ACLJ
American Center for Law & Justice

MEMORANDUM

TO: **Interested Parties**

FROM: **American Center for Law and Justice**

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

DATE: **January 15, 2007**

Executive Summary

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 several other Senators—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 ("Lobbying Act")[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

[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).

would greatly expand the coverage of the Act to include a *new* class of lobbyist, "*grassroots lobbying firms*," which are 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] A church or other exempt 501(c)(3) organization could trigger the new registration and filing requirements for "grassroots lobbying firms" without violating the "no substantial part" test already applicable to them under the current tax law.[7] H.R. 4682 and S.1 also include financial and criminal penalties for failure to comply with the registration and reporting requirements.[8]

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 to 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.[9]

[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] The tax code provides exemption for churches and certain other organizations so long as "*no substantial part*" of their activities include, *inter alia*, "carrying on propaganda, or otherwise attempting, to influence legislation . . . ." I.R.C. § 501(c)(3) (emphasis added).
[8] S.B. 1 §§ 216, 223, and H.R. 4682 § 402, amending Lobbying Act § 7.
[9] H.R. 4682 § 204(a)(2), amending Lobbying Act §§ 3(19), (20).

For example, if a church or denomination spent $50,000 of its resources within one quarter (three month period) to influence 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.

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.[10]

For example, if a church received or spent an aggregate of $25,000 on salaries, materials, advertisements, etc. within a 3 month period to influence 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

[10] S.1 § 220(a)(2)(18), (19), amending Lobbying Act § 3.

contacts," so more churches and other organizations would likely become "grassroots lobbying firms" under the House bill than under the Senate bill;[11]

- 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;[12]
- 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;[13]
- 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;[14]
- 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";[15]
- 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;[16]
- the House bill contains an additional reporting requirement for each expenditure by grassroots lobbying firms of $250,000, but the Senate bill does not;[17] and
- some of the House bill's investigation and enforcement provisions are tougher than the Senate bill's provisions, although the maximum fine under the Senate bill ($200,000) is double what the maximum fine under the House bill is ($100,000).[18]

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,"[19] 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

[11] *Compare* S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3, *with* H.R. 4682 § 204(a)(2), amending Lobbying Act § 3.
[12] *Compare* S.1 § 220(a)(2)(18), (19), amending Lobbying Act § 3, *with* H.R. 4682 § 204(a)(2), amending Lobbying Act § 3.
[13] *See* S.1 § 220(a)(2)(18)(B), amending Lobbying Act § 3.
[14] *Compare* S.1 § 220(a)(2)(18)(C), amending Lobbying Act § 3, *with* H.R. 4682 § 204(a)(2), amending Lobbying Act § 3.
[15] *See* H.R. 4682 § 205(a), amending Lobbying Act § 3(2).
[16] *Compare* S.1 § 220(b), amending Lobbying Act § 4(a), *with* H.R. 4682 § 204(b)(1), amending Lobbying Act § 4(a).
[17] *See* H.R. 4682 § 204(d)(2), amending Lobbying Act § 5(a)(2).
[18] *Compare* H.R. 4682 §§ 401-403, removing Lobbying Act § 8(c), *with* S.B. 1 §§ 218, 231-270, amending Lobbying Act § 6.
[19] Lobbying Act § 8(a).

the First Amendment.[20] 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."

I. AN OVERVIEW OF H.R. 4682.

Title 2 of H.R. 4682 would amend existing law to include several new groups of individuals and entities. The most significant change is the addition of "grassroots lobbying firm" and "paid efforts to stimulate grassroots lobbying" as new classes of regulated lobbying. The addition of new classes of individuals and groups as "lobbyists" would subject them to the current and new reporting requirements under the Lobbying Act.

A. H.R. 4682's Broad Expansion of Who is Covered by the Lobbying Act.

H.R. 4682 would expand the coverage of the Lobbying Act by amending currently existing provisions of the Act and also adding new ones. The current Act deals with "lobbyists" and "lobbying firms" which, by definition, are paid to contact public officials on behalf of a client. Under the definition of "lobbyist," which remains mostly unchanged by the bill,[21] a lobbyist is anyone who makes more than one "lobbying contact" and spends more than 20% of his time engaging in "Lobbying Activities."[22] While the term "lobbying contact" covers many communications made to a federal public official, existing law expressly excludes

[20] *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 Fed'n of the Blind of N.C., 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).

[21] The time frame to measure the 20% would be changed from six months to three months by H.R. 4682 § 201(b)(1).

[22] Lobbying Act § 3(10).

communications made by "a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under" 26 U.S.C. § 6033(a)(3)(A)(i) from the definition of "lobbying contact."[23] Thus, under existing law, "a church, its integrated auxiliary, or a convention or association of churches" would rarely be classified as a "lobbyist."[24]

However, the House bill would expand "lobbying activities"—currently defined as "lobbying contacts and efforts in support of such contacts"[25]—to include "*paid efforts to stimulate grassroots lobbying*."[26] Thus, someone who engages in "paid efforts to stimulate grassroots lobbying" or other "lobbying activities" for at least 20% of his time and makes more than one "contact" is a "lobbyist" and must register with the federal government.[27] By expressly excluding "grassroots lobbying" itself from the definition of "lobbying activity," the bill ensures that the efforts of average, unpaid citizens to contact public officials on their own behalf will rarely lead to any reporting requirements for them.

More importantly, the House bill would create an entirely new class of entities and individuals subject to registration requirements: the "grassroots lobbying firm."[28] The bill defines a "grassroots lobbying firm" as:

> *a person or entity* that . . . is retained by 1 or more clients to engage in *paid efforts to stimulate grassroots lobbying* on behalf of such clients; and . . . receives income of, or spends or agrees to spend, *an aggregate of $50,000 or more* for such efforts in any quarterly period.[29]

[23] Lobbying Act § 3(8)(B)(xviii).
[24] *See* Lobbying Act § 3(8)(B)(xviii).
[25] Lobbying Act § 3(7).
[26] H.R. 4682 § 204(a)(1), amending Lobbying Act § 3(7) (emphasis added).
[27] H.R. 4682 § 201 *et. seq.*, amending Lobbying Act § 4.
[28] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(18)-(20).
[29] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(20) (emphasis added).

Thus, there are three elements of a "grassroots lobbying firm"—the person or organization: 1) must be engaging in paid efforts to stimulate grassroots lobbying; 2) have at least one client; and 3) receive or spend $50,000 or more on grassroots lobbying in a quarter.[30]

First, the person or organization must be engaging in "*paid efforts to stimulate* grassroots lobbying."[31] The term "grassroots lobbying" does not appear anywhere within the United States Code. Under the bill, "grassroots lobbying" means "the *voluntary* efforts of members of the general public to *communicate their own views* on an issue to Federal officials or to *encourage other members of the general public to do the same*."[32] Thus, the term "grassroots lobbying" encompasses a broad array of activities such as contacting the staff of a member of Congress in support of or in opposition to a bill or a judicial nominee, encouraging other people to express a similar viewpoint to their own member of Congress, or simply encouraging other people to contact federal officials regardless of their opinion on the issue.

While the House bill does *not* make "grassroots lobbying" itself a "lobbying activity," it does target those who engage in "*paid efforts to stimulate* grassroots lobbying." The bill defines "paid efforts to stimulate grassroots lobbying" as:

> (A) . . . *any paid attempt to influence the general public, or segments thereof, to engage in grassroots lobbying or lobbying contacts*; and
> (B) does not include any attempt described in subparagraph (A) by a person or entity directed to its members, employees, officers or shareholders, unless such attempt is financed with funds directly or indirectly received from or arranged by a lobbyist or other registrant under this Act retained by another person or entity.[33]

There are two aspects of "paid efforts to stimulate grassroots lobbying": 1) the efforts must be "paid," *i.e.*, someone who is a paid advocate must make the effort or the medium of delivery

[30] *Id.*
[31] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(20)(A) (emphasis added).
[32] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(18) (emphasis added).
[33] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(19) (emphasis added).

must cost money (printing pamphlets, advertising, etc);[34] and 2) the efforts must "influence" others in the public to express views to federal officials.[35]

The term "paid efforts to stimulate grassroots lobbying" does not cover communications directed to an entity's own "members, employees, officers or shareholders" unless the communication is funded in some way by an outside lobbyist or grassroots lobbying firm.[36] Some critics of the House bill have argued that this provision would ensure that corporations and labor unions will rarely be classified as "grassroots lobbying firms" because their communications that encourage action on federal legal issues are typically limited to their own members, employees, officers or shareholders.[37] The exception does *not* apply, however, when non-members are also encouraged to take action such as where statements are made during a church service that is open to both members and non-members. Also, if an outside person or organization that is considered a lobbyist or grassroots lobbying firm pays for the communications in whole or part, then the communications are considered "paid efforts to stimulate grassroots lobbying" even where the organization only distributes the information to its own members or employees.

The second element of a "grassroots lobbying firm" is that the person or organization has at least one client.[38] Under the Lobbying Act and the House bill, however, an organization can have itself as a client.[39] Third, to be considered a "grassroots lobbying firm," the person or entity must receive or spend $50,000 or more on grassroots lobbying in a quarter.[40] Thus, a church or other group that spends over $50,000 in a quarter on salary, materials, etc. designed to encourage

[34] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(19)(A).
[35] *Id.*
[36] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(19)(B).
[37] Dave Eberhart, *Pelosi Set to Attack Conservatives*, Jan. 2, 2007.
[38] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(20)(A).
[39] H.R. 4682 § 205(a), amending Lobbying Act § 3(2).
[40] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(20)(B).

people to act with regard to federal legal issues would be a "grassroots lobbying firm" under the bill and would be regulated as such.

In sum, a church or other organization would be a "grassroots lobbying firm" if:

- the group sought 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,
- at least one person influenced by the communication was not a member or employee of the group, and
- the group receives income of, or spends or agrees to spend, an aggregate of $50,000 or more for such efforts in any quarterly period.[41]

B. H.R. 4682's Reporting Requirements for Lobbyists and Grassroots Lobbying Firms.

The House bill would subject grassroots lobbying firms to many reporting requirements.

1. *Under H.R. 4682, grassroots lobbying firms would be required to register with the House and Senate.*

At present, all lobbyists must register with the House and Senate within forty-five days of making a lobbying contact.[42] The House bill would shorten this period to twenty days.[43] In addition, the new class of "grassroots lobbying firms" would be required to register with Congress within twenty days of being first retained by a client to engage in "paid efforts to stimulate grassroots lobbying."[44] According to the bill, when the grassroots lobbying firm is an organization or association, the firm is considered its own client for purposes of registering.[45]

Under current law, lobbyists and lobbying firms that do not exceed a certain dollar amount in income and expenditures for "lobbying activities" are exempt from registering. This amount is cut in half by the bill.[46] This registering exemption for "lobbying activities" would *not*

[41] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(20).
[42] Lobbying Act § 4(a)(1).
[43] H.R. 4682 § 204(b)(1), amending Lobbying Act § 4(a)(1).
[44] H.R. 4682 § 204(b)(3), (4), amending Lobbying Act § 4(a)(3).
[45] H.R. 4682 § 205(a), amending Lobbying Act § 3(2)(B)(i).
[46] H.R. 4682 §§ 201(b)(5)(A), 204(b)(3), amending Lobbying Act § 4(a)(4)(A).

include "paid efforts to stimulate grassroots lobbying." Thus, while some small lobbying firms are exempt from registering, all "grassroots lobbying firms" would have to register under the proposed legislation.[47]

Under the House bill, all grassroots lobbying firms must include certain information in their registration such as the "the name, address, business telephone number, and principal place of business of the registrant" as well as any "client" in addition to the registrant.[48] For 501(c)(3) organizations and some groups covered by other portions of 501(c), the only "client" is the group itself so they do *not* have to disclose their membership lists. Groups *not* governed by 501(c), however, must make some disclosures regarding their members, although it is unclear whether the House bill's requirement applies to *individual* members or just *organizational* members.[49]

With regard to donors, all grassroots lobbying firms must also provide the "name, address, and principal place of business" of any other *organization* that donates a certain amount of money toward the lobbying activities of the firm, but *only if* that organization exerts some *control* over the content of the relevant activities.[50] There appears to be no disclosure requirement for *individual* donors.

Also, the registration statement must include a general description of the group's business or activities and disclose the general issues lobbied and the names of the employees that are lobbyists for that issue.[51] The registration must also disclose whether any of the lobbyists are considered former federal officials under the Lobbying Act.[52] A registration must be made for each client that a lobbyist or lobbying firm is retained by, but a single registration may be filed

[47] H.R. 4682 § 204(b)(3), amending Lobbying Act § 4(a)(4)(A).
[48] Lobbying Act § 4(b)(1)-(2).
[49] H.R. 4682 § 205(a), amending Lobbying Act § 3(2).
[50] Lobbying Act § 4(b)(3).
[51] Lobbying Act § 4(b).
[52] H.R. 4682 § 206, amending Lobbying Act § 4(b)(6).

for multiple lobbying contacts.[53] The bill would subject all grassroots lobbying firms to these stringent registering requirements.[54]

2. *H.R. 4682 would impose many additional burdens on grassroots lobbying firms.*

Existing law imposes a semiannual reporting requirement for all registrants.[55] The House bill would change these required reports to once a quarter for all registrants.[56] The reports must contain the name of the registrant and the client as well as "any changes or updates to the information provided in the initial registration."[57] Grassroots lobbying firms must also submit a list of the "specific issues" including "bill numbers" and executive branch actions that the firm dealt with that quarter.[58] The report must also list the Federal offices contacted and who did the lobbying for the firm.[59] The House bill would limit this list so that those who solely engage in "paid efforts to stimulate grassroots lobbying" would not be required to list the offices contacted.[60] The reports must also include "good faith estimate[s]" of the income and expenditures of lobbying firms, and the House bill would add that there must be a separate estimate made for income and expenses related to "paid efforts to stimulate grassroots lobbying" and "paid advertising."[61]

The House bill would also add additional quarterly reporting requirements. All registrants would have to report any political contributions, fundraisers, or events honoring federal officials and the amount given or spent for each. This includes donations made by political committees associated with the registrant. The covered donation recipients are PACs, federal candidates

[53] Lobbying Act § 4(c).
[54] H.R. 4682 § 204(b)(3), (4), amending Lobbying Act § 4(a)-(d).
[55] Lobbying Act § 5(a).
[56] H.R. 4682, amending Lobbying Act § 5(a)(1).
[57] Lobbying Act § 5(b)(1).
[58] Lobbying Act § 5(b)(2)(A).
[59] Lobbying Act § 5(b)(2)(B)-(C).
[60] H.R. 4682 § 204(c)(4), amending Lobbying Act § 5(b)(2)(B)-(C).
[61] H.R. 4682 § 204(c), amending Lobbying Act § 5(b)(3)-(4).

campaigns, political parties, and leadership PACs.[62] The same information would have to be included for any employee that is listed as a lobbyist, including retreats and other similar things that an individual might contribute in relation to federal officials.[63] Registrants would have to certify that they have not provided any members of Congress with gifts or travel.[64] The registrant must also include the name of any member of Congress contacted by any lobbyist under the employ of the registrant.[65] The House bill also requires that any member of Congress denoted in a report be notified of the report.[66]

Perhaps most significantly, the proposed legislation requires that each registration and quarterly report be filed electronically and be *made available to the public free of charge on the internet in an easily searchable manner*.[67]

Under the House bill, a registered grassroots lobbying firm would also have to file an additional report every time it either spends or receives an aggregate of $250,000 for "paid efforts to stimulate grassroots lobbying" in a quarter.[68] This is the only group or subsection of registered lobbyists that would have to file this additional report.[69] The House bill would also increase the civil penalties for failure to comply with the registration and reporting requirements to a maximum $100,000 fine for each violation.[70] The bill would also add criminal penalties for failure to comply; those who knowingly and willfully fail to comply would be subject to up to

[62] H.R. 4682 § 203(a)(2), amending Lobbying Act § 5(b).
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] H.R. 4682 § 203(d), amending Lobbying Act § 6(2)(A).
[67] H.R. 4682 §§ 202, 207(a)(3), (b), amending Lobbying Act §§ 5(d), 6(4), and 6(9).
[68] H.R. 4682 § 204(d)(2), amending Lobbying Act § 5(a)(2).
[69] H.R. 4682 §§ 201(a)(1), 204(d)(1)-(2), amending Lobbying Act § 5(a).
[70] H.R. 4682 § 402(2), amending Lobbying Act § 7(a)(2).

six years in prison, and those who also "corruptly" fail to comply would face up to ten years in prison.[71]

Existing law provides that all 501(c)(4) organizations that engage in *lobbying activities* are not able to receive any type of federal funds including grants and loans.[72] Since "paid efforts to stimulate grassroots lobbying" would become a "lobbying activity" under the bills, 501(c)(4) civic organizations, nonprofit associations that exist to promote social welfare, and employment associations that attempt to influence the general public about a federal issue (*i.e.* engage in "paid efforts to stimulate grassroots lobbying") could no longer receive federal funds. A 501(c)(4) group does not have to be a "grassroots lobbying firm" in order to lose federal funds so long as it engages in some form of "paid efforts to stimulate grassroots lobbying." This restriction may include some organizations that receive federal funds from the Faith Based Initiative or other federal programs.

Moreover, although existing lobbying law provides that neither the House nor the Senate has the power to audit or investigate whether the requirements of the Lobbying Act are being followed, the House bill removes that provision.[73] Removing this section would give the Clerk of the House or the Secretary of the Senate the power to actively investigate all lobbyists or grassroots lobbying firms. Title Four of the House bill grants full investigative power to a new office called the Office of Public Integrity, which would be within the Office of Inspector General.[74] This office would be given power to audit *and investigate* all lobbying requirements made by the Lobbying Act and to turn over such findings to the Attorney General for

[71] H.R. 4682 § 402(3), amending Lobbying Act § 7(b).
[72] Lobbying Act § 18.
[73] H.R. 4682 § 401(f), removing Lobbying Act § 8(c).
[74] H.R. 4682 §§ 401-403.

prosecution.[75] This would mean that any lobbyist or grassroots lobbying firm would be subject to audits of their registration and reports by the Office of Inspector General.

Finally, existing law provides: "It is the sense of the Senate that lobbying expenses should not be tax deductible."[76] Due to the many changes the House bill would make to existing law, however, individuals and organizations that engage in "paid efforts to stimulate grassroots lobbying" would now have "lobbying expenses." This sense of the Senate provision could affect the ability of such organizations to maintain their ability to deduct certain expenses.

II. AN OVERVIEW OF S.1.

S.1 has many provisions similar to those in H.R. 4682. However, there are some significant differences between the bills with regard to the "grassroots lobbying firm" and its implications on churches or other religious groups.

A. S.1's Expansion of Who is Covered by Lobbying Restrictions.

Title Two of S.1 ("Senate bill") would amend the Lobbying Disclosure Act of 1995 by creating a new class of lobbyist—the "grassroots lobbying firm." Many churches, denominations, public interest organizations, other groups, and individuals would meet the Senate bill's definition of "grassroots lobbying firm" and would be subject to the registration and reporting requirements applicable to traditional lobbyists.

The Senate bill defines "grassroots lobbying firm" as a "person or entity" that:

> (A) is retained by 1 or more clients to engage in paid efforts to stimulate grassroots lobbying on behalf of such clients; and
> (B) receives income of, or spends or agrees to spend, an aggregate of $25,000 or more for such efforts in any quarterly period.[77]

[75] H.R. 4682 § 401.
[76] Lobbying Act § 23(b).
[77] S.1 § 220(a)(2)(19), amending Lobbying Act § 3.

Under the Senate bill, a person or entity would become a "grassroots lobbying firm" once three elements are met: 1) acting on behalf of a "*client*"; 2) engaging in "*paid efforts to stimulate grassroots lobbying*" on behalf of the client(s); and 3) receiving or spending *$25,000 or more in any quarterly period* to stimulate grassroots lobbying.[78]

1. *The "Client" Requirement.*

The requirement of a "client" is easily met. Unlike the House bill, the Senate bill does *not* change the Lobbying Act's existing definition of "client": "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."[79] However, where an association or other entity has employees or other persons that engage in lobbying activities on behalf of the entity, *the entity itself is a "client*."[80] Since the Senate bill expands the definition of "lobbying activities" to include "paid efforts to stimulate grassroots lobbying,"[81] a group that engages in "paid efforts to stimulate grassroots lobbying" will be considered to be its own "client."[82]

2. *The "Paid Efforts to Stimulate Grassroots Lobbying" Requirement.*

Many churches, denominations, and public interest organizations would meet the Senate bill's definition of engaging in "paid efforts to stimulate grassroots lobbying."[83] The Senate bill defines "paid efforts to stimulate grassroots lobbying" as:

> any paid attempt in support of lobbying contacts on behalf of a client to influence the general public or segments thereof to contact 1 or more covered legislative or executive branch officials (or Congress as a whole) to urge such officials (or Congress) to take specific action with respect to a [federal legal issue] . . . .[84]

[78] S.1 § 220(a)(2)(19), amending Lobbying Act § 3 (emphasis added).
[79] Lobbying Act § 3(2).
[80] *Id.* (emphasis added).
[81] S.1 § 220(a)(1), amending Lobbying Act § 3(7).
[82] Lobbying Act § 3(2); S.1 § 220(a)(1), amending Lobbying Act § 3(7).
[83] S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3.
[84] *Id.*

Many statements made by pastors about important moral and social issues "*influence*" those in attendance at church services to contact their government officials to support or oppose a particular law or judicial nominee. The use of the broad term "influence" ensures that the Senate bill would even apply to communications that do not actually mention any particular law or judicial nominee but merely "influence" people to take action.

Moreover, the "paid" aspect of the definition is easily met when an employee of an organization (such as a pastor) is involved because the bill does not differentiate between *paying others* to take action and *being paid* to take action as a part of a person's job. The word "attempt" implies that the person does not have to be successful in achieving his goal of influencing others so long as he tried to do so.

At first glance, the mention of "lobbying contacts" in the Senate bill's definition of "paid efforts to stimulate grassroots lobbying" may appear to exclude churches because the definition of "lobbying contact" under existing lobbying law excludes communications made to federal officials by "a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under" 26 U.S.C. § 6033(a)(3)(A)(i).[85] However, the Senate bill does *not* limit its coverage to organizations that make their *own* "lobbying contacts" but rather applies to all individuals and groups that take action "*in support of lobbying contacts*" generally.[86] In other words, a pastor's statement that a bill should be enacted into law is not itself a "lobbying contact," but the pastor may engage in "paid efforts to stimulate grassroots lobbying" by encouraging people to take actions that, intentionally or unintentionally, support *another* group's lobbying contacts. Virtually any statement made by a pastor about an important social issue that "influences" people to contact their federal officials will support *some*

[85] Lobbying Act § 3(8)(B)(xviii).
[86] S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3 (emphasis added).

group or individual's "lobbying contact" because a "lobbying contact" is simply an oral or written communication to a federal official about legal issue made on behalf of a client.[87]

One limitation on the scope of the Senate bill provides that "paid efforts to stimulate grassroots lobbying" does *not* cover an attempt to influence people to contact federal officials regarding a specific legal issue "directed at less than 500 members of the general public."[88] This provision would have little practical impact because many individuals and groups reach more than 500 people with their message.

The Senate bill also provides that the term "paid efforts to stimulate grassroots lobbying" does not include "any communications by an entity directed to its members, employees, officers, or shareholders."[89] The bill defines a "member" for this purpose to include a "member of the entity," an honorary or life member, "an employee, officer, [or] director" or other person "entitled to participate in the governance of the entity," and a person that donates "more than a nominal amount" of money or time to the entity.[90] Critics of the bill argue that this provision ensures that corporations and labor unions will rarely be classified as "grassroots lobbying firms" because their communications that encourage action on federal legal issues are often limited to their own members, employees, officers or shareholders.[91] This provision does *not* apply, however, when non-members are also influenced to take action such as where statements are made during a church service that is open to both members and non-members.

3. *The $25,000 Threshold.*

The final element to becoming a "grassroots lobbying firm" under the Senate bill is that the person or group receives or spends an "aggregate of $25,000" within a quarterly period to

[87] Lobbying Act § 3(8).
[88] S.1 § 220(a)(2)(18), amending Lobbying Act § 3.
[89] *Id.*
[90] *Id.*
[91] Dave Eberhart, *Pelosi Set to Attack Conservatives*, Jan. 2, 2007.

stimulate "grassroots lobbying."[92] The Senate bill defines "grassroots lobbying" as "the voluntary efforts of members of the general public to communicate their own views on an issue to Federal officials or to encourage other members of the general public to do the same."[93] The "aggregate of $25,000" provision is ambiguous; it is possible that receiving $12,500, and then spending $12,500, would produce an "aggregate of $25,000" that triggers the provision. In any event, many churches, denominations, and public interest organizations would meet the $25,000 threshold.

4. *Short Summary of Who is Covered by the Senate Bill.*

In sum, a church or other organization would become a "grassroots lobbying firm" under the Senate bill 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;[94]
- the communication was "directed at" at least 500 members of the general public;[95]
- at least one person that the communication was directed at was not a member, employee, officer, director, or donor of a non-nominal amount of money or time to the group;[96]
- 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 legal issue, made on behalf of a client, that is not exempted from the definition of "lobbying contact");[97] and
- the group received, spent, or agreed to spend $25,000 or more for such efforts in any quarterly period.[98]

For example, consider a church that receives or spends an aggregate of $25,000 on salaries, materials, advertisements, etc. within a 3 month period related to efforts to influence people to contact elected officials to enact the Federal Marriage Amendment. If the church's message

[92] S.1 § 220(a)(2), amending Lobbying Act § 3.
[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] Lobbying Act § 3(8); S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3.
[98] S.1 § 220(a)(2)(19), amending Lobbying Act § 3.

reaches over 500 people, including some that are not members or donors, the church would be considered a "grassroots lobbying firm" because its actions resulted in "support of lobbying contacts" made by many other organizations regarding the marriage issue. The church would have to register with Congress and comply with quarterly reporting requirements or face possible fines and criminal penalties.

B. S.1's Reporting Requirements for "Grassroots Lobbying Firms."

Many of the reporting requirements of S.1 are similar to those of the House bill.

1. *Under S.1, grassroots lobbying firms would be required to register with the House and Senate.*

Currently, lobbyists must register with the House and Senate within 45 days of making a lobbying contact.[99] The Senate bill includes a provision requiring "grassroots lobbying firms" to register within 45 days of being retained by a client to engaging in lobbying activities.[100] Also, lobbyists and lobbying firms that do not exceed a certain dollar amount in income and expenditures for "lobbying activities" are exempt from registering; this amount is cut in half by the bill.[101] The Senate bill ensures that this registering exemption for "lobbying activities" would *not* include "paid efforts to stimulate grassroots lobbying," so *all* grassroots lobbying firms would have to register under the Senate bill.[102]

Under the Senate bill, both lobbyists and grassroots lobbying firms must include certain information in their registration such as the "the name, address, business telephone number, and principal place of business of the registrant" as well as any "client" in addition to the registrant.[103] The only "client" for most groups deemed to be grassroots lobbying firms will the

[99] Lobbying Act § 4(a)(1).
[100] S.1 § 220(b), amending Lobbying Act § 4(a).
[101] S.1 § 211(b)(5), amending Lobbying Act § 4(a), (b).
[102] S.1 § 220(b)(1), amending Lobbying Act § 4(a).
[103] Lobbying Act § 4(b)(1)-(2).

group itself, so many groups will not have to disclose individual or organizational members under the Senate bill.[104] With regard to donors, all grassroots lobbying firms must also provide the "name, address, and principal place of business" of any other *organization* that donates a certain amount of money toward the lobbying activities of the group and "participates in a substantial way in the planning, supervision, or control of such lobbying activities."[105] There is no disclosure requirement for individual donors. The registration statement must also include a general description of the group's business or activities[106] and disclose the general issues lobbied and the names of the employees that are lobbyists for that issue.[107] The registration must also disclose whether any of the lobbyists are considered former federal officials under the Lobbying Act.[108]

2. *S.1. would impose many additional burdens on grassroots lobbying firms.*

While lobbyists are now subject to a semiannual reporting requirement,[109] the Senate bill would change these required reports to once a quarter for all registrants.[110] The reports must contain the name of the registrant and the client as well as "any changes or updates to the information provided in the initial registration."[111] The Lobbying Act, as amended, would also require a list of the "specific issues" including "bill numbers" and executive branch actions that the lobbyist or firm dealt with that quarter.[112] The report must also list the Federal offices contacted and who did the lobbying for the firm, although the Senate bill exempts grassroots

[104] Lobbying Act §§ (3)(2), 4(b)(1)-(2).
[105] S.1 § 217(a), amending Lobbying Act § 4(b)(3)(B).
[106] Lobbying Act § 4(b)(1).
[107] Lobbying Act § 4(b)(5)-(6).
[108] Lobbying Act § 4(b)(6).
[109] Lobbying Act § 5(a).
[110] S.B. 1 §§ 211, 212, amending Lobbying Act § 5.
[111] Lobbying Act § 5(b)(1).
[112] Lobbying Act § 5(b)(2)(A).

lobbying activities from this requirement.[113] The Senate bill adds several additional reporting requirements, including an estimate of all expenses incurred in lobbying activities, an estimate of specific amounts devoted to "paid efforts to stimulate grassroots lobbying" and "paid advertising," and a certification that the registrant has not provided a gift (including travel) to a Member of Congress in violation of the Congressional ethics rules.[114]

The Senate bill would add additional quarterly reporting requirements. All registrants would have to report any political contributions, fundraisers, or events honoring federal officials, leadership PACs, or political party committees, and the amount given for each, an itemized list of any travel expenses that were provided for a federal official, and certain gifts made to federal officials.[115] The Senate bill would also create a government website where each registration and quarterly report would be made available to the public in an easily searchable manner.[116]

The proposed legislation would increase the civil penalties for failure to comply with the registration and reporting requirements to a maximum of $200,000 fine for each violation.[117] The Senate bill would also add criminal penalties for failure to comply—those who knowingly, willfully, and "corruptly" fail to comply would face up to ten years in prison.[118] The bill also directs the Comptroller General to audit registration reports and report to Congress on an annual basis.[119] The bill requires the United States Attorney for the District of Columbia to report the number of enforcement actions taken under the bill, and the amount of fines assessed, to Congress on a semiannual basis.[120] Additionally, the Senate bill would create a "Commission to

[113] Lobbying Act § 5(b)(2)(B)-(C).
[114] S.B. 1 § 220(c), amending Lobbying Act § 5(b).
[115] S.B. 1 § 212, amending Lobbying Act § 5.
[116] S.B. 1 § 214, amending Lobbying Act § 6.
[117] S.B. 1 § 216, amending Lobbying Act § 7.
[118] S.B. 1 § 223, amending Lobbying Act § 7.
[119] S.B. 1 § 231.
[120] S.B. 1 § 218(b), amending Lobbying Act § 6.

Strengthen Confidence in Congress" that would investigate and report on the effectiveness of lobbying regulation.[121]

Since existing law already provides that 501(c)(4) organizations that engage in *lobbying activities* are not able to receive any type of federal funds including grants and loans,[122] the Senate bill's expansion of the definition of "lobbying activities" to include "paid efforts to stimulate grassroots lobbying"[123] would have a major impact. 501(c)(4) civic organizations, nonprofit associations that exist to promote social welfare, and employment associations that attempt to influence the general public about a federal issue would run the risk of losing federal funding.

Additionally, current law provides: "It is the sense of the Senate that lobbying expenses should not be tax deductible."[124] Since the Senate bill classifies "paid efforts to stimulate grassroots lobbying" as a lobbying activity,[125] this provision may jeopardize the ability of churches and other non-profit organizations to continue to deduct certain expenses.

III. COMPARISON OF THE HOUSE AND SENATE BILLS.

The key difference between the House and Senate bills is the way in which they define "paid efforts to stimulate grassroots lobbying." The definition of this term affects how broad the term "grassroots lobbying firm" is because only those who engage in "paid efforts to stimulate grassroots lobbying" may become a "grassroots lobbying firm" required to register and report.

It would be easier for churches and other organizations to engage in "paid efforts to stimulate grassroots lobbying" under the House bill than it would be under the Senate bill. The

[121] S.B. 1 §§ 231-270.
[122] Lobbying Act § 18.
[123] S.1 § 220(a)(1), amending Lobbying Act § 3(7).
[124] Lobbying Act § 23(b).
[125] S.1 § 220(a)(1), amending Lobbying Act § 3(7).

key language in the Senate bill's definition of "paid efforts to stimulate grassroots lobbying" is "any paid attempt *in support of lobbying contacts* on behalf of a client to influence" people to contact federal officials.[126] In contrast, the key phrase in the House bill's definition of "paid efforts to stimulate grassroots lobbying" is "any paid attempt to influence the general public, or segments thereof, *to engage in grassroots lobbying or lobbying contacts*."[127] In other words, while both bills cover actions in support of "lobbying contacts," the House bill *also* covers influencing participation in grassroots lobbying that is wholly unconnected to any "lobbying contact."

The distinction between the House and Senate bills will have some practical effects because, as explained previously, the definition of "lobbying contact" under existing law contains many exceptions including communications to federal officials made by "a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under" 26 U.S.C. § 6033(a)(3)(A)(i).[128] The existence of a "lobbying contact" is not required under the House bill, making it easier for churches to fall within the definition of "paid efforts to stimulate grassroots lobbying." The Senate bill's requirement that the activities be "*in support of lobbying contacts*"[129] may decrease the number of cases where a church's activities are covered, but the Senate bill *does not* entirely exempt churches from its coverage. As discussed previously, many statements made by a pastor about important social issues will "influence" people to contact federal officials in a manner that supports *some* group or individual's "lobbying contact."[130]

[126] S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3 (emphasis added).
[127] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(19) (emphasis added).
[128] Lobbying Act § 3(8)(B)(xviii).
[129] S.1 § 220(a)(2)(18)(A), amending Lobbying Act § 3 (emphasis added).
[130] Lobbying Act § 3(8).

Another important difference is the amount of money that a person or entity must receive, spend, or agree to spend on lobbying activities within a quarter in order to become a "grassroots lobbying firm." The House bill establishes a $50,000 threshold for any quarterly period in order to become a grassroots lobbying firm, but the Senate bill's threshold is only $25,000. Many churches and other organizations would be covered by either threshold, although more will obviously be covered by the Senate bill's lower $25,000 threshold.

Moreover, the Senate bill provides that "paid efforts to stimulate grassroots lobbying" does not cover an attempt to influence people to contact federal officials regarding a specific legal issue "directed at less than 500 members of the general public."[131] The House bill does not have a similar provision.

An additional difference is that the Senate bill's exception for "members only" communications is broader than the House bill's exception. Both bills cover communications directed to members, employees, officers or shareholders of an organization. However, the Senate bill's exception also includes donors of a non-nominal amount of money or time to the group.[132] Moreover, the House bill's exception does not cover communications to members that are funded in some way by an outside lobbyist or grassroots lobbying firm.[133] The Senate bill does not contain a similar provision. Under either version of the bill, the exception does not apply when non-members are also encouraged to take action such as where statements are made during a church service that is open to both members and non-members.

Furthermore, since the Senate bill does not alter the existing definition of "client," most organizational grassroots lobbying firms will not have to disclose their organizational members. In contrast, the House bill redefines "client" with regard to organizations such that groups that

[131] S.1 § 220(a)(2)(18)(B), amending Lobbying Act § 3.
[132] S.1 § 220(a)(2)(18)(C), amending Lobbying Act § 3.
[133] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(19)(B).

are *not* governed by 501(c) must make some disclosures regarding some of their organizational *members*.[134]

Also, both bills require quarterly rather than semiannual reporting. 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. The House bill contains an additional reporting requirement for each expenditure of $250,000, but the Senate bill does not. The House bill would remove an existing statutory provision that provides that the lobbying statutes do not grant Congress the authority to audit lobbyists, while the Senate bill leaves this provision intact.[135] Additionally, the House bill creates an Office of Public Integrity, while the Senate bill requires the United States Attorney's office to provide a report twice a year.

IV. PRACTICAL EFFECT OF H.R. 4682 AND S.1 ON CHURCHES AND OTHER GROUPS AND INDIVIDUALS.

The bills would treat many individuals and organizations that do not engage in traditional lobbying activities as "lobbyists" or "grassroots lobbying firms." Some civic organizations, churches, or public interest groups that focus a portion of their efforts on informing the general public and encouraging them in their civic responsibilities would be required to register with Congress and report just like a traditional lobbyist. Many organizations, including large churches and denominational groups, would likely meet the $25,000 or $50,000 requirement within a quarter and be classified as a "grassroots lobbying firm."

A. Many Individuals and Organizations that Attempt to Influence Members of the Public to Express Their Own Views to Federal Officials Would Fall Under the Lobbying Laws and Would Have to Report if They Meet the $25,000 or $50,000 Threshold.

[134] H.R. 4682 § 205(a), amending Lobbying Act § 3(2).
[135] H.R. 4682 § 401(f), removing Lobbying Act § 8(c).

The bills go beyond someone whose job it is to lobby public officials to cover anyone who seeks to influence the public to act with regard to a federal legal issue. Thus, this *law could 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*.

Under the bills, any person or entity that pays for or otherwise provides some medium of communication in an attempt to *influence* members of the public to communicate their personal views to federal officials would be engaging in "paid efforts to stimulate grassroots lobbying." While the bills do not extend to a group's communications directed to its own members or employees, many churches and other groups often seek to influence non-members. Moreover, under the House bill, even communications to members or employees would be covered if they are paid for by another person or entity that is a lobbyist or grassroots lobbying firm under the Act. Under the bills, "grassroots lobbying firms" are people or entities that either bring in or spend an aggregate of $25,000 or $50,000 within a quarter on "paid efforts to stimulate grassroots lobbying." Along with other "lobbyists," these "grassroots lobbying firms" would be required to register with Congress and make various disclosures.

The bills' broad provisions encompass many aspects of what churches and pastors do. Churches and their pastors often engage in "paid efforts to stimulate grassroots lobbying" as that term is defined in the bills. A pastor encouraging those in attendance at a service to contact their congressperson, or even just to be informed and involved in the political process, would likely be engaging in "paid efforts to stimulate grassroots lobbying." The definition of that term is extremely broad, especially in the House bill, and includes efforts to "influence the general

public" to "communicate their own views on an issue to Federal officials" or encourage others to do the same.[136] The exception for communications to members or employees only would rarely apply to churches because services are not directed solely at members. Indeed, it is often their purpose to reach non-members. Also, even members-only communications would be "paid efforts to stimulate grassroots lobbying" under the House bill if the communication was based upon materials provided by an outside lobbyist or grassroots lobbying firm.

Some radio and TV personalities and their employers could also be classified as grassroots lobbying firms. Any TV program or station that does or says anything that could be construed as an attempt to "influence" the public to communicate their personal views with federal officials engages in "paid efforts to stimulate grassroots lobbying." Many talk radio and TV programs are specifically designed to influence the public on federal political issues. All of these individuals and organizations could be considered "grassroots lobbying firms" and would have to register as such if they are "paid" for their efforts and meet the $25,000 or $50,000 threshold within a quarter.

One of the main focuses of many public interest organizations and civic organizations is to influence the public. If this influence extends to a federal legal matter, then they would often be engaging in "paid efforts to stimulate grassroots lobbying." If this effort reaches the $25,000 or $50,000 threshold within a quarter, then the organization would be required to report. Organizations that could be re-categorized as lobbyists or grassroots lobbying firms would include the American Center for Law and Justice, the American Civil Liberties Union, Focus on the Family, Prison Fellowship, and People for the Ethical Treatment of Animals. While some organizations may tend to only share information in an attempt to influence their own

[136] H.R. 4682 § 204(a)(2), amending Lobbying Act § 3(18)-(19).

membership, any such attempt that extends to some non-members could be considered an attempt to "influence" the general public.

Bloggers are another group of individuals that may fall under the definition of "paid efforts to stimulate grassroots lobbying." Most political bloggers clearly engage in grassroots lobbying, but many today have advertisements on their websites. If they are paid for these advertisements, then they could be engaging in "paid efforts to stimulate grassroots lobbying." The same may be true if the blogger is paying for the website himself, at least where the blogger has created an organization that runs or sponsors the website. Under the bills, where the financial aggregate for the blogger's "paid efforts to stimulate grassroots lobbying" exceeds $25,000 or $50,000 in a quarter, the blogger and/or his organization would be a grassroots lobbying firm and must register with Congress.

Additionally, the term "*paid efforts* to stimulate grassroots lobbying" may even apply to private individuals that pay for any medium to distribute their message to the general public. While there is an exception for "voluntary" grassroots lobbying in the House bill, the "paid efforts" language does not distinguish between being paid for what you do and paying others for what you do (such as printing or hosting a website).[137] Thus, the bills may cover some individuals that voluntarily engage in grassroots lobbying that pay for some of the materials they use in their advocacy. If the aggregate amount is reached within a quarter, these individuals could be considered grassroots lobbying firms and be required to register with Congress.

In sum, many churches, denominations, public interest organizations, media outlets, and even individual citizens who put their opinion on a website or use other public means of communication would be considered grassroots lobbying firms under these bills and would be subject to the restrictions and the requirements of the Lobbying Act.

[137] *Id.*

V. H.R. 4682 AND S.1 ARE UNCONSTITUTIONAL ON THEIR FACE BECAUSE THEY ARE NOT NARROWLY TAILORED TO MEET A COMPELLING GOVERNMENTAL INTEREST.

H.R. 4682 and S.1 violate the First Amendment of the United States Constitution for several reasons. A court reviewing the bills would apply strict scrutiny and hold that they are unconstitutionally burdensome and broad. The bills are not narrowly tailored to achieve a compelling government interest. In addition, the bills impermissibly require many organizations to disclose portions of their membership and/or donor lists. The bills reach beyond the constitutional limits established in *United States v. Harriss*.[138] In addition, the bills are not in line with the regulations concerning campaign finance disclosures upheld in *McConnell v. FEC*.[139] Finally, the bills intrude into areas of protected anonymous speech. The following sections explain in detail that H.R. 4682 are S.1 are far from being narrowly tailored to meet any of the government interests asserted.

Several public interest organizations have already noted that H.R. 4682 poses constitutional problems. For example, in early 2006, the American Civil Liberties Union publicly opposed a Senate version of H.R. 4682 on First Amendment grounds.[140] In a letter to the Senate, the ACLU argued that "the grassroots lobbying provision is constitutionally suspect because it does not serve a compelling government interest and is not narrowly tailored to achieve the asserted goal."[141] Also, in December 2006, the Free Speech Coalition wrote a similar letter to Public Citizen, a group that helped to draft H.R. 4682. The Free Speech Coalition argued: "The registration and quarterly reporting of grassroots communications to the public . . . [is] a frontal

[138] *U.S. v. Harriss*, 347 U.S. 612, 615 (1953).
[139] *McConnell v. FEC*, 540 U.S. 93 (2003).
[140] *ACLU Letter to the Senate Opposing Expansions of Post-employment Bans and Regulations on Grassroots Lobbying*, Mar. 7, 2006, *available at* http://www.aclu.org/freespeech/gen/24423leg20060307.html.
[141] *Id.*

attack on the First Amendment. Requiring citizen-critics of Congress or their communication agents to register with Congress . . . would most certainly chill these rights."[142]

A. Courts Applying Strict Scrutiny to H.R. 4682 and S.1 Would Find That They are Unconstitutionally Burdensome and Overly Broad.

H.R. 4682 and S.1 unconstitutionally expand the Lobbying Act to broadly encompass nearly every aspect of core political speech relevant to grassroots politics. The bills impose registration requirements, with the threat of civil and criminal penalties, upon many private individuals and organizations with regard to many avenues of communication should they receive or spend an aggregate of more than $25,000 or $50,000 on "paid efforts to stimulate grassroots lobbying" within a quarter. Moreover, the bills reach beyond current law to include speech that is not a direct communication to federal officials. The bills also implicate communications to members of the general public that encourage them to communicate their views to either federal officials or other citizens. Therefore, the bills attempt to regulate core political speech. Communication to the general public involves "interactive communication concerning political change."[143] Consequently, the "grassroots lobbying" that the bills regulate is "core political speech."[144]

Core political speech includes speech concerning both candidate-based elections and speech concerning political issues.[145] This type of speech has been at the "core of the protection afforded by the First Amendment."[146]

> Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such

[142] Free Speech Coalition Letter to Public Citizen, Dec. 14, 2006, http://freespeechcoalition.org/pdfs/ClaybrookLetterAndAnalysis.pdf.
[143] *Buckley v. Am. Const. Law Found*., 525 U.S. 182, 186-87 (1999).
[144] *Id*. (citing *Meyer v. Grant*, 486 U.S. 414, 422 (1988).
[145] *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995).
[146] *Id.* at 346.

> political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people."[147]

In *Mills v. Alabama*, the Court recognized that "there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs." [148] Thus, the regulation of core political speech is examined under strict scrutiny. As the Supreme Court has explained: "significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest."[149] "When a law burdens core political speech, we apply 'exacting scrutiny,' and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest."[150]

In *Police Dep't of the City of Chicago v. Mosley*, the Supreme Court explained, "[t]he [Constitution] requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives."[151] The Court in *Frisby v. Schultz* stated: "A statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy."[152] A stated reason for the bills is that "responsible representative government requires public awareness . . . of the efforts of paid lobbyists to influence federal officials in the conduct of government actions."[153] An attempt to subject many churches, public advocacy organizations, and individuals that are not "lobbyists" to the burdens of lobbying regulation is unconstitutional because it is not narrowly tailored to achieve the bills' stated purposes.

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[147] *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (per curiam) (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)).
[148] 384 U.S. 214, 218 (1966).
[149] *Buckley*, 424 U.S. at 64.
[150] *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995) (citation omitted).
[151] *Police Dep't of the City of Chicago v. Mosley*, 408 U.S. 92 (1972).
[152] *Frisby v. Schultz*, 487 U.S. 474, 477 (1988) (quoting *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 808-10 (1984)).
[153] Lobbying Act § 2 (1), (3).

In *Rumely v. United States*, the Supreme Court interpreted a Congressional resolution regarding lobbying as not including paid efforts to influence the general public, stating that interpreting it in this manner was necessary to avoid "a serious constitutional doubt."[154] The Court explained that any other interpretation of the resolution would "raise[] doubts of constitutionality in view of the prohibition of the First Amendment."[155] The Court noted that the appeals court had clearly laid out the constitutional dangers created by incorporating communication with the general public into the definition of lobbying:

> It is said that lobbying itself is an evil and a danger. We agree that lobbying by *personal contact* may be an evil and a potential danger to the best in legislative processes. *It is said that indirect lobbying by the pressure of public opinion on the Congress is an evil and a danger. That is not an evil; it is a good, the healthy essence of the democratic process. It is said that the financing of extensive efforts to influence public opinion is an evil and a danger. As to that, generalities are inaccurate.* If influences upon public opinion were being bought and prostituted, an evil might arise. But the case before us concerns . . . the formation of public opinion through the processes of information and persuasion. There is no evil or danger in that process.[156]

Consequently, an attempt to regulate traditional forms of public persuasion would violate the First Amendment.

The Court has also observed that legislative restrictions on the "discussion of political policy" or support or "defeat of legislation" are "wholly at odds with the guarantees of the First Amendment."[157] In *Meyer v. Grant*, the Court struck down a Colorado law prohibiting paid petition circulators.[158] The Court reasoned that this method of "direct one-on-one communication" was perhaps the most "economical avenue of political discourse."[159] The fact that Colorado's law left open "more burdensome avenues of communication" did not relieve the

[154] *Rumely v. United States*, 345 U.S. 41, 47 (1953).
[155] *Id.* at 46.
[156] *Rumely v. United States*, 197 F.2d 166, 174 (D.C. Cir. 1952) (emphasis added).
[157] *Buckley*, 424 U.S. at 48, 50.
[158] *Meyer v. Grant*, 486 U.S. 414, 424 (1988)
[159] *Id.*

government from establishing a compelling state interest before restricting political speech.[160] The First Amendment protects one's right not only to advocate a cause, but also to choose an effective medium of communication.[161]

By including as lobbyists individuals and organizations seeking to influence the general public to share their own views with federal officials, H.R. 4682 and S.1 far exceed the stated purposes of the Lobbying Act. As the Court explained in *Consolidated Edison Company of New York v. Public Service Commissioner of New York*, "[w]here a government restricts the speech of a private person, the state action may be sustained only if the government can show that the regulation is a precisely drawn means of serving a compelling state interest."[162] The Court in *Consolidated Edison* ruled that a restriction on what leaflets could and could not be added to an envelope containing bills was an unconstitutional regulation of persuasive speech to the general public.[163] Similarly, the grassroots lobbying bills would include private citizens encouraging others in the general public to perform their civic duty. In an attempt to fight corruption, this legislation is not "a precisely drawn means of serving [that] compelling state interest."[164]

While H.R. 4682 and S.1 are purportedly an attempt by Congress to prevent corruption, this goal can be achieved by means much less restrictive of speech and associational rights. The Court noted in *Consolidated Edison* that "mere speculation" does not constitute a compelling state interest and cannot support a finding that a law is narrowly tailored.[165] The Speaker of the House, Nancy Pelosi, has identified the compelling governmental interest for H.R. 4682 as "sever[ing] unethical ties between lawmakers and lobbyists"[166] Several of her stated objectives

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[160] *Id.*
[161] *Id.*
[162] *Consol. Edison Co. of N.Y. v. Pub. Serv. Comm'r of N.Y.*, 447 U.S. 530, 540 (1980).
[163] *Id.* at 542-43.
[164] *Id.* at 540.
[165] *Id.* at 544.
[166] *A New Direction For America*, *at* http://www.house.gov/pelosi (last visited Jan. 3, 2007).

include "to make certain this nation's leaders serve the people's interests, not special interests . . . [and] to represent all of the people, not just the powerful."[167] She added: "Our goal is to restore accountability, honesty and openness at all levels of government."[168] Close monitoring of the activities of churches and public advocacy groups bears no real relationship to the compelling governmental interest of eliminating corruption. H.R. 4682 and S.1 offer "mere speculation" that their regulations and disclosure requirements will in any way sever unethical ties, hinder special interests, or restore governmental accountability. As Justice Stevens explained in his concurring opinion in *Consolidated Edison*, "A regulation of speech that is motivated by nothing more than a desire to curtail expression of a particular point of view on controversial issues of general interest is the purest form of a law . . . abridging the freedom of speech . . . ."[169] H.R. 4682 and S.1 appear to be the manifestation of a desire to curtail certain speech on federal political issues by individuals and organizations to the general public.

In *Federal Communications Commission v. League of Women Voters of California*, the Supreme Court ruled that a regulation of educational broadcasting companies that engaged in "editorializing" that "may support or oppose any candidate for political office" was unconstitutional.[170] The Court stated that the law was not narrowly tailored to achieve the compelling governmental interest of preventing these stations from becoming "convenient targets for capture by private interest groups" with their own political agendas. The current legislation has a similar purpose: to prevent private interests from circumventing the will of the people in federal matters. Like the act in *League of Women Voters*, H.R. 4682 and S.1 are not narrowly tailored toward that end and would infringe upon First Amendment rights.

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[167] *Id.*
[168] *Id.*
[169] *Consol. Edison Co. of N.Y.*, 447 U.S. at 546 (Stevens, J. concurring) (quotations and footnote omitted).
[170] *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 371 (1984) (quoting 47 U.S.C. § 399).

The Court in *Riley v. National Federation of the Blind of North Carolina, Inc.* ruled that a regulation on free speech that required registration and public disclosure of financial information was unconstitutional.[171] The law had required disclosure and registration of organizations that solicited charitable contributions because of the "State's interest in preventing fraud."[172] The Court struck down the public disclosure requirement as not being narrowly tailored, characterizing it as a "prophylactic, imprecise, and unduly burdensome rule."[173] In the same way, a public disclosure and registration requirement for "paid efforts" to influence the public on federal issues that reach a certain financial threshold would *not* be narrowly tailored to encourage trust in government or prevent fraud.

By including public advocacy groups and grassroots movements that encourage or mobilize public citizens to contact their representatives, the bills remove the element of direct contact with public officials that has been part of the historical, common-sense understanding of "lobbying." In so doing, the legislation would not further a legitimate government interest. While the government has an interest in preventing corruption and making the political process more open to public scrutiny, regulating speech directed to the public (and not Congress) would have the opposite effect. The bills are not narrowly tailored because they include many more individuals and organizations than would be necessary to fulfill the government's legitimate purposes. For these reasons, the bills would be unconstitutional on their face if enacted.

B. H.R. 4682 and S.1 Unconstitutionally Require Organizations to Disclose Information About Some of Their Members and Donors Contrary to Their Associational Rights.

One highly important aspect of the right to freedom of association guaranteed by the First Amendment is the right to privacy in one's associations. This is especially true if the group

[171] *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988).
[172] *Id.* at 789.
[173] *Id.* at 798.

espouses unpopular or minority views. Although the freedom of association is not absolute, the government may not require disclosure of private associational relationships without showing that disclosure is necessary to further important state interests.

First Amendment freedoms "are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle government interferences."[174] The Supreme Court has recognized that disclosure of the fact that a person is a member of, or contributes to, a particular group or organization may deter the person from becoming a member or contributing, and therefore may deter the freedom of association.[175] Regulatory measures cannot be employed to stifle, penalize, or curb the exercise of First Amendment rights, such as the right to freedom of association.[176]

In *NAACP v. Alabama*, the Court recognized that forced disclosure of membership would have a deterrent effect upon the NAACP's members' freedom of association because it might induce members to withdraw from the organization, and might dissuade others from joining it because of their fear of exposure.[177] The Court reversed the decision of the lower court holding the NAACP in contempt for not revealing the membership list. The Court was concerned that the forced identification might cause some NAACP members to withdraw and prevent others from joining.[178] Noting the "vital relationship between freedom to associate and privacy in one's associations," the Court stated that "inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs."[179] The Court further stated that "[c]ompelled disclosure of

[174] *Bates v. Little Rock*, 361 U.S. 516, 523 (1960).
[175] *See NAACP v. Alabama*, 357 U.S. 449 (1958).
[176] *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293 (1961).
[177] 357 U.S. 449.
[178] *Id.* at 462-63.
[179] *Id.* at 462.

membership in an organization engaged in advocacy of particular beliefs is of the same order" as "a requirement that adherents of particular religious faiths or political parties wear identifying arm-bands."[180]

The Court has extended the protection afforded by the First Amendment for association and privacy since *NAACP v. Alabama*.[181] In *Bates v. Little Rock*, associational privacy was extended beyond an organization's members to protect its donors when revealing donors would essentially be revealing members.[182] In *Bates*, the city requested a list of donors and members from a local NAACP chapter pursuant to an occupational license tax ordinance. Relying heavily on *NAACP v. Alabama*, the Court held that the organization did not have to turn over its membership list because the government failed to show an interest which would override the right of the members and donors of the NAACP to remain anonymous.

In *Gibson v. Florida Legislative Investigation Committee*, the Court reiterated that unless the government shows a substantial interest in seeking the membership list of an organization, an association has a right not to disclose the names of its members.[183] A committee of the Florida legislature ordered the president of the Miami branch of the NAACP to bring the group's membership lists to a legislative hearing and to respond to direct questions about membership. The president refused to produce the membership lists, arguing that the order interfered with the exercise of the associational rights of NAACP members. Reversing his conviction for contempt, the Court held that the NAACP could deny the government access to its membership lists on the basis of its right of association. The Court stated that "[i]t is beyond debate that freedom to engage in association for the advancement of beliefs and ideas . . . encompasses protection of

[180] *Id.*
[181] *See Shelton v. Tucker*, 364 U.S. 479 (1960) (invalidating a statute which required public school teachers to reveal to the state their contributions to or memberships in any organization during the previous five years).
[182] 361 U.S. 516 (1960).
[183] 372 U.S. 539 (1963).

privacy of association."[184] Citing *NAACP v. Alabama*, the *Gibson* Court stated that compelled disclosure of affiliation with groups engaged in advocacy may constitute an effective restraint on freedom of association.[185] The disclosure provisions of H.R. 4682 and S.1 regarding organizational members and donors clearly violate the First Amendment principles established in these cases.

C. Adoption of H.R. 4682 and S.1 Would Be an Unconstitutional Expansion Beyond the Narrow Lobbying Regulation Limits Established in *United States v. Harriss*.

United States v. Harriss dealt with a lobbying regulation that applied to all those who "influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States."[186] The regulations imposed upon these individuals and organizations are similar to those present in H.R. 4682 and S.1.[187] The Supreme Court, however, interpreted the regulation to only apply to direct contact with Congress.[188] The Court upheld the regulation by construing it "to refer only to 'lobbying in its commonly accepted sense'—to direct communication with members of Congress on pending or proposed federal legislation," even though on its face it would have extended to the kind of "grassroots" advocacy covered by H.R. 4682 and S.1.[189] The Court stated that it was "construing the act narrowly to avoid constitutional doubts."[190] The broad scope of the bills create the kind of "constitutional doubts" the Court sought to avoid in *Harriss*.

The *Harriss* Court stated that Congress has the power to regulate traditional lobbyists and also explained that the way the law was construed—to regulate lobbyist contacts with federal

[184] *Id.* at 544.
[185] *Id.*
[186] *Harriss*, 347 U.S. at 615.
[187] *Id.* at 615-16.
[188] *Id.* at 620.
[189] *Id.*
[190] *Id.* at 623.

officials *alone*—allowed it to be narrowly tailored "in a manner restricted to its appropriate end."[191] The fact that the lobbying act in *Harriss* applied only to contact with federal officials and not to "organizations seeking to propagandize the general public" is the key to why the act was upheld as constitutional.[192] The Court further reasoned, "[o]therwise the voice of the people may all too easily be drowned out by the voice of special interest groups . . . ."[193] H.R. 4682 and S.1 are *not* narrowly tailored to further the goal of diminishing special interest influence in Congress. Rather, they would actually muffle the voice of the people by restricting, through regulation, the ways in which they can be informed by grassroots groups about how federal governmental actions may affect them.

D. The Campaign Finance Cases Confirm that H.R. 4682 and S.1 Unconstitutionally Burden the Freedoms of Speech and Association.

Campaign finance restrictions and lobbying restrictions are frequently promulgated for similar reasons as those asserted in support of H.R. 4682 and S.1. However, those restrictions often infringe upon the same rights to political free speech and association at issue in this bill. The two primary Supreme Court cases addressing the constitutionality of campaign finance restrictions are *Buckley v. Valeo*[194] and *McConnell v. Federal Election Commission*.[195] These cases help illuminate the constitutional parameters for lobbying restrictions.

Under *Buckley* and *McConnell*, campaign contribution restrictions must be justified by a compelling interest and narrowly tailored to achieve that end.[196] Expenditure limits are scrutinized even closer than contribution limits because expenditure limits "preclude most

[191] *Id.* at 626.
[192] *Id.* at 621.
[193] *Id.* at 625.
[194] *Buckley*, 424 U.S. at 1.
[195] *McConnell*, 540 U.S. at 93.
[196] *Id.* at 136.

associations from effectively amplifying the voice of their adherents . . . ."[197] Disclosure limits must also by justified by a compelling interest and must be narrowly tailored.

In both cases, the Court identified some of the compelling interests that provide justification for disclosure regulations and political speech restrictions. Both cases recognized that preventing corruption or the appearance thereof is a compelling interest.[198] The *McConnell* Court extended the interest in preventing the appearance of corruption to having access to politicians.[199] The Court has also held that interests that provide justification for disclosure requirements include preventing corruption,[200] the provision of information to the electorate to aid in informed voting,[201] and the collection of data to aid in the detection of violations.[202]

In *Buckley*, the Court ratified the ability of the government to promulgate anti-circumvention measures. However, in its analysis on expenditure limits, the Court found that such measures must "provide an answer that sufficiently relates to the elimination of th[e] dangers" being circumvented.[203] The Court added that the conduct that is restricted must actually "pose dangers of real or apparent corruption."[204] However, H.R. 4682 and S.1 would bring many churches and public advocacy organizations under the umbrella of lobbyist restrictions. One apparent justification for this inclusion is preventing such groups from reaping the benefits of engaging in lobbying activities without following the stringent requirements of being a "lobbyist." Under the existing definition of "lobbyist," the compelling interest for disclosure could easily and justifiably be any of the disclosure interests identified above. The government's

[197] *Id.* at 135-36 (quotations omitted).
[198] *McConnell*, 540 U.S at 116; *Buckley*, 424 U.S. at 67.
[199] *McConnell*, 540 U.S at 154.
[200] *Buckley*, 424 U.S. at 67.
[201] *Id.* at 66-67.
[202] *Id.* at 67-68.
[203] *Id.* at 45.
[204] *Id.* at 46.

interests in broadly regulating the groups covered by H.R. 4682 and S.1 are much less compelling, however, and the bill is not narrowly tailored to achieve these interests.

E. H.R. 4682 and S.1 Violate Citizens' Right to Speak Anonymously.

The Supreme Court has recognized a level of First Amendment protection for anonymous speech. "Our nation's tradition of anonymous political expression 'is perhaps best exemplified by the secret ballot, the hard-won right to vote one's conscience without fear of retaliation.'"[205] The Court has held statutes that unduly restrict or limit anonymous speech unconstitutional.[206] Anonymous speech holds a position of protection because "freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment."[207] As Chief Justice Rehnquist explained in his dissent in *McConnell v. FEC*, "Indeed, this Court has explicitly recognized that 'the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry.'"[208]

In *McIntyre v. Ohio Elections Comm'n*, the Court concluded that an Ohio statute prohibiting the distribution of anonymous campaign literature was not narrowly tailored to achieve the government's goals.[209] The Court distinguished the case from *Buckley v. Valeo* which involved the mandatory disclosure of campaign-related expenditures.[210] The Court noted that, although it expressed approval in *Buckley* of a requirement that "independent expenditures"

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[205] *Am. Const. Law Found. v. Meyer*, 120 F.3d 1092, 1102 (10th Cir. 1997) (citing *McIntyre*, 514 U.S. at 347).
[206] *See, e.g., Buckley v. Am. Const. Law Found*, 525 U.S. at 182 (striking down Colorado restriction on anonymous speech and disclosure regarding circulation of handbills); *McIntyre*, 514 U.S. at 334 (invalidating law restricting anonymous election-related handbilling); *Talley v. California*, 362 U.S. 60, 63 (1960) (invalidating law prohibiting distribution of "any handbill in any place under any circumstances" unless it contains names and addresses of those who prepared, distributed, or sponsored it); *Bates v. City of Little Rock*, 361 U.S. 516 (1960) (striking down ordinance requiring disclosure of membership lists).
[207] *Meyers*, 486 U.S. at 421 (citing *Thornhill v. Alabama*, 310 U.S. 88, 101-02 (1940) (emphasis added)).
[208] 540 U.S. at 275-76 (describing and referring to *McIntyre*) (Rehnquist C.J., dissenting).
[209] *McIntyre*, 514 U.S. at 357.
[210] *Id.* at 353-55.

in excess of a certain amount be reported to the Federal Election Commission, "that requirement entailed nothing more than an identification to the Commission *of the amount and use of money expended in support of a candidate*."[211] The *McIntyre* Court explained that "even though money may 'talk,' its speech is less specific, less personal, and less provocative than a handbill . . . ."[212] The Court concluded that Ohio's statute was too broad and open-ended to be narrowly tailored to serve the compelling interests advanced by Ohio—preventing fraud and libel and providing relevant information to the electorate. Importantly, the statute covered speech that could not be considered false or misleading and would also apply to activities of individuals acting independently of any political candidate.[213]

H.R. 4682 and S.1 are not narrowly tailored to achieve the compelling state interest of preventing corruption since they would also cover many entities that are not capable of causing or likely to cause corruption in the first place. The bills implicate anonymous speech rights because they would require disclosure of the identity of the "grassroots lobbying firm" being regulated as well as of the clients and some organizational donors financially supporting such speech. The bills impose civil and criminal penalties on many individuals and groups that encourage grassroots participation and that do not register and disclose this information. The bills' broad provisions would cover a large amount of speech, including anonymous speech, that does not involve a direct communication with a political candidate, member of Congress, or federal official. This kind of regulation "puts a crimp in political speech" by discouraging individuals and groups from encouraging people to contact public officials.[214] H.R. 4682 and

[211] *Id.* at 355 (citations omitted) (emphasis added).
[212] *Id.*
[213] *Id.* at 348-52.
[214] *Majors v. Abell*, 317 F.3d 719, 723 (7th Cir. 2003) (withholding decision until the Indiana Supreme Court, through certified question, delineated the actual scope of the anonymous speech statute).

S.1's broad regulation of many forms of anonymous speech is unconstitutional because it is not a narrowly tailored means of achieving a compelling government interest.

Conclusion

H.R. 4682 and S. 1 would alter the face of grassroots politicking and the common sense definition of lobbying by expanding existing law to regulate "grassroots lobbying firms" that seek to encourage other people to contact their federal public officials regarding public policy issues. These bills would subject many individuals, churches, denominations, public interest organizations, and other groups to burdensome registration and reporting requirements. While the bills are bad policy, they also violate the First Amendment's protection of the freedoms of speech and association. *Amendment 20 to S.1* should be adopted because it 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.*