose the severest recordkeeping burden necessitating the keeping of records, not just on lobbying activity itself, but on all activities of the individual and/or the organization.

We feel, again, of the bills under consideration, the hours test, the hours of lobbying test and the oral communications tests are cleaner, simpler, more effective and far less chilling than the percentage of total time test.

It is our position, however, that if either of these tests is adopted, the threshold figure must be higher.

If, for example, using the 12 communications test, an employee of an organization located in North Carolina spoke just once during a quarter with each of the 13 members of his State's delegation, that organization would be a lobbyist.

We do favor, of the bills under consideration, the oral communications test, the test approved by the Senate last year.

But with a markedly higher threshold figure, perhaps of 30.

The second point I want to comment on here is the so-called "home State exemption."

We believe most strongly that communications by constituents to their Senators and Representatives should not be labeled lobbying and should not be subjected to regulation.

We believe all communications by an organization to the Senators and Representatives and their staffs representing the State in which the organization's principal place of business is located, should be exempt.

A statewide organization, such as a State trade association, speaking for members throughout the State, should be able to communicate with that State's delegation without encumbrances, as would a constituent.

We recognize the desire of some proponents of the legislation to bring to light the sophisticated grassroots lobbying campaigns which seem to be so effective in influencing the Congress.

We believe that this goal, if it is to be attained, should be attained not by regulating the communications of constituents and organizational members, but rather by having those who regularly, purpose-

fully, and expressly solicit such communications, report their solicitation activity.

Finally, just one very practical point of concern to us. Realistically speaking, the large well-staffed and well-financed professional lobbies will be able to cope with the new law, no matter what its provisions. If necessary, they will merely hire additional staff or retain outside firms to help with the recordkeeping and form-filing.

There will no be diminution of their activities. But, for small organizations and State and regional organizations, we fear the result will be far different, unless extraordinary care is taken in framing the new law in accordance with the considerations we have outlined here.

Many of these organizations which only occasionally communicate with Congress, but which supply unique perspective and valucd input to the Federal legislative process, are going to be driven off.

The result, Mr. Chairman, is our fear that the Congress would hear just as much, if not more, from the so-called "big lobbies" here in Washington and less from the small organizations and the State and local groups back home, with an immcasurably increased influence for the professionals.

The focus, therefore, we submit, should be on the true lobbies, those organizations which hire or retain people to exert influence upon the legislative process or whose officers, staff or agents, engage in lobbying activity in a regular and significant manner.

Finally, Mr. Chairman, I would direct the subcommittee's attention to the appendix which contains a resolution of the 91st annual convention of the National Newspaper Association, which outlines in summary form the organization's concerns about lobbying reform.

With that, Mr. Chairman, I thank you and will be happy to answer any questions you may have.

Mr. DANIELSON. Thank you very much.

Mr. Harris?

Mr. HARRIS. I think it is a good statement and helpful, and I have no questions, Mr. Chairman.

Mr. DANIELSON. Thank you.

Mr. Kindness?

Mr. KINDNESS. I would like to express my thanks, too, for this testimony, Mr. Cregan, which will be very helpful.

Mr. CREGAN. Thank you.

Mr. KINDNESS. An I have no questions at this point and yield back the balance of my time.

Mr. DANIELSON. I have no questions myself.

I think that the presentation you have made is really a fairly good summary of the highlights of testimony we have heard during the several days that we have met on this subject.

We thank you and may get it touch with you, if need be.

We invite you to follow our work in the markup.

Mr. DANIELSON. Our last witness this morning, and our last witness on general testimony on this bill, will be Mr. H. Dickinson Rathbun of the Christian Science Committee on Publication.

Would you please come forward, Mr. Rathbun? Would you identify your associate?

TESTIMONY OF H. DICKINSON RATHBUN, CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION, ACCOMPANIED BY DAVID WILLIAMS

Mr. RATHBUN. Yes; this is David Williams, he's an attorney and our assistant manager.

Mr. DANIELSON. You may proceed.

Mr. RATHBUN. Thank you.

Mr. Chairman, we all understand what the situation is here. I think if you will look at your summary that we gave you we can just work from that.

Mr. DANIELSON. Thank you, we appreciate that. That is why we request summaries. Really, those are the highlights.

[The prepared statement of Mr. Rathbun follows:]

STATEMENT OF H. DICKINSON RATHBUN, MANAGER, WASHINGTON, D.C. OFFICE, CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION

SUMMARY TO MEMBERS

The Statement of the Christian Science Church on Lobbying, Submitted to the Subcommittee on Administrative Law and Governmental Relations, House Committee on the Judiciary

Care must be taken to avoid violating First Amendment rights in any lobbying disclosure legislation. Specifically:

1. A requirement of numbering or an organization's members would violate a rule of the Christian Science religion, unless some religious exemption were permitted.
2. Mandatory disclosure of names of contributors would be objectionable because—
 - a. it would lead to harassment and discouragement of contributors;
 - b. contributors do not use tax-exempt organizations to promote their private lobbying interests;
 - c. the right of privacy and freedom of association guaranteed by the Constitution are infringed by contributor listing;
 - d. discretion of the Comptroller General to waive the disclosure doesn't solve the problem; and
 - e. policing such a requirement would involve the government in an inappropriate examination of religious organization records.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: My name is H. Dickinson Rathbun and as Manager of the Washington, D.C. Office of the Christian Science Committee on Publication I am speaking on behalf of the members of the Christian Science Church. My colleague is David N. Williams, an attorney and our Assistant Manager.

Mr. Chairman, any legislation which requires registration and reporting of speech is necessarily near the outer Constitutional fringes of Congressional power. The lobbying disclosure bills under your consideration approach these limits of First Amendment rights of free speech, free press, the right to petition for redress of grievances and, in the case of lobbying by churches, the free exercise of religion. We have chosen to direct our statement to two specific problems encountered in some of the proposed lobby disclosure bills—the numbering of an organization's members, and the disclosure of the identity of contributors to a lobbying organization.

The Christian Science denomination would have an insurmountable problem with a lobbying law calling for the disclosure of the number of an organization's members. The basic organizational rules of our Church are published in our Church Manual which states:

"Christian Scientists shall not report for publication the number of the members of The Mother Church, nor that of the branch churches. According to the Scripture they shall turn away from personality and numbering the people."

Since our Church Manual may not be amended, this rule cannot be changed. Some of the lobbying disclosure proposals have included the numbering of an organization's members among the facts required in a registration statement. We hope that any such provision in the lobbying law you approve will include an exception where the disclosure would violate the basic practices of a church.

Now, our second point. Chairman Rodino's bill (H.R. 1180) mandates the listing of all contributors of over \$2,500 to a lobbying organization. The Railsback bill (H.R. 5795) requires the listing of all contributors of \$3,000 or more in four categories, but it allows the Comptroller General the option through an advisory opinion to waive these listing requirements with respect to certain contributors of less than 5 percent of the organization's annual expenditures. The bill reported by the Judiciary Committee last year required the listing of contributors, but excluded organizations exempt under section 501(c)(3) of the Internal Revenue Code. Congressman Edwards's bill (H.R. 5578) requires no listing. In fact, it bars the Comptroller General from requesting membership or contributor lists.

Except under the most extreme circumstances, contributors to tax-exempt organizations do not give their money to the organization to influence legislation. Among the millions of Americans who give to support their churches, the Boy Scouts, the United Fund, etc., there is no thought that any portion of their donation will be used in a lobbying effort. This is so even though nearly all organizations, or any size, engage in legislative activity of one type or another. Under some of the lobbying bills before you, many thousands of these citizens across the country would have their names and the extent of their generosity filed with the Comptroller General and opened to public inspection as contributors to an activity they had no knowledge of. It is certainly not in the interest of this legislation to snare contributors into disclosure when they have no desire to influence legislation.

A provision like this will invite every knowledgeable fund-raiser in the country to visit the Comptroller General's office regularly to see who gave how much to what organizations and then to subject the exposed donor to extremely unfair pressures. A contributor to one charity would be subject to approach by every other charity that has a similar purpose with a request for an equal donation. Donors rightly object to the publicizing of what they consider a private transaction, and with the kind of harassment this provision would expose them to, many would simply refuse to give to the charities they would otherwise support. Limiting the lists to larger supporters will not eliminate the problem, since these are the very people the fund-raisers are most interested in.

As you know, organizations exempt from the income tax under section 501(c)(3) are prohibited from substantial lobbying. Most of them can elect to be limited by a financial test under section 501(h) of the Internal Revenue Code or they can limit themselves to an "insubstantial" amount of lobbying. Churches cannot choose the first method, but must measure their contacts with government by the "substantiality" test.

If a donor wanted to use his money for a lobbying campaign, a tax-exempt organization would prove a very poor conduit for such an effort, because in order to maintain its tax-exempt status the organization must devote most of its spending, by far, to the religious or charitable purposes for which it was organized. Furthermore, the public charities of America are nearly all motivated by some guiding ideal or principle and are not likely to be subverted by the personal lobbying ambitions of even a very large contributor. This is particularly true of churches.

Touching again on our first point, the Supreme Court has struck down statutes mandating the disclosure of membership and contributor lists as a violation of the right of privacy and freedom of association (*N.A.A.C.P. v. Alabama*, 357 U.S. 449 (1958); *Buckley v. Valeo*, 424 U.S. 1 (1976)). To override these precious rights there must be some compelling state interest, some identifiable threat to the public safety. We wonder what danger is involved in lobbying by membership organizations? Has any study of tax-exempt lobbying revealed hidden donors influencing the public positions of churches, public charities, youth groups, or conservationists? It is important to the public to know what is said to public officials, but do they need to know what goes on within the organization itself?

It is not enough to permit the Comptroller General in his discretion to waive the listing of contributors. The right of privacy involved here is much too precious to be granted on an optional basis. The guarantees of the First Amendment are rights, not privileges, and must not be subordinated to the judgment of a government official. Furthermore, in order to determine whether disclosure would "violate the privacy of the contributor's religious beliefs" the Comptroller General would have to involve himself in weighing questions of religious doctrine in a completely inappropriate manner. The bill gives him no criteria to go by.

Another dangerous aspect of this concept is the broad power it gives the Comptroller General to police any organizations that lobby. How will he satisfy himself that lobbyists have revealed all their contributors? The bills give him subpoena powers to examine any reports, records or correspondence he may consider necessary. He could go through

the financial records of churches with a fine toothed comb if he wished, something that Congress has not permitted before. Even the Internal Revenue Service can only examine church records under the most exiguous circumstances.

Balancing the value of information obtained from disclosure of contributors' names against the loss of privacy to these people (hardly any of whom are even aware that their donees engage in lobbying) shows how unfair the disclosure requirement can be. The best way to honor the right of contributors' privacy in their support of tax-exempt organizations is to drop the contributor's disclosure requirement entirely, as Mr. Edwards's bill does.

We appreciate the opportunity to express these views to your subcommittee and we applaud the open and cooperative manner in which your staff has listened to our thoughts on this subject.

Mr. RATHBUN. No. 1 is an issue that really doesn't exist but it's something we wanted to comment on in case it came up in markup. If you will read that, we will appreciate it.

No. 2 is mandatory disclosure of names of contributors would be objectionable because, and I can't go away without reading something and I will read a paragraph or two about that.

Except under the most extreme circumstances, contributors to tax-exempt organizations do not give their money to influence legislation.

Among the millions of Americans who give to support their churches, the Boy Scouts, the United Fund, et cetera, there is no thought that any portion of their donation will be used in a lobbying effort. This is so even though nearly all organizations, of any size, engage in legislative activity of one type or another. Under some of the lobbying bills before you, many thousands of these citizens across the country would have their names and the extent of their generosity filed the Comptroller General and opened to public inspection as contributors to an activity they had no knowledge of. It is certainly not in the interest of this legislation to snare contributors into disclosure when they have no desire to influence legislation.

A provision like this will invite every knowledgeable fund-raiser in the country to visit the Comptroller General's office regularly to see who gave how much to what organizations and then subject the exposed donor to extremely unfair pressures. A contributor to one charity would be subject to approach by every other charity that has a similar purpose with a request for an equal donation. Donors rightly object to the publicizing of what they consider a private transaction, and with the kind of harassment this provision would expose them to, many would simply refuse to give to the charities they would otherwise support. Limiting the lists to larger supporters will not eliminate the problem, since these are the very people the fund-raisers are most interested in.

Item B, if you have questions about our statements here, we will be glad to answer them. It says contributors do not use tax-exempt organizations to promote their private lobbyists. The right of privacy and freedom of association guaranteed by the constitution are infringed by a contributor listing. The discretion of the Comptroller General to waive and—the disclosure doesn't solve the problem. Policing such a requirement would involve the Government in an inappropriate examination of religious organization records.

My closing paragraph says balancing the value of information obtained from disclosure of contributors' names against the loss of privacy to these people (hardly any of whom are even aware that their donees engage in lobbying) shows how unfair the disclosure require-

ment can be. The best way to honor the right of contributors' privacy in their support of tax-exempt organizations is to drop the contributor's disclosure requirement entirely, as Mr. Edwards' bill does.

Mr. DANIELSON. Thank you, Mr. Rathbun.

Actually, you have made only two points here. Although you have made them well. No. 1, the naming of your membership would violate one of the rules of your church, and, No. 2, the mandatory disclosure of names of contributors and amounts is something repugnant to your concept of how we should carry on the bill; isn't that basically it?

Mr. RATHBUN. That is true, yes, sir.

Mr. DANIELSON. Any questions? Mr. Harris.

Mr. HARRIS. Thank you, Mr. Chairman.

Would you object to a provision in the bill that required the disclosure of anyone who contributed more than 5 percent of your budget or 10 percent of your budget?

Mr. RATHBUN. Probably not, but just, now the nature of the question itself, you say 5 percent or 10 percent, it's—there's a significant number of people who are going to be included or excluded just in that hypothetical figure.

Mr. HARRIS. Not in your case, though.

Mr. RATHBUN. No, it wouldn't bother us, no.

Mr. HARRIS. Most contributors, membership type organizations it wouldn't bother. You know what I have been delving for is to see if there is a way not to intrude upon the legitimate membership organization, but at the same time require disclosure from those organizations which may be the Committee for a Free and Open Congress supported by the five principal oil companies or something like that, you know. I think it would be good to have that, bring that sort of information to the public and to the Congress if there was a way to get at it, without intruding upon the points that you make which are very legitimate. You would not object to that sort of an effort, would you?

Mr. RATHBUN. I don't see that we would have any objection to 10 percent as a threshold.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. DANIELSON. Mr. Kindness.

Mr. KINDNESS. Mr. Chairman, thank you.

Pursuing this point further, though, how would the Comptroller General or whoever administers the act determine the accuracy of the 5 percent or 10 percent without looking at your records? That is another point that you make very well in your testimony. So they would run up against a problem right there, too.

Mr. RATHBUN. You're aware of my problem better than I am.

Mr. KINDNESS. Mr. I wanted to make sure that we didn't leave the record reflecting that you would not have a problem with it, because you indicated in your statement that you would.

Mr. RATHBUN. Yes.

Mr. KINDNESS. I think we all share your concern, particularly as related to religious organizations. It does suggest to me that, and your statement clearly points it out, that there are a lot of people who provide money, contributions, donations, to religious organizations without any thought of lobbying involved in the use of those funds.

Sometimes, I wonder whether my church ought to be involved in the lobbying activities in which they do engage, quite contrary to the wishes of many of the members of that church. And this is the other side of that controversy. Is it appropriate for religious organizations to take funds that are given for religious purposes and interpret that to mean that they may be used and should be used for lobbying purposes? Would you care to make any expression in that area?

Mr. RATHBUN. Well, the only experience that I have is with our own organization and primarily the lobbying activity that we conduct is for just protection of our own religious freedom and we don't engage in lobbying activities that don't concern our religious freedom. But I know that this isn't universally so with all churches and I just wouldn't want to comment on the others.

Mr. KINDNESS. Mr. That is a very good answer. Thank you, sir.

Mr. DANIELSON. Mr. Thank you again, Mr. Rathbun. I don't know if you were here this morning, on one occasion I raised the point of whether you could, within the first amendment, require a church organization to do anything with respect to registering as a lobbyist. In all of the proposed lobbying legislation we run head into a freedom of speech, a freedom to petition to government, freedom of peaceably to assemble. And with religion you're running into the freedom, the absolute injunction against Congress passing any law which would impair the free exercise of religion. I appreciate your message here. We have got it. We understand it. And the subjects have been touched upon by others at various times and certainly will be in the workup of this bill.

May I ask, does the Christian Science Church perform any lobbying function? I have never been approached by any of them.

Mr. RATHBUN. I would have to fix that.

Mr. DANIELSON. What?

Mr. RATHBUN. I would have to fix that. I will have to come to see you more.

Yes, sir, in this, in our office which is the Washington, D.C., office of the headquarters of the mother church, one of the responsibilities of our office is to watch the legislation to see that through any incidental oversight that laws are not passed which would restrict the freedom of our religion.

Mr. DANIELSON. Well, of course that constitutes watching legislation and alerting your own organization and your own membership.

Mr. RATHBUN. Also when we find something like this, and two or three times in Congress we do, then we make an effort to see to it that the language that is prepared—

Mr. DANIELSON. Has your church, your management, or whatever you call it in your church, taken any position as to whether or not requiring registration as a lobbyist for those purposes would impinge upon the exercise of your religion?

Mr. RATHBUN. We don't have a position on that.

Mr. DANIELSON. You haven't any particular objection to that part of it, is that correct, officially anyway?

Mr. WILLIAMS. I would say we have some objection.

Whether we would register or not—

Mr. RATHBUN. That's up to you.

Mr. DANIELSON. I see. Well, thank you very much.

I think this concludes our general testimony on the subject of the lobbying bill.

I want to thank you, gentlemen, and all those who have come before for making some very valuable contributions to us.

I know that all of the issues, the difficult points have at least been identified.

A number of solutions and alternative solutions have been advanced to each of these, and now we have to get down to the work of sorting them out and trying to find out what we can put together that would work. I want to assure you gentlemen that in doing so, all the members of this subcommittee are going to be very mindful of the injunctions of the first amendment and hope to do our job without in any way damaging those rights. Thank you very much.

Since there is no further business to come before the subcommittee today, the subcommittee will, subject to call of the chair, now stand adjourned.

[Whereupon, at 1:10 p.m., the hearing was adjourned.]

APPENDIX

COMPTROLLER GENERAL OF THE UNITED STATES,
WASHINGTON, D.C., April 11, 1977.

Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives

DEAR MR. CHAIRMAN: This is in response to your request for our views on H.R. 1180 and four related bills, H.R. 557, H.R. 766, H.R. 1035, and H.R. 2301. All of the bills deal with the public disclosure of lobbying and related activities.

H.R. 1180 and H.R. 2301, the most comprehensive of the lobbying disclosure proposals, are similar bills entitled the "Public Disclosure of Lobbying Act of 1977." A measure comparable to H.R. 1180 and H.R. 2301 was passed by the House during the 94th Congress but was not passed by the Senate. See H.R. 15, 94th Cong., 1st Sess. (1975); 122 Cong. Rec. H 11416 (daily ed. September 28, 1976). Unless otherwise indicated, comments addressed to H.R. 1180 are equally applicable to H.R. 2301.

H.R. 557 and H.R. 1035 are also similar bills but differ materially from H.R. 1180 and H.R. 2301. Unless we indicate differently, comments addressed to H.R. 557 also apply to H.R. 1035. H.R. 766 has no companion bill. Comments on H.R. 557 and H.R. 766 are integrated with our comments on relevant provisions of H.R. 1180.

H.R. 1180 would replace the present lobbying disclosure law, the Federal Regulation of Lobbying Act (2 U.S.C. Sec. 261 et seq.), with a comprehensive new statute defining the organizations that must register and report as lobbyists and specifically describing the information that those organizations must disclose. H.R. 557 and H.R. 766 have a similar objective.

We believe H.R. 1180 would constitute a significant improvement over the existing lobbying disclosure law, previously cited. In addition to broadening and clarifying the definition of those organizations subject to lobbying disclosure requirements, H.R. 1180 would provide additional investigative and enforcement powers needed to make the proposed law effective. Despite these improvements, however, there appear to be certain ambiguities and omissions in H.R. 1180 that should be corrected.

1. H.R. 1180—Scope of Coverage (Section 3)

Section 3 would define who must comply with the bill's registration, recordkeeping, and reporting requirements.

A. COVERAGE OF ORGANIZATIONS THAT RETAIN LOBBYISTS

Under subsection 3(a)(1), the bill would apply to any "organization" (Sec. 2(8)) that spends in excess of \$1,250 in any "quarterly filing period" (Sec. 2(9)) to retain another person to engage in certain lobbying activities on its behalf. The quarterly expenditure threshold in this provision differs from the \$250 per calendar quarter threshold prescribed in the comparable provision of H.R. 557. H.R. 766, unlike both H.R. 557 and H.R. 1180, generally requires a filing before lobbying and without regard to the dollar amount expended in a lobbying effort.

Although we have no opinion on the appropriate minimum expenditure that should be required before an organization must register and report under a new lobbying law, a minimum quarterly expenditure threshold does seem desirable.

Quarterly expenditures are comparatively easy for lobbying organizations to determine and for the administering agency to verify. A quarterly expenditure threshold, in our view, is also preferable to an annual expenditure requirement; with only an annual expenditure requirement, a lobbyist could delay registration for 1 year simply by delaying payment to the person retained to engage in lobbying. Disclosure of lobbying activities to Congress and the public must be timely to be effective. We think the quarterly expenditure threshold provisions in H.R. 557 and H.R. 1180 could accomplish this objective.

B. COVERAGE OF ORGANIZATIONS THAT EMPLOY LOBBYISTS

Unlike H.R. 557 and H.R. 766, subsection 3(a)(2) of H.R. 1180 requires registration if an organization employs "at least one individual who spends 20 percent of his time or more in any quarterly filing period ***" engaged in certain lobbying activities. As we indicated previously, subsection 3(a)(1) would establish a quarterly expenditure threshold for retained lobbyists who are not otherwise employees of the registrant.

In many instances, we believe it would be difficult for a lobbying organization to determine and for the administering agency to verify when an organizational employee had spent 20 percent or more of his time engaged in lobbying. Further, a lobbying organization could employ 20 individuals to spend 19 percent of their time lobbying and escape the bill's registration and reporting requirements. If just one individual, however, were to spend 20 percent of his time lobbying, the employer organization would be required to register.

We believe consideration should be given to alternate or supplementary means by which the degree of an organization's lobbying efforts could more effectively be measured. One method, of which an example is contained in H.R. 557, might be to apply a quarterly expenditure threshold to organizations that employ individuals to engage in lobbying activities.

C. COVERAGE OF LOBBYING COMMUNICATIONS

Subsections 3(a)(1) and (2) of H.R. 1180 would also require lobbying organizations subject to the bill to register and report as lobbyists when they attempt to influence certain executive branch officials off-the-record with respect to any report, investigation (excluding civil or criminal investigations or prosecutions by the Attorney General), or rule, as well as when they attempt to influence the content or outcome of legislation. Executive branch activities of the type covered by H.R. 1180 would also be covered by H.R. 557; they would not be covered by H.R. 766. We think it especially wise that the disclosure provisions of H.R. 1180 currently cover lobbying directed at the described activities of the executive branch which, like legislation, may directly affect the public. As we testified before your Subcommittee on Administrative Law and Governmental Relations on September 12, 1975, we see no convincing reason why the executive branch is less susceptible than the legislative branch to the pressure of special interest groups seeking favored treatment.

We note, however, that H.R. 1180, unlike H.R. 557, limits its coverage of lobbying communications directed to the executive branch to communications made to the executive branch officials listed in sections 5312 through 5316 of title 5, United States Code. These officials are paid at levels 1 through V of the Executive Schedule. With certain exceptions, H.R. 1180 would cover lobbying communications directed to any Congressman or any congressional employee. Many officers and employees in the executive branch who are not paid at levels 1 through V of the Executive Schedule may, like congressional employees who are covered by the bill, perform duties that significantly impact on public and private interests. Thus, we question whether it is necessary or desirable to exclude from the coverage of H.R. 1180 organizations that lobby executive branch officials who are not listed in 5 U.S.C. Sections 5312-5316.

Subsection 3(a)(1) of H.R. 1180 extends the bill's coverage to communications made to influence the award of Government contracts. In our opinion, this provision needs clarification. As presently drafted, subsection 3(a)(1) could be construed to require that an organization otherwise subject to the bill keep track of and report routine sales contracts where the communication involved merely relates to a company's performance capabilities.

We note too that subsections 3(a)(1) and (2) of H.R. 1180 could be interpreted to apply only to lobbying efforts undertaken in connection with matters actually pending in the Congress. Whether H.R. 1180 would also apply when an organization attempts to prevent the introduction of legislation is not clear. H.R. 766 specifically covers this type of lobbying effort. To avoid unnecessary interpretive disputes in the application of H.R. 1180, we believe this ambiguity should be clarified.

D. COVERAGE OF LOBBYING COMMUNICATIONS DIRECTED TO LEGISLATIVE BRANCH AGENCIES

H.R. 1180 does not cover lobbying of the officers and employees of legislative branch agencies such as the General Accounting Office, Cost Accounting Standards Board, Office of Technology Assessment, the Congressional Budget Office, and others.

The bill applies to organizations that seek to influence a "Federal officer or employee," a key term defined by subsections 2(6)(A)-(C). Essentially, this subsection defines a "Federal officer or employee" as any Member of Congress, any congressional employee, and any officer of the executive branch listed in sections 5312 through 5316 of title 5, United States Code. Officers and employees of legislative agencies

are not within the scope of this definition. Although subsection 3(a)(1) specifically exempts from the bill's coverage organizations attempting to influence a lobbying-related investigation by the Comptroller General, this exemption seems somewhat anomalous because the Comptroller General is not, in our view, a "Federal officer or employee" as that term is presently defined.

We cannot speak for others but insofar as the General Accounting Office and the Cost Accounting Standards Board are concerned, we recommend that they be covered by the bill. We have no objection, however, to the retention of the subsection 3(a)(1) exempting provision.

Enactment of this recommendation would, of course, necessitate a change in the definition of a "Federal officer or employee" (Sec. 2(6)). We noted earlier that all congressional employees are currently covered by this definition. In contrast, the coverage of executive branch officials is limited to only those officials in levels 1 through V of the Executive Schedule who are listed in 5 U.S.C. Sections 5312-5316. We questioned whether it was necessary or desirable to exclude from H.R. 1180's coverage organizations that lobby executive branch officials not listed in the cited sections of title 5. Similarly, we recommend that lobbying communications directed to an officer or employee of the General Accounting Office or the Cost Accounting Standards Board, like communications directed to congressional employees, be subject to the bill's registration, recordkeeping, and reporting requirements. Were this done, lobbying activities unrelated to the subsection 3(a)(1) exemption would be subject to the bill's registration, reporting, and recordkeeping requirements.

E. COVERAGE OF INDIRECT OR GRASSROOTS LOBBYING COMMUNICATIONS

The registration, recordkeeping, and reporting requirements of H.R. 1180 apply to organizations whose lobbying activities include the retention of another (Sec. 3(a)(1)) or the use of an organization's employee (Sec. 3(a)(2)) to make a communication "directed to" a Federal officer. An organization whose sole lobbying activity is to encourage the general public to communicate a particular viewpoint to a Federal officer would not be subject to the provisions of H.R. 1180 because no communications of that organizations would be "directed to" Federal officers.

Under subsection 6(b)(6) of H.R. 1180, an organization that had either (1) spent \$1,250 in a quarterly filing period for the retention of another to make communications directed to Federal officers; or (2) employed at least one individual who had spent 20 percent of his time or more in a quarterly filing period in making communications directed to a Federal officer, would be required to report lobbying solicitations to the public it had either paid for or initiated. When the organization's lobbying activities satisfy neither of these criteria, however, the organization is not subject to the bill and solicitations may go unreported. Thus, indirect or grassroots lobbying—that is, encouraging the general public, through a solicitation, to communicate a position of the organization to Congress—would not always be subject to full disclosure.

H.R. 557, and H.R. 766 both apply when an organization, through its own paid employees or through the retention of others, encourages the general public to communicate a specific position of the organization directly to Federal officers.

It has been widely reported that certain lobbying organizations are extremely adept at generating mass-letter-writing campaigns through solicitations to the general public. As a result, much criticism has focused on the exclusion of grassroots lobbying from the disclosure provisions of the current lobbying law. We recommend, therefore, that subsections 3(a)(1) and (2) of H.R. 1180 be amended to extend the bill's application to indirect or grassroots lobbying when the total direct expenses of such lobbying exceed a specified dollar amount.

F. EXEMPT COMMUNICATIONS

Subsection 3(b) of H.R. 1180 would qualify subsections 3(a)(1) and (2) by specifically exempting certain types of communications from the bill's coverage. This provision contains several important exemptions that are not included in H.R. 557 or H.R. 766. Subsection 3(b)(3), for example, carefully excludes from the bill's coverage communications by an individual citizen, acting solely on his own behalf, for redress of a personal grievance or to express his personal opinion.

Another subsection 3(b) exemption provides that the bill shall not apply to: "A communication (A) made at the request of a Federal officer or employee, (B) submitted for inclusion in a report or in response to a published notice of opportunity to comment on a proposed agency action, or (C) submitted for inclusion in the record, public docket, or public file of a hearing or agency proceeding."

A literal construction of the exemption for communications "made at the request of a Federal officer or employee" would exempt from disclosure all communications

made by a lobbying organization if the communications were made at the request of a Congressman. Under this exemption, any Congressman could ask an organization to lobby other Congressmen. Since the resultant communication would be made "at the request" of a Congressman, the lobbying organization could escape the bill's disclosure requirements.

The definition of "lobbying" in H.R. 557 only exempts a communication made to the requesting Congressman or to an entity, such as a congressional committee, that the requesting Congressman officially represents. H.R. 766 contains an exemption comparable to that of H.R. 557. Although the subsection 3(b) exemption for communications made "at the request of a Federal officer or employee" may have been intended to be limited to communications made to the requesting Federal officer or employee, we recommend the provision be amended to exempt those communications made to the requesting official.

Subsection 3(b)(5) of H.R. 1180, unlike the other lobbying disclosure proposals, would also exempt from the bill's coverage a communication by an organization on any subject if the communication is directed to the two Senators and the Representative that represent the State and the congressional district, respectively, where the organization maintains its principal place of business. This exemption is commonly referred to as the "home-State" exemption. This particular version of the exemption, by not extending its applicability to all Representatives of a State, avoids the disparate treatment and inequities that could result where one organization's principal place of business is in a State having a large congressional delegation and where another organization's principal place of business is in a State having a smaller congressional delegation.

All States have two Senators and an organization otherwise satisfying the subsection 3(b)(5) criteria can, without triggering the bill's disclosure requirements, communicate with either or both of the Senators who represent the State where the organization has its principal place of business. In the case of communications to Representatives, the exemption applies only to communications directed to the Representative who represents the congressional district where the organization has its principal place of business.

The "home-State" exemption is qualified in two other ways that should limit the ability of parent organizations to utilize their State "affiliates," a term defined in subsection 2(1) of the bill, to evade the bill's disclosure requirements. To be exempt, an "affiliate" must lobby on its own initiative and not at the "suggestion, request, or direction," of any other person and the costs of the lobbying must be borne by the local organization.

Finally, H.R. 1180 does not include several exemptions contained in the other lobbying disclosure bills. For example, H.R. 557 excludes communications by a Federal officer or employee from its definition of "lobbying." H.R. 766 contains an analogous exemption. It may be that communications between officers and employees of the executive and legislative branches are exempt under other provisions of H.R. 1180, such as the definition of "organization" in subsection 2(8). We believe, however, that clarification of the bill's application to this special category of communication would be desirable. Since subsection 2(8) defines the term "organization" as including "any corporation," we also recommend clarification of the bill's applicability to communications by Government corporations.

II. H.R. 1180—Registration (Section 4)

Section 4 of H.R. 1180 would require each organization subject to the bill's disclosure requirements to register with the Comptroller General within 15 days after becoming a lobbyist. A registration in any calendar year would be effective until January 15 of the succeeding calendar year.

H.R. 1180 would place the primary onus of registration on the organization on whose behalf lobbying services are performed. H.R. 557 and H.R. 766, on the other hand, place the responsibility to register directly on the person who will perform lobbying services, not necessarily on the person or organization on whose behalf the services will be performed. Further, H.R. 766, unlike both H.R. 557 and H.R. 1180, requires registration, except in unspecified "extenuating circumstances," before any lobbying activity may properly be engaged in. This requirement could prove unduly burdensome to the registrant and monitoring compliance with a pre-lobbying registration provision would, in our view, be administratively impracticable.

The amount and types of information that an organization must disclose when registering under H.R. 1180 would be limited when compared to the registration information required under the other lobbying disclosure proposals. Subsection 4(b) of H.R. 1180 would require that an organization's registration statement contain (1) an identification of the organization and a general description of the methods used to arrive at a position on an issue before the legislative or executive branch, except that the registra-

tion need not disclose the identity of the organization's members; and (2) an identification of the person retained by the organization (Sec. 3(a)(1)) or the persons employed by the organization (Sec. 3(a)(2)) to engage in certain lobbying activities. Subsection 4(b)(1) provides that the registration need not identify an organization's members and subsection 4(b)(2) would require disclosure of persons retained or employed to engage in lobbying activities. We recommend clarification of H.R. 1180's registration disclosure requirements when a member of an organization is also an employee who lobbies on behalf of the registrant.

Under H.R. 557 and H.R. 766, the registrant would be required to disclose substantially all of the information required under H.R. 1180. In addition, the registrant would be required to identify the issues or measures to be lobbied and describe the financial terms or conditions under which an employed or retained lobbyist performed services. Under H.R. 557, the Comptroller General could direct the registrant to furnish additional information not specifically required by the bill.

III. H.R. 1180—Recordkeeping (Section 5)

Section 5 of H.R. 1180 would require lobbying organizations and persons retained by such organizations to maintain records relating to their lobbying activities in accordance with regulations prescribed by the Comptroller General. Under subsection 5(b), records would be preserved by the lobbying organization for a period of not less than 5 years after the close of the quarterly filing period to which the records relate. The fact that persons retained by a lobbying organization will also be required to maintain and preserve records should facilitate verification of the lobbying organization's registration and reports, as well as investigations of the organization's lobbying activities.

H.R. 557 and H.R. 766 specifically describe the information that must be contained in a registrant's records but, unlike H.R. 1180, do not authorize the issuance of regulations governing the maintenance of records. While we think it desirable that lobbyists be sufficiently apprised of the records they must maintain and of the information those records must contain, we consider the authority to issue regulations governing the maintenance of records essential to establish fair, realistic and necessary recordkeeping requirements as experience is acquired in administering a new lobbying disclosure law.

The final major difference between the recordkeeping requirements of H.R. 1180 and those of the other lobbying disclosure bills is the time period prescribed for the preservation of lobbying records by lobbyists. H.R. 1180 would establish a 5-year record retention period; H.R. 557 and H.R. 766 prescribe a 2-year retention period. Requiring a lobbyist to retain his records for a period of 5 years strikes us as fair and not overly burdensome. Such a retention period should allow sufficient time to thoroughly verify and investigate an organization's reported lobbying activities and, where necessary, to seek civil or criminal sanctions. A substantially shorter retention period, such as that adopted by H.R. 557 and H.R. 766, could result in the destruction of records essential to the enforcement of any new lobbying disclosure law.

IV. H.R. 1180—Reports (Section 6)

Section 6 of the bill would require lobbying organizations to file quarterly reports with the Comptroller General. The information required in these reports would be considerably more detailed than the information required for registration under subsection 4(b). Once again, however, the reporting requirements of H.R. 1180 are different from the reporting provisions of the other lobbying disclosure proposals, including H.R. 2301.

H.R. 1180 and H.R. 2301 are similar in that they would require lobbyists' reports to include, among other information, the "total expenditures" that an organization made for subsection 3(a) lobbying activities and an identification of persons retained or employed to lobby and expenditures made in connection with such retention or employment. Both bills would require an itemized disclosure of each expenditure in excess of \$25 made to or for the benefit of identified Federal officials. With regard to this latter category of expenditures, H.R. 1180, but not H.R. 2301, would require a lobbying organization's expenditures to individual Congressmen to be referred by the Comptroller General to Congress' Committee on Standards of Official Conduct if the aggregate expenditure exceeded \$100.

A report filed under H.R. 1180 would contain a description of the "primary issues" on which the organization spent a "significant amount" of its efforts. An H.R. 2301 report, on the other hand, would contain (1) a description of the 25 issues on which the organization spent the greatest portion of its lobbying efforts and (2) a general description of all other lobbied issues.

Reports filed under H.R. 557 would disclose each issue that an individual lobbyist sought to influence and would identify each lobbyist as well as the person or organization on whose behalf the specific lobbying services were performed. And reports filed under H.R. 766 would contain substantially all of the information required to be reported under the other lobbying disclosure proposals as well as any other information required by the Comptroller General.

We think H.R. 1180's "primary issue" reporting requirement needs clarification. The bill does not define "primary issue" and disputes undoubtedly would arise whether a particular issue was a "primary issue" and, hence, subject to disclosure, or whether the issue was not a "primary issue" and therefore exempt from disclosure. With respect to the issue-reporting requirements of H.R. 557 and H.R. 766, however, it is difficult to foresee the benefits that would result from disclosure of the specific issues that individual agents or employees of an organization attempted to influence. Hence, the exclusion of this information from section 6 of H.R. 2301, which requires a detailed description of the 25 issues on which the organization spent the greatest portion of its lobbying efforts as well as a general description of all other lobbied issues, appears reasonable.

None of the lobbying disclosure proposals require that lobbying organizations report their total expenditure for issues they try to influence. In our view, the amount of money spent by a lobbyist on a particular issue may be of interest to Congress and the public, at least where the amount expended exceeds a certain dollar minimum. For example, if an organization spent a total of \$50,000 lobbying on 10 separate issues during a quarterly filing period, it seems, in our opinion, that the Congress and the public should be aware that \$40,000 was spent to influence the outcome of just one of those issues. We recommend, therefore, that section 6 of H.R. 1180, as well as the comparable provisions of the other bills, be amended to require disclosure of the total expenditures on individual issues when the amount expended exceeds a prescribed dollar minimum.

V. H.R. 1180—Powers and Duties of the Comptroller General (Sections 7 and 8)

H.R. 1180 would designate the Comptroller General as the official with primary responsibility for administering the bill's lobbying disclosure requirements. The administrative duties of the Comptroller General would include maintaining and making available to the public, for inspection and copying, lobbyist registration statements and reports, and compiling and summarizing the information contained in these reports in a meaningful and useful way. In addition, the Comptroller General would be empowered to conduct investigations and hearings, administer oaths and affirmations, take testimony by deposition, issue subpoenas, and initiate civil actions for the sole purpose of compelling compliance with a subpoena.

The administrative powers and procedures prescribed in H.R. 1180 should significantly improve the effectiveness of lobbying disclosure. We do have reservations, however, about an apparent condition attached to one of the powers prescribed by subsection 8(a)(7) of H.R. 1180.

A. AUTHORITY TO ISSUE RULES AND REGULATIONS

Subsection 8(a)(7) authorizes the Comptroller General to prescribe only "procedural rules and regulations" considered necessary to carry out the provisions of the bill in an effective and efficient manner. (Emphasis added.) We believe the characterization may be misleading. If the only effect of the "procedural" provision is to prohibit the Comptroller General from requiring more information or greater specificity than would be allowed under the registration and reporting sections of the bill, we certainly have no objection to the purpose of the condition. We cannot be certain, however, that the courts will adopt such a narrow interpretation of the provision.

Subsection 8(a)(7) contains the general rule-making authority for implementing the bill and the "procedural" provision could affect rule-making under other sections of the bill. If, for example, a general principle concerning the bill's applicability evolved in a series of advisory opinions (Sec. 9) and the Comptroller General sought to promulgate a regulation embodying this principle, would a court consider the regulation "procedural" and enforce the regulation, or would the court hold that the rule was substantive and that the Comptroller General exceeded his authority under subsection 8(a)(7)? If such a principle were not formally embodied in a regulation, but was nevertheless generally applied as precedent in subsequent advisory opinion determinations, would a court conclude that the principle as applied was really a *de facto* regulation having substantive characteristics?

In short, due to the lack of specificity in subsection 8(a)(7), we do not know what effect the "procedural" condition may have on the Comptroller General's ability to implement H.R. 1180 in an effective and efficient manner. We must recommend, therefore, that the "procedural" provision be deleted.

CONGRESSIONAL VETO

We believe section 12 of H.R. 1180 creates an unnecessary obstacle to the effective discharge of the Comptroller General's responsibilities under other provisions of H.R. 1180. Under section 12, all proposed regulations must be transmitted to the Congress before they may take effect. Either House of the Congress may veto a regulation within 90 calendar days of continuous session following transmittal of a proposed regulation.

This provision has several drawbacks. It would add another administrative step prior to implementation of the bill and prevent the expeditious modification of existing regulations. It would prevent the timely implementation of H.R. 1180 and the issuance of urgently needed regulations. The delay that would be caused by this provision, in our opinion, is unnecessary since the Comptroller General, under section 8(b) of the bill, would typically obtain and consider comments from the public and, of course the Congress, before the regulations could become effective.

Moreover, if the Comptroller General incorporated a judicial interpretation of H.R. 1180 in a proposed regulation or proposed a regulation implementing, for example, H.R. 1180's definitional section, either House of the Congress could veto the rule within the prescribed time period. This latter situation could result in the anomalous situation where H.R. 1180 had become law in the usual manner by passing the Senate and the House and receiving the President's approval, but either House could effectively frustrate the law's implementation by a single-house veto.

H.R. 766, like H.R. 1180, would designate the Comptroller General as the official responsible for administering the new lobbying disclosure law. Although H.R. 766 imposes administrative duties on the Comptroller General much in the same manner as H.R. 1180, the authority to promulgate rules and regulations under H.R. 766 is not encumbered by the "procedural limitation" found in subsection 8(a)(7) of H.R. 1180.

H.R. 557 places responsibility for administration in the Federal Election Commission and H.R. 1035 would place the responsibility in a new Federal Lobbying Disclosure Commission, an independent agency in the executive branch. We have no special information bearing on the advantages of transferring the administration of lobbying disclosure to the Federal Election Commission. With respect to the establishment of a Federal Lobbying Disclosure Commission, we have reservations whether the task warrants the establishment of a new agency for the sole purpose of disclosing lobbying activities.

VI. H.R. 1180—Enforcement (Sections 9 and 10)

Finally, we would like to discuss the enforcement provisions of H.R. 1180. The enforcement scheme envisioned by H.R. 1180 would impose primary enforcement responsibility on the Attorney General, with the Comptroller General playing a limited role.

Under section 9 of the bill, the Comptroller General, at the request of any individual or organization, must render written advisory opinions respecting the applicability of the bill's recordkeeping, registration, or reporting requirements to any specific set of facts involving the requesting individual or organization, "or other individual or organizations similarly situated." Section 9 goes on to provide, however, that an individual or organization "with respect to whom an advisory opinion is rendered" is presumptively in compliance with the law if the advisory opinion is adhered to in good faith. (Emphasis added.) And subsection 9(3) provides that any individual or organization "who has received and is aggrieved" by an advisory opinion may file a civil declaratory action against the Comptroller General in Federal Court. (Emphasis added.)

We recommend that section 9 be clarified to specifically indicate whether "individuals or organizations similarly situated" who have not specifically requested an advisory opinion may (1) claim the compliance with the law presumption (Sec. 9) or (2) file a declaratory action as a party aggrieved by the advisory opinion (Sec. 9(e)).

Under section 10, the Comptroller General would be responsible for conducting investigations when he has reason to believe that an individual or an organization violated any provision of the bill.

Based exclusively on the language of this provision, it could be argued that before the Comptroller General may order an investigation, there must be some basis—such as a compliant or apparent inconsistency in a registration statement or report—for forming a belief that the law may have been violated. In short, the Comptroller General may be prohibited from conducting investigations on his own initiative, without some evidence that a violation has occurred or is about to occur. In our opinion, such a restriction on the Comptroller General's investigative authority could prove

troublesome because it could conceivably bar general compliance audits or investigations, thereby handicapping our ability to ensure that organizations are complying with the law's requirements.

Subsection 10(b) provides that if the Comptroller General determines, after any investigation, that there is reason to believe that a lobbyist has engaged in acts that constitute an apparent civil violation of the law, he shall attempt to correct the apparent civil violation through informal methods of conference and conciliation.

If these informal methods fail, or if the apparent violation seems criminal in nature, the Comptroller General would be required to refer the matter to the Attorney General. H.R. 1180 would require the Attorney General to report back periodically to the Comptroller General on the status of all matters that have been referred. If is the Attorney General, however, who would have the exclusive authority to enforce the substantive provisions of the bill through civil and criminal enforcement proceedings. In addition, the Attorney General would be empowered to defend all declaratory actions that challenged advisory opinions rendered by the Comptroller General on the registration, recordkeeping, and reporting requirements. Although H.R. 1180 would authorize the Comptroller General to seek court enforcement of subpoenas (Sec. 7(a)(6)), a matter we alluded to earlier, the bill does not authorize the Comptroller General to bring a civil enforcement action under any circumstances.

We believe the administering agency should be vested with civil enforcement authority generally, and the authority to conduct civil litigation in particular. We have serious reservations whether the bill's present allocation of authority between the Comptroller General and the Attorney General would prove to be workable or effective.

Disputes undoubtedly would arise between the Comptroller General and the Attorney General over questions of statutory interpretation, the disposition of particular cases, and other legal and policy matters. The bill would establish no procedure for resolving these disputes. Moreover, although the Comptroller General would have primary responsibility for implementing the law, the Attorney General would have ultimate control because he alone would have authority to go to court to compel compliance.

Granting the Attorney General exclusive authority to initiate civil enforcement actions also would tend to undercut several important functions specifically given to the Comptroller General in the bill. For example, enforcement through informal methods of conference and conciliation could be rendered ineffective if the Attorney General refused to file a civil enforcement action after the Comptroller General had sought and failed to enforce the law through the informal methods. Similarly, advisory opinions issued by the Comptroller General could be rendered meaningless if the Attorney General failed to define a declaratory action filed by a lobbyist against the Comptroller General pursuant to subsection 9(e) of the bill. In short, the bill would place the Comptroller General in the awkward position of having his actions effectively overruled by the Attorney General.

Finally, several provisions of the bill underscore the importance of timely disclosure of lobbyists' activities. The enforcement scheme of the bill, however, may encourage dilatory tactics by lobbyists, and would create unnecessary delay and duplication of effort. The Attorney General, in all likelihood, would want to repeat many of the investigative steps already taken by the Comptroller General.

It is for these reasons that we have consistently stated that the agency responsible for administering a new lobbying disclosure law should be given all civil enforcement authority, including the authority to litigate, and that the Attorney General should retain all criminal enforcement powers. This authority should, of course, include the authority to go to court to defend civil challenges to the Comptroller General's advisory opinions and to compel compliance with the civil provisions of any new lobbying disclosure law.

Clearly, there is ample statutory precedent for authorizing the Comptroller General to go to court in his own right or on behalf of the Congress. Specifically, section 504(a) of the Energy Policy and Conservation Act, Pub. L. No. 94-163, 89 Stat. 871, 959, 42 U.S.C. Sec. 6384, directs the Comptroller General to collect energy information for the Congress and empowers him, through attorneys of his own selection, to institute a civil action to collect civil penalties or enforce subpoenas he issues under the Act. Similarly, section 12 of the Federal Energy Administration Act of 1974, Pub. L. No. 93-275, 88 Stat. 96, 106-107, 15 U.S.C. Secs. 761, 771, authorizes the Comptroller General to institute a civil action in Federal Court to compel compliance with subpoenas issued under that Act. See also, *United States v. Rumely*, 345 U.S. 41, 43 (1953); *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927); *Associated Industries v. Ickes*, 134 F.2d 694, 704 (2d Cir. 1943); *Reade v. Ewing*, 250 F.2d 630, 631 (2d Cir. 1953).

We note too that section 1016 of the Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 336-337, 31 U.S.C. Sec. 1406, authorizes the Comptroller General to bring a civil action in Federal court, again through attorneys of his own selection, to compel the release of impounded budget authority.

We believe that vesting civil enforcement powers in the Comptroller General not only will place the enforcement of the legislative branch's information-gathering power within the legislative branch where it should be, but will, in our view, eliminate potential conflict between the Comptroller General and the Attorney General. See, *United States v. Harris*, 347 U.S. 612, 625-626 (1954).

We do not believe, however, that the agency responsible for administering a new lobbying law should be given criminal enforcement powers. As a general principle, enforcement of the Federal criminal laws through formal criminal proceedings is a function of the Attorney General. We can see no reason for departing from this principle in the proposed lobbying legislation.

Alternatives to vesting complete civil enforcement powers in the Comptroller General have been proposed in the past, most recently by S. 2477, a lobbying disclosure bill passed by the Senate during the 94th Congress. S. 2477 contained a provision authorizing the Comptroller General to institute a civil action in Federal court whenever, after notifying the Attorney General, the Attorney General failed to bring a civil suit within a specified period of time. Although adoption of this alternative could conceivably strengthen the civil enforcement provisions of H.R. 1180, it would also enable the Comptroller General to second-guess and effectively overrule the Attorney General, and like the provisions of H.R. 1180, could cause needless friction between the Comptroller General and the Attorney General.

We recommend, therefore, that H.R. 1180, be amended to vest in the Comptroller General civil enforcement powers, including the authority to file civil enforcement actions and to defend civil challenges to advisory opinions.

We also have serious reservations about the enforcement schemes adopted by the other lobbying disclosure proposals.

H.R. 766 suffers from substantially the same enforcement deficiencies that are present in H.R. 1180—the Comptroller General, the Federal official responsible for administering the bill, would have no meaningful civil enforcement powers. H.R. 766, like H.R. 1180, vests virtually all civil enforcement power in the Attorney General. Although H.R. 766 is silent on the point, criminal enforcement would presumably be the Attorney General's responsibility.

The responsibility for administering the disclosure provisions of H.R. 557 would be the responsibility of the Federal Election Commission. H.R. 1035 would place the same responsibility in a new Federal agency, a fact we commented on earlier in this letter. Both bills vest all civil and criminal enforcement powers in the administering agency. As we indicated in our comments on H.R. 1180, we believe the administering agency should be given civil enforcement authority but do not believe that the agency responsible for administering a new lobbying law should be given criminal enforcement powers.

We hope this information will prove useful to you, and we are ready to provide whatever additional assistance you might require. At your request, we have enclosed four copies of our April 1975 report, entitled "The Federal Regulation Of Lobbying Act—Difficulties In Enforcement And Administration."

Sincerely yours,

BOB KELLER,
Deputy Comptroller General of the United States.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C. May 17, 1977.

Mr. JAY TURNIPSEED,
Room 207,
Cannon House Office Building,
Washington, D.C.

DEAR MR. TURNIPSEED: Enclosed per our phone conversation on Friday, May 13, is a copy of the earlier comments from the Office of Federal Procurement Policy (OFPP) on H.R. 15. These are equally applicable to the current bill, H.R. 1180.

If you need any further information, please give me a call (395-6186).

Sincerely,

LEROY J. HAUGH,
Assistant Administrator for Regulations.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 1, 1977.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the comments of the Office of Federal Procurement Policy (OFPP) on the Government activities listed in Section 3(a) of H.R. 15 as approved by the House on September 29, 1976. Our comments are limited to the relationship of this provision to Federal procurement policy and practice.

Public Law 93-400, which established OFPP, requires the Administrator to establish "criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies." We have encouraged openness and public participation throughout the executive branch (see enclosed proposed OFPP Regulations Nos. 1 and 2). The broadly defined "rule" and "rulemaking" of Section 3(a) of the bill would appear to cover all executive branch procurement policy development, but we believe that it is the intent of Section 3(b)(1) to expressly exempt communications from organizations which have been provided in a manner consistent with the uniform procedures we have employed for comment by the interested public and organizations on proposed procurement policies.

Section 3(a)(1) would also make the Act applicable to "the award of Government contracts (excluding the submission of bids)." However, it makes no distinction between the legitimate efforts of potential contractors to secure awards and ex parte contacts which attempt to influence awards. In addition, "bids" is a term of art limited to non-negotiated, formally advertised procurements. In negotiated contracts, "proposals" rather than "bids" are submitted. The procurement agencies evaluate the proposals, and select the proposal most advantageous to the Government for negotiation of a contract. In still another procurement scenario, contractors are encouraged to and frequently do submit unsolicited proposals and otherwise market goods and services without the submission of bids. A literal reading of this provision of H.R. 15 would include contractors attempting to secure contracts by negotiation through the established selection process. We feel that current procurement policy and standards of conduct provide adequate safeguards to insure that the selection process is not subject to ex parte influence.

OFPP will continue to be responsible, as provided in P.L. 93-400, for assuring proper standards of conduct and public participation with respect to these procurement aspects.

We appreciate the opportunity to comment on this bill.

Sincerely,

JAMES D. CURRIE,
Acting Administrator.

RUTGERS UNIVERSITY,
OFFICE OF FEDERAL RELATIONS,
New Brunswick, N.J., May 4, 1977.

Hon. PETER RODINO
Washington, D.C.

DEAR MR. RODINO: As you may recall, I briefly spoke to you several weeks ago about Rutgers' interest in your lobbying bill, H.R. 1180. You suggested I discuss my concerns with a member of your committee staff, and I later met with Bill Shattuck. I raised several questions with Mr. Shattuck regarding various provisions of the lobbying bill, and he was very helpful and responsive. However, he could not give me assurances regarding the proposed legislation, and he suggested I send you this letter. The following are my observations, questions, and recommendations regarding H.R. 1180:

OBSERVATIONS

Both Dr. Bloustein and I are in total agreement that Congress is quite correct in trying to pass a lobbying bill that would more effectively account for the operations of practicing lobbyists. Although I don't normally use the term, there is no doubt

that I am the lobbyist for Rutgers University; my activities would certainly qualify me as a lobbyist according to Section 3(a) of your bill.

I suppose if Rutgers University and other institutions of higher education had "lobbying budgets" that allowed us to make political contributions and to splash funds for entertainment and the like, I could readily understand why you might want to make us account for our expenditures. However, those of us representing higher education institutions can ill-afford to give little more than what we hope to be worthwhile information to members of Congress and their staffs.

APPLICABILITY OF HR 1180 TO RUTGERS

1. Section 2(8) defines the term "organization" and excludes "... any federal, state or local unit of government..." Would Rutgers University, the State University of New Jersey, be excluded from the provisions of the bill just as the State of New Jersey is excluded from the provisions of the bill?

2. Section 2(11) defines the term "state" to mean "... any of the several states..." Is your bill intended to exempt or cover public agencies and instrumentalities of one or more states; municipalities and political subdivisions of states; public corporations, boards, and commissions established under the laws of any state; and public educational institutions?

3. As I stated earlier, the provisions of this bill apply to Rutgers University according to Section 3(a). I am confused, however, by Section 3(b) that exempts certain "communications," not organizations and individuals. As I believe you know, most of our communications from Rutgers are with members of the New Jersey Congressional Delegation. These communications I believe are exempt from the applicability of HR 1180. What is the status of an institution that qualifies under Section 3(a) but whose communications are all exempt under Section 3(b)? What is the status of an institution such as Rutgers where we qualify under 3(a) but the vast majority of our communications are exempt under 3(b)? Are we still obligated to comply with the reporting and record keeping requirements as described in Sections 5 and 6?

4. Your bill applies to communications directed to "federal offices or employees," and this would include officials within the executive branch. I truly believe that the merging of legislative branch lobbying and executive branch lobbying will so confound and confuse the situation so as to weaken the intended impact of the legislation. This situation may be unique to colleges and universities, but I suspect it would also apply to government contractors. Although I may be the designated lobbyist for Rutgers University, hundreds of our faculty members each year deal with officials at executive agencies. These contacts are not limited to discussions of grants and contracts with lower level program officers, and I believe many of our faculty communications would be construed as a "communication with a federal officer or employee" under the applicable provisions of the bill. Is this bill intended to cover these communications between our faculty members and executive agency officials?

RECOMMENDATIONS

I would like to suggest to you, Mr. Rodino, that public institutions of higher education should be exempt from the provisions of your bill as a result of their affiliation with their respective states. Although it may be your understanding and intention that HR 1180 should not apply to institutions of higher education, I believe it should be made clear in the law. If you think that unnecessary, then certainly a comment in the committee report would clarify the situation. In either case, I believe there is need for clarification of the applicability of the lobbying bill to public institutions of higher education. If you remember the House floor debate over HR 15 on September 28, 1976, there were several questions relating to the applicability of that lobbying bill to institutions of higher education, but there was no resolution of the issue.

Although such a provision as I have suggested would cover Rutgers University, we believe that all 501(c)(3) institutions of higher education should be treated equally. I don't believe there is all that much difference between the "lobbying" activities by Lee Burke at Seton Hall, Nan Wells at Princeton, and Bill Lyons at Rutgers. Therefore, I would further suggest that all 501(c)(3) institutions (charitable, religious, scientific, literary, educational, institutions) be exempt from the provisions of the lobbying bill. I think there is sufficient justification for exempting 501(c)(3) organizations:

1. All educational institutions would be treated equally.
2. The 501(c)(3) organizations are those organizations eligible to receive tax deductible gifts, and they do not have lobbying as a major activity, if it is done at all.
3. All 501(c)(3) organizations, with the exception of public colleges and universities that are units of their respective states, file Exempt Organization Information Returns, IRS Form 990. Form 990 requires information regarding the organization's attempts

to influence national, state, or local legislation. IRS requires "a statement giving a detailed description of the expenses paid or incurred . . ." The preparation of Form 990 and the attendant documents make 501(c)(3) organizations publicly accountable for any lobbying activities.

4. From my readings about the proposed lobbying bills, I get the sense that Congress wants a greater degree of accountability from those organizations that have lobbying as one of their major activities. An exemption for 501(c)(3) organizations does not include an exemption for other organizations that may be "not-for-profit" but clearly have lobbying as a major activity of their enterprise. The National Education Association, the American Council on Education, and similar associations that do lobby are non-profit organizations under 501(c)(6) of the IRS Code. Therefore, providing an exemption for 501(c)(3) organizations would not provide a loophole for the exemption of many associations that are intended to be covered under the provisions of your bill.

I would be grateful for the opportunity to discuss these points with you in more detail. President Bloustein will be in Washington within the next two weeks, and I will call you to see if we can arrange a convenient time to meet.

Cordially,

WILLIAM T. LYONS,
Director of Federal Relations.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 9, 1977.

HON. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Washington, D.C.

DEAR GEORGE: Attached is a copy of a letter from Rutgers, The State University of New Jersey, expressing concern that state colleges and universities may be considered lobbying organizations under H.R. 1180.

I believe this issue deserves the most serious consideration. Rutgers, for example, has been identified by the Internal Revenue Service as a "unit of government", and other state universities as well are considered "instrumentalities of the state" by their respective attorneys general.

I urge your subcommittee to give careful and deliberate consideration to this issue before taking any action that would cover state colleges and universities under H.R. 1180.

With kind regards,
Sincerely,

PETER W. RODINO, JR.,
Member of Congress.

RUTGERS UNIVERSITY,
OFFICE OF FEDERAL RELATIONS,
New Brunswick, N.J., June 8, 1977.

HON. PETER RODINO,
Washington, D.C.

DEAR MR. RODINO: As you may recall, I sent you a letter on May 4 expressing Rutgers' concern that the State University might be included in the provisions of your lobbying bill, HR 1180. Inasmuch as the Administrative Law Subcommittee is currently in mark up of the bill, I would like to briefly summarize a key point of interest.

State colleges and universities are units of States and should be excluded from the provisions of the bill. However, the exemption is not clear in the bill. I want to appeal for your help to ensure that Rutgers and the other public institutions are classified as instrumentalities of their respective States when the bill becomes law.

With a minor change in punctuation in the definition of "organization," I believe that we will be assured of the exemption. Section 2(8) reads in part, "excluding any Federal, State, or local unit of government or Indian tribe, and national or State political party and any organizational unit thereof of . . ." By placing a comma between 'party' and 'and' and by placing a semicolon after 'thereof' it would be clear that State universities would be exempt because they are units of State governments.

Also, Mr. William Shattuck reports that the subcommittee members are disposed to classify all colleges and universities as "organizations" and require that they register whether they are private or public. Mr. Shattuck believes an amendment to that effect will be offered, perhaps at the next mark up session of the subcommittee.

My colleague, Newton Cattell, from Penn State University has reviewed the issue with Rep. Eilberg. It is our hope that a means may be found to correct the punctuation and to negate or defeat the proposed amendment.

Thank you for your consideration of this request.

Cordially,

WILLIAM T. LYONS,
Director of Federal Relations.

PRINCETON UNIVERSITY,
Princeton, N.J., June 17, 1977.

Hon. PETER W. RODINO,
Chairman, House Judiciary Committee,
Washington, D.C.

DEAR CHAIRMAN RODINO: You undoubtedly receive a great deal of mail about H.R. 1180, and I am sure that the bill includes many needed reforms in regard to lobbying. In the absence of President Bowen, who is abroad, I want to express our primary concerns about the bill as it would affect an independent institution such as ours.

As the bill is now drawn, I understand, it would exempt public colleges and universities from stringent reporting requirements but would impose upon independent institutions a great deal of reporting beyond the present requirements of the Internal Revenue Service. We believe that the burdens would be severe and that equity calls for exemption of both public and independent colleges and universities.

The requirement of public disclosure of the names of large contributors is also of particular concern to us, because we believe that our ability to raise money for educational purposes would be seriously affected. Throughout the history of this University, there have been many donors who have supported education but without being willing to be singled out as making the gifts. Some of them have shunned publicity because of their modesty; others have wanted to avoid becoming the targets of fund-raisers of all descriptions as a result of a gift for education.

Let me cite as an example the largest donation received in Princeton's history. In 1961, Mr. and Mrs. Charles S. Robertson gave the University \$35 million to endow graduate education in the Woodrow Wilson School of Public and International Affairs, but because of their modesty and love of privacy, they insisted that the gift should be anonymous. This single gift, which would not have come to the University without anonymity, has enabled the Woodrow Wilson School to make significant contributions to the nation and to New Jersey through the education of men and women for public service. After the tragic death of Mrs. Robertson in 1972, Mr. Robertson agonized for some time and finally decided to acknowledge the source of the fund. Having made that decision, Mr. Robertson, in his characteristic modesty, wrote concerning the announcement to be made: "Please keep the invitations to a minimum and the announcement to a sentence or two at most—sort of a Calvin Coolidge approach with overtones of Greta Garbo." I enclose a copy of the remarks of those who spoke on June 12, 1973, when the names of these anonymous benefactors finally were disclosed.

As you proceed with the mark-up for reforms that undoubtedly are needed, we would greatly appreciate your keeping in mind these very serious concerns that we have.

Sincerely

WILLIAM H. WEATHERSBY,
Vice President for Public Affairs.

NEW JERSEY ASSOCIATION OF COUNTIES,
Trenton, N.J., June 15, 1977.

Hon. PETER RODINO,
Chairman Judiciary Committee,
Washington, D.C.

DEAR PETE: As president of this Association, which seeks to represent the interests of the 30,000 elected and appointed County officials in the state's 21 Counties, I am concerned, as I have told you, with some of the provisions of HR 1180.

We feel that elected County, city and state officials and their employees should be exempted from registration as lobbyists the same as elected Federal officials and their employees.

We realize that the Federal Regulation of Lobbying Act (2 U.S.C.S. 261) exempts from registration as lobbyists "public officials acting in their official capacity."

Judge Gesell in *Bradley v. Saxbe* 338 F. Supp. 53 (D.D.C. 1974) held that officers and employees of our affiliate, the National Association of Counties, the National League of Cities and the U. S. Conference of Mayors are exempt from registration under the present law so long as such people engage in lobbying solely on the authorization of a public official acting in his official capacity and receives compensation from public funds.

In a Federal system we feel local subdivisions have a right and a duty to join together to insure that their needs and views shall be heard by various branches of the Federal government. While HR 1180 does exempt the employees of individual states, Counties and cities, it does not exempt them when governments join together in organization, such as the N. J. Association of Counties.

We will appreciate your interest to modify this legislation in the best interest of our ability to represent our needs in the way I have outlined. Thank you.

Very cordially yours,

VINCENT J. FUSILLI,
President.

NEW JERSEY ASSOCIATION OF COUNTIES,
Trenton, N.J.

HONEYWELL STATEMENT ON PROPOSED LOBBYING LEGISLATION

Honeywell believes the lobbying disclosure legislation that will be considered by Congress this session should not include provisions which would require a company, as part of the lobbyist disclosure requirements, to report on normal sales and marketing activities with the government. In our opinion, such a proposal would reduce the legislation's effectiveness in reporting legislative lobbying efforts by combining that data with data on an unrelated subject, normal sales activities with the government. Depending on how the legislation is written, reporting on sales activities could also inhibit the valuable flow of information between the government and contractors, and could impose complicated and costly internal reporting requirements on companies.

Sales and marketing contacts between private industry and the government serve many important purposes: they enhance competition, they promote advancement in technology, and they save the government money by allowing government purchasers to pick the most cost-effective goods or services.

The following material describes how a provision defining normal sales activities as lobbying would relate to Honeywell's sales activities and why we believe it should not be included in legislation on Congressional lobbying. Each of last year's proposed bills would have a somewhat different impact. Our statement describes how the Senate-passed bill would affect our operations and notes, where appropriate, how the House-passed legislation would differ.

1. Lobbying and sales efforts are distinctly separate activities

At Honeywell, selling to the government and lobbying on legislative matters are two distinct operations carried out by separate organizations within the Company. Our legislative lobbying activities are under the direction of the Public Affairs Department which has a professional staff of four persons concerned with federal legislation.

Sales and marketing activities are carried out by more than a dozen relatively autonomous operations including hundreds of sales and marketing persons with each operation reporting through an entirely different chain of command. Products we sell to the Federal government include computers, building control equipment, medical instrumentation, industrial controls, and a wide range of aerospace and defense products. Divisions selling these products are headquartered at locations as distant as Seattle, St. Petersburg, Boston and Phoenix.

2. Sales activities would require more extensive reporting than legislative lobbying

While it would be possible to collect and report information on the Company's modest legislative lobbying activities without unreasonable burden, this would not be the case with respect to the Company's sales and marketing activities.

In arriving at an estimate of the total number of contracts in which Honeywell has an interest and on which a communication would be considered lobbying under

the bill which passed the Senate last year, we have utilized information from the two groups in the Company which make the largest number of sales to the government, our Aerospace and Defense Group and the Federal Systems Operations of Honeywell Information Systems.

For the current twelve month period, these two groups alone expect to book about 100 government contracts which exceed \$1,000,000. If one assumes that an equal number of contracts were bid, but lost, and that the average length of time between the issuance of a bid and completion of delivery is over two years (assumptions we believe are reasonable), the total number of awarded contracts (exceeding \$1,000,000) on which Honeywell employees would have made "lobbying" communications this year exceeds 400.

This does not include the many proposals on which sales and marketing personnel are presently making calls which may be awarded in future years. The precise number of such sales opportunities cannot be determined, but, to give some idea of the number, our ADG sales and marketing staff alone maintains a current list of more than 1,000 potential sales opportunities—opportunities that may translate into contracts in the future. Early in the bidding process, the Company cannot really tell what the size of any prospective contract may be and certainly not all of these contracts would exceed \$1,000,000. However, a sizeable number would.

With respect to the number of employees who could be expected to make non-Congressional "lobbying" communications (as defined in the bill), we have been able to compile reasonably accurate data only on the number who would make sales and marketing calls. We estimate the number of these persons exceeds 200. This does not include attorneys, controllers, engineers, etc. who communicate with government employees on various aspects of a contract, and who could be expected to make what the bill considers a lobbying communication (requesting a government employee to act in a certain manner on a contract already awarded). For instance, a Honeywell engineer who contacts a government employee requesting approval to use a different bolt in a product would be making a lobbying communication.

While the total number of employees who make oral lobbying communications on legislative matters in a quarter would likely be no more than three or four, and the number of legislative issues lobbied would usually be less than ten, the figures for government contracts could very well be more than 100 people making more than 1,000 separate sales communications. As can be seen by these figures, the information on legislative lobbying activities would be lost in any report that also includes sales activities.

Even though the bill which passed the House last year limits its Executive Branch personnel coverage to those persons whose positions are classified in Executive Pay Schedule Levels I through V, it would still cause substantial reporting problems. The limitation itself results in a great deal of confusion in trying to determine which employees are covered by the bill, and we believe that a sizeable number of sales communications would still have to be reported upon.

3. The cost of reporting sales activities would be significant

Projecting the cost to Honeywell of complying with the provisions requiring reporting on normal sales activities is extremely difficult. However, since existing internal reporting systems do not provide the necessary information, a totally new system would need to be developed and implemented. Based on rough estimates from our Aerospace and Defense Group and the Federal Systems Operations of Honeywell Information Systems, we would guess that the cost of implementing such a system to comply with last year's Senate bill could reach \$500,000 annually. This number includes the cost of additional people to administer the program as well as the cost of compiling and filing the reports. It does not include the time which would be lost by sales people, engineers and others keeping new records of their activities. The cost to comply with last year's House bill would be less, but still significant.

4. Inhibition of Communications

Reporting on normal sales and marketing activities would result in increased record-keeping, administrative costs, and confusion for us. It might also result in a reluctance on the part of government employees to take part in anything which could be considered a "lobbying" activity. Because of this, we believe that there would be less communication between the Company and the Federal government on contract matters. These communications are necessary and valuable both for the purchaser and the prospective seller of a product or service. We believe the attachment to this statement which describes Honeywell sales contacts with the Federal government illustrates the value of these communications. Reduction in their number would be detrimental to both Honeywell and the Federal government. Even though fewer communications are affected

by the House bill than by the Senate bill, we would still anticipate a significant decrease in communications as people within the Company would have a great deal of uncertainty in determining who is and who is not covered by the bill.

5. Other methods available for regulating sales activities

Honeywell also believes that this reporting on normal sales activities is unnecessary because of Title 18 U.S. Code Sections 203, 208 and 209 and the regulations various Departments are implementing to tighten enforcement against improper attempts to influence government purchasing decisions. The Department of Defense, for example, now prohibits (DoD Directive 5500.7) Department personnel from accepting virtually any gratuity from anyone doing business, or seeking to do business, with the Department. This prohibition applies even to such normal activities as a business lunch. All Department personnel must be briefed upon or receive a copy of these regulations and attest in writing that they understand them. Additionally, we understand from public comments that the new Administration proposes to implement new procedures (perhaps including logging of all outside contacts) to guard against improper activities in the Executive Branch. We believe these new procedures should be evaluated before Congress subjects private industry to complicated new regulations.

NATIONAL BLACK POLICEMEN'S ASSOCIATION,
Chicago, Ill., May 4, 1977.

Hon. GEORGE DANIELSON,
Chairman, House Subcommittee on Administrative Law and Governmental Relations,
Washington, D.C.

DEAR CONGRESSMAN DANIELSON: The National Black Police Association (NBPA) is the National organization which represents black police officers in twenty two (22) States representing 35 major metropolitan areas. The NBPA was organized in November of 1972, and during our existence we have been outspoken in our conviction that black police officers and law enforcement officials have unique rolls to play in this nation's efforts to prevent and contain urban crime.

As a part of this effort the NBPA has embarked on a program to inform many of this nation's top policy makers, in the Criminal Justice field, of our views on many deficiencies in current federal anti-crime programs. Toward the end of March, members of our Board of Directors met with a number of top officials within the Department of Justice, including Attorney General Griffin Bell, as well as numerous Senators and Congressmen.

In these meetings we offered the collective expertise of our membership as a resource they might use in formulating policy and drafting new legislation. Our reception was very warm with most of these federal officials and they eagerly welcomed our assistance and encouraged us to establish regular contact with them and their staff. Many also noted that they had never before had the opportunity to hear the views of an organization of minority police officers who represented the views of "the Cop on the Beat."

Within the last two weeks it has come to our attention that your Subcommittee on Administrative Law and Governmental Relations is presently taking testimony on legislation which will have a substantially negative effect on our ability to consult with and advise the Congress and the Executive Branch on issues concerned with law enforcement, legislation and federal policy in that area. Some of these proposals dealing with lobbying disclosure would clearly chill our ability to speak with members of Congress and their staff. Proposals which require extensive disclosure of private organizational information would also chill our constitutional right to meet with and advise various high federal officials, including the Attorney General.

The National Black Police Association is not opposed to lobbying reform but we are opposed to some requirements now being proposed and debated which would disclose the clearly private information, such as list of donors, of our national organization and its local chapters to the federal government and the public-at-large.

For this reason I am requesting that you invite me, as a representative of the NBPA, to testify at upcoming Hearings on the eight bills your subcommittee is now considering. At that time I will be prepared to explain our specific objections to various proposed legislation as well as explain to your subcommittee what proposals will not harm our ability to meet with and advise the Congress and the various Executive agencies.

Yours truly,

RENAULT A. ROBINSON,
National Information Officer.

KAWASAKI MOTORS CORP., U.S.A.,
 May 5, 1977.

HON. PETER RODINO,
 Chairman, Judiciary Committee,
 Washington, D.C.

DEAR MR. RODINO: Thank you for your letter in response to my expressed concerns about one portion of the lobbying legislation (H.R. 15) which passed the House last fall. It is my understanding that you have introduced a similar bill. H.R. 1180, in this session of Congress.

The snowmobile manufacturing industry has a trade association headquartered in Washington, D.C., the International Snowmobile Industry Association. It has seven regular members and twenty-six associate members. These are listed on pages 6-8 of the enclosed booklet, "Who's Who in Snowmobiling, 1977". Associate members pay annual dues of \$1,000 and regular members currently 3/10 of 1 percent of gross sales for the previous year. The ISIA's dues income is approximately \$600,000.

Everything I have described to you is public information. As one member of ISIA, my company does not know how much dues is paid by any other company and does not know gross sales of snowmobiles by other companies. We operate in a highly competitive industry and do not share that kind of information.

In order for us to know the effect of certain governmental actions (proposed or existing) on the snowmobile industry, it is important that ISIA be in existence to so advise us. I'm sure you know that every company in America can't subscribe to the Federal Register or the Congressional Record or the other means of following proposals or actions of government. Conversely, we rely heavily on our association to keep government informed about snowmobiling matters of interest to the government.

In the process, I believe our association thus performs a valuable public service. It would seem unwise to require disclosure of proprietary information by companies such as mine as the price for belonging to such an association.

There must be some other way to achieve what you want in this legislation without creating the mischief which I have described.

If you believe it to be important for a public record to be kept of contacts made by organizations with government, would it be possible to simply require government to record those contacts and make them public? I understand that the Consumer Product Safety Commission has been very successful with its public disclosure of meetings and contacts.

If our trade association can help you or your staff get around the problems I have raised, please give Mr. M. B. Doyle, ISIA's President, a call.

Sincerely yours,

MICHAEL C. VAUGHAN,
 Marketing Manager, Snowmobile Division.

NATIONAL ACADEMY OF SCIENCES,
 Washington, D.C., May 6, 1977.

HON. PETER W. RODINO, JR.,
 Chairman, Committee on Judiciary,
 Washington, D.C.

DEAR CHAIRMAN RODINO: It is my understanding that the Subcommittee on Administrative Law and Government Relations of the House Judiciary Committee currently has under consideration H.R. 1180 and related bills to provide for new federal reporting and disclosure requirements for lobbying. H.R. 1180 is essentially the same as H.R. 15 which was passed by the House in 1976 but on which the Congress failed to take final action prior to adjournment.

I write concerning Section 3(b)(6) of H.R. 1180 which would exempt those activities carried out by the National Academy of Sciences under the terms of its Congressional charter. We respectfully urge that this provision be retained in the measure to be reported by you. This proposed exemption is particularly critical if interpretation of the term "lobbying" in H.R. 1180 is to be expanded beyond its commonly accepted meaning so as also to include contract negotiations with the Federal government.

The National Academy of Sciences is a private, nonprofit corporation established under an Act of Congress, March 3, 1863. This Congressional charter provides that the Academy "shall, whenever called upon by any department of the Government, investigate, examine, experiment, and report upon any subject of science or art. . . ." In response to this mandate, the Academy has engaged for over one hundred years in a wide range of scientific studies on behalf of the Federal government. A

current listing would include major studies in such areas as: the effects of chlorofluoromethanes on ozone in the stratosphere, nuclear and alternative energy systems, world food and nutrition, the feasibility of controlling motor vehicle emissions, recoverable petroleum resources, the effects of environmental pollutants on public health, earthquake prediction, radiation hazards, the quality of health care in Veterans Administration hospitals, etc.

It is important to note that the Academy is "an ally of the government" but is not a agency. *Lombardo v. Handler*, 397 F. Supp. 792, 796 (D.D.C. 1975), *aff'd per curiam*, 546 F 2d 1043 (D.C. Cir. 1976), *petition for cert. filed*, April 6, 1977, Misc. No. 6505. The Academy receives no appropriations from Congress; all studies for the Federal government are conducted under contract with various government agencies, or, occasionally, direct contract with a Congressional committee. To conduct these studies, the Academy relies upon the volunteer services of the nation's best scientists and engineers who receive no compensation other than reimbursement for travel expenses.

In our comments of last year to your Committee, with respect to H.R. 15, we conveyed our concern that the proposed expansion of the term "lobbying" to include negotiation of Federal government contracts could seriously impair the effectiveness of the Academy's service to the government. In response to these concerns, the House Judiciary Committee last year adopted Section 3(b)(6) of H.R. 15 exempting from the coverage of the lobbying bill "activities of the National Academy of Sciences conducted under section 3 of the Act of March 3, 1863 (36 U.S.C. 253)."

Notwithstanding the characterization of lobbying as a great American tradition, the word "lobbying" retains its pejorative aspects. In common usage, it connotes selfishness, special interest, and a lack of reasoned impartiality. Indeed, the negative connotations of "lobbying," as much as the revelation of specific lobbying abuses, appear to be among the driving forces to enact new lobbying legislation.

The National Academy of Sciences was established specifically to provide objective scientific information and assistance to the Federal government. For the Academy to be labeled as a "lobbyist" for whatever reason, even though far removed from partisan efforts to influence legislation, would surely raise questions concerning its objectivity in the minds of the public, and particularly in the minds of the scientific community, upon which the Academy depends for its volunteers. In this sense, the result would be to partially vitiate the very purposes for which the Academy was chartered by the Congress. Moreover, if the term "lobbying" were expanded beyond its common meaning so as also to include contract negotiations with the Federal government, the Academy, in order to avoid being branded a "lobbyist" might be forced to restrict its activities to the detriment of the services which it provides to the Federal government. For these reasons, we strongly urge the House Judiciary Committee to retain the language now in Section 3(b)(6) of H.R. 1180 in the bill as finally reported to the full House.

We recognize that Section 3(b)(1)(A) of H.R. 1180 would exempt communications "made at the request of a Federal officer or employee," and it has been suggested that such a provision would exempt the Academy's contract negotiations with the government. However, there are a number of difficulties with this suggestion. Arrangements for studies and the preparation of Academy reports to the government and the public on matters of science and technology involve almost continuing communication by many Academy staff with many Federal officials. Executive Order 2859, as amended, recognizes the close interaction between the Academy's operating arm, the National Research Council and the departments of the Government. See note following 36 U.S.C. section 253. Academy reports also may provide the stimulus for further government requests for Academy studies and therefore further contracts. Concern within the Academy that communications with the Federal government on matters of substance may somehow be misconstrued to be initiatives designed to generate Federal contracts, thereby constituting "lobbying," could seriously inhibit the ability of the Academy to provide useful and candid scientific information and assistance.

The Academy has often undertaken studies in response to statutory requests by the Congress. A list of these studies since 1970 is enclosed. These studies usually have been conducted under contracts with appropriate Federal agencies. We are concerned that if the Academy should take any initiative in discussions with Federal agencies once such Congressional requests for Academy studies have been enacted into law, the Academy initiatives might be misconstrued as constituting "lobbying" since communications made in response to statutory requests for contract studies would apparently not be exempt, except possibly by implication, under H.R. 1180.

From time to time, the Academy receives requests for assistance directly from the President. For example, in 1974 President Ford wrote to the Academy requesting

that the Academy undertake a major study of world food shortages and malnutrition. In March of this year, President Carter sent a letter to the Academy which stated in part as follows:

"On many occasions, the National Academy of Sciences has provided valuable assistance to the Federal Government on a wide range of issues of National concern. As I look ahead, I see a pressing need for enlisting and utilizing the best minds in the community of science and technology to help us analyze and wisely resolve the many problems that confront the Nation.

I believe that the Academy could be most helpful to me in meeting this need, especially if, in addition to its long range studies, it is prepared to accept and respond in a more timely manner to questions which demand early decision. I would appreciate your consulting with Dr. Press whose responsibility it is to see that I receive the best scientific and technical advice that the country has to offer."

The position of the Academy in communicating with Federal officials in response to such Presidential requests would be unclear under the proposed lobbying legislation. We note for instance that responding to a Presidential request would not be an exempt communication "made at the request of a Federal officer or employee" since the President is not a "Federal officer or employee" as defined in H.R. 1180.

Adoption of Section 3(b)(6) of H.R. 1180 would simply make it clear that the Academy is not engaged in "lobbying" when the Academy is responding to the unique requirement of its Congressional charter that the Academy "shall, whenever called upon by any department of the Government, investigate, examine, experiment, and report upon any subject of science or art. . . ." In the House Committee Report last year on H.R. 15, reference was made to the fact that exemption of the Academy "should not be construed to mandate either the inclusion or exclusion of any other federally chartered private organization, merely because they are not expressly exempted." H.R. Rept. No. 94-1474 Part 1, 94th Cong., 2nd. Sess. 23 (1976). This comment was apparently motivated by concern that there may be other federally chartered private organizations having problems similar to the Academy. However, counsel for the Academy has reviewed the list of private organizations established under Federal law appearing at 36 U.S.C. section 1101 and a list of Congressionally chartered corporations chartered from February 25, 1791 through July 16, 1964, prepared by the Library of Congress Legislative Reference Service. We have been unable to find any other private Congressionally chartered organization having the same kind of special charter provisions and service requirements as those that would make the Academy so adversely affected by the proposed legislation. We, therefore, feel that concern about other Congressionally chartered private organizations is a separate issue and should not inhibit specific action to deal with the Academy's unique situation.

Since 1863 the National Academy of Sciences has, whenever called upon, provided valuable assistance to the Federal government on matters of science and technology. To carry out these purposes, each year the Academy draws upon the volunteer services of over 8,000 of the nation's best scientists and engineers who give freely of their time in the public interest. We are certain that there is no intent on the part of the Congress to restrict or inhibit this unique service which the Academy provides to the Federal government. It is for this reason that we respectfully urge the retention of Section 3(b)(6) of H.R. 1180 in lobbying legislation to be reported by the Committee.

Thank you for this opportunity to submit our views.

Sincerely yours,

PHILIP HANDLER,
President.

STATUTORY AUTHORIZATION FOR STUDIES

BY THE

NATIONAL ACADEMY OF SCIENCES

Public Law 91-441—Study of the ecological and physiological dangers inherent in the use of herbicides, and the effects of the defoliation program in South Vietnam.

Public Law 91-604—Study of the technological feasibility of meeting the motor vehicle emission standards set forth in the Clean Air Amendments of 1970.

Senate Resolution 135—Studies for Senate Public Works Committee on health effects of ambient air quality standards, and social and economic costs and benefits of compliance with automobile emission standards.

Public Law 92-500—Assistance to National Study Commission in the investigation of all technological, economic, social and environmental effects of achieving or not achieving the effluent limitations and goals of the Federal Water Pollution Control Act Amendments of 1972.

Public Law 92-516—Continuing NAS review procedure to consider questions of scientific fact raised by public hearing under Federal Environmental Pesticide Control Act of 1972.

Public Law 93-82—Three-year review and study of personnel and other resource requirements in Veterans Administration medical facilities for establishing high quality medical care for veterans.

Public Law 93-112—Provides for appropriate consultation with the NAS/NSF.

Public Law 93-135—Assistance to the Environmental Protection Agency in strengthening scientific basis for environmental regulation programs.

Public Law 93-222—Two-year comprehensive study and assessment of health care quality assurance programs.

Public Law 93-233—Studies concerning equitable methods of reimbursement for physicians' services in teaching hospitals and assessment of how support funds under Social Security Act are being utilized.

Public Law 93-251—Review of scientific basis upon which conclusions are reached by Department of the Army in study of (1) the future water resource needs of the Washington metropolitan area, and (2) the pilot project for treatment of water from the Potomac estuary.

Public Law 93-348—National Biomedical Research, Fellowship, Traineeship, and Training Act—Undertake studies on behalf of the Secretary of Health, Education, and Welfare to aid in the establishment of national needs for biomedical research personnel, assess biomedical training programs conducted under the Public Health Act, and identify recommended training program modifications.

Public Law 93-523—Safe Drinking Water Act of 1974—Study by NAS to assist EPA in determining maximum contaminant levels in water delivered to any user of a public water system.

CORNING GLASS WORKS,
Corning, N.Y. May 11, 1977.

Representative PETER RODINO
U.S. House of Representatives
Washington, D.C. 20515

DEAR REP. RODINO: I'm writing as president of the Chemung Valley Chapter of the Public Relations Society of America. We're concerned about proposed lobbying legislation in the Congress. We hope and expect that any new or revised legislation will affect true lobbyists and exempt public relations professionals carrying on their normal duties in Washington.

It would be ill-advised, in my view, to require registration as lobbyists those people making normal PR contacts such as with newspaper or broadcast journalists, or writing news releases or newsletters or house organs and the like, or writing and making speeches. To do so would, in my view, be another example of obtrusive and unrewarding government. To do so could interfere even with our rights as citizens to do just what I'm doing—making our views known to you.

I trust that you will approach such legislation cautiously with these points in mind.

Thank you for your consideration.

Sincerely,

ARCHER N. MARTIN,
President, Chemung Valley Chapter, PRSA.

AIRCRAFT OWNERS AND PILOTS ASSOCIATION,
Washington, D.C., May 11, 1977.

Representative GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Procedures, Committee on the Judiciary, Washington, D.C.

DEAR CHAIRMAN DANIELSON: We have studied the provisions of H.R. 1180, H.R. 5975 and H.R. 5578, listened to some of the testimony, reviewed many of the statements, and noted the variety of views expressed on the subject of lobbying regulation. We would appreciate inclusion of this letter in the hearing record.

For many years AOPA has complied with the registration and reporting requirement of existing law. This experience has produced the following observations.

1. The registration and reporting appears to have served no useful purpose. On the few occasions when anyone inquired as to whether we were registered and how much we spent for lobbying, we referred them to the reports. Invariably, they lost interest.

2. Most of the inquiries came from parties who were well aware that AOPA did some lobbying, but were opposed to the positions which AOPA supported. This led to the conclusion that they were more interested in hopefully finding some method of denigrating AOPA's views than of ascertaining anything significant about the nature of AOPA's lobbying program.

3. We have watched the explosion of lobbying effort in the decades since the 1930s in response to the expansion of Federal legislation and regulation into virtually every facet of American life. Hence, lobbying is no longer an activity of a few selected individuals or groups but is all but universal.

In view of this experience, we are opposed to any legislation, regulation, limitation or inhibition upon the right to communicate with Members of Congress and their staffs, agencies of the Executive Branch, or members of our association respecting any existing or proposed action of the Federal Government that does or may affect us or our members.

We believe that aircraft owners and pilots have a Constitutional right to associate themselves and to advocate their mutual interests, including petitioning the government.

AOPA is a service organization. Representation of the interests of our members before Executive agencies is a relatively small part of our total program. Representation before Congress is an even smaller part. Nevertheless, both are important and essential. Neither should be inhibited. Our representations are open, aboveboard, reported to our members, frequently the subject of press releases, and information about them is readily available to all who inquire.

There may be lobbying evils which Congress thinks need correction. Nevertheless, the activities of associations such as AOPA should not be inhibited or limited in the process of correcting those evils.

We urge that the committee take a realistic view of what is Constitutional, practical, necessary, and useful with respect to lobbying legislation.

Sincerely,

JOHN L. BAKER,
President.

AMERICAN TEXTILE
MANUFACTURERS INSTITUTE, INC.
Washington, D.C., May 11, 1977.

Hon. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the textile manufacturers represented by the American Textile Manufacturers Institute, we would like to comment on the "Public Disclosure of Lobbying Act of 1977."

ATMI is the central trade association for the textile spinning, weaving, knitting and finishing industry. Our membership accounts for about 85 percent of an industry which employs nearly 1 million people in 47 states.

Textile manufacturers believe that lobbying disclosure reform is in the public interest, and we support the goals of the legislation pending before your subcommittee. While supporting lobbying reform legislation, we believe that Congress should be diligent in safeguarding the basic Constitutional rights of every citizen to privacy, freedom of speech and to petition his government for redress of grievances.

In order to achieve the goal of greater disclosure without infringing on Constitutional rights, we believe that lobby reform legislation should include the following elements: (1) it should focus on the professional lobbyist and not upon those who contact government officials occasionally, (2) citizens should have complete freedom to communicate with their own Congressman and Senators from the states in which they live and are employed, (3) a general description of lobbying activities should be sufficient, and (4) trade associations should not be required to disclose the amount of dues or subscriptions they receive. To require such disclosure would be an invasion of privacy that goes beyond any rule of reasonableness and it would serve no constructive purpose.

We believe that some of the provisions of the legislation pending before your subcommittee constitute a serious threat to the right of privacy and the right to communicate

with government. The reporting provisions in Section 6 of H.R. 1180, for example, would require the disclosure of proprietary information by trade associations. Since dues paid to many trade associations are based on a member company's sales, the requirement that the amount paid in excess of \$2,500 be disclosed, would reveal a privately-owned company's sales and position in the industry. This type of information has always been regarded as private. Even placing dues in broad categories, as suggested by H.R. 5795 would, in the case of many companies, result in the disclosure of private information. A listing of the members of a trade association and a description of the dues structure together with the total amount that the trade association spends on lobbying activities would be sufficient to satisfy the public need to know what is being spent on lobbying activities.

The various "thresholds" for qualifying as a lobbyist are too broad in that they go beyond the professional lobbyist and reach out to many people who lobby only occasionally. Sec. 3(b)(5) of H.R. 5795 reaches so far that it would require registration by people who may never make a direct contact with a Member of Congress or his staff. This section would be extremely difficult to administer because of the way it covers people who may act at the suggestion of a second party.

Individuals should be free to communicate with their own Congressman without crossing any of the thresholds which would require registration.

The registration thresholds in H.R. 6202, H.R. 1180 and H.R. 5795 present particular problems where trade associations are concerned. It is general practice for industry experts who may make no lobbying contacts at all to spend a good deal of time studying and evaluating the impact of proposed legislation. This is often done long before any contact is made or any decision is reached with respect to a policy position on a piece of legislation. This type of careful study is a valuable service to an industry and its employees. In addition, it is helpful to Congress. If people who participate actively in the work of association committees could cause their companies to become "lobbying organizations", many individuals would be reluctant to devote time to such research and study. H.R. 6202 and H.R. 1180 are extreme in that they could even reach back to secretaries who type documents which eventually could be used in support of a lobbying communication on the part of a lobbying organization. This goes beyond what is necessary and reasonable for adequate disclosure.

It would be extremely expensive and cumbersome for everyone even remotely involved with the legislative communication to keep track of the time spent on such activities. The result would very likely be that people would avoid such activities altogether even though they are quite remote from what is normally considered lobbying.

This problem could be overcome by confining lobbying registration and reporting to those employed to make direct oral and written communications with Members of Congress. This approach would provide the necessary disclosure without requiring registration and reporting by the occasional lobbyist or persons who provide expertise in connection with legislative matters.

If these recommended changes were made in the draft legislation, a number of serious Constitutional questions involved with the pending measures could be avoided.

Finally, we believe lobbying disclosure legislation should be confined to contacts and communications with Members of Congress and their staffs. Contacts with regulatory and administrative agencies already are covered by other statutes and agency regulations, including the freedom of information and "sunshine" laws.

On April 13, 1977, the ATMI Board of Directors unanimously approved the following resolution:

"The American Textile Manufacturers Institute supports reasonable lobbying reform legislation which provides adequate public disclosure of lobbying activities, but which (1) protects an individual's and organization's right to freely petition its Representative and Senators; (2) avoids the disclosure of the actual amount of dues or contributions made by a member to an organization; and (3) recognizes that the legitimate participation in the development and preparation of materials to be used subsequently in written or oral contacts with federal officials does not constitute lobbying."

We hope you will consider these comments as constructive suggestions which will contribute to greater disclosure without endangering basic Constitutional rights.

Sincerely,

ROBERT P. TIMMERMAN,
President.

OUTDOOR ADVERTISING ASSOCIATION OF AMERICA, INC.

May 11, 1977.

Re comments on proposed lobbying reform legislation

HON. GEORGE DANIELSON,

Chairman, Subcommittee on Administrative Law and Governmental Relations, Washington, D.C.

DEAR CHAIRMAN DANIELSON: The Outdoor Advertising Association of America, Inc. (OAAA), the oldest trade association in the advertising fraternity, representing nearly 200 small business interests, wishes to briefly comment on the proposed lobbying reform bill. This Association, while the oldest in the advertising industry, is also the smallest in dollar volume. The outdoor industry will average approximately 2 percent of all advertising dollars.

We wish to focus our comments on the fact that as a small organization (3 employees in Washington) we spend most of our time counseling our members and a minor amount of time on Congressional lobbying. From time to time we do have legislation pending on Capitol Hill, but not continuously.

The text of former lobbying bills and some of the bills now under consideration are much too burdensome on a small association such as the OAAA. We fear that an additional employee will have to be employed just to handle the bulk of the reports outlined in some of the pending lobbying bills.

Some reports on the future of a lobbying bill indicate that a short modified form of report might be adopted for certain associations and groups who do limited lobbying. I would like to put our Association on record as supporting such a plan. We now fill out the existing quarterly lobbying reports and would endorse a similar technique.

While we support the concept of reasonable lobbying controls and disclosures, our Association does, however, oppose unrealistic and burdensome proposals.

Thanking you in advance for considering our comments.

Sincerely,

VERNON A. CLARK.

NATIONAL WILDLIFE FEDERATION,
Washington, D.C., May 13, 1977.

STATEMENT ON PUBLIC DISCLOSURE OF LOBBYING ACTIVITIES

At the invitation of the Chairman, the National Wildlife Federation submits the following statement for inclusion in the record of the hearings recently held by the Subcommittee on Administrative Law and Governmental Relations of the House Committee on the Judiciary on proposals to enact some form of public disclosure of lobbying legislation.

Before commenting upon the various lobbying disclosure bills pending before the subcommittee, it may be useful to introduce the National Wildlife Federation. First organized in 1936 at the urging of President Franklin Roosevelt as a national umbrella for state federations of local sportsmen's clubs and other conservation organizations, the National Wildlife Federation has grown into the nation's largest private conservation organization. Today individuals and individual members of local clubs and conservation organizations affiliated with the Federation's state affiliate organizations in all fifty states, the Commonwealth of Puerto Rico, Guam and the Virgin Islands together with the Federation's own associate members and supporters number more than three and a half million persons.

As a national federation of state federations of individual conservationists, local sportsmen's clubs and other conservation groups, the National Wildlife Federation is deeply concerned about the impact which the enactment of various forms of public disclosure of lobbying activities may have on the willingness and ability of small and medium size citizen's organizations—and, therefore, of individual citizens who, in order to be effective, must organize—to participate in the governmental process.

The Federation has concluded, after detailed review and analysis of the various lobbying disclosure bills, that the enactment of most of the bills now pending would (1) violate the Constitution, and (2) place major obstacles in the way of, and thus substantially reduce, citizen participation in the government process.

THE ALLEGED PROBLEM

Before addressing the problems which lobbying disclosure legislation would have on citizen participation in the government we believe that more attention should be paid to the alleged problem, i.e., the lack of public disclosure of lobbying activities.

Though many knowledgeable individuals including many members of Congress have testified that the present lobbying disclosure law, 2 U.S.C. Subsec. 261, *et seq.*, is inadequate, we do not believe that anyone has demonstrated that the failure of the present law to achieve meaningful public disclosure actually constitutes a problem. Sure, it would be nice, or at least interesting, to know how much various organizations are spending to influence legislation, but is the obtaining of this information worth the price in terms of reduced citizen participation in the governmental process? The Federation thinks not!

The scandals which have occurred in the federal government in the last few years have involved (1) actions by government officials in excess of their lawful authority, (2) excessive and often illegal campaign contributions, and (3) illegal or at least questionable gifts. Although some of these scandals have involved lobbyists, none of them involved the types of activities which the lobbying disclosure bills now pending before this Subcommittee are designed to disclose. Moreover, Congress in the enactment of more stringent Codes of Ethics and the Federal Election Campaign Act Amendments of 1974 has acted to address these problems. There is simply no demonstrated need for an extensive lobbying disclose law.

CONSTITUTIONAL LIMITATIONS

Even if one concludes that more disclosure of lobbying activities is necessary, one must still consider the Constitutional limitation on what can be required.

The grave Constitutional problems raised by most of the public disclosure of lobbying bills pending before this Subcommittee have been examined and testified to by the American Civil Liberties Union. The National Wildlife Federation agrees with the American Civil Liberties Union's conclusion that the only lobbying disclosure bill which recognizes the Constitutional limitations on the regulation of lobbying is H.R. 5578, introduced by Rep. Don Edwards of California, and endorses this bill.

The National Wildlife Federation, like Representative Edwards, believes that the Constitutional limitations on the regulation of access by citizens to their government are not mere obstacles to the attainment of the desired level of public disclosure, but expressions of fundamental and essential democratic values which should be respected not infringed.

THRESHOLD

Because all of the lobbying disclosure bills define "lobbyist," (i.e., those who are covered) in terms of how much "lobbying" (i.e., that which is covered) the organization does it is impossible to discuss *who* is covered without discussing *what* is covered. As a general principle, the National Wildlife Federation believes that lobbying disclosure should be required only of large organizations which (1) have a staff, sophistication and ability to comply with such a law, and (2) do enough communicating directly with members of Congress or their staff to have the ability to meaningfully influence important legislation. Though the National Wildlife Federation does not purport to be an expert on lobbying it is apparent to anyone familiar with Congress that any organization which does not have at least one paid employee who spends at least one day per week communicating with the Congress is (1) not seriously engaged in lobbying, (2) not likely to have any substantial impact on important legislation, and (3) unlikely to have the knowledge or ability to comply with a sophisticated lobbying disclosure law. In view of this the National Wildlife Federation believes that lobbying disclosure should be required only of organizations which employs at least one person who spends at least one day a week communicating with the Congress.

"LOBBYING SOLICITATIONS" AND EXECUTIVE BRANCH CONTACTS

In addition to infringing upon basic First Amendment rights, the inclusion of "lobbying solicitations" or contacts with the executive branch in any lobbying disclosure law would (1) render any such law unconstitutionally vague, (2) constitute a trap for the unwary, and (3) make it almost impossible to design a meaningful or workable threshold.

The vagueness of the concept of "lobbying solicitation" (i.e., the making of any oral or written communication directly urging, requesting or requiring another person to advocate a specific position on a particular issue) is as obvious as its Constitutionally protected status.

The apparent clarity obtained by use of reference to employee grade levels with respect to contacts with the executive branch merely hides the problem of determining whether the contact was intended to influence a rule, a contract, a report, an investigation, etc. Does the organization on whose behalf a contact is made have to know that a report is under preparation or that an investigation has been initiated? What

if, an organization is attempting to influence policy which it says constitutes a regulation, but the agency denies it or vice versa. The Federation has in the past been forced to litigate whether certain agency policies and procedures were or were not regulations. The result, after years in courts: some were, some were not. What would the Federation have reported had there been a lobbying disclosure law requiring it to report on its attempts to influence the promulgation of these "policies and procedures."

In addition to the problems described above, inclusion of executive branch contacts or lobbying solicitations would (1) constitute a trap for the unwary, since few Americans other than Washington lobbyists would know that engaging in this sort of activity could make one a lobbyist, and (2) make it almost impossible to set a reasonable threshold, i.e., that amount of lobbying which an organization could engage in before being required to register and report, especially since the no equivalent to the home state exempt has been suggested with respect to these types of "lobbying."

Finally, there is a reasonable and available alternative to requiring "lobbyist" to disclose their contacts with the executive branch and that is to require members of the executive branch to log and report their contacts.

CONTRIBUTOR DISCLOSURE

The inclusion of a requirement in most of the lobbying disclosure bills that lobbyists disclose the names of individuals from whom they receive more than a certain amount of money or more than some set percentage of their income is a matter of great concern to the National Wildlife Federation as well as many other "public charities." (Public charities are organizations that are exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1954, as amended, (the "I.R.C.") by virtue of the fact that they are described in Section 501(c)(3) of the I.R.C. but are not "private foundations" within the meaning of Section 509 of the I.R.C.).

The elaborate definition in Section 509(a) of the I.R.C. insures that "public charities" are publicly supported and not under the control of any single individual or group of related individuals. Moreover, although public charities, unlike private foundations, may lobby their lobbying activities must not exceed an insubstantial amount or a small percentage of their exempt purpose expenditures. In the Federation's case, for example, its lobbying activities may not exceed approximately 5 percent of its exempt purpose expenditures. In any event, the amount which a public charity may spend lobbying is (1) publicly controlled and (2) small. Moreover, the Congress found in the hearings it held between 1965 and 1969 on the Tax Reform Act of 1969 that "public charities" were not being used as front organizations for lobbying which is why public charities were exempted from the penalty taxes imposed upon private foundations which engaged in lobbying.

Since public charities depend upon contributions, any requirement that they disclose the names of their contributors could be very serious.

First, many donors to public charities value their privacy; indeed, many large gifts are anonymous. Second, few donors are interested in having their names listed in a place where they are available to every fundraiser in the country. This problem cannot be solved by the inclusion of a prohibition on the use of disclosed names since such a prohibition would be unenforceable as long as the fundraiser does not admit he is aware of prior disclosed gifts.

The third problem presented by contributor disclosure is the discouraging of gifts to unpopular causes. Many of today's most respected organizations have at one time or another championed unpopular causes, causes which the government itself was unwilling to champion. Public disclosure of large contributions could jeopardize the only source of funds available for such causes in the future.

A fourth problem is the practical problem of compliance. The National Wildlife Federation receives contributions from literally millions of people every year. Most of these contributions are small, but cross-checking the list to find out if we received *in toto* more than a certain amount of money from any one individual "or his immediate family," assuming we knew who they were, would be almost impossible.

In view of the fact that there is no reason to believe or evidence to suggest that public charities are being or would be used as front organizations to avoid public disclosure while disclosure of major contributions would have substantial adverse effects on contributions to public charities, the National Wildlife Federation believes that public charities should not be required to disclose the names of their contributors.

AFFILIATES

Though the inclusion of a definition of the term "affiliate" in most of the disclosure bills now pending is not really a problem since the definition is used to permit but not require one organization to report for another organization with which it is affiliated,

the term has proved to be a problem in the past. The problem arises from the fact that the word means different things to different organizations. The important thing to keep in mind is that "affiliates" are not "wholly owned or controlled subsidiaries," though this is frequently forgotten. Generally speaking "parent" organizations do *not* control organizations with which they are "affiliated." Thus, the term "parent" is *not* a good word to use in describing the central organization in an affiliated group. Indeed, rather than controlling the organizations with which it is affiliated, the central organization is often controlled collectively by its "affiliates." In view of this it is important that a lobbying disclosure law not require the central organization to report on the activities of affiliated organizations which it does not control.

Although the term "affiliate" has been a problem it is really a "red herring" because the real issue is control not affiliation. Lobbying activities should be reported by the organization which engages in them, that is the organization which has the right to and does in fact decide to engage in the activity in question. Thus, it is not necessary to require a central organization in an affiliated group to report on the activities of its "affiliates" in order to obtain full disclosure. Rather, the central organization and the affiliate should each report their own activities separately unless the affiliates agree to permit the central organization to report for them.

AMERICAN COUNCIL ON EDUCATION,
Washington, D.C., May 13, 1977.

HON. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. DANIELSON: On behalf of the American Council on Education and the higher education associations noted on the attached document, we hereby request that our statement on H.R. 1080 and related bills be included in the hearing record on lobbying reform legislation.

It is our position that the threshold for lobbying activities should be set at the highest possible level and that reporting requirements should be kept to a minimum for charitable organizations. In our system of government, the full exchange of all ideas and views is deemed to be essential for enlightened decisionmaking by Congress and by the federal government. Colleges and universities should not be put to the test of choosing between costly compliance and foregoing the right to redress of their grievances. A sound lobbying reform bill would avoid creating time consuming, unnecessarily complex and costly recordkeeping and reporting requirements, so that there will not be an excessive burden on charitable organizations which would deter or possibly preclude the exercise of first amendment rights.

Thank you for your consideration.

Very truly yours,

SHELDON ELLIOT STEINBACH,
Staff Counsel.

STATEMENT OF THE AMERICAN COUNCIL ON EDUCATION TO THE SUBCOMMITTEE ON ADMINISTRATIVE LAW & GOVERNMENTAL RELATIONS, COMMITTEE ON THE JUDICIARY, U.S. HOUSE OF REPRESENTATIVES, MAY 13, 1977

The following associations join in this statement: American Association of Community and Junior Colleges, American Association of State Colleges and Universities, Association of American Universities, Association of Jesuit Colleges and Universities, National Association of College and University Business Officers, National Association of State Universities and Land-Grant Colleges, National Association of Independent Colleges and Universities.

On behalf of the American Council on Education, an association of over 1,500 colleges and universities and regional education organizations and the associations noted hereunder, we are pleased to present our views on the lobbying disclosure bills that have been introduced in this session of Congress.

The thrust of all the proposed lobbying disclosure legislation is to ensure that organizations that contact Congress (and under some bills, the executive branch) register as lobbyists and disclose certain information about their activities. Colleges and universities are greatly concerned that the registration and reporting requirements contained in the proposed lobbying legislation are unnecessarily onerous and rigid and would constitute a substantial economic burden on institutions of higher education.

There are considerable difficulties inherent in treating universities and colleges as "lobbying organizations." Lobbying is neither their primary nor ancillary purpose. The extent to which they engage in "lobbying" reflects only the most elementary exercise

of the right to petition government. When colleges, and universities do exercise that right, it is in relationship to issues of public policy which are central to their institutional roles and existence.

Colleges and universities are dedicated to teaching, research and community services. Most of them, in pursuit of those goals, are organized in a highly decentralized fashion. Considerable autonomy is granted to faculties and to schools within more complex institutions. To call such an institution a "lobbying organization" which is presumed to exercise monolithic controls and absolute command over all its "employees" simply does not square with the nature of academia.

Several proposals that would replace the existing and inadequate Federal Regulation of Lobbying Act (2 U.S.C. 261 et. seq.) come close to abridging individual and organizational first amendment rights and inhibiting the legitimate interests of organizations to petition their government for redress of grievances. Some aspects of the proposed legislation could possibly end the effective participation in the government's decisionmaking process by many public charitable, religious, scientific, and education organizations which are tax exempt under section 501(c)(3) of the Internal Revenue Code.

These organizations, which by law are public charitable entities, are already forbidden to devote any substantial part of their activities toward attempting to influence legislation. They are also required to submit annual reports on their lobbying activities to the Internal Revenue Service. Under the proposed legislation these same groups would be subject to additional recordkeeping and registration requirements, but unlike the groups in the industrial sector, they would be unable to pass on the cost of compliance or deduct them as business expenses. Instead, public charitable organizations would have to absorb the entire cost of compliance, thereby substantially reducing the resources available for their primary philanthropic activities.

THRESHOLD

One of the most critical areas of concern to the higher education community is the threshold for becoming a lobbyist. It is the belief of the American Council on Education that the threshold should be kept as high as possible, in order that only those organizations who are intensively engaged in lobbying would be covered. The legislation should take into consideration the fact that there are many small colleges and universities who may from time fall within the definition of a lobbying organization solely as it pursues a single matter of concern to it. By enacting a threshold of 1 percent of total annual expenditures for 501(c)(3) organizations, only those institutions which engage in significant levels of lobbying would be required to file reports beyond those already required by law.

AFFILIATES

A problem arises from the fact that the word "affiliate" means different things to different organizations. Generally speaking, the parent organizations do not control their affiliates. If anything the reverse is true. The parent is indeed controlled by the affiliates. For example, as it relates to higher education, are the lobbying activities of the colleges and universities attributable to the Washington-based education associations or to the contrary, are the associations' activities attributable to the institutions? The problem of affiliation should not be of major concern, since the real issue is control, not who is affiliated. Under our proposed test, a lobbying expenditure should be reported by the organization that had the right to and did, in fact, decide to spend the money or invested the time of the staff member.

LOBBYING COMMUNICATIONS WITH CONGRESS

Colleges and universities should be free to communicate without having to keep time charts with their own congressman and senators. It may also be advisable to have this right extended to all members of the state congressional delegation, since the branches of the university as well as its influence are really state wide. The addition of the following language would aid most institutions: "Any communication with a member of Congress, or an individual on the staff of such member representing the state in which the organization making the communication has its principal place of business."

Colleges and universities may have particular difficulty with nonpartisan research papers that have been developed as part of academic pursuits by a professor or possibly even sponsored by an external organization which at that time may have had no intention of using the result of the research for lobbying purposes. Within the past several years, for example, a chemist at a university may have done research on the influence of saccharin on the human body. At the time, the intent may have

been purely research on behalf of the individual or if it were sponsored by an external organization, merely to identify if there were any adverse consequences from utilization of the food additive. Yet, if the findings of such research became used as a lobbying document for or against a particular position, an institution could find itself under the ambit of the lobbying law when indeed it never had any intent to influence legislation, or any control over the process of publishing the research findings.

LOBBYING COMMUNICATIONS WITH EXECUTIVE AGENCIES

We believe that the lobbying disclosure bill should be confined to legislative activity. We are skeptical of any attempt to include contacts with the executive branch in a definition of lobbying. The nature of the administrative process demands at the very least, treatment of this activity in separate legislation.

On any given campus, there are often numerous faculty members who are in the process of negotiating contracts or consulting with various federal agencies without specific knowledge of the president, and other officers of the university. These individuals may learn of the contract or grant negotiations as the agreement gets to its final stages. Yet in the interim, a particular individual could for example exhaust 30 hours in negotiating one contract with an executive branch employee. It is suggested that the negotiation of contracts and grants as a contract with federal agencies should be deleted from any definition of lobbying communication. In addition, where enforcement activity pursuant to any federal statute has been initiated by a federal agency and the institution is merely in the process of defending itself, it would be absurd to count the time negotiating with the federal officials as lobbying.

REGISTRATION AND REPORTING REQUIREMENTS FOR LOBBYING

Many of the bills introduced would impose a major paperwork burden for all 501(c)(3) organizations. It should be noted that 501(c)(3) organizations file Form 990 with the IRS annually, and that this form requires them to answer the question: "During the taxable year has the organization attempted to influence national, State, or local legislation or participated or intervened in any political campaign? If yes, attach a statement giving a detailed description of such activities and a classified schedule of the expenses paid or incurred and enter the total of such expenses here. Also attach copies of any materials published or distributed by the organization in connection with such activities."

We maintain that this provision, or one substantially like it, is all that is appropriate and necessary for organizations which by their very nature are not in the business of lobbying. In addition, as a result of the Tax Reform Act of 1976 charitable entities now will have the option of lobbying to a certain percent of its activities, and those organizations that elect this option will have to fulfill reporting requirements that have not yet been published by the Internal Revenue Service. Institutions that so opt should be able to fulfill any reporting requirements of the lobbying law by completing the form to be developed by IRS. They should not have to maintain extensive records, intricate accounting and internal reporting procedures in addition to their report to IRS.

DISCLOSURE OF CONTRIBUTORS

A matter of extreme concern to the American Council on Education is the inclusion of any requirement that registering organizations disclose the names of individuals from whom they receive in excess of a certain sum of money during the preceding quarter, if that income was expended in all or in part for lobbying. Although the intent of the provision is clear, it is unnecessary to request that information of bona fide philanthropic organizations which receive deductible charitable contributions for the furtherance of their tax exempt purpose. There is no reason to believe that this information would serve any useful purpose. In 1969 Congress found that public charities as opposed to private foundations were accountable to the public and were not being used by contributors as fronts for lobbying. Therefore, Congress did not impose upon public charities the special provisions on lobbying expenditures which it imposed on private foundations.

Secondly, if public charities are required to disclose the names of large contributors the effects could be quite serious. Donors who value their privacy would simply not make large contributions. Few donors are interested in having their names listed in a place which is available to every fundraiser in the area. No prohibition against use of names of contributors filed with the Comptroller General can be effective. Once that individual's name is placed on the registration statement, their is all likelihood that he will be dunned by a multitude of fundraisers. We are concerned that this will discourage voluntary support for colleges and universities, which currently receive \$2.3 billion annually from this source.

It is unclear whether the lobbying regulation bills introduced so far intend to cover public institutions of higher education. As instrumentalities of the states, they would seem to be exempted under the definition of "organization" which includes: "any corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, national organization or State or local elected or appointed officials (excluding any Federal, State, or local unit of government or Indian tribe, any national or State political party and any organizational unit thereof, and excluding any association comprised solely of members of Congress or congressional employees), group of organizations, or group of individuals, which has paid officers, directors, or employees."

Historically, higher education legislation has treated all colleges and universities equally, without distinction between public and private. If public institutions are to be exempt from lobbying regulation, equity dictates that all independent colleges and universities should be similarly treated.

It is the position of the higher education community that any lobbying legislation should treat public and private institutions equally.

In conclusion, we reiterate that the threshold for lobbying activities should be set at the highest possible level and that reporting requirements should be kept to a minimum. In our system of government, the full exchange of all ideas and views is deemed to be essential for enlightened decisionmaking by Congress and the federal government. Colleges and universities should not be put to the test of choosing between costly compliance and foregoing the right to redress of their grievances. A sound lobbying reform bill would avoid creating time consuming, unnecessarily complex and costly recordkeeping and reporting requirements, so that there will not be an excessive burden on charitable organizations which would deter or possibly preclude the exercise of first amendment rights.

AMERICAN COUNCIL ON EDUCATION,
Washington, D.C., May 27, 1977.

HON. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the American Council on Education, an association of over 1,500 colleges, universities, and regional education organizations, I am writing to summarize our views on the lobbying disclosure bills that have been introduced in this session of Congress. Our full statement was filed with the Subcommittee on May 13.

Colleges and universities are greatly concerned that the registration and reporting requirements contained in the proposed lobbying legislation are unnecessarily onerous and rigid and would constitute a substantial economic burden on institutions of higher education.

There are considerable difficulties inherent in treating universities and colleges as "lobbying organizations." Lobbying is neither their primary nor ancillary purpose. The extent to which they engage in "lobbying" reflects only the most elementary exercise of the right to petition government. When colleges and universities do exercise that right, it is in relationship to issues of public policy which are central to their institutional roles and existence.

Colleges and universities, which by law are public charitable entities, are already forbidden under section 501(c)(3) of the Internal Revenue Code from devoting any substantial part of their activities toward attempting to influence legislation. They are also required to submit annual reports on legislation, they would be subject to additional recordkeeping and registration requirements, but unlike the groups in the industrial sector, they would be unable to pass on the cost of compliance or deduct them as business expenses. Instead, institutions of higher education would have to absorb the entire cost of compliance, thereby substantially reducing the resources available for their primary educational activities.

It is the belief of the American Council on Education that the threshold for becoming a lobbyist should be kept as high as possible, in order that only those organizations who are intensively engaged in lobbying would be covered. The legislation should take into consideration the fact that there are many small colleges and universities who may from time to time fall within the definition of a lobbying organization solely as it pursues a single matter of concern to it.

Colleges and universities should be free to communicate without having to keep time records with regard to contacts with their own congressmen and senators. It may also be advisable to have this right extended to all members of the state congress-

sional delegation, since the branches of the university as well as its influence are really state wide.

In addition, we believe that the lobbying disclosure bill should be confined to legislative activity. We are skeptical of any attempt to include contacts with the executive branch in a definition of lobbying. The nature of the administrative process demands at the very least, treatment of this activity in separate legislation.

The bills introduced would impose a major paperwork burden for all 501(c)(3) organizations. It should be noted that 501(c)(3) organizations file Form 990 with the IRS annually, and that this form requires them to report their lobbying activity. Form 990, or one substantially like it, is all that is appropriate and necessary for organizations which by their very nature are not in the business of lobbying.

A matter of great concern to the American Council on Education is the inclusion of any requirement that registering organizations disclose the names of individuals from whom they receive in excess of a certain sum of money during the preceding quarter, if that income was expended in all or in part for lobbying. Although the intent of the provision is clear, it is unnecessary to request that information of bona fide philanthropic organizations, which receive deductible charitable contributions for the furtherance of their tax exempt purpose. There is no reason to believe that this information would serve any useful purpose.

If public charities are required to disclose the names of large contributors, the effects could be quite serious. Donors who value their privacy would simply not make large contributions. Few donors are interested in having their names listed in a place which is available to every fundraiser in the area. We are concerned that this will discourage voluntary support for colleges and universities, which currently receive \$2.3 billion annually from this source. It is furthermore, unclear whether the lobbying regulation bills introduced so far intend to cover public institutions of higher education. As instrumentalities of the states, they would seem to be exempted under the definition of "organization." Historically, higher education legislation has treated all colleges and universities equally, without distinction between public and private. If public institutions are to be exempt from lobbying regulation, equity dictates that all independent colleges and universities should be similarly treated.

It is the position of the higher education community that any lobbying legislation should treat public and private institutions equally.

In conclusion, we reiterate that the threshold for lobbying activities should be set at the highest possible level and that reporting requirements should be kept to a minimum. In our system of government, the full exchange of all ideas and views is deemed to be essential for enlightened decisionmaking by Congress and the federal government. Colleges and universities should not be put to the test of choosing between costly compliance and foregoing the right to redress of their grievances. A sound lobbying reform bill would avoid creating time consuming, unnecessarily complex and costly recordkeeping and reporting requirements, so that there will not be an excessive burden on charitable organizations which would deter or possible preclude the exercise of first amendment rights.

We would be pleased to discuss our views further with you or your staff.

Sincerely,

SHELDON ELLIOT STEINBACH,
Staff Counsel.

ASSOCIATION OF HOME APPLIANCE MANUFACTURERS,
Chicago, Ill. May 13, 1977.

HON. GEORGE E. DANIELSON,
Chairman, Administrative Law and Governmental Relations Subcommittee, Judiciary Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. DANIELSON: On behalf of the members of the Association of Home Appliance Manufacturers (AHAM) we respectfully request that the following comment be included in the record of the Administrative Law and Governmental Relations Subcommittee hearing on H.R. 1180, "Public Disclosure of Lobbying Act of 1977."

AHAM is a national trade association representing both major and portable appliance manufacturers. Its membership includes the companies that manufacture the vast majority of such appliances sold in the United States and component suppliers.

AHAM supports lobbying reform legislation which treats business, labor, and public interest lobbying organizations alike.

We strongly oppose provisions in the legislation which would require disclosure of the amount of dues paid by AHAM member companies. This provision would make

public proprietary information as our dues structure is based upon company sales data. AHAM proposes, instead, that the Subcommittee amend this provision to require full disclosure of lobbying organization membership and the basis upon which membership dues or contributions are derived. We are attaching as Exhibits 1 and 2 examples of such information for our association.

AHAM opposes inclusion of sales contacts with executive agencies in the definition of "lobbying activities." Such contacts are made by such a variety of company personnel and can be so frequent as to unreasonably burden companies doing business with the government while yielding information of dubious value to the purposes of the legislation.

We also oppose including the organizing and communicating of "grass roots legislative" activity in the definition of "lobbying activities" since such activity is an ongoing information dissemination of any organization, such as ours, and it is nearly impossible to differentiate communications relating to legislation from the myriad of total communications to our membership. In any event, such communications are directed to private citizens rather than legislators and as such as not truly "lobbying communications."

We sincerely hope that the full Committee can report lobbying reform legislation which is fair to all lobbying organizations and does not unduly burden the relationships between business and government.

Respectfully submitted,

GUENTHER BAUMGART,
President.

EXHIBIT 1

Major Appliance Members

Absocold; Addison; Arvin; Blackstone; Boston Stove; Broan; Carrier; Design & Manufacturing; Ebco; Fedders, Airtemp, Norge, Fedders Refrigeration; Friedrich; General Electric, Major Appliance Business Group; General Motors, Frigidaire Division; Gerling Moore; Glenwood Range.

Hardwick Stove; Hoover; In-Sink-Erator Division of Emerson Electric; Jenn-Air; KitchenAid-Hobart; Litton; Magic Chef, Gaffers & Sattler; Maytag; McGraw-Edison, Air Comfort, Modern Maid, Speed Queen, Intl. Metal Products; Natl. Union Electric, Emerson Quiet-Kool; Preway; Revco Rockwell International, Admiral; Roper; Tappan, Anaheim, O'Keefe & Merritt.

Vernco; West Blend; Whirlpool; White Consolidated Industries, Athens Stove Works, Franklin-Freezer Division, Franklin-Laundry Division; Gibson Products, Belding, Gibson Appliance, Greenville Products; Kelvinator, GR Manufacturing, Kelvinator Appliance, Kelvinator Intl., Kelvinator Comm. Prods.; White-Westinghouse, White-Westinghouse Appl., Columbus Products, Mansfield Major Appliance, Edison Products.

Portable Appliance Members

Aluminum Specialty; American Electric; Arvin; Capitol Products; Clairol; Conair; Farberware; General Electric; Gillette; Hoover; Intermatic; KitchenAid-Hobart.

Markel Electric; McGraw-Edison, Port. Appl. & Tool, Time Products; Metal Ware; Mirro Aluminum; National Presto; Regal Ware; Richmond Cedar; Rival; Titan.

Salton; SCM Corporation, Proctor-Silex; Scovill, Dominion, Hamilton Beach; Son-Chief, Black Angus; Sperry Remington; Sunbeam, Oster; Superior Electric; Vita Mix; Waring; Wear-Ever; West Bend.

EXHIBIT 2

AHAM Dues Schedule Major Appliance Department Membership

1. Annual Dues are composed of:

(a) \$395 per million, for the first \$25 million of sales; plus \$325 per million, for the next \$225 million of sales (\$25-\$250 million); plus \$300 per million, for the next \$250 million of sales (\$250-\$500 million); plus \$50 per million, for the next \$200 million of sales (\$500 million-\$700 million);

(b) Plus \$50 per million for all sales.

2. There is a \$300 annual minimum per product line.

3. Initiation fee: For new members an initiation fee equal to 1/6 of each of the first four quarters dues will be charged.

Dues Instructions

1. Dues are computed on the basis of each calendar year's sales.

2. Dues are payable quarterly in accordance with Article IV of AHAM's Bylaws. Quarterly amount is to be based on sales for preceding calendar quarter. Dues payments are due within thirty days after the close of the quarter to which they apply.

3. Dues are based on factory price which is defined as the published cost to the distributor, excluding only the following specific items: freight; regular cooperative advertising; and charges which may be made for warranty; and excise taxes if imposed.

4. Dues are applicable to all products manufactured by AHAM member in AHAM department to which member belongs. They are applicable to no products outside AHAM.

(a) If one member buys products from another, the purchaser pays dues on them; the seller does not.

(b) If a member buys products from a non-member, the purchaser pays dues on them. Thus all products will be accounted for; there will be no overlap.

(c) Private brand sales are included in members' dues computations (unless sold to another member—see above).

5. Subject to annual review by AHAM's Board of Directors, gas range sales will be exempted from the AHAM dues computation.

Plus 9 percent temporary increase for 1977 to fund engery-related litigation.

STATEMENT BY THE NATIONAL CANNERS ASSOCIATION

Legislation providing for the public disclosure of lobbying activities cannot be evaluated without establishing certain guidelines that NCA's view should consist of the following three criteria:

1. No legislation should infringe upon the exercise of First Amendment rights. The impact of disclosure alone even though unintended can be to suppress speech. Accordingly, disclosure requirements should be reasonable from the standpoint of all those potentially affected by them; otherwise, past experience under the existing Federal Regulation of Lobbying Act suggests that the entire fabric of regulation may fail.

2. Existing or proposed laws, or rules and regulations, that adequately meet the needs with which lobbying disclosure legislation purports to deal should not be duplicated. Examples of such legislation and rules are the Freedom of Information Act, the Government in the Sunshine Act and House and Senate Codes of Ethics.

3. Disclosure requirements should be clear, workable and unburdensome. If compliance is costly, the communication of views to the Congress may be suppressed. And just as importantly, recent experience under the Federal Election Campaign Act demonstrates that the advantage to the press and the public of disclosure may be lost if reporting requirements are too expansive.

Applying these guidelines to some of the key provisions of lobbying disclosure legislation suggests the following:

1. The thresholds that cause a person to be labeled a lobbyist and trigger registration and reporting requirements should not require detailed records simply to prove the negative—that is, that an organization is not required to register. NCA believes that the "legislative agent" threshold should be based on expenditures and the "in-house" lobbyist threshold should be based on the number of days that an employee of an organization spends in making lobbying communications.

2. Lobby solicitation activities should neither trigger registration nor be subject to reporting. The Supreme Court has strongly implied that it would be unconstitutional to require disclosure of lobbying solicitation activities.

3. The Home State Exemption recognizes the special nature of contacts to "Home State" Members of Congress. The types of organizations potentially affected by proposed lobbying disclosure legislation, however, as a practical matter are constituents of a state's entire delegation and NCA recommends that the Home State Exemption be broadened to reflect this fact.

4. There is no compelling reason to make public the identity of, and amounts contributed by, contributors to a registered lobbyist, as would be required under H.R. 1180 and H.R. 5795. The disclosure requirements in the Federal Election Campaign Act apply with respect to the transmittal of political contributions and do not justify such broad disclosure in legislation dealing with the transmittal of information to Members of Congress. Only the identity of those who contribute a sufficient amount to exercise "control" over a registered lobbyist should be subject to disclosure.

5. The primary effect of the disclosure requirements will be to inform Congress and the public generally as to lobbying efforts, so that in the future what appears to be undue influence in particular areas or by particular groups can be counteracted. Thus, the disclosure requirements should be straightforward and limited to the items listed in the attached statement.

6. There seems little to be gained by extending coverage of lobbying disclosure legislation to Executive Branch contacts. By virtue of the Freedom of Information Act, the Government in the Sunshine Act and court decisions such as the recent

Home Box Office case, there already exists a comprehensive scheme for providing broad disclosure of information relating to Executive Branch contacts.

7. Coverage of gifts is unnecessary in light of the rules contained in the recently revised House and Senate Ethics Codes, regulations applicable to unofficial office accounts under the Federal Election Campaign Act, and proposals for Financial Disclosure Legislation.

NCA feels that none of the bills discussed in this statement—namely, H.R. 1180, H.R. 5795, H.R. 6202 and H.R. 5578—is fully satisfactory. On balance, however, NCA feels that H.R. 6202 and H.R. 5578, subject to the modifications recommended herein, represent the best approaches. The thrust of these bills is reasonable from the standpoint of those affected by them and at the same time serves the goal of disclosure to the Congress, the public and the press.

The National Cannery Association (NCA) is a nonprofit trade association of more than 500 members, who represent approximately 90 percent of the national production of canned foods. NCA is registered under the 1946 Federal Regulation of Lobbying Act (2 U.S.C. Section 261 et seq.) and currently files quarterly reports with the Clerk of the House and the Secretary of the Senate. This statement reflects the concerns of both NCA and its members with regard to proposals for public disclosure of lobbying activities.

The right to petition the government and to communicate one's views to the Congress is vital to a government in which laws are made by and for the people. The Congress can legislate effectively only if it is fully informed; and lobbyists help to provide the Congress with helpful information, pro and con, on which to base public policy decisions. This information is of increasing importance as each year the legislation upon which Congress must act becomes more sophisticated, technical and complex.

Presently, your Subcommittee has before it at least four bills—H.R. 1180, H.R. 5795, H.R. 6202, and H.R. 5578—which would require lobbyists to register and report their "lobbying activities." Lobbying activities, it is said, should be disclosed in a timely fashion in order to provide the Congress, the Executive Branch and the public with a fuller understanding of the nature and scope of such activities.

Regardless whether one agrees or disagrees with the proposals which have emerged for lobbying disclosure legislation, it is time to focus upon their very real impacts, intended or not. While these proposals differ in a number of respects, they follow a similar pattern which suggests that any lobbying disclosure legislation will basically do the following: (1) define certain lobbying thresholds; (2) require organizations which exceed such thresholds to register with the Comptroller General of the General Accounting Office; and (3) require regular reports on the nature and scope of lobbying activities by such registered lobbyists. Still unresolved, however, are the definition of lobbying thresholds and the contents of disclosure statements.

This legislation cannot be evaluated without first establishing certain guidelines that, in our view, should consist of the following three criteria:

1. No legislation should infringe upon the exercise of First Amendment rights. The proposals for lobbying disclosure legislation purport neither to regulate nor limit lobbying in any way, but merely to require disclosure of lobbying activities. The problem is, however, that unless disclosure requirements are clear and reasonably drawn, the impact of disclosure alone, even though unintended, can be to suppress speech. The Supreme Court has expressly stated that concern for the indirect impact of disclosure legislation upon the exercise of First Amendment rights is necessary in order to fully protect these rights:

In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action . . . [R]ecognition of possible unconstitutional intimidation of the free exercise of the right to advocate underly this Court's narrow construction of the authority of a congressional committee investigating lobbying and of an Act regulating lobbying, although in neither case was there an effort to suppress speech.

NAACP v. Alabama, 357 U.S. 449, 461 (1958).

Indeed, it was this same concern that led the Supreme Court, as indicated in the above passage, to construe narrowly the existing Federal Regulation of Lobbying Act—so narrowly, in fact, that most everyone considers the existing law entirely ineffective. To avoid repeating this past experience, the disclosure requirements of new legislation should be clear and reasonable and should not infringe the free exercise of the First Amendment right to petition the government: whenever there are doubts as to whether disclosure would have a chilling effect upon the exercise of First Amendment rights, we submit that such doubts should be resolved in favor of the First Amendment right.

It is important, we feel, to keep in mind that this legislation will apply nationwide—to every business, corporation or other organization, wherever located. Many organizations, believing they have every right freely to contact the Members of Congress, probably will be shocked and affronted to discover they must disclose such contacts, or face criminal penalties if they fail to do so. Faced with the choice of assuming a Federally-imposed reporting obligation or not contacting Members of Congress, many such “Washington outsiders” will choose not to contact rather than disclose, if the disclosure requirements are unduly burdensome. This should not be allowed to happen. Disclosure requirements should be reasonable from the standpoint of all those potentially affected by them; if they are not, past experience suggests that the entire fabric of disclosure may fail.

2. Duplication with other legislation which serves the same purpose as any portion of a lobbying disclosure proposal should be avoided. Other legislation or regulations that already exist or may be promulgated in the near future may adequately meet the needs with which lobbying disclosure legislation purports to deal. Those that come immediately to mind are the Government in the Sunshine Act, the Federal Election Campaign Act, the Freedom of Information Act, recently-passed House and Senate Ethics Rules, Agency Ethics and Conflict of Interest Rules and proposals for Financial Disclosure legislation. Such laws, or rules and regulations, or proposals therefor should be closely examined to avoid the cost of lobbying disclosure legislation duplicating any of them.

3. Disclosure requirements should be clear, workable, and unburdensome. The administrative burdens and costs of disclosure requirements of lobbying disclosure legislation are a principal concern of those that are likely to be affected by such legislation. Many organizations have feared that a staff person might be required to spend an inordinate amount of time keeping records and filing reports in order to comply with lobbying disclosure legislation. As the costs of complying increase, so too does the likelihood that the communication of views to Congress will be suppressed. And just as importantly, the advantage to the press and the public of disclosure may be lost if reporting requirements are too expensive.

Recent experience with reporting requirements under the Federal Election Campaign Act (FECA) underscores these concerns. Approximately one half of the Federal Election Commission's legislative recommendations in its 1976 Annual Report sought to simplify the reporting requirements of the FECA. The reasons given for this need for simplification were that:

A major goal of campaign financing legislation should be the facilitating of participation in the political process. Burdensome and cumbersome requirements and procedures only blunt the impact of reform legislation and discourage honest people from entering politics. . . .

The 1974 Amendments attempted to reduce the number of reports required to be filed, but in 1976 many candidates and committees actually were required to file more reports. Implementation of the following recommendations would drastically reduce the number of reports required to be filed, while actually facilitating public disclosure. Presently, the large number of excess reports and requirements. . . make it more difficult for the press and the public to effectively use campaign financing reports. Federal Election Commission, Annual Report 1976, P. 61 (emphasis added).

Similarly, reasonable disclosure requirements are essential to the real effectiveness of lobbying disclosure legislation.

Applying these guidelines to some of the key provisions of lobbying disclosure legislation suggests the following:

1. Lobbying Thresholds. One of the most troublesome items with respect to the proposals for lobbying disclosure legislation has been the definition of the thresholds that cause a person to be labeled a lobbyist and trigger registration and reporting requirements. All the bills presently before your subcommittee contain two thresholds, one of which depends upon whether an organization hires outside agents to engage in lobbying, while the other depends upon whether an organization's own employees perform its lobbying activities—a “legislative agent” threshold and an “in-house” lobbyist threshold, respectively. H.R. 5795 also contains a “lobbying solicitation” threshold which, as discussed below, we do not believe should be a threshold at all.

H.R. 1180, H.R. 5795, H.R. 6202 and H.R. 5578 all adopt the approach that the “legislative agent” threshold should be based on expenditures paid during a calendar quarter to a legislative agent to engage in lobbying communications. NCA agrees with this approach.

By contrast, there is no general agreement as to what the “in-house” lobbyist threshold should be based upon. H.R. 1180 would base this threshold upon whether

20 percent or more of at least one employee's time during any quarter was spent engaged in making or preparing lobbying communications; H.R. 5578 uses the same percentage test but combines it with an expenditure threshold of \$2500. H.R. 5795 uses an "hours" test under which an organization would be a "lobbyist", if at least one employee spends thirty or more hours in any quarter in making lobbying communications or solicitations or if at least two or more employees spend fifteen or more hours during such period in making lobbying communications or solicitations. H.R. 6202 adopts the approach that an organization would be a "lobbyist", if it makes or causes to be made by its officers, directors, agents or employees twelve or more oral lobbying communications in any quarterly period.

NCA opposes the proposed "in-house" lobbyist thresholds in H.R. 1180 and H.R. 5578 because they would be extremely difficult to administer. Detailed records would be necessary simply in order to prove the negative—that is, that an organization is not required to register. Similarly, we feel that the "hours" approach in H.R. 5795 poses difficulties in its application. When does a communication begin or end for purposes of determining whether the clock has been running on the thirty hour limit? We think that the "contacts" test in H.R. 6202 is the simplest test to apply; but its impact may not be entirely fair since it does not distinguish between, for example, a one-minute contact and an hour-long contact. An approach similar to that in H.R. 6202, but one which would accommodate such qualitative differences, might be a threshold based on the number of days that an employee of an organization spends in making lobbying communications. Under this test, a day would be counted regardless of the number of hours spent or contacts made, so long as the employee made at least one lobbying communication. The number of days could be set so as to approximate a "twenty percent of time" threshold, yet the threshold would not require the detailed records necessitated by all of the thresholds that thus far have been proposed.

Finally, all organizations which exceed the thresholds should be covered by any lobbying disclosure legislation. There should be no blanket exemption for volunteer staff or unpaid officers or directors, if an organization itself has paid staff, devotes significant resources to lobbying activities, and directs or coordinates the lobbying activities of such volunteers, and such volunteers, like employees or retained persons, engage in a significant amount of lobbying. These organizations would seem to have the resources to comply with the disclosure requirements, particularly if the reporting requirements are simple and reasonable, as they should be. To enhance the goal of public disclosure, all organizations which engage in lobbying in excess of the thresholds should be treated as similarly as circumstances permit, and no one category of groups should be singled out for special treatment.

2. Lobbying Solicitation. Both H.R. 1180 and H.R. 5795 attempt to cover in some manner so-called lobbying solicitations. "Lobbying solicitation" is defined basically as any oral or written communication directly urging, requesting or requiring another person to make a lobbying communication. See, section 2(10) of H.R. 1180 and section 2(11) of H.R. 5795. One need only read this definition to see its tenuous connection with the commonly accepted meaning of lobbying as direct communications with Members of Congress. "Lobbying solicitations" may or may not later be followed by such direct contacts; and even when contacts are made, they may not have been motivated by the solicitation but could well have been the result of the individual's or organizations's own initiative.

Disclosure of lobbying solicitation raises serious constitutional questions. Although the Supreme Court never has addressed the issue directly, it has strongly implied that disclosure of lobbying solicitation is unconstitutional. In *U.S. v. Harriss*, 347 U.S. 612, 620 (1954), the Supreme Court construed the existing Federal Regulation of Lobbying Act (2 U.S.C. Section 261 *et seq.*) to apply only to " 'lobbying in its commonly accepted sense'—direct communications with members of Congress on pending or proposed Federal Legislation." Similarly, in *U.S. v. Rumely*, 345 U.S. 41 (1953) the Court upheld the constitutionality of a House resolution authorizing the investigation of lobbying activities only by construing it narrowly not to apply to direct efforts to influence legislation.

We think it likely that any bill that requires an organization to assume the burdens of a "lobbyist" solely because it engaged in lobbying solicitation would be unconstitutional. Although we support the position taken in H.R. 6202 and H.R. 5578 that lobbying solicitation activities should not be a reportable event, we submit that should a provision be adopted that requires disclosure of lobbying solicitations by registered lobbyists, it should be drafted with extreme care. Lobbying solicitation should only include communications which expressly request, urge or direct others to contact Member of Congress. Cf. *Buckley v. Valeo*, 424 U.S. 1 (1976). Communications which simply describe pending legislation, explain its effects upon an industry or set out

an organization's position with respect to the legislation should not be considered solicitations, unless they include an express request to contact Members of Congress. Furthermore, solicitations must be with respect to a specific matter before Congress or must urge others to request the introduction of a specific matter. Thus, communications that simply urge others to exercise their right to communicate with their legislative representatives should not be covered. Nor should communications which request others to urge their Representatives and Senators to support generally, for example, legislation that will promote a private enterprise system or provide a more equitable tax policy for business, be encompassed within any definition of lobbying solicitation.

The only arguably legitimate concern with "lobbying solicitations" is with "artificially stimulated" lobbying. Such lobbying is typified by those advertisements that merely require the reader to clip out a printed statement, sign it, and send it to a Member of Congress. As a practical matter, we expect that the Congress has little difficulty in discerning such artificial communications. If a solicitation causes people to lobby as a result of learning facts or arguments, their communications should not be discounted by either the Congress or the public. Limiting the scope of "lobbying solicitations" to express requests, therefore, would insure that disclosure focuses upon solicitations that result in artificial lobbying communications, rather than in communications made on account of the views and information conveyed.

3. Home State Exemption. The special nature of contacts to "Home State" Members of Congress, and their staffs, has been given explicit recognition in all the bills presently before your Committee. We agree fully with the principle reflected in these provisions. We also urge that contacts by legislative agents on behalf of an organization be clearly included within the scope of this exemption. Furthermore, we submit that the Home State Exemption should apply with respect to the entire state delegation. Limiting the exemption to Representatives from the District in which an organization has its principal place of business ignore the actual economic significance of most business entities. In urban areas, for instance, a corporation often will draw employees, purchase supplies, and otherwise have an economic impact upon more than one District. It also is typical for a corporation to have a principal place of business in one District and plants scattered throughout the state in other Districts. One group which we feel would be particularly adversely affected by limiting the exemption to the "Home District" would be state trade associations which represent members throughout a state and often operate on very low budgets; these organizations should be treated as constituents of their entire statewide delegation. In short, we submit that the types of organizations potentially affected by the proposed lobbying disclosure legislation may have a principal place of business in a particular District, but as a practical matter, are constituents of the state's entire delegation and the Home State Exemption should reflect this fact.

4. Dues Disclosure. H.R. 1180 would require disclosure of the identity of, and amount contributed by, all contributors of \$2,500 or more to a registered lobbyist. H.R. 5795 would require the disclosure of the identity of all contributors and the categorization of contributors according to the range (rather than exact amount) of their contributions. By contrast, neither H.R. 6202 nor H.R. 5578 would require the disclosure of the identify of, or amounts contributed by, contributors to a registered lobbyist.

NCA fully supports the position reflected in H.R. 6202 and H.R. 5578 that disclosure of contributors and the amounts they contribute should not be required. The broad disclosure of membership lists and dues required under H.R. 1180 and H.R. 5795 we feel certain would be unconstitutional. The Supreme Court consistently has declared unconstitutional attempts to require disclosure of membership lists in circumstances where the exercise of First Amendment rights would otherwise be restricted. *NAACP v. Alabama*, 357 U.S. 499 (1958); *Bates v. Little Rock*, 361 U.S. 516 (1960); and *Gibson v. Florida*, 372 U.S. 539 (1963). Furthermore, in most, if not all, cases, the amount spent on lobbying would be a small fraction of the sums disclosed. In the case of trade associations, there is an added danger that such requirements would cause disclosure of confidential and proprietary information relating to their corporate members.

The proponents of the dues disclosure provisions in H.R. 1180 and H.R. 5795 appear to have assumed that precedents in the federal election law area make permissible a requirement that the identity of, and amounts contributed by, contributors to a registered lobbyist be disclosed.¹ We do not think, however, that *Buckley v. Valeo*, 424 U.S. 1 (1976), which permitted disclosure of the identity of contributors in excess of \$100 to a federal election campaign, establishes a precedent for a \$2,500 threshold in lobbying disclosure legislation. The contexts in which federal election laws apply and lobbying disclosure legislation would apply are significantly different. While in

¹ See, for example, Cong. Rec. H. 11409 (Sept. 28, 1976, Part II).

each case legislation may have as its principal purpose the prevention of corruption, the danger of corruption is far greater when the transmittal of political contributions is involved, as opposed to the transmittal of information. Furthermore, the Federal Election Campaign Act, unlike any of the proposals for lobbying disclosure legislation, is a regulatory statute, not merely a disclosure statute. The FECA imposes limits on political contributions and enforcement of these limits requires disclosure of the amounts contributed. Lastly, the amounts subject to disclosure under the FECA are in their entirety, not simply in some small part, political contributions.

As a practical matter, moreover, no purpose would be served by requiring organizations to make public their membership lists. The National Canners Association has 500 members, none of whom "control" NCA; other organizations probably have thousands of contributors, none of whom control those organizations. The purpose of a "dues disclosure" provision is to disclose the identify of someone who is in control of an organization. *See*, Cong. Rec. H. 11408 (Sept. 28, 1976, Part II). This purpose could be served by requiring disclosure of the identify of organizations who contribute a significant percentage of an organization's income—reflecting an ability to exercise control over the organization. We think that this percentage figure should be fifty percent; but in any event it should not be less than ten percent.

5. Disclosure Requirements. To protect fully the First Amendment right to petition the government and to insure that lobbying disclosure requirements do not have a chilling effect upon the exercise of such rights, disclosure requirements should be clear, workable and unburdensome. The effectiveness of any legislation will depend upon the reasonableness of the disclosure requirements. The items required to be disclosed should be straightforward:

The identity of the lobbyist (i.e., the name and address of the organization; the nature of its business or activities; the names of its directors and chief executive officer; and, in the case of voluntary membership organizations or organizations funded primarily through voluntary contributions, the approximate number of individuals who are members of or contributors to the organization, the approximate number of organizations which are members of or contributors to the organization and a description of the type of such organizations; a general description of the procedures by which the organization establishes its position with respect to issues before Congress, and a general description of the geographic distribution and common interests of the persons who are members of our contributors to the organization).

The identity of any individual or organization that pays dues or makes contributions to the lobbyist which exceed 50 percent of the lobbyist's total income.

The issues with respect to which the reporting organization lobbied and its position for or against such issues.²

Total fees paid to all legislative agents for making lobbying communications.

Total direct expenditures for lobbying communications made by the reporting organization's officers, directors or employees.

The identity of legislative agents to whom the organization paid fees in excess of the threshold amount to engage in lobbying communications.

The identity of officers, directors or employees of the reporting organization who engaged in lobbying communications in excess of the threshold amounts.

A description of any express lobbying solicitation made by the reporting organization (or a sample of solicitation material), where such solicitation was intended to reach 500 or more persons, 25 or more officers or directors, 100 or more employees, or 12 or more affiliates.

It should be kept in mind that disclosure for the most part will be after-the-fact. That is, Members of Congress and the public generally will know how much money particular lobbyists spent or with respect to which issues they lobbied only after the issues have been acted upon in committee or on the floor. Thus, the primary effect of this legislation will be to inform Congress and the public generally as to lobbying efforts, so that in the future what appears to be undue influence in particular areas or by particular groups can be counteracted. A simple and concise overview of lobbying activities would best serve this purpose and should therefore be the goal of registration and reporting requirements.

² Possibly the reporting form could provide for the breakdown of these issues according to subject matter categories. This might be done, for example, by listing the issues according to House or Senate Committee Jurisdiction.

6. Contacts with the Executive Branch. Both H.R. 1180 and H.R. 5795 extend disclosure to contacts other than traditional lobbying contacts. That is, they cover to some extent communications with the Executive Branch. Such disclosure requirements, however, would overlap with the requirements already imposed by the Freedom of Information Act (5 U.S.C. Sec. 522) and the Government in the Sunshine Act (5 U.S.C. Sec. 557(d)). The Freedom of Information Act was enacted in 1966, to guarantee public access to government information, and substantially broadened in 1974 to insure such access. It provides for disclosure of all records of Executive Branch agencies, subject only to certain specific exemptions. Under the FOIA, the public can learn not only the frequency and general subject matter of communications between outside parties and agency personnel, but can obtain copies of written communications and or summaries of oral conversations. For instance, under regulations promulgated by the Food and Drug Administration, pursuant to the Freedom of Information Act, all correspondence, all minutes of meetings and all summaries of oral conversations, telephonic or otherwise, with members of the public, members of Congress, organization or company officials, or other persons, except other members of the Executive Branch or special government employees, are subject to public disclosure. See 21 CFR Subsec. 4.103-4.104.

In addition, on September 13, 1976, the Government in the Sunshine Act was signed into law, which prohibits ex parte Communications with agency personnel in connection with certain adjudicatory and rulemaking proceedings and requires that if made such prohibited communications must be disclosed.³ The courts also have been active in evolving rules in the executive branch area. In a recent case, *Home Box Office, Inc. v. FCC*, — F.2d — (No. 75-1280, D.C. Cir., March 25, 1977), the District of Columbia Court of Appeals held that in informal rulemaking proceedings (not covered by the Sunshine Act) it is imperative that agency officials involved in the decisional process of a rulemaking shun ex parte contacts and if such ex parte contacts occur the substance of the contacts must be reduced to writing and put in a public file.

Thus, there already exists a comprehensive scheme for providing broad public disclosure of information relating to Executive Branch actions, including lobbying communications. Indeed, some such communications are flatly prohibited. The system in existence differs from the lobbying disclosure proposals in that it requires disclosure by the agency to which the contacts are made, rather than disclosure by the organization making the contacts. Similar proposals for logging of contacts with Congress have been made, but were rejected during the deliberation of S. 2477. See Cong. Rec. S. 9283-9286 (June 14, 1976).

Although such a system may not be appropriate for the Congress which is concerned with broad, policymaking that affects the general public, it does appear suited to the Executive Branch which concerns itself with implementing legislation through actions which for the most part affect a relatively small number of persons. Admittedly, the Freedom of Information Act does not provide for regular summaries of Executive Branch contacts; nevertheless, it provides the public with the means of obtaining information about such contacts with respect to agency actions of sufficient public importance. In such cases, moreover, a FOIA request has the advantage that it will produce far more detailed information about these contacts than could be obtained from a lobbying disclosure report. Thus, there seems little to be gained by extending coverage of lobbying disclosure legislation to Executive Branch contacts and whatever additional information might be obtained hardly seems worth the added administrative and recordkeeping costs imposed upon both the government and the reporting organizations.

7. Gifts. H.R. 1180, H.R. 5795, and H.R. 5578 all would require disclosure by a registered lobbyist of gifts to Members of Congress. H.R. 6202 would not, however; and NCA agrees with the position reflected in H.R. 6202 that this is an area in which existing and/or proposed legislation and regulations provide ample coverage. Under the Federal Election Campaign Act of 1971, as amended, legislators are required to report semi-annually contributions to their unofficial office accounts. See sections 113.3 and 113.4 of the FEC's proposed regulations published in the Federal Register on August 25, 1976. Furthermore, both the House and the Senate have passed rules banning unofficial office accounts altogether as of January 1978.

³ See also, Section 1201 of the Tax Reform Act of 1976, 26 U.S.C. Sec. 6110, which provides for disclosure of all rulings, technical advice memoranda, and determination letters issued by the Internal Revenue Service, and, upon request, background file documents relating thereto. The background file documents include any communication, written or otherwise, between the IRS and any outside person in connection with such matters.

Indeed, both the House and the Senate have completely revised their Codes of Ethics, and under the new rules, full disclosure is required as to all gifts received by Members of Congress. In addition gifts aggregating over \$100 per year from persons or organizations with a direct interest in legislation before Congress are prohibited. Such rules would seem to make disclosure of gifts by lobbyists unnecessary. Furthermore, similar proposals for Financial Disclosure appear likely to be enacted with respect to Executive Branch officials. Accordingly, we urge that developments in these other areas be examined closely to avoid unnecessary duplication by lobbying disclosure legislation.

Conclusion. NCA hopes that these comments will provide some helpful input to your Subcommittee's consideration of various proposals to reform the present Federal Regulation of Lobbying Act. We feel that none of the proposals discussed in this statement—namely, H.R. 1180, H.R. 5795, H.R. 6202 and H.R. 5578—is fully satisfactory. On balance, however, we feel that H.R. 6202 and H.R. 5578, subject to the modifications recommended herein, represent the best approaches suggested thus far. The thrust of these two bills we feel is reasonable from the standpoint of those affected by them and at the same time serves the goal of disclosure to the Congress, the public and the press.

NATIONAL ASSOCIATION OF COUNTIES,
Washington, D.C., May 23, 1977.

Staff contact: Aliceann Fritschler

Bill: Regulation of Lobbying (H.R. 1180)

Status: Mark up in House Judiciary Subcommittee beginning May 23rd.

NACo Position:

Elected county, city and state officials and their employees should be exempted from registration as lobbyists the same as elected federal officials and their employees.

Background:

The Federal Regulation of Lobbying Act (2 U.S.C. S. 261) exempts from registration as lobbyists "public officials acting in their official capacity." In *Bradley v. Saxe* 338 F. Supp. 53 (D.D.C. 1974) Judge Gerhard Gesell held that the officers and employees of the National Association of Counties, National League of Cities and U.S. Conference of Mayors are exempt from registration under the present law so long as such people engage in lobbying solely on the authorization of a public official acting in his official capacity and receives compensation from public funds. NACo believes that county officials and their employees, whether hired by a single county or group of counties should be considered in the same category as public officials at the federal level who are exempted from registering under HR 1180.

NACo is deeply concerned that the laws being considered by Congress to improve the present regulation of lobbying would not exempt our employees who have been hired by public bodies joining together in an association whose costs are paid for by public funds. We feel that in a federal system the states and their local subdivisions have a right and a duty to join together to insure that their needs and views will be heard by the various branches of the federal government. HR 1180 does exempt the employees of individual states, counties and cities, but not when governments join together.

It is not possible or practical for each of the 3,101 counties in this country to have their own representative in Washington to help elected officials to understand what federal legislative or administrative actions mean to county governments. Therefore, in 1935 counties joined together and pooled their resources to form a national organization to represent all counties in Washington before federal, administrative and Congressional bodies.

By virtue of a county's membership, all its elected and appointed officials become participants in an organization dedicated to improving county government serving as the national spokesman for county government; acting as a liaison between the nation's counties and other levels of government; and achieving public understanding of the role of counties in the federal system. Meeting in annual and special meetings the membership acts on policy questions and chooses the Association's Board of Directors. The Association is funded by public funds appropriated by each member county on the basis of population. Policy is determined by a system of weighted voting also based on population. The county governing board determines which of its elected or appointed officials shall cast its votes. All meetings of the association are open to press and public.

In his decision, Judge Gesell described the situation faced by local governments today:

"The involvement of cities, counties and municipalities in the day-to-day work of the Congress is of increasing and continuing importance. The Court must recognize that the voice of the cities, counties and municipalities in federal legislation will not adequately be heard unless through cooperative mechanisms such as plaintiff organizations they pool their limited finances for the purpose of bringing to the attention of Congress their proper official concerns on matters of public policy."

The impact of federal actions on counties cannot be underestimated. Approximately 25 percent of state and local budgets come from federal aid. The federal impact on counties is so great that some counties have full time employees in Washington to keep county officials informed about federal actions. Those individuals employed by a single county would not be required to register under H.R. 1180 but employees hired by counties joining together in a national association would be subject to the provisions of the Act. Since all of these employees are paid for by publicly appropriated funds under the direction of public officials, we cannot see any difference between employees of a group of counties and employees of a single county who represent county interests before Congress and administrative agencies. This seems to discriminate against small and less affluent counties who must look to a NACo employee for assistance and representation.

County officials believe there is a need for more intergovernmental contact by public officials and their staffs at the federal, state and local levels. A great deal of time is spent by NACo employees answering inquiries from Congressmen and federal agencies concerning county problems in administering and implementing federal laws.

In his decision concerning the existing Lobbying Act, Judge Gesell made a clear distinction between special interest groups and those groups representing public officials:

"Here there can be no doubt that all officers and employees of the plaintiff organizations are engaged in lobbying solely for what may properly be stated to be the "public weal" as conceived by those in Government they represent who are themselves officials responsible solely to the public and acting in their official capacities. The narrow interpretation of the Act should be maintained to assure its constitutionality. Significantly, the legislative history reveals the definition of "organization" was intended to apply to "business, professional and philanthropic organizations," not to organizations of public officials and their agents."

The associations representing states, counties and cities are already recognized as partners in the federal system in federal legislation and regulation.

The Advisory Commission on Intergovernmental Relations Act, Public Law 86-380, Section 3 names the National Association of Counties, National League of Cities, U.S. Conference of Mayors, National Governors Conference as the groups responsible for recommending to the President candidates for appointment to ACIR.

The Office of Management and Budget Circular A-85 requires that each of the state and local public interest groups be consulted on major agency regulations, standards, procedures and guidelines, prior to final federal action. The courts upheld the right of states, counties and cities to this prior consultation in *NARC v. James T. Lynn* (Civil Action 2203-73 January 8, 1974, U.S. District Court, District of Columbia).

On February 25, 1977, President Carter issued a memo to heads of executive departments and agencies calling for more state and local involvement in major policy, budget and reorganization proposals which have significant state and local impact.

All of these actions and many more point to the uniqueness of the associations representing state, county and city elected officials and their employees in our federal system. We urge the Congress to recognize these governments' and their representatives' vital role in the federal system.

FRIENDS COMMITTEE ON LEGISLATION OF CALIFORNIA,
Sacramento, Calif., May 24, 1977.

DAVID LANDAU
American Civil Liberties Union, Washington, D.C.

DEAR DAVID LANDAU: Art Lipow asked me to write to you about the affect that Proposition 9—the Fair Political Practices Act—has had upon this organization in the hope that my comments may be helpful to you in drafting federal legislation. Lipow covers most of the main issues in his paper. All that I can really add are personal feelings and the experiences of our organization.

FCL is a statewide legislative action organization (Quaker sponsored) which supports four offices on a \$100,000 annual budget. The budget supports one full time lobbyist (myself) and two part time lobbyists who work a total of three quarters time. The balance of our staff works on organizational support, public education, and national

issues. It is possible that FPPC could complain that some of our support services are legislative in nature and therefore should be reported since the whole purpose of our organization is to promote legislative activism. However at present only the three of us register and only the budget for the Sacramento office, plus the costs of mailing our Newsletter and Action Bulletins are considered by us to be direct lobbying activities.

I feel that Prop 9 discourages ordinary people and small groups from participating in the legislative process. Its requirements are highly technical and cumbersome. The amount of actual information disclosed is minute in comparison to the bureaucracy of lawyers and accountants that administer the Act. I am aware of a number of organizations which have risked not registering for fear that compliance with the Act would draw attention to their lobbying activities thereby jeopardizing their tax status. Other organizations have avoided paying their staffs decently in hopes of staying beneath the financial reimbursement provisions of Prop 9. A number of grassroots candidates and low budget campaigns organized around ballot propositions have had to carefully evaluate whether they could "afford" to work in politics given the requirements of Prop 9. These observations are hard to substantiate since they refer to things that have not happened as a result of the Act—a negative reaction which cannot be measured.

In the first year that the FPP Act was in effect the auditing procedures, which are conducted by the Franchise Tax Board, were very detailed, in part because the reporting procedures were detailed. Since I had attempted to comply with the Act according to the letter of the law, the auditor found nickel and dime discrepancies in my reports which meant many added hours of his time and expense to the state. A number of fellow "cause" lobbyists asked me why I reported so much information—it would have made more sense, they said, just to "forget" about most private, social contacts. The fact is that Prop 9 is making crooks out of all of us.

It is important to add that I believe Prop 9 misuses the audit process. As the FPPC is set up, the only time reports are systematically read is during the audit. Every lobbyist is audited every year! This means that the Franchise Tax Board is actually administering the Act rather than randomly checking accounts, which is the proper function of an audit.

Finally, I feel that Prop 9 basically barks up the wrong tree—the problem is not disclosure but an unequal economic order. Standard Oil will always (or at least in the foreseeable future) have more money than we do to lobby. Local District Attorneys will always be able to free a DA when needed to chase to Sacramento to talk about criminals. These inequities will not be corrected by legislation.

Our organization does support public financing of campaigns and in this respect we differ from Art Lipow. If legislators were not dependent on lobbyists' contributions to stay in office some positive results might ensue for public interest groups. However, so far I have not seen a formula, or been able to devise one for myself, that does not favor incumbents and does not literally exclude third party candidates.

The ACLU Board member who spoke at the conference on political reform sponsored by the Center for Ethics and Social Policy said that political reform carries with it the same dangers that characterized the loyalty oath issue. Loyalty requirements didn't flush out any subversives—subversives were already adept at circumventing the law. The oath did trap conscientious, principled people, however.

Good luck with your project.

Sincerely,

LAURA MAGNANI,
Legislative Advocate.

NATIONAL AUDIO-VISUAL ASSOCIATION, INC.,
Fairfax, Va., May 25, 1977.

Re Lobbying Reform Legislation

HON. GEORGE E. DANIELSON,
Chairman, House Judiciary Subcommittee on Administrative Law and Government Relations, Washington, D.C.

DEAR CHAIRMAN DANIELSON: We appreciate your interest in developing fair and equitable lobbying legislation.

To assist you in your consideration of the various proposals, we thought you would want to know some facts about this association. We are similar to other associations representing small dealers, distributors, manufacturers and producers.

1. *Disclosure of Membership.* This Association is proud of its members and throughout the years, we have always made our membership list public. We publish it in our "Membership Directory" which may be purchased by anyone, and we publish it in our annual Audio-Visual Equipment Directory which is circulated as the "bible" of the A-V industry throughout the United States and around the world.

Companies which join NAVA are proud of their membership and include the fact of their NAVA membership in their advertising and catalogues, and on their letterheads, store windows, delivery and service trucks.

Therefore, we would have no objection to filling a legitimate request from a government agency for the names of the members of NAVA.

However, there are other associations which do not operate in the same way. They guard their membership lists and, at the request of their members, limit circulation of the list.

We believe that the public disclosure of an association membership list should be by choice of the association and should not be required by law. The fact that NAVA publishes its membership list should not be used as an argument for all associations to do the same.

2. *Disclosure of Dues.* This Association makes disclosure of dues to no one. Because dues are based on sales in the audio-visual marketplace, the disclosure would be (1) a violation of the terms of membership in this association, (2) a violation of a very strongly-worded NAVA Board Policy, and (3) an unwarranted exposure of private business information.

It may interest you to know that, as the person responsible for government relations, I am prohibited from knowing the dues payments of NAVA members. The chief operating officer of the association, our Executive Vice President, is also prohibited from access to dues information. The NAVA Staff, the officers and the Board of the Association are similarly barred from this information. If Congress requires revelation of dues, Members of Congress and the public will have access to information neither I nor the other leaders of this association have. Because NAVA dues are based on sales, the dues information is proprietary and its disclosure would hurt this Association and its member companies. Many companies will certainly drop out of the association if they are forced to reveal to the public their audio-visual sales as a condition of membership. We have an excellent reputation for keeping dues information absolutely private and confidential.

By the way, small family-owned A-V companies do have difficulty getting credit and winning bank financing. The quarterly semiannual or annual publication of their sales could easily hurt a company's stability in the money market.

Would NAVA agree to revelation of dues in groupings or categories, such as listing companies by dues amounts like \$100-\$200 or \$225-\$500? Such groupings or categories would still permit the reader to compute the audio-visual sales of the individual member companies. This is the kind of information which is denied under the Freedom of Information Act when a government agency is asked to reveal industry-wide sales figures of companies dealing with the government. We feel this information should be similarly denied under the banner of lobbying legislation.

What if Congress and the public have access to the dues paid by NAVA member companies—would you really have better insight into NAVA's legislative interest? Frankly, because NAVA makes no secret of its legislative positions and because we make no secret of who belongs to NAVA, I can see no purpose served by revelation of dues paid. In this association, we treat large and small companies alike. Each has an equal vote in association matters. We do not build our legislative efforts around the "big" or the "small" companies, but we work for them all. We represent an entire industry; we do not speak for individual companies. Dues information or any other measure of company size would be irrelevant in judging NAVA's legislative interests.

Any lobbying reform legislation which requires disclosure of dues would not only seriously damage this association and the companies which belong, but it would also create a small information-gathering government bureaucracy whose purpose would be to gather data which Congress will find useless.

3. *Actions which constitute lobbying.* Legislative action is a small part of our association's program. A major reason why companies belong to NAVA is to get information about what is happening in Washington, including what is happening on Capitol Hill. They seek this information because they need to know, in advance, what changes to expect in the future—new government regulations, trends in Federal spending, changes in laws affecting their customers. NAVA members rely on their Association for this information. They seek the information because they need to know what will affect their future marketplace.

Therefore, we do not believe that every mention in a NAVA newsletter of a bill, amendment or other Congressional action should be counted as a "lobbying solicitation". My experience here at NAVA has taught me this: If an association thinks a member should express his or her views on an issue, the association must so state, clearly and specifically, in a separate bulletin. A mere notation in a newsletter would be an entirely ineffective way to ask for "grass roots" views.

For many years, this Association has made very clear to our members what is and is not a lobbying solicitation. If we are asking our members to solicit Congress, we indicate it clearly by special bulletins which are marked and colored to identify their purpose. And we report all of these mailings as part of our quarterly lobbying report.

We do not believe that the added burden of reporting newsletter items and other informational communications will help enlighten anyone concerning our legislative interests. We already make it very clear to our members, and to Congress through our lobbying reports, those matters on which our members may wish to express their views.

4. *Recordkeeping.* At this time, it takes us one day four times a year (i.e., four working days per year) to complete and file our "lobbying reports". Yet, "lobbying" is a very small part of the overall program of this association. Usually we spend no more than a few days on each singular bill or amendment. Yet, it takes four days a year to compile and file in the lobbying report.

In making our lobbying report, we disclose all of our legislative interests. When there is any uncertainty at all, we disclose rather than omit an item.

In general, we don't object to the present system of reporting, even though it is burdensome and an expensive use of staff time. The forms we are presently asked to fill in could be modernized and streamlined.

However, we would be strongly opposed to any added recordkeeping. I think four days per year devoted to reporting to the government is quite enough. And we feel that our disclosures are already exceptionally full and complete—we list every bill in which we have an interest, we list every mailing we do in behalf of our interests, and we show how much of our funds are spent on legislative matters. We do not believe the public interest will be served by adding more recordkeeping.

Conclusion. The membership list of this association is not a closely-held secret but is published and widely distributed. Other associations operate in different ways and disclosure of membership should be left up to each individual association. The legislative positions of this association are not secret. The legislative actions of this association are done in public—we are covered by the press—and we report fully our legislative interests and expenditures in our quarterly lobbying report.

We are stongly opposed to the disclosure of our member's dues. And we strongly oppose added bookkeeping and recordkeeping—we are already spending four days a year making public the information Congress and the public need to know.

Finally, a special concern we hope you will consider: While larger associations may be able to sustain added requirements in the area of bookkeeping, recordkeeping and new types of "lobbying" disclosures, smaller associations cannot. While larger associations may have legislative staffs of 5-10, small associations like NAVA have only one person. There is a point at which the "government requirements" burden gets to be too much for that one person. And also, in the case of NAVA, we are primarily an association of very small local companies—10-15 employees per company. These are the companies which will bear the added cost of the paperwork, and these are the companies which will suffer if there is a mandatory disclosure of dues. These are not the "fat cats" but the "little guys," and I think that any legislation should take this fact into consideration. For these small companies, any added cost will have the effect of a special tax on their right to petition government, on their right to free speech. I think they have a right to be heard and am hopeful that their voice will not be muffled under a new layer of government lobbying regulations.

We would welcome an opportunity to discuss this matter further with you or to answer any questions you may have concerning the way in which this Association operates.

Sincerely,

KENTON PATTIE,
Vice President and Educational Director.

NATIONAL ASSOCIATION OF INDEPENDENT SCHOOLS,
Boston, Mass., May 27, 1977.

DEAR MR. DANIELSON: I am writing on behalf of the 775 private nonprofit elementary and secondary schools which are members of this Association, in regard to the various lobbying disclosure bills which have been submitted during this session of Congress.

We have studied the statement on this subject on May 13 to the Subcommittee by the American Council on Education and find that most of the circumstances described and conclusions reached by the representatives of higher education are equally applicable to this Association and its member schools. Form 990 must be filed annually by them as 501(c)(3) organizations was a major item in the 1976 Tax Reform Act, and for those which participate in lobbying there are detailed provisions for full reporting to the IRS under that measure.

It would be most unfortunate if our school heads and trustees were to be made subject to an additional statute which, by reason of its burdensome and costly compliance and requirements, would inhibit their efforts to keep the legislative and executive branches of our government informed about the problems and concerns of the institutions for which they are responsible. We urge, therefore, that any new lobby disclosure legislation keep to a minimum whatever record-keeping and reporting may be required of the private nonprofit section of American education, or better yet, make acceptable reporting requirements under already existing legislation.

Sincerely yours,

CARY POTTER,
President.

NATIONAL HEALTH COUNCIL, INC.,
Washington, D.C., May 27, 1977.

Hon. GEORGE DANIELSON,
Chairman, Subcommittee on Administrative Law and Government Relations, House Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter contains the views of the National Health Council, Inc., concerning legislation before your Subcommittee intended to reform existing laws governing lobbying registration and reporting. Our Council is composed of member organizations of varying size and interest, and all are free to act independently on legislative issues. However, some of the proposals before your Subcommittee contain provisions which would in our opinion be harmful to either all, or a large segment of these associations. Of special concern to us is the possible impact some of these bills may have on nonprofit associations, especially small ones, and public charities in particular. (Our membership is listed on the reverse side of this letterhead.)

Threshold for lobbying. Most associations which are members of the National Health Council have very limited resources devoted to lobbying. Indeed, there are a number which have no representation in Washington at all. The average health organization with an active Washington staff divides its time among a large variety of reporting, informational, public relations, and communications activities. Many staffs have one full-time professional responsible for conducting all these activities for a national association, or are dependent on part-time persons to complete these duties for them. Any threshold established in new law for identifying lobbyists should take into account this vast difference among private associations and should, in our opinion, set that threshold as high as possible. Without such a policy objective, new law will end up treating associations with very limited lobbying activity equal to those with extensive legislative programs. We believe this would be unfair and ultimately have a chilling effect on the less active, smaller organizations.

Moreover, because many associations concentrate their efforts primarily on gathering and communicating information about government activities we believe the threshold should be in dollars, rather than "number of contacts". The latter is not enforceable in our opinion, and can only lead to excessive reporting.

Although our Council has not formally identified a specific threshold to support, the proposal which comes closest to meeting our concerns is in H.R. 5578, establishing a \$2,500 per quarter threshold.

Reporting and coverage for public charities. Under new provisions of the 1976 Tax Reform Act organizations classified as public charities can now engage in a specified amount of limited, insubstantial lobbying. The new requirements will effect approximately half of our eight national members and thousands of their state and local chapters. Traditionally, these associations have engaged under the law in very limited amounts of legislative activity. Many have not lobbied at all. The new tax rules will require

the IRS to promulgate new reporting requirements. We urge you to include in any legislation approved by your Subcommittee a provision allowing associations affected by these IRS rules to satisfy new reporting and record-keeping requirements by filing their IRS report. This will eliminate duplicate reporting and record-keeping, and restrain increased costs. Added administrative costs for these associations will detract from the amount of funds available for charitable purposes.

Identification of contributors. While we understand the objectives of the proposals with regard to identification of contributors we believe you must take into account the special circumstances of membership associations and public charities. In the former, professional and other associations should not have to identify the names of bona fide members who belong to their associations for legitimate professional, educational or other reasons. An identification requirement could be extremely costly and time-consuming for these organizations and provide information which would in no way benefit Congress. Moreover, it would violate the privacy of individuals who in almost every case never get involved nor have a direct interest in the legislative process.

For public charities, this requirement could bring about a result which we believe your Subcommittee does not intend. The publication of names of contributors, even if limited to large contributors, can have a very chilling effect on public donations and substantially limit these contributions. Organizations in our membership which raise funds from the public are primarily interested in preventing or finding cures for such illnesses or disabling conditions as multiple sclerosis, muscular dystrophy, kidney disease, venereal disease, blindness, etc. Donors to these causes consider their contributions to be private actions. Publication of their names in a public report would be especially onerous for many of them and would have the unintended effect of limiting their contributions.

We urge you to not include any requirement disclosing the names of members or donors, especially for public charities.

Executive branch communications. We urge that this activity be excluded from any definition of lobbying and that its coverage be identical to that covering public charities under the 1976 Tax Reform Act. This would cover such communications where their purpose is to effect legislative activity. We believe that if Congress wishes to consider this area of activity it should be reviewed in separate legislation.

We would appreciate if you could take our views into account as your subcommittee marks-up this legislation. We are available to assist further if that would be helpful.

Thank you for your consideration.

Sincerely,

BARNEY SELLERS,
Assistant Vice President, Government Relations.

June 2, 1977.

HON. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN DANIELSON AND MEMBERS OF THE SUBCOMMITTEE: We write to you concerning the proposed lobbying disclosure bills now under consideration by the Subcommittee. Our study of the current proposals has brought us to the conclusion that only H.R. 5578, introduced by Mr. Edwards of California, conforms to present constitutional standards. Key provisions of H.R. 1180 and related bills raise serious constitutional questions.

First, H.R. 1180 would force the disclosure of an organization's political activities aimed at its own membership or at the general public. The Supreme Court has never permitted such broad government regulation of organizational political activities (see *United States v. Harriss*, 347 U.S. 612 (1954), *Buckley v. Valeo*, 424 U.S. 1 (1976), *U.S. v. National Committee for Impeachment*, 469 F.2d 1135 (2d Cir. 1972).

Second, H.R. 1180 is significantly overbroad and places an excessive burden on small organizations. It would discourage and in many instances prevent these small organizations from engaging in the constitutionally protected right to communicate with their elected representatives. Only when substantial amounts of money and employee time are spent in direct communication with Congress should the reporting requirements be triggered.

Third, we are strongly opposed to the bills contributor disclosure requirements. The Supreme Court has repeatedly held that the inviolability of privacy in group associations is indispensable to the preservation of freedom of association.

Finally, we oppose the inclusion of Executive Branch contacts within the definition of lobbying. Some proposals would force a logging of contacts to thousands of executive branch officials. The quasi-judicial, quasi-legislative nature of the administrative process demands, at the very least, that this activity be dealt with separately.

H.R. 5578, on the other hand, is designed to regulate only the expenditure of large sums of money directly to influence members of Congress, while avoiding the imposition of burdensome requirements that would deter the advocacy of ideas or inhibit the exercise of the First Amendment right to petition the government for redress of grievances. Therefore, we support H.R. 5578 as a measure conforming to present constitutional law and urge its adoption by the Subcommittee.

Sincerely yours,

PAUL BENDER,
*Professor of Law,
 University of Pennsylvania Law School.*
 ROBERT H. BORK,
*Resident Scholar,
 American Enterprise Institute.*
 NORMAN DORSEN,
*Professor of Law,
 New York University School of Law.*
 THOMAS I. EMERSON,
*Lines Professor Emeritus of Law,
 Yale University Law School.*
 CAROLE GOLDBERG,
*Professor of Law,
 University of California at Los Angeles.*
 BURT NEUBORNE,
*Associate Professor of Law,
 New York University School of Law.*
 RALPH K. WINTER, Jr.,
*Professor of Law,
 Yale University Law School.*

AMERICAN SOCIAL HEALTH ASSOCIATION,
Palo Alto, Calif., June 3, 1977.

HON. GEORGE DANIELSON,
*Chairman, Subcommittee on Administrative Law and Government Relations, House Com-
 mittee on the Judiciary, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: On behalf of the American Social Health Association, I'd like to express concern with regard to legislation before your Subcommittee which would reform existing law governing lobbying registration and reporting. Specifically, my remarks relate to the identification of contributors provisions in some of the pending legislative proposals.

To say the very least, VD is one of the most sensitive and private health issues confronting us today; perhaps exceeded by none. Our supporters, individuals, corporations and fraternal organizations reflect the sensitivity and privacy of the VD issue to varying degrees. Some, proud of their leadership role in relation to ASHA and the much deserving VD issue, clearly and unsoundly proclaim that role without reservation in the hope of setting an example for others to follow. Others, equally proud, equally concerned and equally motivated to support this worthy cause, wish to do so without fanfare and in fact in as confidential and anonymous way as possible. Confidentiality, as well as intelligent and prudent use of their dollars, is a major restriction with which they demand we abide.

VD has been stigmatized for many, many decades: reversing that is an arduous process. In the meantime, our efforts must go forward. We must therefore respect the wishes of donors. Without their support, we can accomplish nothing.

Having to publicly disclose the identity of these sensitive donors would place us in the untenable position of having to violate their trust, and in doing so, perhaps jeopardize their continued support. Axiomatically some of our most concerned, motivated and generous supporters, happen also to be among the most sensitive, most needful of confidentiality and privacy.

We beseech you to ensure that whatever lobbying registration and reporting bill ultimately emerges from your Subcommittee, it not require us to violate the trust of our sensitive donors and risk losing their support. The available VD resources are pitifully meager as it is. Please don't write anything into law that would exacerbate that condition.

Thank you for your consideration in this matter.

Sincerely,

SAMUEL R. KNOX,
Director, Venereal Disease Program.

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, D.C., June 16, 1977.

HON. PETER RODINO:
Chairman, House Committee on Judiciary, Rayburn House Office Building, Washington, D.C.

MR. CHAIRMAN: Your Committee is now considering legislation which will place stricter controls on lobbying activities in Congress. As you are aware, State Legislatures have also been active in passing similar legislation over the past few years. We recognize the need for such legislation and I generally endorse your work.

I take exception, however, to a provision in the current draft of the "Lobbying and Disclosure Act of 1977," H.R. 1180, which would require the few national organizations representing *elected* state and local officials to meet its strict reporting and disclosure requirements. These organizations—the National Governors Conference, the National League of Cities, the National Conference of State Legislatures, and the National Association of Counties—play a unique and important role in our federal system. Our organization, for example, is supported by legislative appropriations and is viewed as an extension of the several Legislatures. The NCSL Executive Committee views an office in Washington as essential to effective state-federal communications. Our staff is instructed to inform the Legislatures of key federal decisions which may affect state policy and to share the views of the Legislatures with Members of Congress. Our sister organizations representing Governors and local elected officials have similar responsibilities. They are recognized as having a special relationship to the federal government in OMB circular A-83, the General Revenue Sharing Act, and the Act establishing the Advisory Commission on Intergovernmental Relations.

Our objection to the current language of H.R. 1180 is not only the administrative and financial burden that the reporting and disclosure language would require, though that is not inconsequential. We also believe that our special relationship to the federal government would be weakened if we are treated like the National Chamber of Commerce or Common Cause.

For these reasons, Mr. Chairman, I would urge you to reconsider the inclusion of the organizations of elected state and local government officials in your legislation.

I would welcome the opportunity to discuss this issue with you personally.

Sincerely,

WILLIAM HAMILTON,
Speaker, New Jersey Assembly.

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., June 21, 1977.

Memorandum To:
Congressman GEORGE DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Washington, D.C.

We are writing concerning the contributor disclosure provision of the lobbying bills pending before the Subcommittee on Administrative Law and Governmental Relations.

Recently, the Subcommittee eliminated the contributor disclosure provision from H.R. 1180. It should not be reinstated. It is our belief that any contributor disclosure provision is unconstitutional based on a long line of Supreme Court cases, stretching from 1958 to the present.

The landmark case in this area is *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), where the Supreme Court first recognized the right of associational privacy. In that case it reversed a contempt of court conviction of the NAACP for refusing to disclose its membership list. Speaking for a unanimous Court, Justice Harlan said that the inviolability of privacy in group associations is indispensable to the preservation of freedom of association.

The holding of *NAACP v. Alabama* was affirmed in several subsequent cases. In *Bates v. Little Rock*, 361 U.S. 516 (1960), the Supreme Court unanimously invalidated another contempt conviction of the NAACP based upon its refusal to furnish city tax officials with membership lists. Again, in *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293 (1961), the Court unanimously affirmed a lower court decision enjoining the enforcement of a statute requiring the disclosure of NAACP membership lists. See also *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963), where the Supreme Court suggested that it would approve membership disclosure only where there was a very specific and formal investigation of criminal or subversive activity, as in the Communist Party case. (*Communist Party v. Subversive Activities Control Board* 367 U.S. 1 (1961)).

The principle that emerges from the NAACP cases is that each and every American citizen has the right to associate with whomever he or she chooses and to be anonymous in those associations. The purpose of, and the activities resulting from, these associations are irrelevant. This principle has been applied in a variety of situations. In *Shelton v. Tucker*, 364 U.S. 479 (1960), the Court invalidated an Arkansas statute which compelled teachers to disclose all their organizational affiliations for the last five years. In *Talley v. California*, 362 U.S. 60 (1960), the Court ruled "unconstitutional on its face" a Los Angeles ordinance prohibiting anonymous distribution of any handbill.

In sections of the recent Federal Election Campaign Act decision, *Buckley v. Valeo*, 424 U.S. 1 (1976), concerning the disclosure of political contributions and expenditures, the Supreme Court dealt with analogous issues. It began by stressing a fundamental point: ". . . we have repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." 424 U.S. at 64. The Court held that governmental interests supporting disclosure—informing the public about sources and uses of political money, thereby helping to eliminate corruption—were sufficiently strong to uphold the validity of such requirements through political committees controlled by candidates.

But when it comes to other political committees and individuals whose activities are independent of federal candidates, the Court in *Buckley* made an important distinction. Applying a First Amendment analysis, the Court held that such independent efforts have to be disclosed only if the major purpose of those efforts is to nominate or elect candidates, and only if they involve communications that, in express terms, advocate the election or defeat of a clearly identified candidate. Through this narrow construction, the Court made it clear that it would not tolerate a contributor disclosure statute that affected the funding of every conceivable general interest organization engaged in political activities. In other words, the governmental interest in disclosure of names of contributors to independent committees is not substantial enough to outweigh the prohibitions of the First Amendment.

It has been argued that there is a substantial governmental interest in disclosure of financial backers of lobbying organizations in order to determine the sources of the influence on Congress. In the context of the First Amendment, however, the Supreme Court has imposed the additional requirement of "less drastic means". In *Shelton v. Tucker*, 364 U.S. 429, 488 (1960), the Court held that "even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that stifle fundamental personal liberties when the end could be more narrowly achieved. The breadth of the legislative abridgement must be viewed in the light of the less drastic means for achieving the same basic purpose."

The contributor disclosure provision previously contained in H.R. 1180 clearly did not meet this test. The disclosure of all contributors who donate over \$2,500 to an organization is "drastic", because in most organizations those who contribute over \$2,500 or more could not in any sense control the organization. Nor could those who contribute 1 percent or even 5 percent of the total contributions of an organization be said to "control" the organization.

The contributor disclosure provision is also overbroad because it would require disclosure of all amounts over \$2,500 without regard to actual utilization of the funds. In general interest organizations, only a small percentage of each contribution is devoted to lobbying. A \$2,500 contribution to the ACLU, for example, would be used to finance a variety of activities that have nothing to do with lobbying. Moreover, such a contribution to the ACLU would be utilized in a different way from a \$2,500

contribution to a smaller or different organization, such as the Sierra Club or the American Council on Education. Disclosure of these contributions has little, if any, correlation to the apparent purposes of the Act, thus does not conform to the standards set by the Supreme Court.

Enforcement of *any* contributor provision presents additional constitutional problems. The Comptroller General is required to determine whether an organization is complying with these reporting provisions regardless of the figures involved in the contributions (\$2,500 or 1 percent of the total contributions). To do so, he will have to have access to the entire membership list of an organization. The enforcement provision, then, presents the precise fact pattern of the NAACP cases and is, in our view, flatly unconstitutional.

Finally, perhaps the most compelling reason for elimination of the contributor disclosure provision from H.R. 1180 is the chilling effect it would have on First Amendment rights. To take a hypothetical example, John Smith, a senior Vice President of the Northern California Lumbering and Paper Mill Corporation, believes that redwood trees are some of America's most beautiful and historic natural resources. He has attempted a number of times to change company policy which currently opposes the expansion of the Redwood National Forest. However, he has been unsuccessful in his efforts. Not believing that this issue is one to resign his position over, Mr. Smith decides to contribute a substantial amount of money to the Save-the-Redwood Society to aid them in their fight for the expansion of the Redwood National Forest. This contribution consists of a little over 5 percent of the total contributions of the Society for the year, and because of the large amount of lobbying activity on the Redwood National Forest this Save-the-Redwood Society is required to register under the lobbying disclosure act. If a contributor disclosure provisions were included in the act, John Smith's name would have to be published in the Federal Register. One can easily see that such disclosure would probably cause severe repercussions for John Smith and possibly mean the loss of his job.

The contributor disclosure provisions would thus have a crippling effect on many organizations throughout the country. Because of the right of Americans to freely associate and participate in organizations must not be abridged or discouraged, the contributor disclosure provision should be rejected.

NATIONAL ASSOCIATION OF HOME MANUFACTURERS,
Washington, D.C., June 22, 1977.

HON. GEORGE DANIELSON,
Chairman, House Judiciary Subcommittee on Administrative Law and Governmental Relations, Washington, D.C.

Congressman DANIELSON: There are presently several bills before the Subcommittee which would attempt to regulate or limit certain activities of trade associations.

NAHM, as spokesman for many small businesses, is particularly opposed to those elements of such legislation relative to:

Indirect (grass roots) lobbying: You function in the public arena, and you must acknowledge the necessity and importance of monitoring events of interest and impact to your "business (constituents). NAHM does that for its members . . . small businessmen who "need to know" but do not have the in-house resources.

Membership or Dues Disclosure: NAHM's dues structure is based on sales volume as well as some industry statistics. Compliance with such requirements would violate the privacy rights of our members inasmuch as this information is often of a competitive nature.

The National Association of Home Manufacturers would like to go on the record as opposing any provisions of pending lobby reform legislation which violate our constitutional freedoms of association, privacy and petition; and as challenging the wisdom or necessity of increased filing, reporting and bureaucratic burden.

DON L. GILCHRIST
President.

PUBLIC CITIZEN,
June 24, 1977.

MEMORANDUM

To: Members and Staff of the House Judiciary Subcommittee on Administrative and Governmental Relations.

From: Andrew A. Feinstein.

Re H.R. 1180.

In its preliminary mark-up of H.R. 1180, the Public Disclosure of Lobbying Act, the Subcommittee on Administrative Law and Governmental Relations has done a commendable job of examining the multifarious aspects of this proposed legislation. While a few major problems remain in the bill, the work of the Subcommittee has made some improvements, but it has also taken some steps backwards.

When the subcommittee begins its final mark-up on Monday, numerous amendments will be offered; we would like to give our views on some of these:

Section 3(a)(2) Threshold

On June 1, Congressman Herbert Harris introduced an amendment to make an organization a lobbyist if it employs at least one individual who spent all or any part of thirteen days engaged in lobbying activities or if it has two or more employees who spend at least seven days each lobbying. When the committee adopted that amendment, we sent a letter to the subcommittee critical of the action. We were particularly dissatisfied with the unevenness of the thirteen days approach, charging that it would permit clever organizations to elude coverage altogether while, at the same time, capturing in the law's net many small organizations who do not plan their contacts with Washington with the requirements of the law in mind. We suggested that if minimization of record-keeping were the objective of this amendment, the same objective could be accomplished without these untoward results by limiting the power of the Comptroller General to impose record-keeping requirements on unresolved organizations. Subsequent to our letter, the subcommittee has passed the type of limitations which we suggested.

On Monday, Congressman Harris intends to offer an amendment to modify the thirteen days test. This new Harris amendment would make an organization a lobbyist (a) if, through its employees, it makes oral or written contacts on at least thirteen days during the quarterly filing period, and (b) if it expends over \$2,500.00 in the quarterly filing period on lobbying activities. We strongly oppose this amendment for three reasons: First, a cumulative test of thirteen days requires an organization to instruct each of its employees to note the days on which he or she engaged in lobbying activities. At the end of the quarter, management would have to collect and tabulate all these notations on a calendar to ascertain whether the thirteen day threshold had been reached. Hence, such a cumulative test would necessitate extensive internal record-keeping for an organization, thereby defeating the justification for the thirteen days test.

Second, a money threshold requires an organization to allocate its expenses between lobbying activities and non-lobbying activities. This allocation can be made only if each and every employee keeps time logs of his or her lobbying activities. Time logs would be needed to determine what portion of the person's salary should be attributed to lobbying expenses to determine whether the organization reached the \$2,500.00 minimum. This computation involves onerous record keeping for each and every paid employee of each organization which might qualify as a lobbyist. We do not think that the committee intends to place such a burden on would-be registered organizations.

Third, a money threshold opens the door to government abuse of power. Within the last decade we have witnessed agencies of government misusing their power to audit, as a power to harass and intimidate. The Internal Revenue Service, on instructions from the White House, audited the tax returns of political enemies of the White House as a way to punish those individuals. Political organizations, of the type which would be subject to the lobbying disclosure law, were investigated and audited in an effort to weaken or destroy them. All too often, this governmental harassment succeeded. While we would not expect the current Comptroller General to misuse his power in this way, we do feel that equipping an official with the power to audit opens up this possibility. Because the power to audit is essential to enforcing a money threshold, we oppose the use of a money threshold in the lobbying bill.

We would prefer to see the committee adopt a threshold based on the time spent by individuals within an organization on oral lobbying communications, as provided in H.R. 7319. The time spent on the telephone or in personal contact with members

or staff of Congress is easily measurable and definable. Until the individual reaches the threshold number of hours of oral lobbying communications (we would suggest thirty hours a quarter), he or she would only need to note the amount of time spent in these communications on his or her calendar each day. Basing the threshold on oral communications alone eliminates the problems of determining the day on which a written communication was made or of figuring out how much time was spent in drafting a written communication. A time threshold is also enforceable, in much the same way that a thirteen days test is enforceable. In both cases, the Comptroller General would have to canvass members and staff of Congress to determine whether an individual lobbied them. Besides requiring minimal records and being readily enforceable, the time threshold is preferable because it concerns itself with actions essential to lobbying: direct communications between someone paid to influence legislation and someone in a position of power. If an organization has one person who spends thirty hours in three months making oral communications (or two people each of whom spend fifteen hours), that organization is truly a lobbyist. A time threshold based on thirty hours or oral communications by an individual is the most reasonable threshold that we know of; we urge the subcommittee to give it serious consideration.

DISCLOSURE OF CONTRIBUTORS TO A LOBBYING ORGANIZATION

The subcommittee acted wisely and constitutionally when, on June 8, it adopted the Jordan amendment to strike Section 6(b)(8), requiring the disclosure of those who contribute to organizations which are registered under the Act. Decisions of the Supreme Court on forced disclosure of membership lists have made it clear that the government must have a compelling interest to mandate this information. Even when this interest exists the disclosure must be in the form which intrudes least on First Amendment rights. Aside from asserting the existence of such a compelling interest, no one on the subcommittee has articulated the interest. Without a clearly established, and not merely a stated compelling interest, forced disclosure of the names of contributors to an organization is unconstitutional.

Despite this clear case law, Congressman Harris will offer an amendment to require an organization to disclose the names of its contributors of over \$3,000.00 and the amount of their contribution by category. Governed by a desire to ascertain who is behind lobbying organizations, i.e., who controls them, many members of the subcommittee support some form of contributor disclosure. Whether this interest in determining who controls a lobbying organization is sufficiently compelling to pass constitutional muster is a question which will ultimately be decided by the courts. Nevertheless, this interest in determining who controls a lobbying organization is not served by the Harris amendment. Information on control could be elicited by requiring the organization to disclose the names of all contributors whose contributions account for greater than five percent of the organization's annual budget. While a five percent contributor may not have actual control in many organizations, any more than a five percent shareholder controls a corporation, the five percent figure is really the minimum level of contribution which could reveal control. Hence, the Harris amendment fails to satisfy many members who wish to mandate the disclosure of information concerning those people who control an organization. At a minimum, it should be amended to require the disclosure only of individuals and organizations who give more than \$3,000.00, where that contribution represents over five percent of the organization's total budget.

The Harris contributor amendment has another serious flaw. Because of its inclusion in the reporting section of the bill, the amendment requires that this information be reported every three months. If the amendment is based on annual contributions, what is supposed to be reported quarterly? In that most organizations compile their contributor's list on an annual basis, it is only fair the disclosure should take place annually. Since each organization has to reregister annually, that organization statement is clearly the appropriate vehicle for this disclosure. The Harris alternative may require that this information has to be reported during the quarter in which the contribution was received and rereported each quarter throughout the year. For no apparent reason, this amendment may impose new record-keeping and paperwork requirements on lobbying organizations. Since annual reporting will with organizational procedures, there is no justification for, and probably a constitutional problem with placing new burdens on organizations.

If contributor disclosure is mandated, we believe that no exceptions should be made in its requirements. Fund raising is a difficult and sensitive process. By requiring the disclosure of the names of contributors to one organization and not to another organization, the Congress will be, in effect, taking money from the former organization and giving it to the latter. Amendments have been suggested to exclude organizations

qualifying under Section 501(c)(3) of the Internal Revenue Code from contributor disclosure. Under the tax laws, 501(c)(3) organizations which are public charities can spend up to 20 percent of their efforts lobbying and still collect tax deductible contributions. Organizations which engage in more lobbying cannot take deductible contributions. Obviously, the availability of a tax deduction to their contributors gives an enormous fund-raising advantage to 501(c)(3) organizations. To add a further penalty to non-501(c)(3) organizations by requiring the disclosure of the names of their contributors would deal those organizations a lethal blow. These organizations would, in effect, be penalized for exercising their First Amendment right to petition their government.

In summary, we oppose any forced disclosure of the names of contributors to a lobbying organization. As we stated in our testimony before the committee, requiring disclosure of the existence of any large contributors without requiring the disclosure of their names would serve the interests of the committee. The Harris amendment fails to serve this interest because it is overinclusive and unduly burdensome. As such it runs afoul of the First Amendment. If the committee is interested in determining who controls lobbying organizations, this can be accomplished by having a minimum percentage threshold, and not just a dollar threshold, on contributor disclosure.

COVERAGE OF WASHINGTON OFFICES OF MAYORS AND GOVERNORS

Representative Kindness will propose an amendment to include within the definition of an organization the Washington offices of state and local government officials. We can think of no reason why they should not be covered. These Washington representatives are some of the most effective lobbyists in town and are, at times, our strong allies on consumer legislation. At other times, they oppose us. In any case, the Washington representatives of mayors and governors look like, act like, and consider themselves no different from other lobbyists who work Capitol Hill. They should be covered.

GEOGRAPHIC EXEMPTION

We support a broad geographic exemption which will assure that local civic groups, small businesses, and local labor unions are not covered by this bill solely because they communicate with their own members of Congress. On the other hand, national organizations should not be able to escape coverage by being able to consider their local plants or branches as "principal places of business". If they could do so, a major manufacturing company's Washington lobbyist could escape coverage by talking to the members who represent the districts in which his company has its plants. Furthermore, national organizations should not be able to evade coverage by directing their local affiliates to make lobbying communications which are exempt if made locally but covered if made by the national organization. Nevertheless, national organizations should not be required to keep tabs on the independent activities of their local people.

Hence, we oppose the broadening of the definition of "principal place of business" because it will allow for wholesale evasion. We support an exemption for individuals who talk to their own members unless the communication is made as the result of a command from the national organization. In defining those members of Congress whose own organization may communicate with under the exemption, the concept of standard metropolitan statistical area is convenient. Since most organizations are located in SMSAs, this exemption works as a handy tool to describe a geographic area which is broader than a single congressional district.

DRAFTING PROBLEMS

Definition of Lobbying Communication

The definition of "lobbying communication" is extremely and unintentionally broad. It includes a communication to an Executive Level official to influence the disposition of a hearing. Does this include a rulemaking proceeding? A license renewal hearing? An OSHA adjudication? While the committee intended to remove these proceedings by adopting the Kindness amendment on June 6, the definition of lobbying communications in Section 2(8) retains this coverage. This definition should be amended to limit its coverage to Congressional hearings, Congressional reports, or Congressional investigations.

NO LOBBYING REPORT FORM

The short form report form which allows a registered organization to report simply its lack of lobbying during a quarter, added on June 10 in Section 6(a)(2), creates a major loophole in the statute. Assume that the Congress adjourns on October 1, as it did last year. No registered organization would reach the threshold activities for the fourth quarter and all could file this short form. However, an organization

could, during the quarter, spend a million dollars on gifts to members of Congress. Because that organization would file a short form report, no information about these gifts would have to be disclosed. There is no reason to have a short form report, but at the very least, this loophole can be closed by requiring that an organization report the information required by Section 6(b)(3) as part of its short form report.

GIFTS

The most compelling reason for a lobbying disclosure statute is to counter the public perception that lobbyists "buy" members of Congress. By raising the reportable amount of a gift from \$25 to \$35 the committee is failing to serve this purpose. This change was made to make the lobbying bill match the House Code of Ethics. Because of the numerous distinctions between the gift reporting in each, there is no reason to set the figure of \$35 in the lobbying bill. In the first place, the Ethics Code merely requires disclosure of gifts of over \$35 if the total of all gifts from the same source exceeds \$100 in the year. Second, personal hospitality is specifically exempted from the Ethics Code, and disclosure of travel, meals, and lodging only need be reported if they aggregate to over \$250 from a single source. Third, the Ethics Code requires annual disclosure while the lobbying bill requires quarterly disclosure. Fourth, the Ethics Code disclosures will be listed by Member of Congress and not by the source of the gift. Under the lobbying law, the gifts will be listed by source. The numerous incongruities between the Ethics Code and the gift disclosure in the lobbying law negate any justification to set the same thresholds.

Under H.R. 1180, as amended, it is unclear whether gifts of personal hospitality, travel, food, etc. are considered as gifts. The definition of expenditure talks about payments "to a Federal officer or employee". When a lobbyist buys a member of Congress dinner at Sans Souci, the payment is to Sans Souci, not to the Federal officer or employee. When a lobbyist flies a committee counsel to California, the payment is to the airline, not to the Federal officer or employee. This problem can be eliminated by changing Section 2(5)(A)(i) to read "to or for the personal benefit of a Federal officer or employee; or".

ISSUE REPORTING

The subcommittee amended old section 6(b)(5) to require that an organization describe the issues on which it spent a significant amount of its efforts. Apparently, the committee assumed that the Comptroller General would, by regulation, elucidate the meaning of the term "spent a significant amount of its efforts". We think such faith in regulation is misplaced. When the tax law said that 501(c)(3) organizations could spend no substantial portion of their efforts on lobbying, the Internal Revenue Service took the position that it was up to the organizations to figure out what that meant at risk of loss of tax status. Now, the Congress is telling reporting organizations to figure out what this term means, at the risk of criminal prosecution. We would prefer a requirement that an organization report up to 25 issues on which it makes lobbying communications.

COMMUNICATIONS AT THE REQUEST OF A FEDERAL OFFICER OR EMPLOYEE

On June 3, the subcommittee rejected an amendment drafted by the Comptroller General to clarify the meaning of the exemption for communications made in response to a request by a Federal officer or employee. In the discussion of the amendment, which was ultimately defeated, a new broader interpretation of this exception was expressed. If this interpretation becomes the law, a massive loophole has been created. Section 3(b)(1)(a) was explained to mean that if a single member of Congress or even a staff member asked a lobbyist to lobby the entire Congress on a bill, all those communications would be exempt. In other words, if Congressman A calls Organization B to ask for help on H.R. 12345, all the lobbying done by organization B is exempt from the Act, including all expenditures made. Use of this exemption can readily render the enforcement of this Act an impossibility. If the Comptroller General questions an organization about its failure to report working on H.R. 12345, the organization can blithely respond that it lobbied on that issue by request. The Comptroller General is left without recourse. This problem should be eliminated by adopting the previously considered amendment which exempts only those communications made to the federal officer or employee who requested the information.

NATIONAL COUNSEL ASSOCIATES,
Washington, D.C., June 25, 1977.

HON. GEORGE DANIELSON,
2447 Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Both as a citizen and a contract lobbyist, I am deeply concerned with several issues raised by H.R. 1180, presently being marked up in your Subcommittee on Administrative Law.

As a lobbyist who has been on the scene for thirty years, I am concerned that the reports section of the bill will not violate my organization's privacy or place upon it undue burdens of paperwork. We comply fully with the 1946 Act, and have our bookkeeper spend about one day per month conforming. This is not excessive, but surely we want no more bureaucratic language with which to contend. Not in a firm of ten.

I also have problems with the section concerning disclosure of salaries of my employees. I already disclose to the IRS. Both for my employees' sake and my own, why should it be made public what we are paid? Why should any Tom, Dick or Harry be able to eyeball the internal fiscal structure of the firm I have nurtured for twenty years?

I object also to the disclosure of the "general position of the organization" on the issues lobbied. As you well know from your years on the Hill, issues become quite complicated, and strange political alliances are formed. Why must I lose leverage by being tied to a record of a position that might have to be changed a month later? Will I be prosecuted if I am on record as being in favor of Bill X and then shift my support to Bill Y as a compromise?

Although I am not in the direct mail business, from time to time I do have mailings and they might go to twenty-five or more directors, or twelve or more affiliates. Why must I disclose these?

Finally, I object to having foisted on my small firm a whole new stack of advisory opinions. Will I have to hire a lawyer just to keep me legal at the profession I've been practicing for thirty years?

As a citizen, I object to the unconstitutionality of coverage of indirect lobbying and disclosure of the identities of contributors (and needless to say, members). Let's put it bluntly, "Who does Congress think it is to demand this information?" Is this 1984? Have we started registering political literature? Is not an individual free to support his causes with his own resources without fear of having his neighbor or his boss or his customer knowing about it?

One further question: What abuses have been brought to the attention of the Subcommittee that the proposed legislation would correct?

I need answers to these questions. Can you give them to me? Would you please give me a chance to discuss these issues with you before the Subcommittee finalizes its markup?

Sincerely,

Maurice Rosenblatt.

SIERRA CLUB,
Washington, D.C., June 27, 1977.

HON. GEORGE E. DANIELSON,
Chairman, and Members of the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee, 207 Cannon House Office Building, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN DANIELSON AND MEMBERS OF THE SUBCOMMITTEE: Knowing that your subcommittee is now beginning formal mark-up of H.R. 1180, for Public Disclosure of Lobbying Act of 1977, we reiterate our support for the provisions of H.R. 5578. From the standpoint of preservation of the First Amendment freedoms of speech, petition, assembly and association, we believe H.R. 5578 is the preferable—and the only Constitutional—alternative. Particularly, we object to the disclosure provisions in H.R. 1180 of (a) contributors' names and sums contributed, (b) solicitations or indirect lobbying, both for their chilling effect on the exercise of Constitutional rights, and, (c) executive branch communications, for the reason stated below.

In addition, we suggest the following amendments which we feel would improve H.R. 1180:

Sec. 2(6)C: STRIKE, to conform with new Sec. 3(a)(1), which eliminates disclosure of executive branch contacts.

Present language defines "Federal officer" as: "any officer of the executive branch of the Government listed in sections 5312 through 5316 of title 5, United States Code."

In our opinion, lobbying is an activity which relates to proposed legislation, not to adopted laws or to the proposed administrative actions relating to those laws. We believe that lobbying disclosure legislation should be consistent with the Tax Reform Act of 1976 (Public Law 94-455), which defines lobbying as "attempting to influence legislation."

Sec. 6(b)(6): RESTORE ORIGINAL LANGUAGE, which calls for the report to include: a description of the primary issues concerning which the organization filing the report engaged in activities described in Section 3(a) and upon which the organization spent a significant amount of its efforts;

The present language is as follows: "a description, in such detail as shall disclose the general position of the organization, of the issues concerning which the organization filing such report engaged in activities described in section 3(a) and upon which the organization spent a significant amount of its efforts;"

It would be quite a chore for a public interest group like the Sierra Club to describe *all* of the issues on which we lobby, because we address and try to respond to a wide range of legislative topics. Narrowing the reporting to *primary* issues would accomplish the aims of a lobbying disclosure law without overburdening non profit organizations.

Furthermore, the "general position" of an organization such as the Sierra Club regarding those primary issues is likely to defy detailed description. For instance, when we offer an improving amendment for an objectionable section of a bill which we would otherwise support, we can only say that we oppose the bill as written but would support the bill as amended. Without requiring this much detail on a case-by-case basis, the present Sec. 6(b)(6) language is meaningless, and *with* such a requirement, compliance would be far too onerous for non-profit groups like the Sierra Club which are usually understaffed.

Sec. 9(c): Present language, plus new language added, typewritten in capital letters at end of Section: "All requests for advisory opinions, all advisory opinions, and all modifications or revocations of advisory opinions shall be published by the Comptroller General in the Federal Register, AND SHALL BE MAILED TO ALL REGISTERED LOBBYING ORGANIZATIONS TO WHICH THE ADVISORY OPINIONS MIGHT BE APPLICABLE."

Sec. 9(d): Present language, with new language inserted in capital letters: "The Comptroller General shall, before rendering an advisory opinion under this section, provide any interested individual or organization with an opportunity, AND NOTIFY ANY REGISTERED LOBBYING ORGANIZATIONS WHICH MIGHT BE AFFECTED, within such reasonable period of time as the Comptroller General may provide, to transmit written comments to the Comptroller General with respect to such advisory opinion."

Sec. 9(e): New language in capital letters, followed by present language: "THE COMPTROLLER GENERAL SHALL MAIL THE ADVISORY OPINION TO ALL REGISTERED LOBBYING ORGANIZATIONS TO WHICH IT MIGHT BE APPLICABLE. Any individual or organization who has received and is aggrieved by any advisory opinion from the Comptroller General may file a declaratory action in the United States district court for the district in which such individual resides or such organization maintains its principal place of business."

It appears that short of hiring extra staff to track down notices of requests for, issuances of and declaratory actions on advisory opinions, there will be no orderly way in which a lobbying organization could keep abreast of evolving decisions under the proposed law. This would place non-profit groups at a definite financial and clerical disadvantage as compared with profit-making organizations, and would increase the likelihood of accidental noncompliance.

Thank you for considering these matters.

Sincerely,

RHEA L. COHEN,
Washington Representative.

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D.C. May 11, 1977.

MEMORANDUM ON MEMBERSHIP AND DUES DISCLOSURE PROVISIONS CONTAINED IN THE
PROPOSED LOBBY REFORM LEGISLATION

Nearly all of the bills introduced in the House contain provisions which would require voluntary membership organizations to disclose the names of members who contribute in excess of a specified amount (e.g., \$2,500 or \$3,000) and/or a percentage of the organization's budget. In addition, many of the bills require disclosure of the actual amount contributed, an indication of the amount by category, or a listing of the top ten contributors. H.R. 1180, H.R. 5795 and H.R. 6202 all contain some form of compulsory membership disclosure.

These disclosure provisions would operate when the income or contribution was used "in whole or in part" for lobbying. It should be emphasized that in most trade associations, and many other volunteer membership organizations, only a small portion of the contribution may actually be used for lobbying.

Trade associations provide many services to their members and many companies join and support associations for programs and purposes unrelated to any "lobbying" efforts. For example, associations perform functions for their members in the following areas: (1) accounting; (2) advertising and marketing; (3) education; (4) employer/employee relations; (5) public relations; (6) research; (7) standardization and simplification; (8) statistics; (9) consumer relations. Government relations or "lobbying" is only one of many association activities. See *Webster, Law of Associations*, Sec. 1.04 (1976). In many cases the government relations function of the association is fulfilled merely by keeping its members informed about the existence, status and impact of particular pieces of legislation.

The proposed membership disclosure provisions raise serious questions for all voluntary membership organizations. The underlying issue is whether an organization may be compelled to reveal the identity of some or all of its members (or contributors) merely because that organization exercised its First Amendment right to petition the government. In addition to this basic constitutional question, the disclosure of the amount of dues contributions is of particular concern to many trade associations and their members. Such disclosure could reveal previously confidential and proprietary information about those members.

MEMBERSHIP DISCLOSURE

It is widely recognized that compulsory disclosure of membership lists can have a significant "chilling" effect on the right of free association, e.g., *Buckley v. Valeo*, 424 U.S. 1, 64 (1976). Numerous cases have recognized this fact and upheld the confidentiality of an organization's membership lists. *NAACP v. Alabama*, 357 U.S. 449 (1958); *Bates v. Little Rock*, 361 U.S. 516 (1960); *Louisiana ex. rel Gremillion v. NAACP*, 366 U.S. 293 (1961). See also *Bursey v. United States*, 466 F. 2d 1059 (9th Circ. 1972); *Pollard v. Roberts*, 283 F. Supp. 248 (E. D. Ark. 1968), aff'd 393 U.S. 14 (1968).

The *Buckley* case, which proponents of this type of disclosure cite as authority for their position, does not provide support for the broad membership disclosure provisions contained in this legislation. The Federal Election Campaign Act, as amended, is a regulatory statute enacted to prevent certain abuses of the electoral process. The disclosure of the identity of contributors of \$100 or more was upheld by the Court as necessary to enforce the contribution limits contained within the Act. However, the lobby reform legislation, if passed, will be a disclosure statute and not a regulatory statute. The lobby legislation is designed to make certain information public and not to prohibit any particular type of conduct.

In situations where freedom of association is protected by a First Amendment privilege, disclosure is permissible only when there is an "overriding and compelling need" to be served by such disclosure. *Gibson v. Florida Legislative Committee*, 372 U.S. 539, 546 (1963). No such need has been demonstrated here.

The only justification that has been advanced is the public's right to know who is attempting to influence legislation. There have been no findings of corruption and illegal activities such as those activities which justified the disclosure provisions of the campaign laws. In and of itself, this "right to know" is not sufficient to overcome traditional First Amendment rights.

Anonymous in the exercise of First Amendment rights also has been found by the Supreme Court to be a protected value. *Talley v. California*, 362 U.S. 360 (1960) held that a state could not prevent the anonymous distribution of political literature. The rationale for this decision is important:

Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. . . . Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes. . . . [I]dentification and fear of reprisal may deter perfectly peaceable discussions of public affairs of importance. *Id.* at p. 64, 65.

See also, *U.S. v. Rumely*, 345 U.S. 41, 46-47 (1953).

The issue of the constitutionality of the compulsory disclosure of membership lists has been addressed with respect to state lobbying registration laws. In *Young Americans v. Gorton*, 83 Wash. 2d 728, 522 P.2d 189 (1974) the Washington State Supreme Court held that the contributor disclosure provision in the Washington law did not apply to an organization's dues paying membership, but rather only to those persons who specifically contributed money to influence specific legislation. The Court held that disclosure of general membership lists without a compelling reason would violate recognized First Amendment rights of association.

The Supreme Court's decision in *Buckley* would not affect this holding. In *Buckley*, disclosure of campaign contributors was upheld because the contributions were designed, in their entirety, to be used by a specific political committee or candidate and because such disclosure was necessary to enforce the statutory limits on contributions.

The lobby legislation would mandate disclosure of membership lists despite the fact such disclosure is not necessary to enforce any prohibition and, in most instances, only a small portion of the contribution would actually be used for lobbying.

It should be emphasized that the public's "right to know" who is attempting to influence legislation may be satisfied by a less drastic intrusion into First Amendment rights. A description of the organization, the number of members, a description of the members and information as to how it reaches its policy decisions would adequately describe the organization's "constituency". (See attached language). This approach would permit both the Congress and the public to ascertain who the organization represents without infringing upon the rights of its members.

DUES DISCLOSURE

Because of the method by which many trade associations compute their dues, the disclosure of the amount of money contributed by their members could reveal previously confidential and proprietary data. This could be accomplished merely by comparing the amount paid with the association's dues schedule. Dues schedules may be based on profits, sales, units or production, number of plants, employees or members, payroll, or assets. In order to protect the confidentiality of this information, many trade associations use third parties to collect their dues.

Those associations which base their dues on profits, sales or units of production would suffer the greatest harm from a compulsory dues disclosure provision. While data of this nature is carefully protected by both publicly and privately held companies, it is of particular concern to private companies. Disclosure of information such as sales figures, profits, and rank in the industry would be particularly objectionable to these organizations.

Dues disclosure, of any type, will have an adverse impact on the ability of associations to obtain numbers and raise funds. As a result, trade associations, which may engage in limited lobbying efforts, will face the threat of loss of membership because of such dues disclosure.

FREDERICK J. KREBS.

REPORTING REQUIREMENT IN LIEU OF A MEMBERSHIP AND CONTRIBUTION DISCLOSURE REQUIREMENT

A general description of the methods by which the organization arrives at its position with respect to a particular issue, the approximate number of individuals and organizations who are members of, or contributors to, the organization, and a general description of such members, or contributors, provided, however, that nothing herein shall be construed to require the disclosure of the identity of such members or contributors.

STATE OF CALIFORNIA,
DEPARTMENT OF EDUCATION,
Sacramento, Calif., May 20, 1977.

Hon. GEORGE DANIELSON,
U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN: I am concerned about one provision of H.R. 1180, the registration of lobbyists bill which is now before your Administrative Law and Governmental Relations Subcommittee.

Many local and some state governmental units, including a number of our California cities and counties and our State Department of Education, regularly contact with individuals or with specialized corporations for representation on Capitol Hill and before the various agencies. This course is followed because it is quite difficult for a public agency to operate an office at a remote location and still conform to state purchasing and leasing procedures, Civil Service laws, and various similar requirements. However, as Sec. 2(8) of H.R. 1180 is now worded, it would appear to require such contractors to comply with the provisions of the bill.

You may recall that last year, during consideration of H.R. 15, this matter was the subject of an amendment by Mr. Pattison of New York which was agreed to in Subcommittee. There was subsequent discussion on the House floor on September 28, and Mr. Quie attempted two amendments which were rejected by substantial margins.

During your forthcoming markup on H.R. 1180, I wonder if you could consider inserting some wording such as the following in Sec. 2(8), after the word "tribe" on Page 5, line 8:

"and individuals or corporations contracting with such units of government for the performance of functions regulated under this Act,"

If the addition of this wording does not prove feasible, perhaps you could consider the inclusion in the appropriate part of the Committee report some wording such as the following:

"Since many local and some state governments contract with individuals or with specialized corporations for legislative and federal agency representations, it is the intention of the Committee that the term 'State or local unit of government' be interpreted to include individuals or corporations operating primarily for the purpose of providing such representation for state or local governments, together with the employees of such individuals or corporations."

If this matter is not addressed either in the Act or the committee report, I'm afraid that the effect will be to grant an inequitable advantage to those states which happen to be located near the District of Columbia. A Maryland or Virginia education official can easily and quickly come to Washington to contact members of Congress or federal agency personnel about problems as they arise, but as you well know, for those of us located in the West, almost two days of travel is involved, thus we chose to contract for representation in Washington.

I shall be indebted to you for such consideration as you may be able to give to this request, and I would appreciate having, at your convenience, any information you may be able to provide me as to your views, and the probable action of your Subcommittee on this matter.

With my very best personal regards.

DONALD R. MCKINLEY,
Chief Deputy Superintendent.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 20, 1977.

Hon. GEORGE E. DANIELSON,
*Chairman, Subcommittee on Administrative Law and Governmental Relations,
Committee on the Judiciary,
House of Representatives*

DEAR MR. CHAIRMAN: This responds to the request of your Subcommittee's counsel, Mr. William Shattuck, for our views concerning the requirements and scope of subsections 8(a) (4) and (5) of H.R. 1180 which, as presently drafted, provide:

"Sec. 8. (a) It shall be the duty of the Comptroller General—

.

"(4) to compile and summarize, with respect to each quarterly filing period, the information contained in registrations and reports filed during such period in a manner which clearly presents the extent and nature of the activities described in section 3(a) which are engaged in during such period;

"(5) To make the information compiled and summarized under paragraph (4) available to the public within sixty days after the close of each quarterly filing period, and to publish such information in the Federal Register at the earliest practicable opportunity;"

Subsection 8(a)(4), above, would provide the Comptroller General with the discretion necessary to compile a quarterly general cumulative and combined summary of the direct lobbying activity reported by registered lobbyists. As we indicated in testimony before your Subcommittee on April 6, 1977, this authorization should enable the preparation and publication of meaningful and useful direct lobbying activity summaries.

Subsection 8(a)(4) apparently does not require the preparation of separate and individual summaries for each registration and report on file with the Comptroller General. Persons desiring detailed and complete information about a particular lobbying organization's activities may directly inspect and receive copies of the organization's registration statement and quarterly reports as provided in subsection 8(a)(2).

Rather than directing the publication of a detailed listing of the publicly available information contained in each lobbying organization's registration statement and quarterly report, subsection 8(a)(5) requires that the information "compiled and summarized" under subsection 8(a)(4) be made available to the public and published in the Federal Register.¹

These responsibilities do not, in our opinion, contemplate the preparation and publication of voluminous and cumbersome direct lobbying activity summaries. That being so, we see no persuasive reason why the summaries should not be included in the Federal Register. We believe inclusion of the summaries in the widely circulated Federal Register could improve congressional and public awareness of lobbying activity. If, as experience is acquired in administering a new lobbying law, it becomes apparent that alternatives preferable to publication in the Federal Register exist, we would of course advise the Congress and your Subcommittee of the alternatives in accordance with section 11 of the bill.

There is one minor ambiguity in subsection 8(a)(5), however, that needs clarification. The summaries prepared pursuant to subsection 8(a)(4) are to be made "available to the public" in addition to being published in the Federal Register. Subsection 8(a)(2), which deals with access to the detailed information contained in a lobbying organization's registration statement and quarterly reports, specifically provides that copies of the registration statements and reports shall be available for "public inspection and copying." Copies of the registrations and reports will be provided "upon payment of the cost of making and furnishing such copy." We recommend the language of subsection 8(A)(5) concerning the availability of lobbying activity summaries to the public be modified to track the public availability language of subsection 8(a)(2).

We hope this information will prove useful to you, and we are ready to provide whatever additional assistance you might require.

Sincerely yours,

BOB KELLER,
Deputy Comptroller General of the United States.

DEPARTMENT OF JUSTICE,
Washington, D.C., July 15, 1977.

Hon. PETER W. RODINO, Jr.,
*Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This will respond to your letter of June 27, 1977, inviting the comments of the Department regarding the enforcement and sanctions provisions of H.R. 1180, currently in final markup before the Subcommittee on Administrative Law and Governmental Relations.

¹Under the current lobbying law, 2 U.S.C. Sec. 261 et seq., quarterly listings of all registered lobbyists appear in the Congressional Record. For each of the four quarters in calendar year 1976, roughly 3,000 lobbyists were listed in the Congressional Record. This listing accounted for approximately 267 printed pages.

As Deputy Attorney General Flaherty testified before the Subcommittee on April 21, 1977, we have no major objections to these enforcement procedures and sanctions. We are of the view, however, that the bill should clarify whether the civil penalties contained in Sections 13(a) and 13(d) may be imposed by the Department without referral from the Comptroller General following mandatory conciliation pursuant to Section 10. As H.R. 1180 is now drafted, we would argue that the Department is empowered to invoke these provisions as it sees fit, although admittedly the bill is ambiguous on this point. Since we strongly believe this result to be desirable, we urge the Subcommittee to give clearer expression to this view in the legislation. We assume that the Department will be able to exercise its criminal law enforcement mandate under the penal sections of the Act, applicable to intentional or aggravated conduct, unencumbered by the possibility of parallel administrative jurisdiction on the part of the General Accounting Office.

Thank you for this opportunity of presenting our views on this matter. If we can be of further assistance to you, please let me know.

Sincerely,

PATRICIA M. WALD,
Assistant Attorney General.

[The following bills, which are similar to the bills set out on pages 2 through 73 of these hearings, were also before the subcommittee and were referred to in the course of the hearings.]

95TH CONGRESS
1ST SESSION

H. R. 557

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1977

Mr. MINISH introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To regulate lobbying and related activities.

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

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Public
5 Disclosure of Lobbying Act of 1975".

6 DEFINITIONS

7 SEC. 2. As used in this Act, the term—

8 (1) "person" includes a corporation, company,
9 association, firm, partnership, society, or joint stock
10 company, as well as an individual;

11 (2) "the policymaking process" means any action

1 taken by a Federal officer or employee with respect to
2 any bill, resolution, or other measure in Congress, or
3 with respect to any rule, adjudication, or other policy
4 matter in the executive branch;

5 (3) "Federal officer or employee" means any offi-
6 cer or employee in the legislative or executive branch,
7 and includes a Member of Congress, Delegate to Con-
8 gress, or the Resident Commissioner from Puerto Rico;

9 (4) "income" means the receipt or promise of any
10 consideration, whether or not legally enforceable;

11 (5) "expenditure" means the transfer or promise
12 of any consideration, whether or not legally enforceable;

13 (6) "quarterly filing period" means any calendar
14 quarter;

15 (7) "voluntary membership organization" means
16 an organization composed of individuals who are mem-
17 bers thereof on a voluntary basis and who, as a condition
18 of membership, are required to make regular payments
19 to the organization;

20 (8) "identification" means in the case of an indi-
21 vidual, the name, address, occupation, principal place
22 of business, and position held in that business, of the
23 individual, and in the case of a person other than an
24 individual, its name, address, principal officers, and
25 board of directors, if any;

1 (9) "lobbying" means a communication or the
2 solicitation or employment of another to make a com-
3 munication with a Federal officer or employee in order
4 to influence the policymaking process, but does not
5 include—

6 (A) an appearance before a congressional
7 committee, subcommittee, or joint committee or
8 the submission of a written statement thereto or
9 to any Federal executive department, agency, or
10 entity at the request of such department, agency, or
11 entity;

12 (B) any communication or solicitation by a
13 Federal officer or employee; or

14 (C) except with respect to a publication of
15 a voluntary membership organization, any com-
16 munication or solicitation through the distribution
17 in the normal course of business of any news, edi-
18 torial view, letter to an editor, advertising, or like
19 matter by—

20 (1) a periodical distribution to the gen-
21 eral public;

22 (2) radio or television broadcast; or

23 (3) a book publisher;

24 (10) "lobbyist" means, with respect to any quar-

1 terly filing period, any person who engages in lobby-
2 ing during that period and who—

3 (A) receives income of \$250 or more for such
4 lobbying during that period, whether such income
5 is the prorated portion of total income attributable
6 to that lobbying, or is received specifically for the
7 lobbying;

8 (B) receives an income of \$500 or more for
9 such lobbying during a total of four consecutive
10 quarterly filing periods, in each period of those
11 four which begins after that total of \$500 has
12 been received;

13 (C) makes an expenditure of \$250 or more,
14 except for the personal travel expenses of the lobby-
15 ist, for lobbying during that period; and

16 (D) makes an expenditure of \$500 or more
17 for lobbying during a total of four consecutive
18 quarterly filing periods, in each period of those
19 four which begins after that total of \$500 has been
20 expended;

21 (11) "Commission" means the Federal Election
22 Commission.

23 NOTICES OF REPRESENTATION

24 SEC. 3. Each lobbyist shall file a notice of representa-
25 tion with the Commission not later than fifteen days after

1 first becoming a lobbyist, and each lobbyist who has filed
2 such a notice and has been inactive as a lobbyist for three
3 consecutive quarterly filing periods shall also file a notice
4 of representation when that lobbyist again becomes a lobby-
5 ist. The notice of representation shall be in such form and
6 contain such information as the Commission shall prescribe,
7 including—

8 (1) an identification of the lobbyist;

9 (2) an identification, so far as possible, of each
10 person on whose behalf the lobbyist expects to perform
11 services as a lobbyist;

12 (3) a description of the financial terms and con-
13 ditions on which any lobbyist who is an individual is
14 retained by any person, and the identification of that
15 person;

16 (4) each aspect of the policymaking process which
17 the lobbyist expects to seek to influence, including any
18 Government agency, committee, or Federal officer or
19 employee, with which contact is to be made, the form
20 of communication used, and whether for or against a
21 particular measure;

22 (5) an identification of each person who, as of
23 the date of filing, is expected to be acting for such
24 lobbyist and to be engaged in lobbying including—

1 (A) to employ lobbyists (and the amount re-
2 ceived by each lobbyist so employed) ; and

3 (B) for research, advertising, staff, offices,
4 travels, mailings, and publications.

5 (4) Each expenditure made directly or indirectly to
6 or for any Federal officer or employee.

7 **REPORTS**

8 **SEC. 5.** Each lobbyist shall not later than fifteen days
9 after the last day of a quarterly filing period file a report
10 with the Commission covering that lobbyist's activities dur-
11 ing that quarterly filing period. Each such report shall be
12 in such form and contain such information as the Commis-
13 sion shall prescribe, including—

14 (1) an identification of the reporting lobbyist;

15 (2) an identification of each person on whose
16 behalf the reporting lobbyist performed services as a
17 lobbyist during the covered period, but not including
18 any member of any voluntary membership organization
19 on whose behalf the lobbyist performed such services,
20 if the member contributed not more than \$100 to the
21 organization during the covered period or during that
22 period combined with the three immediately preceding
23 quarterly filing periods;

24 (3) an identification of each person who acted as

1 a lobbyist on behalf of the reporting lobbyist during the
2 covered period;

3 (4) each decision of the policymaking process the
4 reporting lobbyist sought to influence during the covered
5 period, including bill numbers where relevant;

6 (5) an identification of each Federal officer or
7 employee with whom the reporting lobbyist communi-
8 cated during the covered period in order to influence
9 the policymaking process;

10 (6) a copy of any written communication used by
11 the reporting lobbyist during the covered period to solieit
12 other persons to lobby, and an estimate of the number
13 of persons to whom such written communication was
14 made; and

15 (7) copies of the records required to be kept by
16 the reporting lobbyist under section 4, to the extent
17 such records pertain to the covered period.

18 **EFFECT OF FILING ON CERTAIN DETERMINATIONS UNDER**
19 **THE INTERNAL REVENUE CODE OF 1954**

20 **SEC. 6.** Compliance with the filing requirements of this
21 Act shall not be taken into consideration in determining, for
22 purposes of the Internal Revenue Code of 1954, whether a
23 substantial part of the activities of an organization is carry-
24 ing on propaganda, or otherwise attempting, to influence
25 legislation.

1 estimate or request to the President or the Office of Manage-
2 ment and Budget, it shall concurrently transmit a copy of
3 that estimate or request to the Congress.

4 (2) Whenever the Commission submits any legisla-
5 tive recommendations, or testimony, or comments on legisla-
6 tion requested by the Congress or by any Member of
7 Congress to the President or the Office of Management and
8 Budget, it shall concurrently transmit a copy thereof to the
9 Congress or to the Member requesting the same. No officer
10 or agency of the United States shall have any authority
11 to require the Commission to submit its legislative recom-
12 mendations, or testimony, or comments on legislation, to
13 any office or agency of the United States for approval, com-
14 ments, or review, prior to the submission of such recom-
15 mendations, testimony, or comments to the Congress.

16 (k) Each voting member of the Commission shall be
17 compensated at the rate provided for executive level 5 of
18 the Executive Schedule under section 5316 of title 5 of the
19 United States Code.

20 POWERS OF COMMISSION

21 SEC. 8. (a) The Commission has the power—

22 (1) to require, by special or general orders, any
23 person to submit in writing such reports and answers
24 to questions as the Commission may prescribe; and such
25 submission shall be made within such reasonable period

1 person to submit in writing such reports and answers to
2 questions as the Commission may prescribe; and such
3 submission shall be made within such reasonable period
4 and under oath or otherwise as the Commission may
5 determine;

6 (2) to administer oaths;

7 (3) to require by subpoena, signed by the Chair-
8 man or the Vice Chairman, the attendance and testi-
9 mony of witnesses and the production of all documen-
10 tary evidence relating to the execution of its duties;

11 (4) in any proceeding or investigation to order
12 testimony to be taken by deposition before any person
13 who is designated by the Commission and has the power
14 to administer oaths and, in such instances, to compel
15 testimony and the production of evidence in the same
16 manner as authorized under paragraph (3) of this sub-
17 section;

18 (5) to initiate (through civil proceedings for in-
19 junctive relief and through presentation to Federal
20 grand juries), prosecute, defend, or appeal any civil or
21 criminal action in the name of the Commission for the
22 purpose of enforcing the provisions of the Act through
23 its General Counsel;

24 (6) to delegate any of its functions or powers,
25 other than the power to issue subpoenas under paragraph

1 (3) to prepare a manual setting forth recommended
2 uniform methods of bookkeeping and reporting and to
3 furnish such manual to lobbyists upon request;

4 (4) to develop a filing, coding, and cross-indexing
5 system consonant with the purpose of this Act;

6 (5) to make the notices of representation and
7 reports filed with it available for public inspection and
8 copying, commencing as soon as practicable but not
9 later than the end of the second day following the day
10 during which it was received, and to permit copying of
11 any such report or statement by hand or by duplicating
12 machine, as requested by any person, at the expense of
13 such person, provided that the charge does not exceed
14 actual marginal cost, but no information copied from
15 such reports and statements shall be sold or utilized by
16 any person for the purpose of soliciting contributions
17 or for any commercial purpose;

18 (6) to preserve the originals or copies of such
19 notices and reports for a period of ten years from date
20 of receipt;

21 (7) to compile and summarize, with respect to
22 each filing period, the information contained in such
23 notices, and reports in a manner reflective of the dis-
24 closure intent of this Act and in specific relation to—

25 (A) the lobbying activities and expenditures

1 of persons who share an economic, business, or
2 professional interest in the legislative or execu-
3 tive actions which they have sought to influence;

4 (7) to have such information, as so compiled and
5 summarized, published in the Federal Register within
6 fifteen days after the close of each filing period;

7 (8) to have each notice of representation which
8 is filed by any lobbyist published in the Federal Reg-
9 ister within three days after each such notice was
10 received by the Commission;

11 (9) to ascertain whether any lobbyist has failed
12 to comply fully and accurately with the disclosure
13 requirements of this Act and promptly notify such per-
14 son to file such notices and reports as are necessary to
15 satisfy the requirements of this Act or regulations pre-
16 scribed by the Commission under this Act;

17 (10) to make audits and field investigations with
18 respect to the notices, and reports filed under the pro-
19 visions of this Act, and with respect to alleged failures
20 to file any statement or reports required under the pro-
21 visions of this Act, and, upon complaint by any indi-
22 vidual, with respect to alleged violations of any part
23 of this Act;

24 (11) to prepare a special study or report upon the
25 request of any Member of the House of Representatives

1 or the Senate from information in the records of the
2 Commission; or, if such records do not contain the
3 necessary information, but the information would fall
4 under the scope of information required by this Act,
5 the Commission may inspect the records of the appro-
6 priate parties and prepare the report, but only if such
7 special inspection can be completed in a reasonable
8 time before the information would normally be filed;

9 (12) to prepare and publish such other reports
10 as it may deem appropriate;

11 (13) to prescribe suitable rules and regulations to
12 carry out the provisions of this Act; and

13 (14) to recommend legislation to carry out the
14 purposes of this Act.

15 **SANCTIONS**

16 **SEC. 10. (a)** Any lobbyist who knowingly and willfully
17 violates section 3 of this Act shall be fined not more than
18 \$5,000 or imprisoned for not more than two years.

19 (b) Any person who knowingly and willfully falsifies
20 all or part of any notice of representation or report which
21 he files with the Commission under this Act shall be fined
22 not more than \$5,000 or imprisoned for not more than two
23 years, or both.

24 (c) Any person who knowingly and willfully falsifies or
25 forges all or part of any communication to influence legis-

1 lative or executive action shall be fined not more than
2 \$5,000 or imprisoned for not more than two years, or both.

3 **REPEAL OF FEDERAL REGULATION OF LOBBYING ACT**

4 **SEC. 11.** The Federal Regulation of Lobbying Act (60
5 Stat. 839-842; 2 U.S.C. 261 et seq.) and that part of the
6 table of contents of the Legislative Reorganization Act of
7 1946 which pertains to the Federal Regulation of Lobbying
8 Act (60 Stat. 813), are repealed, effective on the date on
9 which the regulations to carry out this Act first become
10 effective.

11 **EFFECTIVE DATE**

12 **SEC. 12.** The provisions of this Act shall take effect upon
13 the date of its enactment, except that any person required
14 by section 5 (a) to maintain records shall not have any
15 duties or obligations under this Act to maintain such rec-
16 ords until the date on which the regulations to carry out
17 this Act first become effective.

1 of the organizations maintains actual control or has
2 the right of potential control of all or a part of the
3 activities of the other organization;

4 (B) units of a particular denomination of a
5 church or of a convention or association of churches;
6 and

7 (C) national membership organizations and
8 their State and local membership organizations or
9 units, national trade associations and their State and
10 local trade associations, national business leagues
11 and their State and local business leagues, national
12 federations of labor organizations and their State and
13 local federations, and national labor organizations
14 and their State and local labor organizations.

15 (2) The term "Comptroller General" means the
16 Comptroller General of the United States.

17 (3) The term "direct business contact" means any
18 relationship between an organization and any Federal
19 officer or employee in which—

20 (A) such Federal officer or employee is a part-
21 ner in such organization;

22 (B) such Federal officer or employee is a mem-
23 ber of the board of directors or similar governing
24 body of such organization, or is an officer or em-
25 ployee of such organization; or

1 (C) such organization and such Federal officer
2 or employee each hold a legal or beneficial interest
3 (exclusive of stock holdings in publicly traded cor-
4 porations, policies of insurance, and commercially
5 reasonable leases made in the ordinary course of
6 business) in the same business or joint venture, and
7 the value of each such interest exceeds \$1,000.

8 (4) The term "exempt travel expenses" means any
9 sum expended by any organization in payment or reim-
10 bursement of the cost of any transportation for any
11 agent, employee, or other person engaging in activities
12 described in section 3 (a), plus such amount of any sum
13 received by such agent, employee, or other person as
14 a per diem allowance for each such day as is not in
15 excess of the maximum applicable allowance payable
16 under section 5702 (a) of title 5, United States Code, to
17 Federal employees subject to such section.

18 (5) The term "expenditure" means—

19 (A) a payment, distribution (other than nor-
20 mal dividends and interest), salary, loan, advance,
21 deposit, or gift of money or other thing of value,
22 other than exempt travel expenses, made—

23 (i) to a Federal officer or employee; or

24 (ii) for mailing, printing, advertising, tele-

25 phones, consultant fees, or the like which are

1 attributable to activities described in section
2 3 (a), and for costs attributable partly to activi-
3 ties described in section 3 (a) where such costs,
4 with reasonable preciseness and ease, may be
5 directly allocated to those activities; or

6 (B) a contract, promise, or agreement, whether
7 or not legally enforceable, to make, disburse, or
8 furnish any item referred to in subparagraph (A).

9 (6) The term "Federal officer or employee"
10 means—

11 (A) any Member of the Senate or the House
12 of Representatives, any Delegate to the House of
13 Representatives, and the Resident Commissioner in
14 the House of Representatives;

15 (B) any officer or employee of the Senate or
16 the House of Representatives or any employee of
17 any Member, committee, or officer of the Congress;
18 and

19 (C) any officer of the executive branch of the
20 Government listed in sections 5312 through 5316
21 of title 5, United States Code.

22 (7) The term "identification" means—

23 (A) in the case of an individual, the name,
24 occupation, and business address of the individual
25 and the position held in such business; and

1 (B) in the case of an organization, the name
2 and address of the organization, the principal place
3 of business of the organization, the nature of its
4 business or activities, and the names of the execu-
5 tive officers and the directors of the organization,
6 regardless of whether such officers or directors are
7 paid.

8 (8) The term "organization" includes any corpora-
9 tion, company, foundation, association, labor organiza-
10 tion, firm, partnership, society, joint stock company,
11 national organization of State or local elected or ap-
12 pointed officials (excluding any National or State politi-
13 cal party and any organizational unit thereof, and
14 excluding any association comprised solely of Members
15 of Congress and congressional employees), group orga-
16 nizations, or group of individuals, which has paid officers,
17 directors, or employees.

18 (9) The term "quarterly filing period" means any
19 calendar quarter beginning on January 1, April 1,
20 July 1, or October 1.

21 (10) The term "solicitation" means any oral or
22 written communication directly urging, requesting, or
23 requiring another person to advocate a specific position
24 on a particular issue and to seek to influence a Federal
25 officer or employee with respect to such issue, but does



1 not mean such oral or written communications by one
2 organization registered under this Act to another orga-
3 nization registered under this Act.

4 (11) The term "State" means any of the several
5 States, the District of Columbia, the Commonwealth of
6 Puerto Rico, the Virgin Islands, Guam, American Sa-
7 moa, and the Trust Territory of the Pacific Islands.

8 APPLICATION OF ACT

9 SEC. 3. (a) The provisions of this Act shall apply to
10 any organization which—

11 (1) makes an expenditure in excess of \$1,250 in
12 any quarterly filing period for the retention of another
13 person to make oral or written communications directed
14 to a Federal officer or employee to influence the content
15 or disposition of any bill, resolution, treaty, nomination,
16 hearing, report, investigation (excluding civil or crimi-
17 nal investigations or prosecutions by the Attorney Gen-
18 eral and any investigation by the Comptroller General
19 authorized by the provisions of this Act), rule (as de-
20 fined in section 551 (4) of title 5, United States Code),
21 rulemaking (as defined in section 551 (5) of title 5,
22 United States Code), or the award of Government con-
23 tracts (excluding the submission of bids), or for the
24 express purpose of preparing or drafting any such oral
25 or written communication; or

1 (2) employs at least one individual who spends 20
2 percent of his time or more in any quarterly filing period
3 engaged on behalf of that organization in those activities
4 described in paragraph (1),

5 except that this Act shall not apply to an affiliate of a regis-
6 tered organization if such affiliate engages in activities de-
7 scribed in paragraphs (1) and (2) of this subsection and
8 such activities are reported by the registered organization.

9 (b) This Act shall not apply to—

10 (1) a communication (A) made at the request of a
11 Federal officer or employee, (B) submitted for inclusion
12 in a report or in response to a published notice of oppor-
13 tunity to comment on a proposed agency action, or (C)
14 submitted for inclusion in the record, public docket, or
15 public file of a hearing or agency proceeding;

16 (2) a communication or solicitation made through
17 a speech or address, through a newspaper, book periodi-
18 cal, or magazine published for distribution to the general
19 public or to the membership of an organization, or
20 through a radio or television broadcast: *Provided*, That
21 this exemption shall not apply to an organization respon-
22 sible for the purchase of a paid advertisement in a news-
23 paper, magazine, book, periodical, or other publication
24 distributed to the general public, or of a paid radio or
25 television advertisement;

1 tain the following, which shall be regarded as material for
2 the purposes of this Act—

3 (1) an identification of the organization and a gen-
4 eral description of the methods by which such organiza-
5 tion arrives at its position with respect to any issue,
6 except that nothing in this paragraph shall be construed
7 to require the disclosure of the identity of the members
8 of an organization; and

9 (2) an identification of any person retained under
10 section 3 (a) (1) and of any employee described in sec-
11 tion 3 (a) (2).

12 (c) A registration filed under subsection (a) in any
13 calendar year shall be effective until January 15 of the
14 succeeding calendar year. Each organization required to
15 register under subsection (a) shall file a new registration
16 under such subsection within fifteen days after the expira-
17 tion of the previous registration, unless such organization
18 has ceased to engage in activities described in section 3 (a).

19 RECORDS

20 SEC. 5. (a) Each organization required to be registered
21 and each person retained by such organization shall maintain
22 such records for each quarterly filing period as may be neces-
23 sary to enable such organization to file the registrations and
24 reports required to be filed under this Act. Such records shall

1 be maintained in accordance with regulations prescribed by
2 the Comptroller General. Any officer, director, employee, or
3 retained person of any organization shall provide to such
4 organization such information as may be necessary to enable
5 such organization to comply with the recordkeeping and re-
6 porting requirements of this Act. Any organization which
7 shall rely in good faith on the information provided by any
8 such officer, director, employee, or retained person shall be
9 deemed to have complied with this subsection.

10 (b) The records required by subsection (a) shall be
11 preserved for a period of not less than five years after the
12 close of the quarterly filing period to which such records
13 relate.

14 REPORTS

15 SEC. 6. (a) Each organization shall, not later than
16 thirty days after the last day of each quarterly filing period,
17 file a report with the Comptroller General concerning any
18 activities described in section 3 (a) which are engaged in by
19 such organization during such period. Each such report shall
20 be in such form as the Comptroller General shall prescribe
21 by regulation.

22 (b) Each report required under subsection (a) shall
23 contain the following, which shall be regarded as material
24 for the purposes of this Act—

1 (1) an identification of the organization filing such
2 report;

3 (2) the total expenditures which such organization
4 made with respect to activities described in section
5 3 (a) during such period, including an itemized listing
6 of each expenditure in excess of \$25 made to or for
7 the benefit of any Federal officer or employee and an
8 identification of such officer or employee, but not in-
9 cluding any contribution to a candidate as defined in
10 section 301 (e) of the Federal Election Campaign Act
11 of 1971 (2 U.S.C. 431 (e)) ;

12 (3) a disclosure of those expenditures for any re-
13 ception, dinner, or other similar event paid for, in whole
14 or in part, by the reporting organization for Federal
15 officers or employees regardless of the number of per-
16 sons invited or in attendance, where the total cost of the
17 event exceeds \$500;

18 (4) an identification of any person retained by the
19 organization filing such report under section 3 (a) (1)
20 and of any employee described in section 3 (a) (2)
21 and the expenditures made pursuant to such retention or
22 employment, except that in reporting expenditures for
23 the employment or retention of such persons, the organi-
24 zation filing such report shall—

1 (A) allocate, in a manner acceptable to the
2 Comptroller General, and disclose that portion of the
3 retained or employed person's income which is paid
4 by the reporting organization and which is attribut-
5 able to engaging in such activities for the organiza-
6 tion filing such report; or

7 (B) disclose the total expenditures paid to the
8 retained or employed person by the organization
9 filing such report;

10 (5) a description of the twenty-five issues concern-
11 ing which the organization filing such report engaged
12 in activities described in section 3 (a) and upon which
13 the organization spent the greatest proportion of its
14 efforts, and a general description of any other issues
15 concerning which the organization engaged in such
16 activities;

17 (6) a description of solicitations initiated or paid
18 for by such organization, and the subject matter with
19 which such solicitations were concerned, where such
20 solicitations reached or could be reasonably expected to
21 reach, in identical or similar form, five hundred or more
22 persons, or twenty-five or more officers or directors, one
23 hundred or more employees, or twelve or more affiliates
24 of such organization, except that this paragraph may be
25 satisfied, with respect to a written solicitation, at the dis-

1 cretion of the reporting organization, by filing a copy of
2 such solicitation;

3 (7) disclosure of each known direct business con-
4 tact by the organization involved with a Federal officer
5 or employee whom such organization has sought to
6 influence during the quarterly filing period involved;
7 and

8 (8) the dues or contribution schedule of the orga-
9 nization, and, if—

10 (A) an individual or organization contributes
11 in excess of such schedule;

12 (B) the total income to the reporting organiza-
13 tion from that individual or organization exceeds
14 2,500 in any calendar year; and

15 (C) such income is greater than one percent of
16 the total dues or contributions received by the report-
17 ing organization,

18 the name of each such individual or organization and
19 the amount contributed in excess of such schedule by
20 such individual or organization: *Provided*, That nothing
21 herein shall require the identification of an individual
22 or organizational donor of a contribution to an organiza-
23 tion described in section 501 (c) (3) of the Internal
24 Revenue Code of 1954, or the corresponding provision
25 or provisions of any future Federal revenue law.

1 As used in paragraph (8), the term "income" means a gift,
2 donation, contribution, payment, loan, advance, service, sal-
3 ary, or other thing of value received, and a contract, promise,
4 or agreement, whether or not legally enforceable, to receive
5 any such item, but does not include the value of any volun-
6 tary services provided by individuals without compensation
7 from the organization.

8 (c) If an organization which is required to register
9 under this Act directs an affiliate which is not required to
10 register to engage in a solicitation relating to an issue with
11 respect to which such organization is engaging in any activity
12 described in section 3(a), or reimburses such an affiliate
13 for expenses incurred in such a solicitation, then such orga-
14 nization must report such solicitation as if it were initiated,
15 or paid for, by such organization.

16 POWERS OF COMPTROLLER GENERAL

17 SEC. 7. (a) The Comptroller General, in carrying out
18 the provisions of this Act, is authorized—

19 (1) to informally request or to require by subpoena
20 any individual or organization to submit in writing such
21 reports, records, correspondence, and answers to ques-
22 tions as the Comptroller General may consider necessary
23 to carry out the provisions of this Act, within such
24 reasonable period of time and under oath or such other
25 conditions as the Comptroller General may require;

1 (2) to administer oaths or affirmations;

2 (3) to require by subpoena the attendance and testi-
3 mony of witnesses and the production of documentary
4 evidence;

5 (4) in any proceeding or investigation, to order
6 testimony to be taken by deposition before any person
7 designated by the Comptroller (General who has the
8 power to administer oaths and to compel testimony and
9 the production of evidence in any such proceeding or
10 investigation in the same manner as authorized under
11 paragraph (3);

12 (5) to pay witnesses the same fees and mileage as
13 are paid in like circumstances in the courts of the United
14 States; and

15 (6) to petition any United States district court
16 having jurisdiction for an order to enforce subpoenas
17 issued pursuant to paragraphs (1), (3), and (4) of
18 this subsection.

19 (b) No individual or organization shall be civilly liable
20 in any private suit brought by any other person for diselos-
21 ing information at the request of the Comptroller General
22 under this Act.

23 DUTIES OF THE COMPTROLLER GENERAL

24 SEC. 8. (a) It shall be the duty of the Comptroller
25 General—

1 (1) to develop filing, coding, and cross-indexing
2 systems to carry out the purposes of this Act, including
3 (A) a cross-indexing system which, for any person iden-
4 tified in any registration or report filed under this Act,
5 discloses each organization identifying such person in
6 any such registration or report, and (B) a cross-index-
7 ing system, to be developed in cooperation with the Fed-
8 eral Election Commission, which discloses for any such
9 person each identification of such person in any report
10 filed under section 304 of the Federal Election Cam-
11 paign Act of 1971 (2 U.S.C. 434);

12 (2) to make copies of each registration and report
13 filed with him under this Act available for public in-
14 spection and copying, commencing as soon as practi-
15 cable after the date on which the registration or report
16 involved is received, but not later than the end of the
17 fifth working day following such date, and to permit
18 copying of such registration or report by hand or by
19 copying machine or, at the request of any individual
20 or organization, to furnish a copy of any such registra-
21 tion or report upon payment of the cost of making and
22 furnishing such copy; but no information contained in
23 any such registration or report shall be sold or utilized
24 by any individual or organization for the purpose of
25 soliciting contributions or business;

1 (3) to preserve the originals or accurate reproduc-
2 tions of such registrations and reports for a period of not
3 less than five years from the date on which the regis-
4 tration or report is received;

5 (4) to compile and summarize, with respect to each
6 quarterly filing period, the information contained in
7 registrations and reports filed during such period in a
8 manner which clearly presents the extent and nature of
9 the activities described in section 3 (a) which are en-
10 gaged in during such period;

11 (5) to make the information compiled and sum-
12 marized under paragraph (4) available to the public
13 within sixty days after the close of each quarterly filing
14 period, and to publish such information in the Federal
15 Register at the earliest practicable opportunity;

16 (6) to conduct investigations with respect to any
17 registration or report filed under this Act, with respect
18 to alleged failures to file any registration or report re-
19 quired under this Act, and with respect to alleged viola-
20 tions of any provision of this Act; and

21 (7) to prescribe such procedural rules and regula-
22 tions, and such forms as may be necessary to carry out
23 the provisions of this Act in an effective and efficient
24 manner.

25 (b) For purposes of this Act, the duties of the Comp-

1 troller General described in subsections (a) (6) and (a)
2 (7) of this section will be carried out in conformity with
3 chapter 5 of title 5, United States Code.

4 **ADVISORY OPINIONS**

5 SEC. 9. (a) Upon written request to the Comptroller
6 General by any individual or organization, the Comptroller
7 General shall, within a reasonable time, render a written
8 advisory opinion with respect to the applicability of the
9 recordkeeping, registration, or reporting requirements of this
10 Act to any specific set of facts involving such individual
11 or organization, or other individuals or organizations simi-
12 larly situated.

13 (b) Notwithstanding any other provision of law, any
14 individual or organization with respect to whom an advisory
15 opinion is rendered under subsection (a) who acts in good
16 faith in accordance with the provisions and findings of such
17 advisory opinion shall be presumed to be in compliance with
18 the provisions of this Act to which such advisory opinion
19 relates. The Comptroller General may modify or revoke
20 any such advisory opinion, but any modification or revoca-
21 tion shall be effective only with respect to action taken after
22 such individual or organization has been notified, in writing,
23 of such modification or revocation.

24 (c) All requests for advisory opinions, all advisory

1 opinions, and all modifications or revocations of advisory
2 opinions shall be published by the Comptroller General in
3 the Federal Register.

4 (d) The Comptroller General shall, before rendering
5 an advisory opinion under this section, provide any inter-
6 ested individual or organization with an opportunity, within
7 such reasonable period of time as the Comptroller General
8 may provide, to transmit written comments to the Comp-
9 troller General with respect to such advisory opinion.

10 (e) Any individual or organization who has received
11 and is aggrieved by any advisory opinion from the Comp-
12 troller General may file a declaratory action in the United
13 States district court for the district in which such individual
14 resides or such organization maintains its principal place of
15 business.

16

ENFORCEMENT

17 SEC. 11. (a) If the Comptroller General has reason to
18 believe that any individual or organization has violated any
19 provision of this Act, the Comptroller General shall notify
20 such individual or organization of such apparent violation,
21 unless the Comptroller General determines that such notice
22 would significantly impair the effective enforcement of this
23 Act, and shall make such investigation of such apparent
24 violation as the Comptroller General considers appropriate.

1 Any such investigation shall be conducted expeditiously,
2 and with due regard for the rights and privacy of the indi-
3 vidual or organization involved.

4 (b) If the Comptroller General determines, after any
5 investigation under subsection (a), that there is reason to
6 believe that any individual or organization has engaged in
7 any acts or practices which constitute a civil violation of this
8 Act, he shall endeavor to correct such violation—

9 (1) by informal methods of conference or concilia-
10 tion; or

11 (2) if such methods fail, by referring such matter
12 to the Attorney General for the institution of a civil
13 action for relief, including a permanent or temporary
14 injunction, restraining order, civil penalty, or any other
15 appropriate relief in the United States district court for
16 the district in which such individual or organization is
17 found, resides, or transacts business. The Attorney Gen-
18 eral shall report to the Comptroller General within sixty
19 days of the referral and every ninety days thereafter
20 until there is a final disposition of it.

21 **REPORTS BY THE COMPTROLLER GENERAL**

22 **SEC. 12.** The Comptroller General shall transmit reports
23 to the President of the United States and to each House of
24 the Congress no later than March 31 of each year. Each such

23

1 report shall contain a detailed statement with respect to the
2 activities of the Comptroller General in carrying out his
3 duties and functions under this Act, together with recom-
4 mendations for such legislative or other action as the Comp-
5 troller General considers appropriate.

6 **SANCTIONS**

7 **SEC. 13. (a)** Any individual or organization knowingly
8 violating section 5, 6, or 7 of this Act, or the regulations
9 promulgated thereunder, shall be subject to a civil penalty
10 of not more than \$5,000 for each such violation.

11 **(b)** Any individual or organization selling or utilizing
12 information contained in any registration or report in viola-
13 tion of section 9 (a) (2) of this Act shall be subject to a civil
14 penalty of not more than \$10,000.

15 **REPEAL OF FEDERAL REGULATION OF LOBBYING ACT**

16 **SEC. 14.** The Federal Regulation of Lobbying Act (2
17 U.S.C. 261 et seq.), and that part of the table of contents
18 of the Legislative Reorganization Act of 1946 which pertains
19 to title III thereof, are repealed.

20 **SEPARABILITY**

21 **SEC. 15.** If any provision of this Act, or the application
22 thereof, is held invalid, the validity of the remainder of this
23 Act and the application of such provision to other persons
24 and circumstances shall not be affected thereby.

1 **AUTHORIZATION OF APPROPRIATIONS**

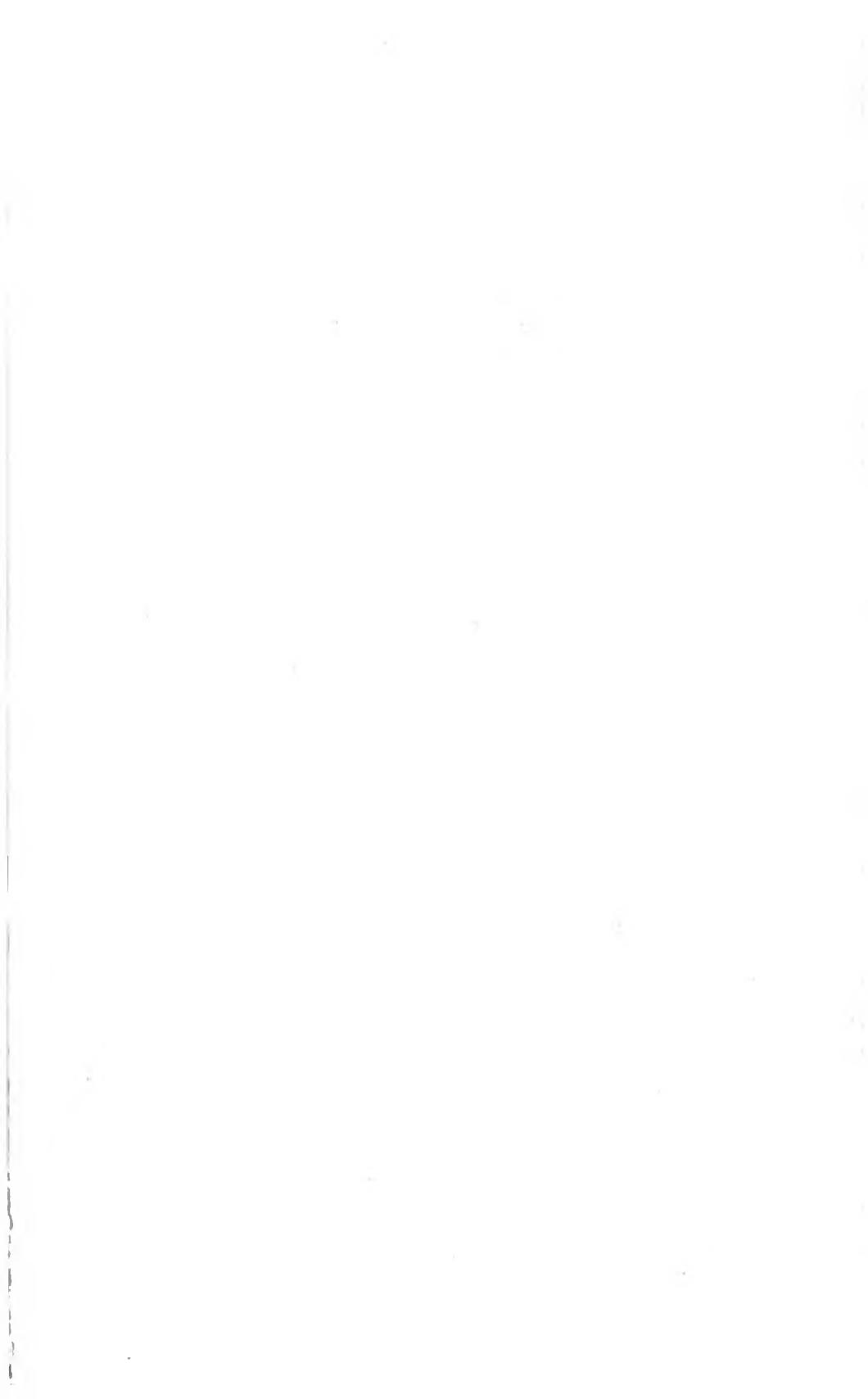
2 **SEC. 16.** There are authorized to be appropriated to
3 carry out the provisions of this Act \$1,000,000 for the fiscal
4 year ending September 30, 1978; and \$1,000,000 for the
5 fiscal year ending September 30, 1979.

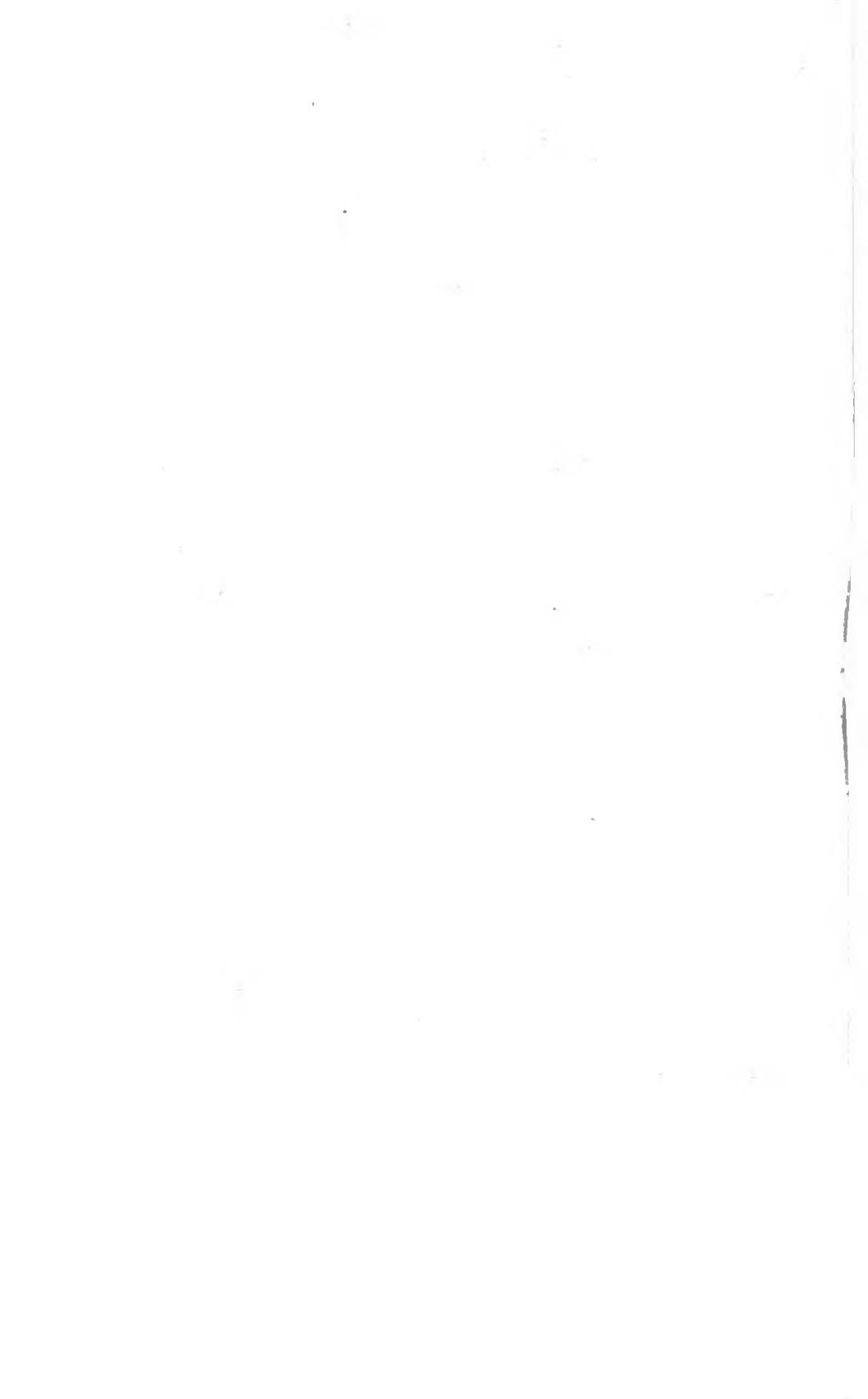
6 **EFFECTIVE DATES**

7 **SEC. 17. (a)** Except as provided in subsection (b), the
8 provisions of this Act shall take effect on the date of
9 enactment.

10 **(b)** The authority of the Comptroller General to pre-
11 scribe regulations under sections 5, 6, and 7 shall take effect
12 on the date of enactment of this Act. The remaining provi-
13 sions of sections 5, 6, and 7 and the provisions of sections 11,
14 13, and 14 shall take effect on the first day of the first calen-
15 dar year beginning after the date on which the first regula-
16 tions so prescribed take effect.

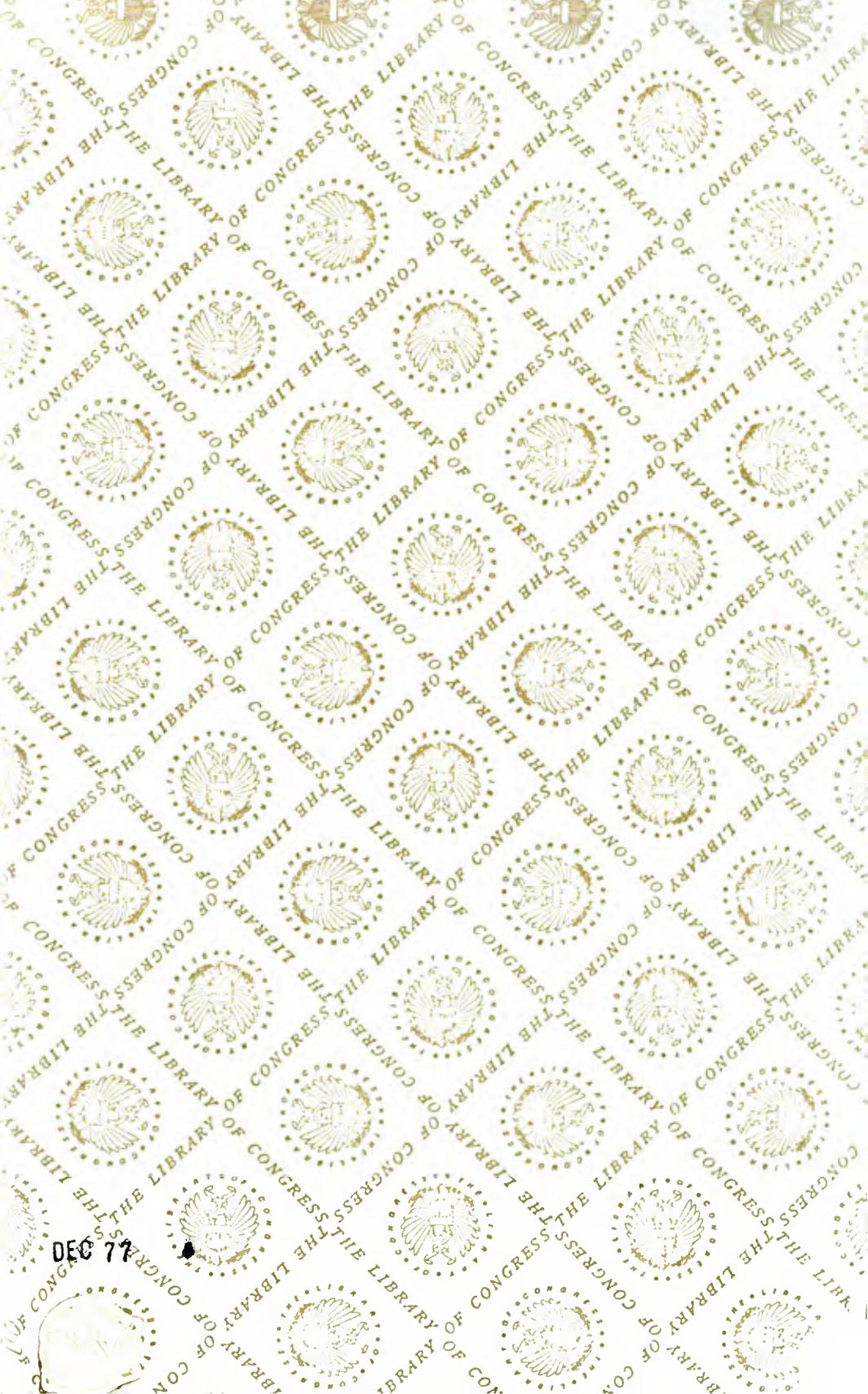












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