

Testimony of

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Committee on Rules**

Lobbying Reform: Accountability through Transparency

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I would like to thank Chairman David Dreier, Ranking Minority Member Louise M. Slaughter and members of the House Committee on Rules, especially Representative James P. McGovern, a graduate of American University's School of Public Affairs, for the opportunity to testify today on lobbying and related reforms. I appreciate the Chairman holding these important hearings that deal with matters that are of deep concern to the American people, in that they go to the core of the way our democracy and representative government work.

My name is James A. Thurber, Distinguished Professor and Director of the Center for Congressional and Presidential Studies at American University in Washington, DC. I teach a graduate seminar on Lobbying and Ethics and founded the Public Affairs and Advocacy Institute at AU. In the course of my research, publication, and teaching, I have studied the law regarding lobbying and have evaluated lobbying reform proposals by Members of Congress and others. I am also currently working with the Committee for Economic Development on a special study entitled, "Making Washington Work" that focuses on lobbying reform. I have served on the American Association of Political Consultants' Board of Directors and their Ethics Committee for the last five years and have published an analysis of the American League of Lobbyists' Code of Ethics.

Your committee is focusing on several central questions about lobbying disclosure and lobbying reform: How has lobbying changed over time? How has the prosecution of Jack Abramoff been instructive to the House regarding lobbying reform?

How can the lobbying process be made more transparent and lobbyist reporting systems be streamlined and improved? What is the best way to increase enforcement of lobbying law and ethics? Is there a need for an expansion of a code of conduct for lobbyists? I will address my remarks to those questions and a variety of lobbying reform proposals.

Recent History of Lobbying and Lobbying Registration Rules

The number of lobbyists, the type and sophistication of public advocacy tactics, and the amount of money spent on lobbying has grown dramatically in the last thirty years in Washington, DC. The post-Jack Abramoff prosecution and his subsequent guilty plea focused national furor over ethical transgressions in lobbying in Washington. Moreover, and more importantly, this scandal has helped to decrease public trust in Congress and other political institutions.

Public advocacy or lobbying is a fundamental right guaranteed by our Constitution and plays an essential role in the functions of Congress, representation, lawmaking, deliberation, oversight and the education of the American public. Lobbying is an honorable profession, but this profession is in deep trouble as evidenced by the illegal actions of Jack Abramoff and Representative Duke Cunningham, the charges against Representative William Jefferson, and a multitude of other accusations against lobbyists, Members and staff. All of this has damaged our democracy and has tarnished the image of how Washington works. Lobbying is the third largest enterprise in our nation's capital after government and tourism, with an estimated 32,890 full-time professional lobbyists registered by Congress representing virtually every type of interest in America. This is the number of registered lobbyists based on the Senate Office of Public Records as of September 30, 2005. There are several figures currently used for

the number of lobbyists ranging from 11,500 to 38,103 by different sources. The Senate number includes duplicate registrations and lobbyists who failed to take their names off the registration after ceasing to represent clients.

Most importantly, lobbying is a growth industry in terms of numbers and amount of money spent on the enterprise. It has been estimated that the number of persons employed in the lobbying industry is well over 100,000. Official recorded spending by registered lobbyists has increased over thirty percent in the last five years from \$1.5 billion to \$2.1 billion. That averages to almost four million dollars per Member per year or an average of \$327,102 per Member per month. Those figures are just the tip of iceberg in lobbying expenditures since it only includes what is recorded by registered lobbyists in public records. They do not include money spent for all elements of lobbying such as: general strategic advice, grassroots organizing, coalition building and maintenance, issue advertising (on television, radio, and in the print media), direct mail campaigns, and advocacy on the Internet and websites. Some estimate the total spent on all lobbying activities is closer to \$8 billion per year. Adding the \$8 billion on lobbying to the almost \$4 billion spent on federal candidates in the 2004 election cycle shows how Washington is awash in money trying to influence policy making.

The most recent lobbying reform, the Lobbying Disclosure Act of 1995 (as amended in 1998) was passed with the belief that representative government requires public awareness of what paid lobbyists do to influence the public policy making process in both the legislative and executive branches of the federal government. The assumption was that public disclosure of the identity and extent of efforts by lobbyists to influence government action would serve to increase confidence in the integrity in government.

The Act limits gifts to Members of Congress, requires a one year cooling off period before a Member or senior congressional staff may lobby Congress, and includes some restrictions on privately sponsored travel for members and staff. The act has failed badly to meet the objectives of disclosure and increased integrity in government, thus Congress is considering new lobbying reforms. The failures are highlighted by the illegalities noted above, but the actual problems are more prevalent and endemic.

The foundation of the ethical problems is the combination of huge sums of money injected into the process by lobbyists and interest groups, the norm of reciprocity that exists between those advocating public policy outside of government and those making policy in government, and the lack of enforcement and non-transparency with respect to lobbying activities

Reform Proposals

Many proposals have been introduced to deal with the current lobbying scandal. House members have introduced lobbying reform proposals and there is action this week on lobbying regulation in the Senate. House proposals would:

- Ban all privately funded travel;
- Establish a stronger gift ban to prevent Members and staff from personally benefiting from gifts from lobbyists;
- Eliminate floor and gym access for former Members of Congress who are registered lobbyists;
- Expand the post employment lobbying ban from one to two years for Members and senior staff;

- Require forfeiture of congressional pensions for Members convicted of a felony related to their official duties;
- Enhance disclosure by lobbyists; and,
- Increase ethics training for Members and staff by the House Committee on Standards of Official Conduct.

The Senate Committee on Rules and Administration marked up a bill on Tuesday, February 28th, and took the following actions with respect to lobbying reform and other related matters. They voted to require a 60 vote point of order on out of scope earmarks during conference committees; to strike Section 9, related to Indian tribal campaign contributions; to prohibit close family members from lobbying staff of members; and to amend Senate standing rules to prohibit members from influencing hiring practices on " K Street." They also voted to pass a sense of the Senate resolution that any lobbying restrictions passed that apply to the congressional branch should be extended to other branches. The Senate Rules Committee rejected prohibiting registered lobbyists from directing campaign finance committees or political actions committees (PACs). Significantly, they did not support further limits on privately funded travel for Members, nor did they increase the "revolving door" from one to two years from Members and senior staff.

The Senate Committee on Government Affairs and Homeland Security is marking up legislation this morning covering the enhancement of lobbying disclosure, increased oversight over ethics and lobbying, creation of an office of public integrity, and a slowing of the revolving door of Members becoming lobbyists.

I am convinced that House lobbying reform needs to focus on restoring trust and accountability in Congress through transparency and enforcement of existing and future law and codes of ethical behavior. Two aspects of lobbying and procedural reform address these objectives: enforcement and transparency.

Enforcement

Lobbying reform should strengthen the enforcement of existing laws and ethics rules that cover Members of Congress, staff and lobbyists. Congress and its nearly moribund committees responsible for enforcing relevant laws need to commit to that task or create new internal or external institutions that will effectively govern lobbying. Unfortunately, the Senate and House Ethics Committees have neither the resources nor the inclination to investigate serious allegations of ethics violations by Members of Congress. The failure of the ethics committees to oversee and enforce existing ethics rules must be remedied immediately. At a minimum the Congressional committees with jurisdiction over lobbying and ethics must hold regular oversight hearings, investigate allegations of existing ethics and lobbying law violations, and hold regular training sessions for Members of Congress and staff about existing rules and standards of conduct. Committees should make timely recommendations to the full House and Senate for censure and sanctions when appropriate. They should not wait for the media to report on wrong doing nor should they wait for the U.S. Department of Justice to act.

Congress does not need to change the limit on gifts; it needs to effectively oversee and enforce the existing gift ban rules. Congress does not need to prohibit the support of legitimate educational travel by Members and staff; it needs to enforce existing rules and ban non-educational travel for Members of Congress and staff. Obviously, the

appropriate travel would not be, for example, an eight-day golf trip to St. Andrews that happened to include a one hour meeting or lecture. The rules of reason that apply the American people need to be evident in the judgments of Members on these issues. There needs to be a pre-authorization or clearance process, and public disclosure of all privately funded education/investigative travel for Members and staff.

In a perfect world all this would occur. However, this is not a perfect world so I urge the House to support the establishment of an independent, nonpartisan and professional office to oversee and enforce ethics rules and lobbying laws. Such an office would monitor and oversee lobbying reports, conduct investigations of allegations of ethics violations, advise Members, staff and lobbyists on compliance with the rules, and, if necessary, refer potential lobbying law violations to the Department of Justice for enforcement. Several Members have introduced legislation to create such an “Office of Public Integrity.” I support their proposal. The office should be structured to assist the committees responsible for seeing that the rules are followed. An independent “Office of Public Integrity” portfolio should track Member financial disclosures; investigate alleged ethics violations; present cases of violations to the ethics committees along with recommendations for punishment; and, provide ethics training and guidance to Members and staff.

Establishing an “Office of Public Integrity” or at a minimum, an expansion of the authority of the House Office of the Inspector General (OIG) to investigate ethics violations and lobbying law should be done immediately to increase public confidence in Congress and the way it regulates lobbying.

Transparency

Lobbying reform should enhance disclosure and transparency of lobbying activities and lobbyists. Public awareness of lobbying activities is essential for our democratic representative government. Lobbying activities must be reported more rigorously and made more accessible to the American public. I recommend that lobbying reports, required under existing law, be filed by lobbyists in a simple common format for the House and the Senate and that these reports be made available and easily retrievable from a common a public database of lobbying disclosure information. The reports should be electronic, simple and easy to complete by lobbyists. They should be filed monthly or, in special cases, on a quarterly basis rather than the current semi-annual filing. Many reports are now filed months late or not at all. In most instances, a four week maximum delay is enough time for filing late. There should be sanctions for those not filing in a timely fashion.

The reports should include a list of Members' offices and congressional committees that were lobbied during the period of the report. Disclosure of political contributions by lobbyists should be made in the same report. The forms should also require disclosure by lobbyists of all prior government employment; disclosure by lobbyists of all travel for members they arranged or paid for; detailed disclosure on all gifts by lobbyists over \$20 to government officials. I also recommend there should be increased fines or sanctions for failing to comply with disclosure.

In the spirit of transparency, there should be a public report of earmarks, including who sponsors them and the justification for each earmark, especially if the earmark is

added to a final conference report without having been approved by a vote of either the House or Senate. There is nothing inherently wrong with earmarks, but they are highly suspect if they are hidden and done secretly and without deliberation. When justified and appropriate, Members should be able to add earmarks to spending, tax and authorization bills, but Members should be required to justify them to their colleagues and to the American public.

Conclusion

More accountability in lobbying will come by making the activities of lobbyists open to public scrutiny and uniformly enforcing existing law and enacting proposed laws and codes of ethics. In that way the public trust can be reestablished in Congress. Good government is a process, not a discrete event. It is essential that Congress begin the process to reform lobbying and Congressional ethics immediately.

Thank you for listening to my testimony today. I would be pleased to answer any questions related to these proposed reforms and other questions you might have with respect to my testimony at this time or after this hearing.