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MEMORANDUM

TO: **Jay Sekulow, Colby May, and Drew Ryun**

FROM: **Erik Zimmerman, Matthew R. Clark, Drew Ashby, Jonathan Shumate, Janelle Smith, and Ben Sisney**

RE: **Executive Summary of How the Grassroots Lobbying Bills (H.R. 4682 and S.1) Would Affect Churches and Other Non-Profit Organizations**

DATE: **January 11, 2007**

By greatly expanding the scope of lobbying regulation, the grassroots lobbying bills (H.R. 4682[1] and S.1) would affect many churches, pastors, denominations, public interest organizations, law firms, radio and TV personalities, civic organizations, nonprofit and for-profit organizations, the media, and private individuals that voluntarily choose to pay for any medium to distribute their message to the general public.

Amendment 20 to S.1—proposed by Senator Bennett on January 10, 2007, and co-sponsored by Senator McConnell—would eliminate the provisions of the Senate bill dealing with "grassroots lobbying firms" and *ensure that churches and many other public interest organizations and individuals would not be subject to lobbying regulations.*

Existing law—namely, the Lobbying Disclosure Act of 1995[2]—imposes registration and reporting requirements upon "lobbyists" and "lobbying firms," *i.e.*, those who are paid to contact public officials on behalf of a client.[3] The grassroots lobbying bills would greatly expand the coverage of the Act to include a *new* class of lobbyist, "*grassroots lobbying firms*," which are

[1] H.R. 4682 was proposed in the 109th Congress and a similar bill is expected to be introduced in the immediate future.
[2] The Lobbying Act is found at 2 U.S.C. §§ 1601 *et. seq.*
[3] Lobbying Act § 3(9), (10).

individuals and organizations that spend a certain amount of money trying to stimulate "grassroots lobbying" (i.e., encouraging people to contact public officials).[4]

Many churches (especially larger ones), denominations, public interest organizations and other groups and individuals that encourage members of the public to get involved with federal legal issues would be classified as "grassroots lobbying firms" under these bills.[5] These groups and individuals would be required to register with Congress and make certain initial and quarterly disclosures about their activities that would be made available to the public on an easily searchable government website.[6] The bills also include financial and criminal penalties for failure to comply with the registration and reporting requirements.[7]

The House and Senate bills are similar in many respects, although there are several key differences. Under the House bill, a church or other organization would be considered a "grassroots lobbying firm"—subject to registration and reporting requirements—if:

- the group attempted to "*influence* the general public" (or segments thereof) to "voluntarily" contact federal officials in order to express their own views on a federal legal issue, or to encourage other people to contact federal officials;
- the communication was directed at least one person that was not a member, shareholder, or employee of the group; and
- the group receives income of, spends, or agrees to spend an aggregate of $50,000 or more for such efforts in any quarterly period.[8]

For example, if a church or denomination spent $50,000 of its resources within one quarter (three month period) to encourage people to support the Federal Marriage Amendment or support the confirmation of a federal judicial nominee, that church or denomination would be classified as a "grassroots lobbying firm" under H.R. 4682.

[4] S.1 § 220(a)(2)(18), (19), and H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(18)-(20).
[5] *See id.*
[6] *See, e.g.*, H.R. 4682 §§ 202, 204, 205, 207, and S.B. 1 §§ 211, 212, 217, 220, amending Lobbying Act §§ 3-6.
[7] S.B. 1 §§ 216, 223, and H.R. 4682 § 402, amending Lobbying Act § 7.
[8] H.R. 4682 § 204(a)(2), amending Lobbying Act §§ 3(19), (20).

Under the Senate bill, a church or other organization would become a "grassroots lobbying firm" if:

- the group attempted to "*influence* the general public" (or segments thereof) to contact federal officials to urge them to take specific action on a federal legal issue;
- the communication was "directed at" at least 500 members of the general public;
- at least one person that the communication was directed at was not a member, employee, shareholder, officer, director, or donor of a non-nominal amount of money or time to the group;
- the communication had the effect of supporting some group or individual's "lobbying contact" on that issue (a direct communication to a federal official about a legal issue, made on behalf of a client, that is not exempted from the definition of "lobbying contact"); and
- the group received, spent, or agreed to spend $25,000 or more for such efforts in any quarterly period.[9]

For example, if a church received or spent an aggregate of $25,000 on salaries, materials, advertisements, etc. within a 3 month period to encourage people to support the Federal Marriage Amendment or support the confirmation of a federal judicial nominee, and the church's message reached over 500 people including some that are not members or donors of the church, the church would be considered a "grassroots lobbying firm" under S.1.

Under either bill, many churches and other "grassroots lobbying firms" would have to register with Congress and comply with onerous quarterly reporting requirements or face possible fines and criminal penalties. There are numerous differences between the bills, however:

- the House bill's definition of "paid efforts to stimulate grassroots lobbying" is broader than the Senate bill's because it is not limited to actions in support of "lobbying contacts," so more churches and other organizations would likely become "grassroots lobbying firms" under the House bill than under the Senate bill;[10]
- the House bill has a $50,000 threshold within a quarter to become a "grassroots lobbying firm," while the Senate bill's quarterly threshold is just $25,000;[11]

[9] S.1 § 220(a)(2)(18), (19), amending Lobbying Act § 3.
[10] *Compare* S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3, *with* H.R. 4682 § 204(a)(2), amending Lobbying Act § 3.
[11] *Compare* S.1 § 220(a)(2)(18), (19), amending Lobbying Act § 3, *with* H.R. 4682 § 204(a)(2), amending Lobbying Act § 3.

- the Senate bill provides that "paid efforts to stimulate grassroots lobbying" does not cover an attempt to influence people to contact federal officials "directed at less than 500 members of the general public," but the House bill does not have a similar provision;[12]
- the Senate bill's exception for communications made to members, employees, officers or shareholders of an organization is broader than the House bill's exception, although neither one would apply to most statements made by pastors during church services;[13]
- the House bill redefines "client" such that organizations that are *not* governed by 501(c) must make some disclosures regarding some of their *organizational members*, while the Senate bill does not alter the definition of "client";[14]
- the Senate bill gives grassroots lobbying firms 45 days to register from the time lobbying activities begin, while the House bill only gives them 20 days to register;[15]
- the House bill contains an additional reporting requirement for each expenditure by grassroots lobbying firms of $250,000, but the Senate bill does not;[16] and
- the House bill's investigation and enforcement provisions are tougher than the Senate bill's provisions.[17]

While the existing lobbying statutes provide that they shall not be construed to interfere with "the right to petition the Government for the redress of grievances . . . [or] the right of association, protected by the first amendment to the Constitution,"[18] H.R. 4682 and S.1 would do just that. By expanding the Lobbying Act to include many forms of political expression that are far removed from the traditional understanding of "lobbying," H.R. 4682 and S.1 would violate the First Amendment.[19] The bills are certainly *not* narrowly tailored to achieve a compelling governmental interest. Amendment 20 to S.1 should be adopted to exclude "grassroots lobbying firms."

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[12] *See* S.1 § 220(a)(2)(18)(B), amending Lobbying Act § 3.
[13] *Compare* S.1 § 220(a)(2)(18)(C), amending Lobbying Act § 3, *with* H.R. 4682 § 204(a)(2), amending Lobbying Act § 3.
[14] *See* H.R. 4682 § 205(a), amending Lobbying Act § 3(2).
[15] *Compare* S.1 § 220(b), amending Lobbying Act § 4(a), *with* H.R. 4682 § 204(b)(1), amending Lobbying Act § 4(a).
[16] *See* H.R. 4682 § 204(d)(2), amending Lobbying Act § 5(a)(2).
[17] *Compare* H.R. 4682 §§ 401-403, removing Lobbying Act § 8(c), *with* S.B. 1 §§ 218, 231-270, amending Lobbying Act § 6.
[18] Lobbying Act § 8(a).
[19] *See generally McConnell v. FEC*, 540 U.S. 93 (2003); *Buckley v. Am. Const. Law Found.*, 525 U.S. 182 (1999); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988); *Frisby v. Schultz*, 487 U.S. 474 (1988); *Meyer v. Grant*, 486 U.S. 414 (1988); *FCC v. League of Women Voters of Cal.*, 468 U.S. 364 (1984); *Consol. Edison Co. of N.Y. v. Pub. Serv. Comm'r of N.Y.*, 447 U.S. 530 (1980); *Buckley v. Valeo*, 424 U.S. 1 (1976); *Police Dep't of the City of Chicago v. Mosley*, 408 U.S. 92 (1972); *Mills v. Alabama*, 384 U.S. 214 (1966); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293 (1961); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Talley v. California*, 362 U.S. 60 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958); *U.S. v. Harriss*, 347 U.S. 612 (1953); *Rumely v. United States*, 345 U.S. 41 (1953).