[NOT YET SCHEDULED FOR ORAL ARGUMENT]

No. 08-5085

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF MANUFACTURERS,

Plaintiff-Appellant,

v.

JEFFREY A. TAYLOR, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE JEFFREY A. TAYLOR

GREGORY G. KATSAS
Acting Assistant Attorney General

JEFFREY A. TAYLOR
United States Attorney

JONATHAN F. COHN
Deputy Assistant Attorney General

MICHAEL S. RAAB
(202) 514-4053
NICHOLAS BAGLEY
(202) 514-2498
Attorneys, Appellate Staff
Civil Division, Room, 7226
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties And Amici.

Plaintiff-appellant is the National Association of Manufacturers. Defendants-appellees are Jeffrey A. Taylor, the United States Attorney for the District of Columbia; Nancy Erickson, the Secretary of the United States Senate; and Lorraine C. Miller, Clerk of the United States House of Representatives.

Wisconsin Manufacturers and Commerce, Inc., WMC Issues Mobilization Council, the Iowa Association of Business and Industry, and the National Paint and Coatings Association have filed an amicus brief supporting the plaintiff. The Campaign Legal Center, Democracy 21, and Public Citizen filed an amicus brief in district court and intend to file an amicus brief in support of defendants. The Citizens for Reform and Ethics in Washington also filed an amicus brief in district court supporting defendants.

B. Rulings Under Review.

Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure and an agreement between the parties, the district court entered final judgment against the plaintiff on April 11, 2008.

C. <u>Related Cases</u>.

Defendant Taylor is aware of no related cases.

NICHOLAS BAGLEY

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page**

***Authorities chiefly relied upon.**

Statutes:

Legislative Materials:

Other Authorities:

GLOSSARY

App.	Appendix
FRLA	Federal Regulation of Lobbying Act
HLOGA	Honest Leadership and Open Government Act of 2007
LDA	Lobbying Disclosure Act of 1995
LMRDA	Labor-Management Reporting and Disclosure Act
NAM	National Association of Manufacturers

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF MANUFACTURERS,

Plaintiff-Appellant,

v.

JEFFREY A. TAYLOR, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE JEFFREY A. TAYLOR

STATEMENT OF JURISDICTION

Plaintiff National Association of Manufacturers (NAM) invoked the jurisdiction of the district court under 28 U.S.C. §§ 1331, 1343, 2201 and 2202. App. 2. The district court entered judgment against NAM on April 11, 2008. App. 63. NAM filed this appeal on April 16, within the time provided by Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

Whether the First Amendment prohibits Congress from requiring registered lobbyists to disclose the identities of organizations that fund and actively participate in their lobbying activities.

STATUTORY PROVISIONS INVOLVED

Section 207 of the Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81 (HLOGA), amended the Lobbying Disclosure Act of 1995, Pub. L. No. 104-65 (LDA). As amended, the LDA requires registered lobbyists to disclose the name and address of any organization that "contributes more than $5,000 to the registrant * * * in the quarterly period to fund the lobbying activities of the registrant," and "actively participates in the planning, supervision, or control of such lobbying activities." 2 U.S.C. § 1603(b)(3). The LDA defines "lobbying activities" as "lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others." 2 U.S.C. § 1602(7).

STATEMENT OF THE CASE

In 2007, Congress amended the Lobbying Disclosure Act of 1995 (LDA) to require registered lobbyists to disclose each quarter the identities of those organizations that provided substantial monetary support for, and actively participated in, the registrants' lobbying activities during that quarter. Several months later, the National Association of Manufacturers (NAM) challenged the constitutionality of the amended disclosure requirement. App. 1. After the district court dismissed NAM's

complaint, App. 63, NAM appealed. The district court, this Court, and Chief Justice Roberts (sitting as Circuit Justice) denied NAM's subsequent motions for an injunction pending appeal.

STATEMENT OF FACTS

I. STATUTORY BACKGROUND

In 1946, Congress enacted the Federal Regulation of Lobbying Act, Pub. L. No. 79-601, tit. III (FRLA). Under the FRLA, paid lobbyists, defined as those persons whose services were engaged for the purpose of influencing Congress, were required to register with the Clerk of the House of Representatives and the Secretary of the Senate. See id. § 308(a). They were also obligated to disclose each quarter the "name and address of each person who ha[d] made a contribution of $500 or more" to fund lobbying efforts. See id. §§ 305(a)(1), 307.

In United States v. Harriss, 347 U.S. 612 (1954), the Supreme Court affirmed the constitutionality of the FRLA's disclosure requirements, which the Court interpreted to apply only to those lobbyists who received contributions where "one of the main purposes" of their lobbying activities was "to influence the passage or defeat of legislation by Congress." Id. at 623. The Court explained that "[p]resent-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected," id. at 625, yet "full realization of the American

ideal of government by elected representatives depends to no small extent on their ability to properly evaluate [lobbying] pressures," id. at 625-26. The Court therefore found that the strong governmental interest in disclosure far outweighed any limited First Amendment concerns.

Over the course of fifty years, Congress became convinced that the FRLA had proven inadequate to meet that "American ideal of government by elected representatives." Congress therefore repealed the FRLA and enacted the Lobbying Disclosure Act of 1995, Pub. L. No. 104-65 (LDA), finding that:

> (1) responsible representative Government requires public awareness of the efforts of paid lobbyists to influence the public decisionmaking process in both the legislative and executive branches of the Federal Government;
>
> (2) existing lobbying disclosure statutes have been ineffective because of unclear statutory language, weak administrative and enforcement provisions, and an absence of clear guidance as to who is required to register and what they are required to disclose; and
>
> (3) the effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government.

LDA, § 2 (codified at 2 U.S.C. § 1601). Consistent with the aim of enhancing "responsible representative government" and "increas[ing] public confidence in the integrity of Government," the LDA continued to require paid lobbyists to register with Congress and broadened the definition of "lobbying" to include

contacts with executive or legislative officials. See id. § 3(8) (codified at 2 U.S.C. § 1602(8)). The LDA also obligated registered lobbyists to disclose the identity of those organizations (not including individuals) that contributed more than $10,000 over a six-month period and "in whole or major part plan[ned], supervise[d], or control[led] * * * lobbying activities." Id. § 4(b)(3) (codified at 2 U.S.C. § 1603(b)). "Lobbying activities" was defined as "lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others." Id. § 3(7) (codified at 2 U.S.C. § 1602(7)). That definition remains unchanged today.

After twelve years of experience with the LDA, Congress grew concerned about a "loophole" to the disclosure obligation. See 153 Cong. Rec. S10709 (daily ed. Aug. 2, 2007) (explaining the purpose of § 207); see also Alison Mitchell, Loophole Lets Lobbyists Hide Clients' Identity, N.Y. Times, July 5, 2002 (recognizing loophole). Under the LDA as originally enacted, an associational lobbyist that acted on behalf of multiple contributors could disclaim reporting responsibilities simply because no single contributor "in whole or major part" controlled its activities. NAM itself acknowledges taking advantage of the

loophole. See Appellant's Br. 45.

In the Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81 (HLOGA), Congress closed this loophole. Section 207 of HLOGA amends the LDA to require registered lobbyists to disclose the identities of those organizations that provided more than $5,000 in a quarter and "actively participated in the planning, supervision, or control of * * * lobbying activities." Id. § 207(a)(1) (codified at 2 U.S.C. § 1603(b)(3)).[1] The LDA still does not require disclosure of individual (i.e., non-organizational) contributors, and § 207 does not require disclosure "if the organization that would be identified as affiliated with the client is listed on the client's publicly accessible Internet website as being a member of or contributor to the client, unless the organization in whole or in major part plans, supervises, or controls such lobbying activities." Id. § 207(b) (codified at 2 U.S.C. § 1603(b)).

II. PRIOR PROCEEDINGS.

On February 6, 2008, NAM filed this suit and sought to preliminarily enjoin the implementation or enforcement of § 207. The parties agreed to treat NAM's preliminary injunction motion as a motion for a decision on the merits. The district court denied the motion on April 11 and, pursuant to the agreement of the

[1] Because HLOGA halved the monetary threshold at the same time it halved the reporting period, the threshold's shift from $10,000 to $5,000 is of minimal practical consequence.

parties, entered final judgment against NAM. App. 63.

The district court began by considering whether to apply intermediate or strict scrutiny to § 207, and observed that neither Buckley v. Valeo, 424 U.S. 1, 60-64 (1976), nor McConnell v. FEC, 540 U.S. 93, 196 (2003), "utilized the traditional language of the strict scrutiny standard" in upholding the validity of disclosure requirements over First Amendment objections. App. 89. The court nevertheless declined to resolve which standard to apply because it concluded that § 207 satisfied all three requirements of strict scrutiny. App. 90.

First, the court "easily conclude[d]" that Congress had a legitimate and compelling interest "in avoiding the appearance of corruption." App. 93. Both the congressional findings and the legislative history, the court concluded, were replete with references to Congress's good-faith effort to promote transparency, improve public oversight, eliminate improper influence, and enhance responsible representative Government. App. 91-93. The court moreover pointed to "a number of other federal and state courts [that] have reached the same conclusion in considering lobbying disclosure requirements." App. 93.

Second, the court found that § 207 would materially further Congress's compelling interests by closing the loophole that had previously allowed some multi-member associations, including NAM, to avoid disclosing their contributors altogether. App. 91-101.

In the court's view, § 207 "provides precisely the information--'who pays, who puts up the money, and how much'--that [the Supreme Court in] Harriss found to be the valid purpose of lobbying disclosures." App. 97 (quoting 347 U.S. at 625). The court rejected NAM's claim that the provision was underinclusive, observing that "'a regulation is not fatally underinclusive simply because an alternative regulation, which would restrict more speech or the speech of more people, could be more effective.'" App. 99 (quoting Blount v. SEC, 61 F.3d 938, 946 (D.C. Cir. 1995)).

Third, the district court held that § 207 was narrowly tailored to achieve its goals. The court rejected NAM's contention that the law should have been drafted to exclude from its scope those long-established organizations with purportedly non-deceptive names. "Congress certainly could not," the court reasoned, "draw a 'bright-line' rule based on some loose conception of whether an association or coalition's name accurately represented its constituencies." App. 102. And the Court noted that the less restrictive alternatives that Congress had previously enacted--the original 1946 disclosure legislation and the 1995 LDA--had proven ineffective. App. 103.

After rejecting NAM's claims on the merits, the district court, "out of an abundance of caution," App. 105, found that NAM had not alleged an injury sufficiently grave to outweigh the

government's interest in compelling disclosure. The court reasoned that "NAM's allegations fail to meet * * * [the] requirement of a showing of a 'reasonable probability that the compelled disclosure of [the NAM members'] names will subject them to threats, harassment, or reprisals from either Government officials or private parties.'" App. 106 (quoting Buckley, 424 U.S. at 74). In this case, the court concluded, "NAM offers only speculation that harm may befall its members if they are disclosed as connected to the NAM's lobbying activities." App. 107.

Lastly, the court addressed NAM's vagueness challenge. Recognizing "that a facial challenge must fail where the statute has a plainly legitimate sweep," App. 109 (quoting Wash. State Grange v. Wash. State Repub. Party, 128 S.Ct. 1184, 1190 (2008) (internal quotation marks omitted)), the court found that § 207 adequately put NAM on notice of which organizations it was obligated to disclose. The court rejected NAM's claim that the 1996 definition of "lobbying activity," which captures activity "that is intended, at the time it is performed," to be used for lobbying purposes, 2 U.S.C. § 1602(7), was vague because it used the word "intended." "Viewed in context," the court reasoned, the "reference to intent serves to distinguish activities undertaken in support of lobbying contacts (which may require disclosure) from those undertaken for other purposes (which do not)." App. 112. The standard is therefore "far more objective" than the

subjective standards found constitutionally problematic in other circumstances. It furthermore noted that "any ambiguity caused by the reference to intent in the definition of lobbying activities may be mitigated by the scienter requirements included in the revised penalty provisions." App. 114.

Three days after its suit was dismissed, NAM filed a motion in the district court for an injunction pending appeal. The court denied that motion on April 18. This Court rejected NAM's subsequent motion for an injunction pending appeal, see Order of Apr. 21, 2008, Nat'l Ass'n of Mfrs., 08-5085 (D.C. Cir.), as did Chief Justice Roberts, sitting in his capacity as Circuit Justice.

SUMMARY OF ARGUMENT

For more than 60 years, Congress has required lobbyists to disclose the identities of their corporate contributors. Because "full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate [lobbying] pressures," United States v. Harriss, 347 U.S. 612, 625 (1954), the Supreme Court has held that such disclosure requirements comport with the First Amendment. No court has ever held that requiring lobbyists to disclose "who is being hired, who is putting up the money, and how much" violates the Constitution. Id.

Plaintiff National Association of Manufacturers (NAM) nevertheless asks this Court to hold unconstitutional, both on its

face and as applied, a limited disclosure requirement that applies to registered lobbyists. The challenged provision, § 207 of the Honest Leadership and Open Government Act of 2007 (HLOGA), amended the Lobbying Disclosure Act of 1995 (LDA) to require registered lobbyists to disclose each quarter the identities of those organizations (but not individuals) that contributed more than $5,000 and actively participated in lobbying activities during that quarter. See 2 U.S.C. § 1603(b)(3). This incremental amendment to the LDA closed a loophole that had allowed associational lobbyists like NAM to entirely avoid reporting the identities of their corporate contributors.

Because it is a "minimally restrictive method of furthering First Amendment values," Buckley v. Valeo, 424 U.S. 1, 82 (1976), a disclosure requirement of this sort must be upheld if it bears a substantial relationship to an important governmental purpose, see McConnell v. FEC, 540 U.S. 93, 231 (2003) (citing Buckley, 424 U.S. at 81). Under this standard, the LDA as amended easily passes constitutional muster. NAM, however, argues that this Court should subject § 207 to strict scrutiny, a more demanding standard than required by Buckley and McConnell, because § 207 will severely restrict speech, infringe on associational rights, and hamper the right to petition. That is so, NAM alleges, because its member corporations might disassociate from NAM out of fear of public reprisal should their affiliation with NAM become

known. But NAM's speculation as to the possible behavior of its corporate members has no place in a facial challenge, and NAM's as-applied challenge founders on its failure even to allege that a particular member corporation faces a meaningful, non-speculative risk of reprisal. NAM's effort to ratchet up the standard of review therefore fails.

In any event, as the district court properly found, § 207 as amended would satisfy strict scrutiny. By contributing to the pool of information about those organizations that finance and direct lobbying efforts, § 207 serves the undeniably compelling interests of promoting sound governance and improving public confidence in elected officials. And the provision is narrowly tailored to serve those interests: it applies only to organizations, not individuals; it exempts passive contributors from disclosure; and it requires the identification only of organizations that spend substantial sums on lobbying.

NAM's contention that the amended LDA is void for vagueness also lacks merit. In nearly every case, the LDA's disclosure obligations are amenable to straightforward application. Although limited uncertainty may remain on the margins, NAM's "basic mistake lies in the belief that the mere fact that close cases can be envisioned renders a statute vague." United States v. Williams, 128 S. Ct. 1830, 1846 (2008). Here, where Congress has issued guidelines to aid in complying with the LDA, and where the

LDA prohibits only "knowing" violations, there is no basis for holding that the LDA is unintelligible.

STANDARD OF REVIEW

This Court reviews a district court's grant of judgment on the pleadings de novo. See Peters v. Nat'l R.R. Passenger Corp., 966 F.2d 1483, 1485 (D.C. Cir. 1992).

ARGUMENT

I. SECTION 207 SURVIVES EXACTING SCRUTINY.

A. Disclosure Obligations That Bear a Substantial Relation To Important Governmental Interests Are Constitutional.

As the Supreme Court held in Buckley v. Valeo, 424 U.S. 1 (1976), and reaffirmed in McConnell v. FEC, 540 U.S. 93 (2003), disclosure obligations are subject to "exacting scrutiny," which requires only that the compelled disclosure bear a substantial relation to an "important governmental interest." McConnell, 540 U.S. at 231; Buckley, 424 U.S. at 64 (holding that "exacting scrutiny" requires a showing of a "substantial relation between the governmental interest and the information required to be disclosed" (internal quotation marks and footnote omitted)); see also Buckley v. Am. Const. Law Found., Inc., 525 U.S. 182, 202 (1999) ("In [Buckley], we stated that 'exacting scrutiny' is necessary when compelled disclosure of campaign-related payments is at issue [and] upheld, as substantially related to important governmental interests, the recordkeeping, reporting, and disclosure provisions of [FECA] * * * ."). The Court's deliberate

use of the phrases "substantial relation" and "important governmental interest" in the disclosure context distinguishes exacting scrutiny from strict scrutiny, under which speech restrictions are upheld "only if they are narrowly tailored to serve a compelling state interest." Wash. State Grange v. Wash. State Republican Party, 128 S. Ct. 1184, 1191 (2008) (internal quotation marks omitted); see also Alaska Right to Life Comm. v. Miles, 441 F.3d 773, 788 (9th Cir. 2006) ("[T]he [Supreme] Court [in McConnell] did not apply 'strict scrutiny' or require a 'compelling state interest.' Rather, the Court upheld the disclosure requirements as supported merely by 'important state interests.'" (internal citation omitted)).

This relatively deferential treatment stems from the Supreme Court's recognition that disclosure requirements are "minimally restrictive method[s] of furthering First Amendment values by opening the basic processes of our federal election system to public view." Buckley, 424 U.S. at 82. In keeping with this understanding, the Supreme Court has sustained numerous disclosure requirements over constitutional objection. In Buckley, the Court rejected a First Amendment challenge to a provision requiring the disclosure of any independent expenditures made to support a candidate for office, even as it invalidated substantive limitations on those expenditures. See 424 U.S. at 80-82. In McConnell, the Court upheld a requirement that private individuals

who pay for advertisements favoring a particular candidate must identify themselves and announce that they are unaffiliated with that candidate. See 540 U.S. at 230-31. In First National Bank of Boston v. Bellotti, 435 U.S. 765, 791-92 n.32 (1978), the Court invalidated certain restrictions on corporate expenditures in part because the disclosure of those expenditures would adequately further the government's interests. In Citizens Against Rent Control v. Berkeley, 454 U.S. 290, 298-300 (1981), the Court struck down limits on contributions to ballot-initiative groups but did not question the validity of requiring the public identification of contributors. And in FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 262 (1986) (MCFL), the Court invalidated limits on independent expenditures made by certain non-profit corporations, but noted that the non-profits could legitimately be required to disclose the source of the contributions that helped bankroll those expenditures.

Following suit, three federal courts of appeals and the California Supreme Court have affirmed the constitutionality of lobbying-related disclosure requirements. In Alaska Right to Life Committee, 441 F.3d at 778-93, the Ninth Circuit upheld an Alaska statute requiring registered lobbyists to report their expenditures and disclose their identities in any electioneering communications that they finance. In Florida League of Professional Lobbyists, Inc. v. Meggs, 87 F.3d 457, 458, 460-61

(11th Cir. 1996), the Eleventh Circuit rejected a facial challenge to a Florida law requiring lobbyists to disclose for each of their expenditures the identity of any client that provided money for that expenditure. In Minnesota State Ethical Practices v. NRA, 761 F.2d 509, 512 (8th Cir. 1985), the Court upheld a Minnesota statute requiring the disclosure of a lobbyist's employers because, "under Buckley, the State of Minnesota's interest in disclosure outweighs any infringement of * * * first amendment rights."[2] And in Fair Political Practices Commission v. Superior Court, 599 P.2d 46, 54 (Cal. 1979), the California Supreme Court "sustain[ed] the validity of * * * provisions requiring the registration of lobbyists and their employers and the reporting of lobbying receipts, expenditures, and activities and employers' businesses."

Although NAM asserts that exacting scrutiny is the same as strict scrutiny, Appellant's Br. 28, both of the Supreme Court cases it cites to support that assertion considered the constitutionality of laws restricting "core political speech."

---

[2] Similarly, in Master Painters of America v. Donovan, 751 F.2d 700 (4th Cir. 1984), the Fourth Circuit rejected a challenge to a provision of the Labor-Management Reporting and Disclosure Act (LMRDA) requiring disclosure of the identity of any individual hired by an employer to persuade employees on union-related matters. "Just as the Federal Elections Campaign Act reviewed in Buckley and the Lobbying Act upheld in Harriss provided such needed sunlight in two areas prone to corrupt activity, so the disclosure provisions of the LMRDA expose 'persuader activity' to the effective 'disinfectant' of public scrutiny." Id. at 713 (quoting Buckley, 424 U.S. at 67).

McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 347 (1995); Burson v. Freeman, 504 U.S. 191, 198 (1992) (considering "a facially content-based restriction on political speech in a public forum"). Accordingly, in both cases the Court explicitly considered whether the statute in question was narrowly tailored to serve compelling interests. In contrast, because disclosure obligations are "minimally restrictive," Buckley, 424 U.S. at 82, the Court has consistently asked only whether they are "substantially related to important governmental interests," Am. Const. Law Found., 525 U.S. at 202.

B. Strict Scrutiny Is Inapplicable To NAM's Challenge.

Brushing aside the case law, NAM argues that § 207 is subject to strict scrutiny because it severely burdens "core speech." Appellant's Br. 22. To support this contention, NAM variously argues that § 207 "directly regulates speech," id., impedes associational rights, id. at 23-24, and "expressly targets and burdens petitioning," id. at 23. But § 207 does nothing of the sort. It is a disclosure requirement, and a fairly limited one at that. See Harriss, 347 U.S. at 625 (noting that Congress in the FRLA "has not sought to prohibit [lobbying] pressures," but instead "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").

At bottom, NAM's constitutional arguments relate not to the

direct regulatory effects of § 207, but to the anticipated collateral consequences of disclosure. Indeed, NAM acknowledges that § 207 burdens its "core" First Amendment rights because its corporate contributors want to lobby "on a variety of hot-button issues" without facing the risk of "adverse consequences to members publicly identified as actively participating in such efforts." Appellant's Br. 14-15. NAM is mistaken, however, that the possibility of "adverse consequences" is relevant to its facial challenge, and equally mistaken that its generalized and unsupported speculation about third parties not before the Court can support an as-applied attack on § 207. See App. 11 (alleging that the act is deficient "both facially and as applied").

1. NAM's Facial Challenge To § 207 Must Be Confined To The Express Terms Of § 207.

The Supreme Court has recently reiterated that a facial challenge can succeed only if a plaintiff can "'establish that no set of circumstances exists under which [a law] would be valid,'" which is to say, "that the law is unconstitutional in all its applications," Wash. State Grange v. Wash. State Repub. Party, 128 S. Ct. 1184, 1190 (2008) (quoting United States v. Salerno, 481 U.S. 739, 745 (1987)). Thus, when a statutory provision "does not on its face impose a severe burden on * * * associational rights," and when a challenger's "arguments to the contrary rest on factual assumptions * * * that can be evaluated only in the context of an as-applied challenge," id. at 1187, it is inappropriate "to go

beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases," id. at 1190.

Because § 207 does not burden associational rights on its face--it is just a disclosure provision--NAM's claim that it will burden "core speech" depends on its factual assumption that corporations will sever contact with NAM out of fear that they will face serious reprisals should their affiliation with NAM be disclosed. But this factual assumption does not hold for all companies; indeed, NAM posts the names of many of its corporate contributors on its website, suggesting that the likelihood of reprisal varies greatly from company to company. App. 107. Because the claim that particular companies will be likely targets of unwarranted reprisals can "be evaluated only in the context of an as-applied challenge," id. at 1187, NAM's factual assumption is irrelevant to its facial challenge to § 207.

Setting that assumption aside, NAM's argument in favor of strict scrutiny reduces to the contention that a private organization has an unfettered First Amendment right to pay a third party to lobby on its behalf, without ever disclosing its identity to Congress or to the public. That is not the law. Disclosure is only a "minimally restrictive method," Buckley, 424 U.S. at 82, for ensuring that public officials and the public know "who is being hired, who is putting up the money, and how much," Harriss, 347 U.S. at 625. Precisely because disclosure

requirements impose no direct speech restrictions, precluding a private organization from anonymously hiring a lobbyist does not burden "core First Amendment rights" or otherwise trigger strict scrutiny. See Fla. League of Prof'l Lobbyists, 87 F.3d at 459 (declining to apply strict scrutiny to a Florida disclosure statute because the Supreme Court in Harriss "did not subject the lobbying restriction to strict scrutiny").[3]

Furthermore, § 207 requires disclosure only of the identities of certain contributing "organizations," a term that expressly excludes individuals. See 2 U.S.C. §§ 1602(13), 1603(b)(3); see also Amundson Decl. ¶6 (averring that NAM has "11,000 corporate members"). As the Supreme Court has observed, "corporations can claim no equality with individuals in the enjoyment of a right to privacy." United States v. Morton Salt Co., 338 U.S. 632, 652

[3] None of the cases NAM identifies holds that disclosure requirements by their nature "impos[e] substantial burdens on * * * core rights." Appellant's Br. 25. In FEC v. Wisc. Right to Life, 127 S. Ct. 2652 (2007) (WRTL), the Supreme Court addressed a direct prohibition on using corporate funds for political speech, not a disclosure obligation. In ACLU of N.J. v. Election Law Enforcement Comm'n, 509 F. Supp. 1123, 1130 (D.N.J. 1981), a district court upheld a disclosure requirement over constitutional objection, noting that "disclosure requirements are probably the least restrictive means of serving [important governmental] interests" and that, in any event, plaintiffs did "not seriously challenge the requirements that they and similar organizations report contributions and expenditures directly related to lobbying." And in Citizens Energy Coalition of Ind., Inc v. Sendak, 459 F. Supp. 248, 251 (D. Ind. 1978), a district court invalidated a state policy of prohibiting lobbyists from securing government contracts; the case had nothing to do with disclosure obligations.

(1950). NAM cites no case in which the mere disclosure of a corporation's identity, without more, gave rise to a First Amendment injury sufficient to trigger the application of strict scrutiny.[4]

Because no court has recognized a First Amendment right to anonymously hire a lobbyist, and certainly not for corporations, it is difficult to understand the basis for NAM's contention that merely requiring it to disclose the identities of its corporate contributors will trench on "core" First Amendment rights.[5] To support its position, NAM cites AFL-CIO v. FEC, 333 F.3d 168, 175-76 (D.C. Cir. 2003). Appellant's Br. 26-27. But in AFL-CIO, this Court explained that where, as here, a plaintiff has made an

---

[4] NAM cites Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510-11 (1972), Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127, 137-38 (1961), and First Nat'l Bank of Boston v. Belotti, 435 U.S. 765, 776-77 (1978), for the proposition that "groups with common interests" receive "core" First Amendment protection. Appellant's Br. 24. But the first two cases considered whether the Sherman Act prohibited coordinated efforts to petition the government, and the third involved a state law forbidding a corporation from expending money to influence statewide referenda. All three thus dealt with direct prohibitions on speech, and none held that a corporation has a "core" First Amendment right to anonymously hire a lobbyist.

[5] The Supreme Court in McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 341-43 (1995), and American Constitutional Law Foundation, 525 U.S. at 199-204, affirmed that individuals have a constitutional right to protect their identities while in the act of speaking. Neither case, however, questioned the validity of requiring the non-contemporaneous disclosure of organizational identities. See Appellants' Br. 26 n.13.

"insubstantial" showing of an associational injury, "we have upheld a disclosure requirement that provided 'the only sure means of achieving' a government interest that was, though valid, 'not * * * of the highest importance.'" 333 F.3d at 176 (quoting Block v. Meese, 793 F.2d 1303, 1316-18 (D.C. Cir. 1986)). That is not strict scrutiny. Indeed, the Court in AFL-CIO considered the constitutionality of a sweeping regulation that would have resulted in the disclosure of strategic political materials from a group that had been exonerated before the FEC. Notwithstanding the sensitivity of the materials and the likelihood of injury, the Court still "declin[ed] to determine the precise level of scrutiny applicable." Id. at 178.

Far from supporting NAM, AFL-CIO was explicit that disclosure obligations impose a severe burden on First Amendment rights only when "a political group demonstrates that the risk of retaliation and harassment is 'likely to affect adversely the ability of * * * [the group] and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate.'" AFL-CIO v. FEC, 333 F.3d 168, 176 (D.C. Cir. 2003) (quoting NAACP v. Alabama, 357 U.S. 449, 462-63 (1958)). This Court's reliance on NAACP v. Alabama is telling. There, the Supreme Court invalidated a Jim Crow-era disclosure requirement as applied to the NAACP because "on past occasions revelation of the identity of [the NAACP's] rank-and-file members" gave rise to, among other

things, "threat[s] of physical coercion." 357 U.S. at 462. NAM does not (and could not) claim that its corporate contributors face remotely comparable risks should their identities become known. As the Supreme Court has explained, "when money supports an unpopular viewpoint it is less likely to precipitate retaliation" than when an individual expresses those same views. McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 355 (1995).[6]

2. NAM Has Failed To Bring A Legitimate As-Applied Challenge To § 207.

However NAM endeavors to characterize its suit, it is evident that it has not in fact mounted a bona fide as-applied challenge

[6] NAM is mistaken that "the Eighth and Ninth Circuits have applied strict scrutiny" to analogous disclosure obligations. Appellant's Br. 27. In Minnesota Citizens Concerned for Life, Inc. v. Kelley, 427 F.3d 1106, 1110 (8th Cir. 2005), the Eighth Circuit upheld a lobbying-related disclosure obligation, citing its earlier decision in Minnesota State Ethical Practice Board v. NRA, 761 F.2d 509, 512 (8th Cir.1985). While the Eighth Circuit noted that "[s]tate laws which inhibit the exercise of first amendment rights are unconstitutional unless they serve a 'compelling' state interest," id. at 511, the court did not find that disclosure laws "inhibit" first amendment rights. Instead, and without ever using the phrase "strict scrutiny," the court simply held that "Minnesota's interest in disclosure outweighs any infringement of the appellants' first amendment rights." Id. at 512 (emphasis added). In California Pro-Life Council, Inc. v. Getman, 328 F.3d 1088, 1101 n.16, 1104 (9th Cir. 2003), the Ninth Circuit applied strict scrutiny to a California obligation that political action committees submit "detailed reports" of "ballot-measure advocacy contributions and expenditures." Getman did not, however, consider whether a requirement that registered lobbyists disclose the identities of their contributors is subject to strict scrutiny. Far from settling the question in Getman, the Ninth Circuit subsequently declined to decide whether strict scrutiny applies to a requirement that electioneering groups disclose their identities in their communications. See Alaska Right to Life Committee, 441 F.3d at 787-88.

to § 207. As the district court recognized, NAM failed to make even a concrete allegation to support the claim that a particular corporation subject to disclosure faces a meaningful risk of retaliation, much less submitted an affidavit to that effect. See App. 106 (noting that "neither the NAM's Complaint nor the Declaration supporting its Motion for a Preliminary Injunction describes actual harm or harassment that has befallen either the NAM, or any of its members whose identities are publicly available on the NAM's website, as a result of the NAM's lobbying activities"). The Supreme Court rejected precisely such a generalized attack on disclosure provisions in Buckley:

> There could well be a case * * * where the threat to the exercise of First Amendment rights is so serious and the state interest furthered by disclosure so insubstantial that the Act's requirements cannot be constitutionally applied. But no appellant in this case has tendered record evidence of [such a threat]. Instead, appellants primarily rely on "the clearly articulated fears of individuals, well experienced in the political process." On this record, the substantial public interest in disclosure identified by the legislative history of this Act outweighs the harm generally alleged.

424 U.S. at 71-72 (internal citation and footnote omitted). If "clearly articulated fears" were inadequate in Buckley, newspaper reports that some corporations--not identified as NAM members--have been criticized for adopting controversial positions are obviously inadequate. See Appellant's Br. 15 n. 6-7.[7]

[7] The confidentiality of any such corporation could have been preserved through the straightforward expedient of moving to file under seal. See U.S. Dist. Ct. for D.C. Local Civ. R.

Moreover, the fact that NAM waived its opportunity to develop evidence in this case should dispel any doubt that NAM has brought a legitimate as-applied challenge. When the parties agreed to convert NAM's motion for preliminary relief into a motion for judgment on the pleadings, the district court entered a minute order noting that NAM "has agreed that, in the event that the Court rules in favor of Defendants on the merits, this action shall be dismissed in its entirety." Minute Order of Feb. 8, 2008, NAM v. Taylor, 08-208 (D.D.C.). Accordingly, when the district court ruled in the government's favor, it dismissed the action "pursuant to the agreement of the parties." App. 63.

C. On Its Face, § 207 Bears A Substantial Relation To An Important Governmental Interest.

NAM is left with a bare facial challenge to § 207, which on its face requires only disclosure. Applying the standard developed in Buckley and reaffirmed in McConnell for disclosure provisions, and taking due account of the fact that only the disclosure of organizational identities is at stake, § 207 readily withstands scrutiny. Informing government officials and the public of who is behind a lobbying effort serves an "important governmental interest." See McConnell, 540 U.S. at 231. And NAM cannot credibly claim that § 207 fails to serve that purpose, or that it covers "substantially more speech than is necessary to

---

5.1(j) (providing for sealing documents pursuant to an "order from the Court").

further that interest," see Turner Broad. Sys. Inc. v. FCC, 520 U.S. 180, 214 (1997) (internal quotation marks omitted).

Indeed, although "every * * * state in the union * * * has enacted legislation regulating the conduct of those who 'lobby' the state's legislative or executive officials," Fla. League of Prof'l Lobbyists, Inc., 87 F.3d at 458, NAM identifies no case in which a court has struck down a disclosure requirement remotely analogous to § 207. To the contrary, NAM concedes that "Congress [may] require some registration of professional lobbyists and disclosure of their clients through precise and narrowly-tailored provisions." App. 11. Under these circumstances, it is impossible to maintain "that no set of circumstances exists under which [§ 207] would be valid," Salerno, 481 U.S. at 745, and it follows that the LDA's disclosure requirement, as amended by § 207, fully comports with the First Amendment.

II. IN THE ALTERNATIVE, SECTION 207 SURVIVES STRICT SCRUTINY.

Even if this Court were to apply strict scrutiny, the district court correctly recognized that § 207 is narrowly tailored to further compelling interests. App. 90-105; see also Blount v. SEC, 61 F.3d 938, 944 (D.C. Cir. 1995) (laying out strict scrutiny standard).

A. Section 207 Serves Compelling Interests.

The Supreme Court has explained that the "full realization of the American ideal of government by elected representatives

depends to no small extent on their ability to properly evaluate [lobbying] pressures." Harriss, 347 U.S. at 625. Furthermore, "disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions * * * to the light of publicity." Buckley, 424 U.S. at 67. Those two compelling interests--promoting good governance and avoiding corruption--fully support § 207's limited disclosure requirement. See Belotti, 435 U.S. at 788-89 ("Preserving the integrity of the electoral process, preventing corruption, and sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government are interests of the highest importance. Preservation of the individual citizen's confidence in government is equally important." (internal quotation marks, correction, and footnote omitted)).

NAM raises two objections. First, NAM contends that Congress "made no findings" identifying compelling interests. Appellant's Br. 31. But "Congress need not make particularized findings in order to legislate," United States v. Lopez, 514 U.S. 549, 563 (1995) (internal amendment and quotation marks omitted), particularly where, as here, the interests served by disclosure are "visible to the naked eye," id. In any event, NAM is mistaken. Congress did make legislative findings in the LDA, stating (among other things) that "responsible representative Government requires public awareness of the efforts of paid

lobbyists to influence the public decisionmaking process in both the legislative and executive branches of the Federal Government" and that "the effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government." LDA, § 2 (codified at 2 U.S.C. § 1601). Requiring Congress to state that an amendment to the LDA furthered the purposes of the LDA would be pointless.

Notwithstanding these findings, NAM insists that Congress did not explain with the requisite specificity how § 207 serves the LDA's purposes. See Appellants' Br. 34. But Congress's intent in enacting § 207 is readily apparent. Under the LDA as originally enacted, lobbyists who received contributions from multiple organizations could avoid reporting the identities of their contributors because no single contributor "in whole or in major part plan[ned], supervise[d], or control[led]" any lobbying activities. LDA, § 4(b)(3). That allowed organizations like NAM to avoid disclosing the identities of any of their contributors. By amending the LDA to require lobbyists to disclose contributing organizations that "actively participate" in lobbying, Congress closed that "gaping loophole." 153 Cong. Rec. H5743 (daily ed. May 24, 2007) (statement of Representative Doggett). No principle of law or common sense required Congress to issue legislative

findings spelling out how this would further the LDA's purposes.

Second, NAM attempts to deny that Harriss concluded that powerful governmental interests support requiring a lobbyist to disclose the identities of its contributors. Appellant's Br. 32-33. The apparent basis for NAM's argument is that the Supreme Court construed the FRLA to apply only to efforts to lobby individual members of Congress, and not to lobbying efforts directed at other government officials. But however the Court interpreted the FRLA, the interest that Harriss identified--enhancing the "ability to properly evaluate [lobbying] pressures" in order to "maintain the integrity of a basic governmental process," 347 U.S. at 625--applies with equal force to legislative and executive officials. NAM also asserts that Harriss "must be applied with caution" because it "was decided before present First Amendment standards of review developed." Appellant's Br. 33. Yet the strength of the government's interest in requiring lobbying-related disclosures does not ebb with changing "First Amendment standards of review."

B. Section 207 Effectively Advances Compelling Interests.

There is no doubt that § 207 materially advances the compelling governmental interests of enhancing "responsible representative Government" and "increas[ing] public confidence in the integrity of Government." 2 U.S.C. § 1601. As the district court explained, § 207 "provides precisely the information--'who

pays, who puts up the money, and how much'--that [the Supreme Court in] Harriss found to be the valid purpose of lobbying disclosures." App. 97 (quoting 347 U.S. at 625).

NAM argues that § 207 advances no compelling interests because other lobbying groups might circumvent the requirements of § 207 by acting through the lobbyists of their members. Appellant's Br. 36. But it is not at all clear that § 207 can be so easily evaded. NAM essentially posits a pass-through scheme: a group of corporations will contribute to a multimember coalition, which will in turn give that money to a third-party corporation that retains its own lobbyists. In NAM's view, that third party could then conduct lobbying activities without ever having to disclose the identities of the initial group of corporations that contributed the money, even if those corporations "actively participated" in its lobbying activities. It is far from obvious, however, that the LDA would allow the use of such a scheme to obscure the genuine source of a contribution. See 2 U.S.C. § 1603(b)(3) (requiring the disclosure of the identity of "any organization [that] contributes more than $5,000" to, and "actively participates" in, lobbying activities (emphasis added)). Nor is it clear that corporations would willingly participate in a transparent pass-through scheme or would contribute to an organization that would funnel their money to a third party. At a minimum, NAM's factual assumptions about other lobbying groups,

combined with its conjecture as to the proper interpretation of § 207 in a context not presented here, provide no basis for invalidating § 207 on its face. See Wash. State Grange, 128 S. Ct. at 1187.

In any event, as this Court explained in Blount, "a regulation is not fatally underinclusive simply because an alternative regulation, which would restrict more speech or the speech of more people, could be more effective." 61 F.3d at 946. Rather, "[b]ecause the primary purpose of underinclusiveness analysis is simply to ensure that the proffered state interest actually underlies the law, a rule is struck for underinclusiveness only if it cannot fairly be said to advance any genuinely substantial governmental interest." Id. (internal quotation marks and citations omitted).

Here, additional disclosures from NAM and from lobbyists like NAM will add to the pool of information available to governmental officials and to the public--whatever other lobbying groups subject to the LDA might do. There is therefore no question that § 207 will "advance * * * genuinely substantial governmental interest[s]." Blount, 61 F.3d at 946 (internal quotation marks omitted). (Indeed, because NAM's standing depends on its allegation that § 207 subjects it to additional disclosure requirements, NAM plainly exaggerates in asserting that "§ 207 does not, in fact, compel greater disclosures concerning stealth

coalitions than were already required under the LDA." Appellant's Br. 2.)

C. Section 207 Is Narrowly Tailored.

The disclosure requirement is also narrowly tailored to serve the compelling interests of enhancing good governance and improving public confidence in government. As the district court appropriately recognized, § 207 broke little new ground. App. 103-04. Rather, it incrementally adjusted the LDA to close a significant loophole that permitted multimember associations to lobby Congress without disclosing the sources of their funding. When Congress closed that loophole, it was careful to minimize any impact on First Amendment interests. It limited the scope of § 207 to "organization[s]." See 2 U.S.C. § 1603(b)(3). It did not require the disclosure of the identities of passive supporters. See 2 U.S.C. § 1603(b)(3)(B). And it excluded from disclosure any organization that contributed less than $5,000 per quarter. See id. § 1603(b)(3)(A).

NAM contends, however, that § 207 is "radically untailored" because it subjects longstanding organizations to additional disclosure requirements, even though (in NAM's view) Congress only meant to target what NAM calls "stealth coalitions." Appellant's Br. 4, 37-38. There are at least two problems with this argument. First, because NAM provides cover for the corporations that (as NAM acknowledges) want to hide their identities, it is precisely

the sort of "stealth coalition" from which Congress has demanded additional disclosure. As Congressman Doggett explained, a "stealth lobbyist" is "[a] lobbyist for an unpopular cause, like * * * those who would deny climate change," that, "instead of indicating who they actually represent, * * * claim they represent a 'coalition' of two or more individuals and avoid any indication of the true parties in interest." 153 Cong. Rec. H5743 (daily ed. May 24, 2007). NAM fits that description perfectly. See App. 94-95 (noting that NAM avoided disclosure obligations because no single member participated "in whole or in major part" in lobbying activities); App. 8 (stating that NAM's "lobbying activities often touch on hot-button topics such as global warming"). Its generic name provides next to no information to decision-makers about which corporations stand to gain or lose from NAM's lobbying efforts. See App. 102-03 ("[D]espite the NAM's claims regarding its purportedly transparent and well-understood name, the organization has a broad constituency of over 11,000 members and its name reveals only that those members are likely to be in some way connected to manufacturing interests.").

Second, even accepting NAM's cramped definition of "stealth coalition," there is no indication that Congress's sole purpose was to regulate such coalitions. The term "stealth coalition" appears nowhere in the LDA, which applies (and has always applied) evenhandedly to all registered lobbyists, whether fly-by-night

operators or longstanding, reputable associations. See Holloway v. United States, 526 U.S. 1, 6 (1999) (noting that "the language of the statutes that Congress enacts provides the most reliable evidence of its intent" (internal quotation marks omitted)). That is because the "full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate [lobbying] pressures," Harriss, 347 U.S. at 625, which in turn depends on knowing "who is putting up the money," id. The importance of that interest does not vary with the length of time that a lobbyist has been incorporated. Indeed, the district court noted that "Congress and the public may have an arguably greater interest in disclosure of the members actively participating in and funding the lobbying activities of such long-standing groups in light of their significant political clout and wealth." App. 104.

Nothing in § 207's legislative history supports NAM's counter-textual suggestion that Congress--which is no stranger to lobbying or to the LDA's reporting requirements--unwittingly imposed a new obligation on powerful lobbying associations. The bill that became HLOGA was the centerpiece of an incoming Congress's effort to "shed further sunlight on the legislative process and illuminate how special interests influence that process." 153 Cong. Rec. S10707 (daily ed. Aug. 2, 2007) (statement of S. Dodd); id. S10715 (statement of S. Reid) ("This

is S. 1, which was the first bill introduced in this body this year--our first and most important bill of the new Congress."). It built on proposals from at least seven earlier bills to require disclosure of corporate identities from multimember coalitions.[8] As originally introduced, the bill included a provision that would have required registered lobbyists to disclose the identity of any organization that "participates in a substantial way" in an association's activities. S. 1, 110th Cong. § 217 (Jan. 9, 2007). And that bill was debated for more than eight months before Congress adopted § 207, which is titled "Disclosure of lobbying activities by certain coalitions and associations." Id. (emphasis added). Under these circumstances, NAM's assumption that Congress could not have meant what it said is baseless.

III. SECTION 207 IS NOT VOID FOR VAGUENESS.

NAM's contention that the LDA, as amended by § 207, is

---

[8] See Stealth Lobbyist Disclosure Act of 2007, H.R. 804, 110th Cong. § 2(a); Honest Leadership and Open Government Act of 2006, H.R. 4682, 109th Cong. § 205(a); Legislative Transparency and Accountability Act of 2006, S. 2349, 109th Cong. § 217(a); Lobbying and Ethics Reform Act of 2005, S. 1398, 109th Cong. § 107(a); Stealth Lobbyist Disclosure Act of 2005, H.R. 1302 & 1304, 109th Cong. § 2(a); Stealth Lobbyist Disclosure Act of 2004, H.R. 4937 & 4938, 108th Cong. § 2(a); Stealth Lobbyist Disclosure Act of 2002, H.R. 5526 & 5527, 107th Cong. § 2(a); see also 153 Cong. H5743 (daily ed. May 24, 2007) ("[F]or over five years I have attempted to close a gaping loophole in the [LDA] that has permitted various lobbyists to form over 800 stealth or hidden coalitions to avoid the requirements of the act. * * * Under the legislation [offered] today, we incorporate the provisions of that Stealth Lobbyist Disclosure Act.") (statement of Representative Doggett).

unconstitutionally vague lacks merit. A statute is void for vagueness only where "it is impossible to ascertain just what will result in sanctions," Timpinaro v. SEC, 2 F.3d 453, 460 (D.C. Cir. 1993) (internal quotation marks omitted), keeping in mind that "perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity," Ward v. Rock Against Racism, 491 U.S. 781, 794 (1989). NAM's "basic mistake lies in the belief that the mere fact that close cases can be envisioned renders a statute vague." United States v. Williams, 128 S. Ct. 1830, 1846 (2008).

On its face, the amended LDA carefully delineates a registered lobbyist's disclosure responsibilities. A lobbyist must identify any organization that has contributed more than $5,000 in a quarter and has actively participated in its lobbying activities, where lobbying activities are defined as "lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others." 2 U.S.C. § 1602(7); see also id. § 1602(8) (defining "lobbying contacts" to include "any oral or written communication" made on behalf of a client to executive or legislative officials with regard to "the formulation, modification, or adoption of Federal legislation").

Far from being "impossible to ascertain" what is required, Timpinaro, 2 F.3d at 460, in the overwhelming majority of cases the LDA provides a lobbyist with precisely the information it needs to make its disclosures. Any borderline cases that remain are highly unlikely to give rise to liability. That is particularly so given that the statute sanctions only "knowing" violations of the law. See Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498 & n.14 (observing that "a scienter requirement may mitigate a law's vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed").

In that connection, the Secretary of the Senate and the Clerk of the House of Representatives have issued "guidance and assistance on the registration and reporting requirements." 2 U.S.C. § 1605(a)(1); see Lobbying Disclosure Act Guidelines (available at http://www.senate.gov/legislative/resources/pdf/S1guidance.pdf). Although these guidelines do not have the force of law, that does not, as NAM insists, make them irrelevant. As a practical matter, lobbyists are highly unlikely to be found to "knowingly" violate disclosure obligations if their disclosures conform to those guidelines.

A. "Lobbying Activities."

NAM argues that the reference to work "intended" for use in lobbying, which appears in the LDA's definition of "lobbying

activities," makes the disclosure requirement unconstitutionally vague. See 2 U.S.C. § 1602(7). The Supreme Court, however, affirmed a disclosure requirement in Harriss that applied when "one of the main purposes" of a lobbyist was to "influence the passage or defeat of legislation by Congress." 347 U.S. at 623 (emphasis added). The Court's approval of an intent-based standard in Harriss forecloses the contention that the use of "intend" in the definition of "lobbying activities" renders the disclosure requirement unintelligible.[9]

In a footnote, NAM claims that Harriss should be ignored because the Court's vagueness inquiry turned on due process principles and "did not address the heightened clarity that current law demands of First Amendment regulation." Appellant's Br. 42 n.25. But a claim that a statute is void for vagueness sounds in due process, even when First Amendment rights are at stake, see Williams, 128 S. Ct. at 1845 ("Vagueness doctrine is an outgrowth not of the First Amendment, but of the Due Process Clause of the Fifth Amendment."), and NAM's suggestion that the Harriss Court was inattentive to the First Amendment implications of the FRLA is difficult to fathom. In any event, NAM ignores

[9] NAM's reliance on FEC v. Wisconsin Right to Life, 127 S. Ct. 2652, 2665 (2007), is misplaced. Wisconsin Right to Life concerned a prohibition on using corporate funds to finance certain speech, not a disclosure requirement. See 127 S. Ct. at 2665 (noting the concern that an intent-and-effect requirement "would afford no security for free discussion" (emphasis added; internal quotation marks omitted)).

that Harriss rejected a vagueness challenge to a lobbying-related disclosure law that included an intent-based standard. This Court is bound by that holding. See Rodriguez de Quijas v. Shearson/American Express, Inc., 490 U.S. 477, 484 (1989) ("If a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions.").

NAM also downplays the fact that the definition of "lobbying activities" was enacted in 1995, not 2007, and "has been in use for over a decade without controversy." 153 Cong. Rec. S736 (daily ed. Jan. 18, 2007) (statement of Sen. Feinstein). While groups like NAM "did not have to concern themselves" with the pertinent disclosure organizations because they could take advantage of a loophole, Appellant's Br. 45, it is significant that the LDA has apparently not proved troubling for other lobbyists who could not avail themselves of that loophole.

B. "Actively Participate."

NAM also attacks as unconstitutionally vague the term "actively participate" in § 207 of HLOGA. See Appellant's Br. 45-48. The Supreme Court, however, has already rejected a vagueness challenge to a prohibition on federal employees taking "'an active part in political management or political campaigns.'" Civ. Serv.

Comm'n v. Nat'l Ass'n of Letter Carriers, 413 U.S. 548 (1973) (emphasis added). NAM objects that the term "active part" passed constitutional muster in National Association of Letter Carriers because the Supreme Court found the phrase to incorporate Civil Service Commission regulations fleshing out the meaning of "active part." See Appellant's Br. 46-47. But even those regulations included the phrases "active part" and "actively participate," and the Court saw "nothing impermissibly vague" in them. 413 U.S. at 577. The Court acknowledged that "[t]here might be quibbles" on the margins of the terms, but noted that "there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest." Id. at 577-79. Furthermore, at no point did the Supreme Court suggest that the mere use of the phrase "active part" automatically warrants a statute's invalidation on vagueness grounds. To the contrary, if the term "active part" was sufficiently definite to warrant upholding a substantial incursion on speech rights, it is certainly concrete enough to support a disclosure requirement of far less constitutional significance.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's dismissal of NAM's suit.

Respectfully submitted,

GREGORY G. KATSAS
Acting Assistant Attorney General

JEFFREY A. TAYLOR
United States Attorney

JONATHAN F. COHN
Deputy Assistant Attorney General

MICHAEL S. RAAB
(202) 514-4053
NICHOLAS BAGLEY
(202) 514-2498
Attorneys, Appellate Staff
Civil Division, Room, 7226
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

JUNE 2008

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)(c)
OF THE FEDERAL RULES OF APPELLATE PROCEDURE

I hereby certify pursuant to Fed. R. App. P. 32(a)(7)(C) that the foregoing brief contains 9,202 words, according to the count of Corel WordPerfect 12.

_____
NICHOLAS BAGLEY

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 2008, I caused copies of the foregoing motion to be filed with the Court by hand delivery, and to be served upon the following counsel by U.S. mail and electronic mail:

Thomas W. Kirby
Jan Witold Baran
Andrew G. Woodson
WILEY REIN LLP
1776 K St., NW
Washington, DC 20006

Morgan John Frankel
Grant Raymond Vinik
Patricia M. Bryan
Thomas Edward Caballero
OFFICE OF SENATE LEGAL COUNSEL
642 Hart Senate Office Building
Washington, DC 20510-7250

Christine Marie Davenport
GENERAL COUNSEL'S OFFICE
291 Cannon Building
Washington, DC 20515

_____
NICHOLAS BAGLEY

STATUTORY APPENDIX

TABLE OF CONTENTS

Page

United States Code Annotated

Title 2. The Congress

Chapter 26. Disclosure of Lobbying Activities

§ 1601. Findings

The Congress finds that--

(1) responsible representative Government requires public awareness of the efforts of paid lobbyists to influence the public decisionmaking process in both the legislative and executive branches of the Federal Government;

(2) existing lobbying disclosure statutes have been ineffective because of unclear statutory language, weak administrative and enforcement provisions, and an absence of clear guidance as to who is required to register and what they are required to disclose; and

(3) the effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government.

§ 1602. Definitions

As used in this chapter:

(1) Agency

The term "agency" has the meaning given that term in section 551(1) of Title 5.

(2) Client

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

(3) Covered executive branch official

The term "covered executive branch official" means--

(A) the President;

(B) the Vice President;

(C) any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President;

(D) any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or Executive order;

(E) any member of the uniformed services whose pay grade is at or above O-7 under section 201 of Title 37; and

(F) any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character described in section 7511(b)(2)(B) of Title 5.

(4) Covered legislative branch official

The term "covered legislative branch official" means--

(A) a Member of Congress;

(B) an elected officer of either House of Congress;

(C) any employee of, or any other individual functioning in the capacity of an employee of--

(i) a Member of Congress;

(ii) a committee of either House of Congress;

(iii) the leadership staff of the House of Representatives or the leadership staff of the Senate;

(iv) a joint committee of Congress; and

(v) a working group or caucus organized to provide legislative services or other assistance to Members of Congress; and

(D) any other legislative branch employee serving in a position described under section 109(13) of the Ethics in Government Act of 1978 [5 U.S.C.A. App. 4].

(5) Employee

The term "employee" means any individual who is an officer, employee, partner, director, or proprietor of a person or entity, but does not include--

(A) independent contractors; or

(B) volunteers who receive no financial or other compensation from the person or entity for their services.

(6) Foreign entity

The term "foreign entity" means a foreign principal (as defined in section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(b)).

(7) Lobbying activities

The term "lobbying activities" means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

(8) Lobbying contact

(A) Definition

The term “lobbying contact” means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to--

(i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);

(ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;

(iii) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or

(iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

(B) Exceptions

The term “lobbying contact” does not include a communication that is--

(i) made by a public official acting in the public official's official capacity;

(ii) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;

(iii) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;

(iv) made on behalf of a government of a foreign country or a foreign political party and disclosed under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.);

(v) a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a covered executive branch official or a

covered legislative branch official;

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

(vii) testimony given before a committee, subcommittee, or task force of the Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;

(viii) information provided in writing in response to an oral or written request by a covered executive branch official or a covered legislative branch official for specific information;

(ix) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency, including any communication compelled by a Federal contract, grant, loan, permit, or license;

(x) made in response to a notice in the Federal Register, Commerce Business Daily, or other similar publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications;

(xi) not possible to report without disclosing information, the unauthorized disclosure of which is prohibited by law;

(xii) made to an official in an agency with regard to--

(I) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding; or

(II) a filing or proceeding that the Government is specifically required by statute or regulation to maintain or conduct on a confidential basis,

if that agency is charged with responsibility for such proceeding, inquiry, investigation, or filing;

(xiii) made in compliance with written agency procedures regarding an adjudication conducted by the agency under section 554 of Title 5 or substantially similar provisions;

(xiv) a written comment filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding;

(xv) a petition for agency action made in writing and required to be a matter of public record pursuant to established agency procedures;

(xvi) made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual, except that this clause does not apply to any communication with--

(I) a covered executive branch official, or

(II) a covered legislative branch official (other than the individual's elected Members of Congress or employees who work under such Members' direct supervision),

with respect to the formulation, modification, or adoption of private legislation for the relief of that individual;

(xvii) a disclosure by an individual that is protected under the amendments made by the Whistleblower Protection Act of 1989 under the Inspector General Act of 1978 or under another provision of law;

(xviii) made by--

(I) a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under paragraph 2 (A)(i) of section 6033(a) of Title 26, or

(II) a religious order that is exempt from filing a Federal income tax return under paragraph (2)(A)(iii) of such section 6033(a); and

(xix) between--

(I) officials of a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act [15 U.S.C.A. § 78c(a)(26)]) that is registered with or established by the Securities and Exchange Commission as required by that Act [15 U.S.C.A. § 78a et seq.] or a similar

organization that is designated by or registered with the Commodities Future Trading Commission as provided under the Commodity Exchange Act [7 U.S.C.A. § 1 et seq.]; and

(II) the Securities and Exchange Commission or the Commodities Future Trading Commission, respectively;

relating to the regulatory responsibilities of such organization under that Act.

(9) Lobbying firm

The term "lobbying firm" means a person or entity that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity. The term also includes a self-employed individual who is a lobbyist.

(10) Lobbyist

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

(11) Media organization

The term "media organization" means a person or entity engaged in disseminating information to the general public through a newspaper, magazine, other publication, radio, television, cable television, or other medium of mass communication.

(12) Member of Congress

The term "Member of Congress" means a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress.

(13) Organization

The term "organization" means a person or entity other than an individual.

(14) Person or entity

The term "person or entity" means any individual,

corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or State or local government.

(15) Public official

The term "public official" means any elected official, appointed official, or employee of--

(A) a Federal, State, or local unit of government in the United States other than--

(i) a college or university;

(ii) a government-sponsored enterprise (as defined in section 622(8) of this title);

(iii) a public utility that provides gas, electricity, water, or communications;

(iv) a guaranty agency (as defined in section 1085(j) of Title 20), including any affiliate of such an agency; or

(v) an agency of any State functioning as a student loan secondary market pursuant to section 1085(d)(1)(F) of Title 20;

(B) a Government corporation (as defined in section 9101 of Title 31);

(C) an organization of State or local elected or appointed officials other than officials of an entity described in clause (i), (ii), (iii), (iv), or (v) of subparagraph (A);

(D) an Indian tribe (as defined in section 450b(e) of Title 25[)];

(E) a national or State political party or any organizational unit thereof; or

(F) a national, regional, or local unit of any foreign government, or a group of governments acting together as an international organization.

(16) State

The term "State" means each of the several States, the

District of Columbia, and any commonwealth, territory, or possession of the United States.

§ 1603. Registration of lobbyists

(a) Registration

(1) General rule

No later than 45 days after a lobbyist first makes a lobbying contact or is employed or retained to make a lobbying contact, whichever is earlier, or on the first business day after such 45th day if the 45th day is not a business day, such lobbyist (or, as provided under paragraph (2), the organization employing such lobbyist), shall register with the Secretary of the Senate and the Clerk of the House of Representatives.

(2) Employer filing

Any organization that has 1 or more employees who are lobbyists shall file a single registration under this section on behalf of such employees for each client on whose behalf the employees act as lobbyists.

(3) Exemption

(A) General rule

Notwithstanding paragraphs (1) and (2), a person or entity whose--

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

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

(as estimated under section 1604 of this title) in the quarterly period described in section 1604(a) of this title during which the registration would be made is not required to register under this subsection with respect to such client.

(B) Adjustment

The dollar amounts in subparagraph (A) shall be

adjusted--

(i) on January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) since December 19, 1995; and

(ii) on January 1 of each fourth year occurring after January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) during the preceding 4-year period,

rounded to the nearest $500.

(b) Contents of registration

Each registration under this section shall contain--

(1) the name, address, business telephone number, and principal place of business of the registrant, and a general description of its business or activities;

(2) the name, address, and principal place of business of the registrant's client, and a general description of its business or activities (if different from paragraph (1));

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

(A) contributes more than $5,000 to the registrant or the client in the quarterly period to fund the lobbying activities of the registrant; and

(B) actively participates in the planning, supervision, or control of such lobbying activities;

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

(A) holds at least 20 percent equitable ownership in the client or any organization identified under paragraph (3);

(B) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, or subsidizes the activities of the client or any organization identified under paragraph (3); or

(C) is an affiliate of the client or any organization identified under paragraph (3) and has a direct interest in the outcome of the lobbying activity;

(5) a statement of--

(A) the general issue areas in which the registrant expects to engage in lobbying activities on behalf of the client; and

(B) to the extent practicable, specific issues that have (as of the date of the registration) already been addressed or are likely to be addressed in lobbying activities; and

(6) the name of each employee of the registrant who has acted or whom the registrant expects to act as a lobbyist on behalf of the client and, if any such employee has served as a covered executive branch official or a covered legislative branch official in the 20 years before the date on which the employee first acted as a lobbyist on behalf of the client, the position in which such employee served.

No disclosure is required under paragraph (3)(B) if the organization that would be identified as affiliated with the client is listed on the client's publicly accessible Internet website as being a member of or contributor to the client, unless the organization in whole or in major part plans, supervises, or controls such lobbying activities. If a registrant relies upon the preceding sentence, the registrant must disclose the specific Internet address of the web page containing the information relied upon. Nothing in paragraph (3)(B) shall be construed to require the disclosure of any information about individuals who are members of, or donors to, an entity treated as a client by this chapter or an organization identified under that paragraph.

(c) Guidelines for registration

(1) Multiple clients

In the case of a registrant making lobbying contacts on behalf of more than 1 client, a separate registration under this section shall be filed for each such client.

(2) Multiple contacts

A registrant who makes more than 1 lobbying contact for the

same client shall file a single registration covering all such lobbying contacts.

(d) Termination of registration

A registrant who after registration--

(1) is no longer employed or retained by a client to conduct lobbying activities, and

(2) does not anticipate any additional lobbying activities for such client,

may so notify the Secretary of the Senate and the Clerk of the House of Representatives and terminate its registration.

Public Law 104–65
104th Congress

An Act

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

Dec. 19, 1995
[S. 1060]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Lobbying Disclosure Act of 1995.

SECTION 1. SHORT TITLE.

Public information.
2 USC 1601 note.

This Act may be cited as the "Lobbying Disclosure Act of 1995".

SEC. 2. FINDINGS.

2 USC 1601.

The Congress finds that—

(1) responsible representative Government requires public awareness of the efforts of paid lobbyists to influence the public decisionmaking process in both the legislative and executive branches of the Federal Government;

(2) existing lobbying disclosure statutes have been ineffective because of unclear statutory language, weak administrative and enforcement provisions, and an absence of clear guidance as to who is required to register and what they are required to disclose; and

(3) the effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government.

SEC. 3. DEFINITIONS.

2 USC 1602.

As used in this Act:

(1) AGENCY.—The term "agency" has the meaning given that term in section 551(1) of title 5, United States Code.

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

(3) COVERED EXECUTIVE BRANCH OFFICIAL.—The term "covered executive branch official" means—

(A) the President;

(B) the Vice President;

(C) any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President;

(D) any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or Executive order;

(E) any member of the uniformed services whose pay grade is at or above O–7 under section 201 of title 37, United States Code; and

(F) any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character described in section 7511(b)(2) of title 5, United States Code.

(4) COVERED LEGISLATIVE BRANCH OFFICIAL.—The term "covered legislative branch official" means—

(A) a Member of Congress;

(B) an elected officer of either House of Congress;

(C) any employee of, or any other individual functioning in the capacity of an employee of—

(i) a Member of Congress;

(ii) a committee of either House of Congress;

(iii) the leadership staff of the House of Representatives or the leadership staff of the Senate;

(iv) a joint committee of Congress; and

(v) a working group or caucus organized to provide legislative services or other assistance to Members of Congress; and

(D) any other legislative branch employee serving in a position described under section 109(13) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(5) EMPLOYEE.—The term "employee" means any individual who is an officer, employee, partner, director, or proprietor of a person or entity, but does not include—

(A) independent contractors; or

(B) volunteers who receive no financial or other compensation from the person or entity for their services.

(6) FOREIGN ENTITY.—The term "foreign entity" means a foreign principal (as defined in section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(b)).

(7) LOBBYING ACTIVITIES.—The term "lobbying activities" means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

(8) LOBBYING CONTACT.—

(A) DEFINITION.—The term "lobbying contact" means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—

(i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);

(ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;

(iii) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or

(iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

(B) EXCEPTIONS.—The term "lobbying contact" does not include a communication that is—

(i) made by a public official acting in the public official's official capacity;

(ii) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;

(iii) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;

(iv) made on behalf of a government of a foreign country or a foreign political party and disclosed under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.);

(v) a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a covered executive branch official or a covered legislative branch official;

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

(vii) testimony given before a committee, subcommittee, or task force of the Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;

(viii) information provided in writing in response to an oral or written request by a covered executive branch official or a covered legislative branch official for specific information;

(ix) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency;

(x) made in response to a notice in the Federal Register, Commerce Business Daily, or other similar publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications;

(xi) not possible to report without disclosing information, the unauthorized disclosure of which is prohibited by law;

(xii) made to an official in an agency with regard to—

(I) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding; or

(II) a filing or proceeding that the Government is specifically required by statute or regulation to maintain or conduct on a confidential basis,

if that agency is charged with responsibility for such proceeding, inquiry, investigation, or filing;

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

(xiv) a written comment filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding;

(xv) a petition for agency action made in writing and required to be a matter of public record pursuant to established agency procedures;

(xvi) made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual, except that this clause does not apply to any communication with—

(I) a covered executive branch official, or

(II) a covered legislative branch official (other than the individual's elected Members of Congress or employees who work under such Members' direct supervision),

with respect to the formulation, modification, or adoption of private legislation for the relief of that individual;

(xvii) a disclosure by an individual that is protected under the amendments made by the Whistleblower Protection Act of 1989, under the Inspector General Act of 1978, or under another provision of law;

(xviii) made by—

(I) a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under paragraph 2(A)(i) of section 6033(a) of the Internal Revenue Code of 1986, or

(II) a religious order that is exempt from filing a Federal income tax return under paragraph (2)(A)(iii) of such section 6033(a); and

(xix) between—

(I) officials of a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act) that is registered with or established by the Securities and Exchange Commission as required by that Act or a similar organization that is designated by or registered with the Commodities Future Trading Commission as provided under the Commodity Exchange Act; and

(II) the Securities and Exchange Commission or the Commodities Future Trading Commission, respectively;

relating to the regulatory responsibilities of such organization under that Act.

(9) LOBBYING FIRM.—The term "lobbying firm" means a person or entity that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity. The term also includes a self-employed individual who is a lobbyist.

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

(11) MEDIA ORGANIZATION.—The term "media organization" means a person or entity engaged in disseminating information to the general public through a newspaper, magazine, other publication, radio, television, cable television, or other medium of mass communication.

(12) MEMBER OF CONGRESS.—The term "Member of Congress" means a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress.

(13) ORGANIZATION.—The term "organization" means a person or entity other than an individual.

(14) PERSON OR ENTITY.—The term "person or entity" means any individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or State or local government.

(15) PUBLIC OFFICIAL.—The term "public official" means any elected official, appointed official, or employee of—

(A) a Federal, State, or local unit of government in the United States other than—

(i) a college or university;

(ii) a government-sponsored enterprise (as defined in section 3(8) of the Congressional Budget and Impoundment Control Act of 1974);

(iii) a public utility that provides gas, electricity, water, or communications;

(iv) a guaranty agency (as defined in section 435(j) of the Higher Education Act of 1965 (20 U.S.C. 1085(j))), including any affiliate of such an agency; or

(v) an agency of any State functioning as a student loan secondary market pursuant to section 435(d)(1)(F) of the Higher Education Act of 1965 (20 U.S.C. 1085(d)(1)(F));

(B) a Government corporation (as defined in section 9101 of title 31, United States Code);

(C) an organization of State or local elected or appointed officials other than officials of an entity described in clause (i), (ii), (iii), (iv), or (v) of subparagraph (A);

(D) an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

(E) a national or State political party or any organizational unit thereof; or

(F) a national, regional, or local unit of any foreign government.

(16) STATE.—The term "State" means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

2 USC 1603.

SEC. 4. REGISTRATION OF LOBBYISTS.

(a) REGISTRATION.—

(1) GENERAL RULE.—No later than 45 days after a lobbyist first makes a lobbying contact or is employed or retained to make a lobbying contact, whichever is earlier, such lobbyist (or, as provided under paragraph (2), the organization employing such lobbyist), shall register with the Secretary of the Senate and the Clerk of the House of Representatives.

(2) EMPLOYER FILING.—Any organization that has 1 or more employees who are lobbyists shall file a single registration under this section on behalf of such employees for each client on whose behalf the employees act as lobbyists.

(3) EXEMPTION.—

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

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

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

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

(B) ADJUSTMENT.—The dollar amounts in subparagraph (A) shall be adjusted—

(i) on January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) since the date of enactment of this Act; and

(ii) on January 1 of each fourth year occurring after January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) during the preceding 4-year period,

rounded to the nearest $500.

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

(1) the name, address, business telephone number, and principal place of business of the registrant, and a general description of its business or activities;

(2) the name, address, and principal place of business of the registrant's client, and a general description of its business or activities (if different from paragraph (1));

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

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

(B) in whole or in major part plans, supervises, or controls such lobbying activities.

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

(A) holds at least 20 percent equitable ownership in the client or any organization identified under paragraph (3);

(B) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, or subsidizes the activities of the client or any organization identified under paragraph (3); or

(C) is an affiliate of the client or any organization identified under paragraph (3) and has a direct interest in the outcome of the lobbying activity;

(5) a statement of—

(A) the general issue areas in which the registrant expects to engage in lobbying activities on behalf of the client; and

(B) to the extent practicable, specific issues that have (as of the date of the registration) already been addressed or are likely to be addressed in lobbying activities; and

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

(c) GUIDELINES FOR REGISTRATION.—

(1) MULTIPLE CLIENTS.—In the case of a registrant making lobbying contacts on behalf of more than 1 client, a separate registration under this section shall be filed for each such client.

(2) MULTIPLE CONTACTS.—A registrant who makes more than 1 lobbying contact for the same client shall file a single registration covering all such lobbying contacts.

(d) TERMINATION OF REGISTRATION.—A registrant who after registration—

(1) is no longer employed or retained by a client to conduct lobbying activities, and

(2) does not anticipate any additional lobbying activities for such client,

may so notify the Secretary of the Senate and the Clerk of the House of Representatives and terminate its registration.

SEC. 5. REPORTS BY REGISTERED LOBBYISTS. 2 USC 1604.

(a) SEMIANNUAL REPORT.—No later than 45 days after the end of the semiannual period beginning on the first day of each January and the first day of July of each year in which a registrant is registered under section 4, each registrant shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives on its lobbying activities during such semiannual period. A separate report shall be filed for each client of the registrant.

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

(1) the name of the registrant, the name of the client, and any changes or updates to the information provided in the initial registration;

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

(A) a list of the specific issues upon which a lobbyist employed by the registrant engaged in lobbying activities, including, to the maximum extent practicable, a list of bill numbers and references to specific executive branch actions;

(B) a statement of the Houses of Congress and the Federal agencies contacted by lobbyists employed by the registrant on behalf of the client;

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

(D) a description of the interest, if any, of any foreign entity identified under section 4(b)(4) in the specific issues listed under subparagraph (A);

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

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

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

(1) Estimates of amounts in excess of $10,000 shall be rounded to the nearest $20,000.

(2) In the event income or expenses do not exceed $10,000, the registrant shall include a statement that income or expenses totaled less than $10,000 for the reporting period.

(3) A registrant that reports lobbying expenditures pursuant to section 6033(b)(8) of the Internal Revenue Code of 1986 may satisfy the requirement to report income or expenses by filing with the Secretary of the Senate and the Clerk of the House of Representatives a copy of the form filed in accordance with section 6033(b)(8).

2 USC 1605.

SEC. 6. DISCLOSURE AND ENFORCEMENT.

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

(1) provide guidance and assistance on the registration and reporting requirements of this Act and develop common standards, rules, and procedures for compliance with this Act;

(2) review, and, where necessary, verify and inquire to ensure the accuracy, completeness, and timeliness of registration and reports;

(3) develop filing, coding, and cross-indexing systems to carry out the purpose of this Act, including—

(A) a publicly available list of all registered lobbyists, lobbying firms, and their clients; and

(B) computerized systems designed to minimize the burden of filing and maximize public access to materials filed under this Act;

(4) make available for public inspection and copying at reasonable times the registrations and reports filed under this Act;

(5) retain registrations for a period of at least 6 years after they are terminated and reports for a period of at least 6 years after they are filed;

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

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

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

SEC. 7. PENALTIES. 2 USC 1606.

Whoever knowingly fails to—

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

(2) comply with any other provision of this Act;

shall, upon proof of such knowing violation by a preponderance of the evidence, be subject to a civil fine of not more than $50,000, depending on the extent and gravity of the violation.

SEC. 8. RULES OF CONSTRUCTION. 2 USC 1607.

(a) CONSTITUTIONAL RIGHTS.—Nothing in this Act shall be construed to prohibit or interfere with—

(1) the right to petition the Government for the redress of grievances;

(2) the right to express a personal opinion; or

(3) the right of association,

protected by the first amendment to the Constitution.

(b) PROHIBITION OF ACTIVITIES.—Nothing in this Act shall be construed to prohibit, or to authorize any court to prohibit, lobbying activities or lobbying contacts by any person or entity, regardless of whether such person or entity is in compliance with the requirements of this Act.

(c) AUDIT AND INVESTIGATIONS.—Nothing in this Act shall be construed to grant general audit or investigative authority to the Secretary of the Senate or the Clerk of the House of Representatives.

SEC. 9. AMENDMENTS TO THE FOREIGN AGENTS REGISTRATION ACT.

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

(1) in section 1— 22 USC 611.

(A) by striking subsection (j);

(B) in subsection (o) by striking "the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence" and inserting "any activity that the person engaging in believes will, or that the person intends to, in any way influence";

(C) in subsection (p) by striking the semicolon and inserting a period; and

(D) by striking subsection (q);

(2) in section 3(g) (22 U.S.C. 613(g)), by striking "established agency proceedings, whether formal or informal." and inserting "judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record.";

(3) in section 3 (22 U.S.C. 613) by adding at the end the following:

"(h) Any agent of a person described in section 1(b)(2) or an entity described in section 1(b)(3) if the agent is required to register and does register under the Lobbying Disclosure Act of 1995 in connection with the agent's representation of such person or entity.";

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

(A) by striking "political propaganda" and inserting "informational materials"; and

(B) by striking "and a statement, duly signed by or on behalf of such an agent, setting forth full information as to the places, times, and extent of such transmittal";

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

(A) in the matter preceding clause (i), by striking "political propaganda" and inserting "informational materials"; and

(B) by striking "(i) in the form of prints, or" and all that follows through the end of the subsection and inserting "without placing in such informational materials a conspicuous statement that the materials are distributed by the agent on behalf of the foreign principal, and that additional information is on file with the Department of Justice, Washington, District of Columbia. The Attorney General may by rule define what constitutes a conspicuous statement for the purposes of this subsection.";

(6) in section 4(c) (22 U.S.C. 614(c)), by striking "political propaganda" and inserting "informational materials";

(7) in section 6 (22 U.S.C. 616)—

(A) in subsection (a) by striking "and all statements concerning the distribution of political propaganda";

(B) in subsection (b) by striking ", and one copy of every item of political propaganda"; and

(C) in subsection (c) by striking "copies of political propaganda,"; and

(8) in section 8 (22 U.S.C. 618)—

(A) in subsection (a)(2) by striking "or in any statement under section 4(a) hereof concerning the distribution of political propaganda"; and

(B) by striking subsection (d).

SEC. 10. AMENDMENTS TO THE BYRD AMENDMENT.

(a) REVISED CERTIFICATION REQUIREMENTS.—Section 1352(b) of title 31, United States Code, is amended—

(1) in paragraph (2) by striking subparagraphs (A), (B), and (C) and inserting the following:

"(A) the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts

on behalf of the person with respect to that Federal contract, grant, loan, or cooperative agreement; and

"(B) a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a).";

(2) in paragraph (3) by striking all that follows "loan shall contain" and inserting "the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the person in connection with that loan insurance or guarantee."; and

(3) by striking paragraph (6) and redesignating paragraph (7) as paragraph (6).

(b) REMOVAL OF OBSOLETE REPORTING REQUIREMENT.—Section 1352 of title 31, United States Code, is further amended—

(1) by striking subsection (d); and

(2) by redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively.

SEC. 11. REPEAL OF CERTAIN LOBBYING PROVISIONS.

(a) REPEAL OF THE FEDERAL REGULATION OF LOBBYING ACT.—The Federal Regulation of Lobbying Act (2 U.S.C. 261 et seq.) is repealed.

(b) REPEAL OF PROVISIONS RELATING TO HOUSING LOBBYIST ACTIVITIES.—

(1) Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) is repealed.

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

SEC. 12. CONFORMING AMENDMENTS TO OTHER STATUTES.

(a) AMENDMENT TO COMPETITIVENESS POLICY COUNCIL ACT.—Section 5206(e) of the Competitiveness Policy Council Act (15 U.S.C. 4804(e)) is amended by inserting "or a lobbyist for a foreign entity (as the terms 'lobbyist' and 'foreign entity' are defined under section 3 of the Lobbying Disclosure Act of 1995)" after "an agent for a foreign principal".

(b) AMENDMENTS TO TITLE 18, UNITED STATES CODE.—Section 219(a) of title 18, United States Code, is amended—

(1) by inserting "or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6) of that Act" after "an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938"; and

(2) by striking out ", as amended,".

(c) AMENDMENT TO FOREIGN SERVICE ACT OF 1980.—Section 602(c) of the Foreign Service Act of 1980 (22 U.S.C. 4002(c)) is amended by inserting "or a lobbyist for a foreign entity (as defined in section 3(6) of the Lobbying Disclosure Act of 1995)" after "an agent of a foreign principal (as defined by section 1(b) of the Foreign Agents Registration Act of 1938)".

SEC. 13. SEVERABILITY. 2 USC 1608.

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

2 USC 1609.

SEC. 14. IDENTIFICATION OF CLIENTS AND COVERED OFFICIALS.

(a) ORAL LOBBYING CONTACTS.—Any person or entity that makes an oral lobbying contact with a covered legislative branch official or a covered executive branch official shall, on the request of the official at the time of the lobbying contact—

(1) state whether the person or entity is registered under this Act and identify the client on whose behalf the lobbying contact is made; and

(2) state whether such client is a foreign entity and identify any foreign entity required to be disclosed under section 4(b)(4) that has a direct interest in the outcome of the lobbying activity.

(b) WRITTEN LOBBYING CONTACTS.—Any person or entity registered under this Act that makes a written lobbying contact (including an electronic communication) with a covered legislative branch official or a covered executive branch official shall—

(1) if the client on whose behalf the lobbying contact was made is a foreign entity, identify such client, state that the client is considered a foreign entity under this Act, and state whether the person making the lobbying contact is registered on behalf of that client under section 4; and

(2) identify any other foreign entity identified pursuant to section 4(b)(4) that has a direct interest in the outcome of the lobbying activity.

(c) IDENTIFICATION AS COVERED OFFICIAL.—Upon request by a person or entity making a lobbying contact, the individual who is contacted or the office employing that individual shall indicate whether or not the individual is a covered legislative branch official or a covered executive branch official.

2 USC 1610.

SEC. 15. ESTIMATES BASED ON TAX REPORTING SYSTEM.

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

(1) make a good faith estimate (by category of dollar value) of applicable amounts that would be required to be disclosed under such section for the appropriate semiannual period to meet the requirements of sections 4(a)(3) and 5(b)(4); and

(2) in lieu of using the definition of "lobbying activities" in section 3(7) of this Act, consider as lobbying activities only those activities that are influencing legislation as defined in section 4911(d) of the Internal Revenue Code of 1986.

(b) ENTITIES COVERED BY SECTION 162(e) OF THE INTERNAL REVENUE CODE OF 1986.—A registrant that is subject to section 162(e) of the Internal Revenue Code of 1986 may—

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

(2) in lieu of using the definition of "lobbying activities" in section 3(7) of this Act, consider as lobbying activities only those activities, the costs of which are not deductible pursuant to section 162(e) of the Internal Revenue Code of 1986.

(c) DISCLOSURE OF ESTIMATE.—Any registrant that elects to make estimates required by this Act under the procedures authorized by subsection (a) or (b) for reporting or threshold purposes shall—

(1) inform the Secretary of the Senate and the Clerk of the House of Representatives that the registrant has elected to make its estimates under such procedures; and

(2) make all such estimates, in a given calendar year, under such procedures.

(d) STUDY.—Not later than March 31, 1997, the Comptroller General of the United States shall review reporting by registrants under subsections (a) and (b) and report to the Congress—

(1) the differences between the definition of "lobbying activities" in section 3(7) and the definitions of "lobbying expenditures", "influencing legislation", and related terms in sections 162(e) and 4911 of the Internal Revenue Code of 1986, as each are implemented by regulations;

(2) the impact that any such differences may have on filing and reporting under this Act pursuant to this subsection; and

(3) any changes to this Act or to the appropriate sections of the Internal Revenue Code of 1986 that the Comptroller General may recommend to harmonize the definitions.

SEC. 16. REPEAL OF THE RAMSPECK ACT.

(a) REPEAL.—Subsection (c) of section 3304 of title 5, United States Code, is repealed.

(b) REDESIGNATION.—Subsection (d) of section 3304 of title 5, United States Code, is redesignated as subsection (c).

(c) EFFECTIVE DATE.—The repeal and amendment made by this section shall take effect 2 years after the date of the enactment of this Act. 5 USC 3304 note.

SEC. 17. EXCEPTED SERVICE AND OTHER EXPERIENCE CONSIDERATIONS FOR COMPETITIVE SERVICE APPOINTMENTS.

(a) IN GENERAL.—Section 3304 of title 5, United States Code (as amended by section 2 of this Act) is further amended by adding at the end thereof the following new subsection:

"(d) The Office of Personnel Management shall promulgate regulations on the manner and extent that experience of an individual in a position other than the competitive service, such as the excepted service (as defined under section 2103) in the legislative or judicial branch, or in any private or nonprofit enterprise, may be considered in making appointments to a position in the competitive service (as defined under section 2102). In promulgating such regulations OPM shall not grant any preference based on the fact of service in the legislative or judicial branch. The regulations shall be consistent with the principles of equitable competition and merit based appointments.". Regulations.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 2 years after the date of the enactment of this Act, except the Office of Personnel Management shall— 5 USC 3304 note.

(1) conduct a study on excepted service considerations for competitive service appointments relating to such amendment; and

(2) take all necessary actions for the regulations described under such amendment to take effect as final regulations on the effective date of this section.

SEC. 18. EXEMPT ORGANIZATIONS. 2 USC 1611.

An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall

not be eligible for the receipt of Federal funds constituting an award, grant, contract, loan, or any other form.

SEC. 19. AMENDMENT TO THE FOREIGN AGENTS REGISTRATION ACT (P.L. 75–583).

22 USC 621.

Strike section 11 of the Foreign Agents Registration Act of 1938, as amended, and insert in lieu thereof the following:

"SECTION 11. REPORTS TO THE CONGRESS.—The Attorney General shall every six months report to the Congress concerning administration of this Act, including registrations filed pursuant to the Act, and the nature, sources and content of political propaganda disseminated and distributed.".

SEC. 20. DISCLOSURE OF THE VALUE OF ASSETS UNDER THE ETHICS IN GOVERNMENT ACT OF 1978.

5 USC app. 102.

(a) INCOME.—Section 102(a)(1)(B) of the Ethics in Government Act of 1978 is amended—

(1) in clause (vii) by striking "or"; and

(2) by striking clause (viii) and inserting the following:

"(viii) greater than $1,000,000 but not more than $5,000,000, or

"(ix) greater than $5,000,000.".

(b) ASSETS AND LIABILITIES.—Section 102(d)(1) of the Ethics in Government Act of 1978 is amended—

(1) in subparagraph (F) by striking "and"; and

(2) by striking subparagraph (G) and inserting the following:

"(G) greater than $1,000,000 but not more than $5,000,000;

"(H) greater than $5,000,000 but not more than $25,000,000;

"(I) greater than $25,000,000 but not more than $50,000,000; and

"(J) greater than $50,000,000.".

(c) EXCEPTION.—Section 102(e)(1) of the Ethics in Government Act of 1978 is amended by adding after subparagraph (E) the following:

"(F) For purposes of this section, categories with amounts or values greater than $1,000,000 set forth in sections 102(a)(1)(B) and 102(d)(1) shall apply to the income, assets, or liabilities of spouses and dependent children only if the income, assets, or liabilities are held jointly with the reporting individual. All other income, assets, or liabilities of the spouse or dependent children required to be reported under this section in an amount or value greater than $1,000,000 shall be categorized only as an amount or value greater than $1,000,000.".

SEC. 21. BAN ON TRADE REPRESENTATIVE REPRESENTING OR ADVISING FOREIGN ENTITIES.

(a) REPRESENTING AFTER SERVICE.—Section 207(f)(2) of title 18, United States Code, is amended by—

(1) inserting "or Deputy United States Trade Representative" after "is the United States Trade Representative"; and

(2) striking "within 3 years" and inserting "at any time".

(b) LIMITATION ON APPOINTMENT AS UNITED STATES TRADE REPRESENTATIVE AND DEPUTY UNITED STATES TRADE REPRESENTA-

TIVE.—Section 141(b) of the Trade Act of 1974 (19 U.S.C. 2171(b)) is amended by adding at the end the following new paragraph:

"(3) LIMITATION ON APPOINTMENTS.—A person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of title 18, United States Code) in any trade negotiation, or trade dispute, with the United States may not be appointed as United States Trade Representative or as a Deputy United States Trade Representative.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to an individual appointed as United States Trade Representative or as a Deputy United States Trade Representative on or after the date of enactment of this Act. 18 USC 207 note.

SEC. 22. FINANCIAL DISCLOSURE OF INTEREST IN QUALIFIED BLIND TRUST.

(a) IN GENERAL.—Section 102(a) of the Ethics in Government Act of 1978 is amended by adding at the end thereof the following: 5 USC app. 102.

"(8) The category of the total cash value of any interest of the reporting individual in a qualified blind trust, unless the trust instrument was executed prior to July 24, 1995 and precludes the beneficiary from receiving information on the total cash value of any interest in the qualified blind trust.".

(b) CONFORMING AMENDMENT.—Section 102(d)(1) of the Ethics in Government Act of 1978 is amended by striking "and (5) and inserting "(5), and (8)".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to reports filed under title I of the Ethics in Government Act of 1978 for calendar year 1996 and thereafter. 5 USC app. 102 note.

SEC. 23. SENSE OF THE SENATE THAT LOBBYING EXPENSES SHOULD REMAIN NONDEDUCTIBLE. 2 USC 1612.

(a) FINDINGS.—The Senate finds that ordinary Americans generally are not allowed to deduct the costs of communicating with their elected representatives.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that lobbying expenses should not be tax deductible.

SEC. 24. EFFECTIVE DATES. 2 USC 1601 note.

(a) Except as otherwise provided in this section, this Act and the amendments made by this Act shall take effect on January 1, 1996.

(b) The repeals and amendments made under sections 9, 10, 11, and 12 shall take effect as provided under subsection (a), except that such repeals and amendments—

(1) shall not affect any proceeding or suit commenced before the effective date under subsection (a), and in all such proceedings or suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted; and

(2) shall not affect the requirements of Federal agencies to compile, publish, and retain information filed or received before the effective date of such repeals and amendments.

Approved December 19, 1995.

LEGISLATIVE HISTORY—S. 1060 (H.R. 2564) (S. 101):

HOUSE REPORTS: No. 104–339, Pt. 1, accompanying H.R. 2564 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 141 (1995):

July 24, 25, considered and passed Senate.

Nov. 16, 28, 29, H.R. 2564 considered and passed House; S. 1060 passed in lieu.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 31 (1995):

Nov. 19, Presidential statement.

UNITED STATES PUBLIC LAWS
110th Congress - First Session
Convening January 04, 2007

PL 110-81 (S. 1)
September 14, 2007
HONEST LEADERSHIP AND OPEN GOVERNMENT ACT OF 2007

An Act To provide greater transparency in the legislative process.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

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

* * *

SEC. 207. DISCLOSURE OF LOBBYING ACTIVITIES BY CERTAIN COALITIONS AND ASSOCIATIONS.

(a) IN GENERAL.--

(1) DISCLOSURE.--Section 4(b)(3) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)(3)) is amended--

(A) by amending subparagraph (A) to read as follows:

"(A) contributes more than $5,000 to the registrant or the client in the quarterly period to fund the lobbying activities of the registrant; and"; and

(B) by amending subparagraph (B) to read as follows:

"(B) actively participates in the planning, supervision, or control of such lobbying activities;".

(2) UPDATING OF INFORMATION.--Section 5(b)(1) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604(b)(1)) is amended by inserting ", including information under section 4(b)(3)" after "initial registration".

(b) NO DONOR OR MEMBERSHIP LIST DISCLOSURE.--Section 4(b) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)) is amended by adding at the end the following:

"No disclosure is required under paragraph (3)(B) if the organization that would be identified as affiliated with the client is listed on the client's publicly accessible Internet website as being a member of or contributor to the client, unless the organization in whole or in major part plans, supervises, or controls such lobbying activities. If a registrant relies upon the preceding sentence, the registrant must disclose the specific Internet address of the web page containing the information relied upon. Nothing in paragraph (3)(B) shall be construed to require the disclosure of any information about individuals who are members of, or donors to, an entity treated as a client by this Act or an organization identified under that paragraph.".