



Grassroots Lobbying Disclosure: A Requirement that Makes Sense

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Both Senate and House Democrats are proposing reforms regarding disclosure of lobbying, including frequency and content of reporting. One provision would require disclosure of grassroots lobbying activities; that is, activities to encourage the public to lobby for or against particular legislation or public policies. The provision has drawn the ire of conservatives, which are spreading inaccurate information about the legislation being considered.

The Free Republic blog claimed that the Democrats are trying to “silence grassroots critics by forcing quarterly reporting to Congress” and raises fears that the provision would violate First Amendment rights to petition and lobby government. (<http://www.freerepublic.com/focus/f-news/1760807/posts>) This blog and others are being fed information from the Free Speech Coalition, a group of conservatives such as direct-mail guru Richard Viguerie and Free Congress Foundation chief Paul Weyrich, which would have to disclose their activities under the new requirements. They are pulling no punches in trying to kill the provision.

The Free Market News Network, for example, in its e-advocacy campaign provides an alarming example of the dangers of the provision: a nonprofit that sends “an email to more than 500 citizens explaining their reasons for proposing a ‘Read the Bills Act,’ and suggest that citizens contact their members of Congress.” According to the FMNN, “This little grassroots organization would, under the grassroots regulation bill, be required to register and report quarterly to Congress under the lobbying disclosure law, identifying who they are, how much they spent, which members of Congress their efforts were directed to, and other information.” (<http://www.freemarketnews.com/Analysis/64/6695/jim.asp?wid=64&nid=6695>)

The Free Republic blog is even clearer: “Communications to as few as 500 people would trigger the registration and quarterly reporting to Congress.”

Sounds really outrageous – except it is flat out wrong.

The legislation (see S. 1, Legislative Transparency and Accountability Act), which is co-sponsored by the leading Democrat and Republican in the Senate, requires grassroots lobbying disclosure for those companies, organizations, and lobbyists already required to register under the Lobbying Disclosure Act and spending significant amounts of money on grassroots lobbying activities.

More specifically, the entity must first qualify to register under the Lobbying Disclosure Act (spend \$24,500 semi-annually on *direct* lobbying activities, which the Democrats are proposing to change to \$10,000 per quarter). If the entity qualifies for registration **and** spends \$25,000 on grassroots lobbying activities, then will it be required to report on *grassroots* lobbying activities. Additionally, communications with less than 500 people or with any number of members are not considered grassroots lobbying communications, and, therefore, would not be counted in the

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calculation of grassroots lobbying expenditures. Special rules are proposed for large grassroots lobbying firms, that is, firms that spend or have revenue of \$25,000 or more in a quarter.

In other words, this provision captures the big lobbyists. The case of disgraced lobbyist Jack Abramoff demonstrated how lobbyists will pay for what appears to be the voice of the people to be heard before Congress, but what many good government groups are calling sham or “Astroturf” grassroots lobbying. They hire a firm to generate communications to Congress opposing or supporting legislation from people back home. Many times the public has no idea who is paying for the campaign; in some cases, the public is provided an incentive to contact their elected official. Public Citizen released a report on January 8 of twelve examples of Astroturf grassroots lobbying efforts (<http://www.citizen.org/pressroom/release.cfm?ID=2347>) demonstrating the need for disclosure.

While we would oppose regulation of such speech, we do strongly support disclosure of such grassroots lobbying activities. After all, charities (501(c)(3) organizations) already must disclose information about their grassroots lobbying activities in their annual tax returns. Let’s level the playing field and have the big spenders disclose such grassroots lobbying communications. (More information on OMB Watch’s views is found in this article from February 2006 at <http://www.ombwatch.org/article/articleview/3306/1/424?TopicID=15>.)

There are legitimate debates about the value of the grassroots lobbying disclosure provision, but the ones being put forward by most conservatives are cover for keeping the status quo – exactly what the voters said no to in the last election.

Some good government groups, including OMB Watch, are worried that the Democrats proposal is not strong enough or has too many loopholes, but still support the provision. OMB Watch believes minor technical amendments could help strengthen the provision. Some conservatives, including FEC’s Bradley Smith, Mark Tapscott of the Examiner newspaper, and Captain Ed of Captain’s Quarters (<http://www.captainsquartersblog.com/mt/archives/008797.php>), worry that disclosure will lead to regulation of speech. They also argue that it would be more appropriate to have the elected leaders disclose lobbying contacts than to have the citizenry be required to disclose. These are legitimate and fair items to debate. However, putting out inaccurate information and launching a grassroots campaign based on false information is totally inappropriate.

What’s In the Lobby Reform Bill?

Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) have introduced S. 1, Legislative Transparency and Accountability Act, which is identical to the bill (S. 2349) that passed the Senate last year. A number of amendments will likely be put forward to strengthen the bill. The provision on grassroots lobbying (Section 220) is described below.

Who Must Report Grassroots Lobbying Information?

Only those who qualify for disclosure under the Lobbying Disclosure Act are required to provide grassroots lobbying information. The LDA, which was enacted in 1995, currently requires groups to register if they spend \$24,500 semi-annually on lobbying activities and employ at least one person who spends at least 20% of his or her time on lobbying activities. The Democrats are proposing to change the dollar threshold to \$10,000 per quarter, instead of \$24,500 semi-annually.

The grassroots lobbying expenditures would *not* count towards the calculation of whether the organization has exceeded the threshold for registering. Only direct lobbying expenditures count towards the threshold for registration.

If an organization or company qualifies for registration, the entity must then report all its grassroots lobbying activities if they spend \$25,000 or more in a quarter on grassroots lobbying activities.

However, there are special rules for grassroots lobbying firms. For an entity that has a client that engages it in paid efforts to stimulate grassroots lobbying and that entity generally receives or spends \$25,000 or more for such activities (presumably from all clients) per quarter, then the entity is described as a grassroots lobbying firm and must register within 45 days of being retained by a client. These large grassroots lobbying firms must disclose the activities of clients engaged in grassroots lobbying activities, no matter how much is spent by the client.

What Counts as Grassroots Lobbying Communications?

Any paid attempts to influence the public to contact covered legislative or executive branch officials to support or oppose legislation or covered policies. This includes direct contact through mass mailing or e-mail as well as ads in newspapers or other publications.

Communications with less than 500 people are specifically excluded from the definition of what counts as grassroots lobbying activities.

Additionally, any grassroots lobbying communication to a company's or organization's members is excluded. The definition of "member" is similar to, but broader than, the tax code definition, which charities currently operate under. A member includes: anyone who contributes more than a nominal amount of time or money to the organization or is entitled to participate in the governance of the nonprofit. Additionally, employees, officers, directors, and honorary or life members are considered members.

Actions by volunteers or unpaid grassroots lobbying efforts also do not need to be reported.

What Must Be Reported?

There are two steps to disclosure. The first is registration under the Lobbying Disclosure Act if the entity is so required. The content for registration has not changed substantially since the law was enacted in 1995.

One change being proposed is to require disclosure of the identity of any organization that contributes over \$10,000 toward the registrant's lobbying activities in a semiannual period, and participates in a substantial way (currently, in whole or in major part) in the planning, supervision, or control of such lobbying activities. The bill waives such disclosure if it is publicly available knowledge that the organization is affiliated with the client, or has been publicly disclosed to have provided funding to the client, unless the organization in whole or in major part plans, supervises or controls such lobbying activities.

The bill also notes that nothing in such a disclosure requirement shall require disclosure of any information about individuals who are members of, or donors to, an entity treated as a client or its identified organization.

The second disclosure step is quarterly reports on lobbying activities. These reports generally follow the same format as those for direct lobbying. The entity would be required to report a list of specific issues and bills that the entity encouraged the public to lobby on. The entity would also be required to provide a good faith estimate of grassroots lobbying expenditures along with an estimate for how much was spent on paid advertising for grassroots lobbying.

Can Nonprofits Use the Tax Code Grassroots Lobbying Definition?

Those charitable nonprofit organizations that elected to follow the lobbying expenditure test (commonly called 501(h) after its section in the tax code), can use the tax code definitions of grassroots lobbying in lieu of the new definitions. (Selected other organizations, such as trade associations, can also use the same definitions.)

These definitions, found in section 4911(c)(3) of the tax code, count grassroots lobbying at the local, state, and federal level, which is broader than the provision in the lobby reform bill. S. 1 only refers to federal lobbying. On the other hand, the tax code definition only covers lobbying on legislative matters; the Lobbying Disclosure Act covers legislative and some executive branch actions.

What are the Penalties for Noncompliance?

The bill raises from \$50,000 to \$100,000 the civil penalty for knowing failure to remedy a defective lobbyist filing or comply with any LDA requirement.

Last year's House version of the bill also amended the federal criminal code to establish criminal penalties of fines or imprisonment for up to: (1) three years for knowing and willful failure to comply with LDA requirements; or (2) five years for knowing, willful, and corrupt failure to do so.