



MEMORANDUM

TO: Interested Parties

FROM: American Center for Law and Justice

RE: H.R. 2093, Representative Meehan's Grassroots Lobbying Bill

DATE: May 11, 2007

Representative Martin T. Meehan (D-MA) has introduced a bill regulating grassroots advocacy, H.R. 2093, that is *simply a re-hashed version of Section 220 of Senate Bill 1 (S.1)*. The ACLJ's comprehensive analysis of S.1's Section 220 made clear that it was a blatantly unconstitutional effort to limit and regulate free speech and citizen petition efforts by the grassroots in the name of "lobbying reform." When it first appeared, the Senate wisely rejected it on a bipartisan basis in January 2007.¹ The House should do likewise.

A Subtle Change in Language.

H.R. 2093 would turn lobbying regulation on its head by dramatically expanding the scope of lobbying law to include grassroots advocacy by individuals and groups that are *not* "lobbyists" in any sense of the word. One strategic difference in language between H.R. 2093 and Section 220 of Senate Bill 1 is that the word "grassroots" does not appear anywhere within the bill. Although several provisions of H.R. 2093 are virtually identical to portions of Section 220, H.R. 2093 uses terms like "lobbying firm" instead of "grassroots lobbying firm" and "paid communications campaigns to influence the general public to lobby Congress" instead of "paid efforts to stimulate grassroots lobbying." This difference is one of form, not substance, as the First Amendment rights of many grassroots advocates will be directly impacted by H.R. 2093. Simply calling grassroots advocacy by average citizens "lobbying" does not make it so.

Shifting the Burden of Regulation.

A provision in H.R. 2093 stating that "[n]o person or entity *other than a lobbying firm* is required to register or file a report under the amendments made by this section" may lead some people to mistakenly believe that grassroots organizations will be unaffected by the bill.² Under H.R. 2093's amended definition of "lobbying firm," however, an *employee* of a grassroots organization, or the *media companies* that the group deals with, may be considered a "lobbying

¹ S.1, the Lobbying Transparency and Accountability Act of 2007, was introduced on January 4, 2007. Section 220 of S.1 contained grassroots lobbying provisions, but Amendment 20 to S.1, approved on January 18, 2007 by a 55-43 vote, removed Section 220 from the bill. The amended version of S.1 was approved by the Senate by a 96-2 vote.

² See H.R. 2093 § 1(a) (emphasis added).

firm” that would have to register with the government and regularly disclose information about the group’s activities.³ These “lobbying firms” would be subject to fines for non-compliance and their registration statements and reports would be made available to the public.⁴

The main difference between H.R. 2093 and Section 220 of S.1 is that H.R. 2093 would simply shift the bulk of the financial and regulatory burden of registration and reporting from the grassroots organizations themselves to the media companies that help distribute their message. H.R. 2093 would chill the exercise of First Amendment rights by requiring the media firms that help grassroots organizations to share their message to register with the government and disclose information about the groups’ activities. The cost of compliance with federal lobbying law—including the need to hire lawyers, accountants, and other personnel to ensure that all legal requirements are met—would be great. Undoubtedly, many companies will make their grassroots clients bear the cost of compliance with lobbying law rather than imposing the burden upon their entire clientele. Moreover, some companies would stop working with grassroots organizations altogether to avoid the onerous burden of lobbying regulation.

The Expanded Definition of “Lobbying Firm.”

The effect of H.R. 2093 is similar to Section 220 of S.1 due to the disclosure requirements imposed upon *media companies that help to communicate the messages of grassroots organizations*. H.R. 2093 expands the definition of “lobbying firm” to include

a person or entity that is retained by 1 or more clients (other than that person or entity) to engage in paid communications campaigns to influence the general public to lobby Congress, and receives income of, or spends or agrees to spend, an aggregate of \$100,000 or more for such efforts in any quarterly period.⁵

“Paid communications campaigns to influence the general public to lobby Congress” are simply efforts to influence the general public to contact federal officials to urge them to take action on legislation, regulations, Executive orders, or nominations.⁶

Under H.R. 2093, a printing, publishing, or other media company that receives or spends a total of \$100,000 within a three-month period on television, radio, Internet, e-mail or other efforts to “influence” the general public to contact federal officials about legal issues would be a “lobbying firm.”⁷ *There is no requirement* that any particular client of the company spend \$100,000 on grassroots advocacy so long as the aggregate amount from *all* clients reaches \$100,000.⁸ *There is also no requirement* that the media company, its grassroots clients, or any member of the general public actually have *any* contact with members of Congress or have *any*

³ See *id.* at § 1(b)(2); 2 U.S.C. §§ 1603, 1604.

⁴ 2 U.S.C. § 1606.

⁵ H.R. 2093 § 1(b)(2). The bill also expands the definition of “lobbying activities” conducted by lobbying firms to include “paid communications campaigns to influence the general public to lobby Congress.” *Id.* at § 1(b)(1).

⁶ *Id.* at § 1(b)(3). The term does not include “communications made to the members of the client” or “direct mail communications to the general public, or segments of the general public, that are made primarily for the purpose of recruiting members to join an organization.” *Id.*

⁷ See *id.* at § 1(b)(2).

⁸ See *id.*

employees that are actual “lobbyists.”⁹ Many media companies would fall within H.R. 2093’s definition of “lobbying firm.”

In addition, it appears that certain *employees* of grassroots organizations could meet the definition of a “lobbying firm.”¹⁰ If a particular employee receives, spends, or agrees to spend \$100,000 within a quarterly period on behalf of his employer to influence the general public to contact federal officials, that employee would be “a lobbying firm that is retained on behalf of a client other than that person or entity.”¹¹ For example, if a church or other non-profit organization receives, spends, or agrees to spend \$100,000 within a quarterly period to influence the general public to contact members of Congress about legal issues, an employee that directs how that money is spent—such as a pastor, treasurer, or public policy director—could be considered a “lobbying firm.”¹² A church or other tax-exempt 501(c)(3) organization could trigger H.R. 2093’s reporting requirements for media companies (or their own employees) without violating the “no substantial part” test already applicable to them under current tax law.¹³

The Registration Statement.

Once a media company or an employee of a church, non-profit organization, or other grassroots organization meets the \$100,000 threshold, they must register with Congress as a “lobbying firm.”¹⁴ The registration statement must contain information about the grassroots organization such as:

- the organization’s name, address, and principal place of business,
- *a general description of the organization’s activities*, and
- *a statement of the general and specific issue areas* in which the group is likely to encourage the public to contact federal officials.¹⁵

If a church or other grassroots organization *spends just \$5,000*¹⁶ to encourage the general public to contact members of Congress about important policy issues, the printing, publishing, and other media companies that help them to produce and distribute their message would have to *disclose the group’s activities and a statement of the issues that the group is working on*.¹⁷

⁹ *See id.*

¹⁰ *See id.*

¹¹ *See id.* at § 1(a); *see also id.* at § 1(b)(2). “The term ‘client’ means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity.” 2 U.S.C. § 1602(2).

¹² *See* H.R. 2093 § 1(b)(2).

¹³ 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).

¹⁴ 2 U.S.C. § 1603(a)(3).

¹⁵ 2 U.S.C. § 1603(b) (emphasis added).

¹⁶ *See* 2 U.S.C. § 1603(a)(4)(A)(i) (stating that clients spending less than \$5,000 do not have to be included on the registration statement).

¹⁷ This assumes that the media companies have a total of at least \$100,000 in grassroots business within a quarter.

The Reporting Requirement.

Media companies or employees of a grassroots organization that are required to register with Congress as a “lobbying firm” would also have to file reports twice a year to disclose additional information about the activities of the organization.¹⁸ These reports would include:

- the organization’s name,
- any changes to the information provided in the initial registration statement, and
- *for each general issue area* in which the group encouraged the public to contact federal officials,
 - *a good faith estimate of the total amount of all income from the organization related to “lobbying activities,”* and
 - *a separate good faith estimate of the total amount of income relating specifically to grassroots advocacy, if such income exceeds \$50,000.*¹⁹

The \$50,000 threshold for the “separate good faith estimate” requirement *does not* keep organizations that spend less than \$50,000 on grassroots advocacy from being included in the reports.²⁰ A “lobbying firm” must provide a good faith estimate of the total amount of *all income* from the client related to “lobbying activities,” *regardless of amount.*²¹ This is true because H.R. 2093 amends the definition of “lobbying activities” so that, for the purposes of a “lobbying firm,” “the term ‘lobbying activities’ includes paid communications campaigns to influence the general public to lobby Congress.”²² A “lobbying firm” must continue to report on the group’s activities regardless of the amount of money that it continues to spend on grassroots advocacy; *there is no minimum dollar amount to be included in the reports.*²³ Once an organization has become a “client” for reporting purposes, the “lobbying firm” would still have to regularly report the amount that the group spent on grassroots advocacy regardless of how small that amount is.²⁴

H.R. 2093 Would Violate the First Amendment.

Like Section 220 of S.1, H.R. 2093 would violate the First Amendment rights of grassroots organizations seeking to inform the general public about important policy issues and encourage them to contact their elected officials.²⁵ The Supreme Court of the United States has explained, “[w]hen a law burdens core political speech, we apply ‘exacting scrutiny,’ and we

¹⁸ See 2 U.S.C. § 1604(a).

¹⁹ 2 U.S.C. § 1604(b) (emphasis added). Also, if the “lobbying firm” hired an actual lobbyist to help distribute the group’s grassroots message, the “lobbying firm” must report on “the specific issues upon which [the lobbyist] engaged in lobbying activities, including, to the maximum extent practicable, a list of bill numbers and references to specific executive branch actions.” 2 U.S.C. § 1604(b)(2)(A).

²⁰ See 2 U.S.C. § 1604(b)(3).

²¹ 2 U.S.C. § 1604(b)(3)(A).

²² See H.R. 2093 § 1(b)(1).

²³ 2 U.S.C. § 1604. For any client that spent under \$10,000 on grassroots advocacy during the reporting period, the report must state that “income or expenses totaled less than \$10,000 for the reporting period.” 2 U.S.C. § 1604(c)(2).

²⁴ See 2 U.S.C. § 1604.

²⁵ The First Amendment provides that “Congress shall make no law . . . prohibiting the free exercise [of religion]; or abridging the freedom of speech, or of the press; or the right of the people . . . to petition the Government for a redress of grievances.” U.S. Const. amend I.

uphold the restriction only if it is narrowly tailored to serve an overriding state interest.”²⁶ A statute is only narrowly tailored “if it targets and eliminates no more than the exact source of the ‘evil’ it seeks to remedy.”²⁷ H.R. 2093 casts an unduly broad net of regulation over many churches, public advocacy organizations, and individuals that are not “lobbyists” and subjects the media companies that they work with to burdensome registration and reporting requirements. H.R. 2093 is *not* justified by any compelling government interest.

The Supreme Court has drawn a clear line between *grassroots advocacy by average Americans* and the activities of *professional lobbyists* who meet with members of Congress. In *United States v. Rumely*,²⁸ the Court held that interpreting a lobbying resolution to give the government “the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals . . . raises doubts of constitutionality in view of the prohibition of the First Amendment.”²⁹ The Court held that the resolution only applied to “lobbying in its commonly accepted sense,” *i.e.*, “representations made directly to the Congress, its members, or its committees,” and did *not* extend to citizen attempts “to saturate the thinking of the community.”³⁰ Similarly, in *United States v. Harriss*,³¹ the Court limited the scope of a lobbying regulation to the activities of *professional lobbyists* and rejected “a broader application to organizations seeking to propagandize the general public.”³² These cases illustrate that H.R. 2093 would violate the First Amendment by reaching beyond the activities of professional lobbyists to cover many churches, non-profit organizations, and other groups that have no direct contact with members of Congress but simply encourage people to contact public officials.³³

Conclusion.

H.R. 2093 would affect far more individuals and groups than just professional lobbyists and media companies. Despite rhetoric about fixing the culture of corruption in Washington, H.R. 2093 would *violate the First Amendment rights of 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 have no direct connections with members of Congress and simply share their views on a federal legal issue with the general public. H.R. 2093 is not supported by any compelling governmental interest, and it is certainly not narrowly tailored to achieve such an interest. The House should follow the Senate’s lead and reject this blatantly unconstitutional legislation.

²⁶ *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995).

²⁷ *Frisby v. Schultz*, 487 U.S. 474, 485 (1988) (quoting *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 808-10 (1984)).

²⁸ 345 U.S. 41 (1953).

²⁹ *Id.* at 48.

³⁰ *Id.* at 47.

³¹ 347 U.S. 612 (1954).

³² *Id.* at 620-21.

³³ See also *Montana Auto Association v. Greely*, 632 P.2d 300 (Mont. 1981). But see *Minn. State Ethical Practices Bd. v. NRA*, 761 F.2d 509 (8th Cir. 1985).