ABUSE OF TAXPAYER FUNDS TO SUBSIDIZE LOBBYING AND POLITICAL ACTIVITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

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ABUSE OF TAXPAYER FUNDS TO SUBSIDIZE LOBBYING AND POLITICAL ACTIVITY

THURSDAY, JUNE 29, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 2154, Rayburn House Office Building, Hon. David McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, Fox, Tate, Gutknecht, Shadegg, Ehrlich, Peterson, Waxman, and Spratt.

Ex-officio present: Representatives Clinger and Collins.

Staff present: Mildred Webber, staff director; Jon Praed, chief counsel; David White, clerk; David Schooler, minority chief counsel; Bruce Gwinn, minority senior policy analyst; and Elisabeth Campbell, minority staff assistant.

Mr. MCINTOSH. A quorum being present, the subcommittee will come to order. Good afternoon, ladies and gentlemen, I'm David McIntosh, from Indiana's Second District. On behalf of the entire subcommittee, I would like to thank you for coming to today's hearing. We appreciate you joining us today as we talk about one of Washington's best kept little secrets—welfare for lobbyists.

Yes, America, you heard it right. Your tax dollars are being used by special interest groups to lobby Congress for more tax dollars. This vicious cycle is taxpayer abuse; it is an outrage; and it must come to an end. Americans will be shocked to know that taxpayers are paying special interest lobbyists to walk the Halls of Congress, executive branches, and even local townhalls, trying to influence their lawmakers.

Unfortunately, what is shocking outside Washington is business as usual here inside the beltway. And it's big business. The IRS conservatively reports the Federal Government gave away more than $39 billion to over 40,000 nonprofit organizations in 1990 alone. Grant recipients themselves admit far more tax dollars are at stake. As the chart we have done here indicates, the Independent Sector, a coalition of some of the largest nonprofit companies in the country, just reported that nonprofits received nearly $160 billion from all government sources combined in 1992.

That means that nearly 39 percent of every dollar received by the nonprofit groups in that organization came from the Government. And we all know where Government gets its money—from you, the taxpayer. How are these billions of dollars being spent?

I'm sorry to report that no one really knows. We do know that too much of the money finds its way into the hands of lobbyists.

For example, earlier this month, the American Bar Association staged a rally here on the Capitol, to protest the constitutional amendment protecting the American flag. The ABA estimates that it will spend around $2 million this year in lobbying activity. Coincidentally, the best Government figures I've been able to find reveal that the ABA receives about $2.2 million in taxpayer funded grants.

Interestingly enough, the ABA itself reports that it receives five times that in Government grants. That's right—over $10 million. In another example, the National Fish and Wildlife Foundation, a private, nonprofit corporation, received $7.5 million in grants from the Federal Government; much of it from Secretary Bruce Babbitt's Interior Department.

Although the foundation tries to follow an internal rule that prohibits it from lobbying, as you can see from this internal memo we obtained, Interior Secretary Babbitt recently pressured the foundation's board of directors to lobby Congress to prevent the budget cuts at the National Biological Service. We have asked the foundation to tell us whether any of its board members followed Mr. Babbitt's instructions, but we have not received an answer. I hope we will get one today.

Just yesterday, a former member of the board, Mr. Steve Robinson, advised us he resigned from the board in December 1992 "as a result of the foundation's involvement in political advocacy and outright lobbying." While not every grant, and maybe not even the majority of grants, is used to lobby the Government, these Federal dollars do free up the special interest private dollars so they can spend it on political advocacy.

Let me be completely clear on one point. Our focus today is on good government and protecting the taxpayer. Whether it's the Nature Conservancy and other groups on the left, or the chamber of commerce on the right, if any special interest takes taxpayer dollars to lobby for more money, it's just plain wrong. Today, we will hear from a number of witnesses who will shed light on one of Washington's dirty little secrets.

We will hear from some people who are angry that their tax dollars are being spent by lobbyists. Some of our witnesses will testify that they have refused to take Federal grants out of principle, and are fed up with those who are feeding at the public trough. For example, you will hear from a former Congressman from my State, the Honorable Roger Zion, who is the honorary chairman of an association of retired persons that refuses to take any Federal grants.

We will also hear from Senator Arlen Specter, who is bravely taking on a different senior citizen's group that does take Federal grants to the tune of $85 million a year. Of course, I'm talking about one of Washington's fattest, all-time big lobbying groups, the American Association of Retired Persons. Finally, we will hear from some experts on good government, who will tell you that something must be done soon to stop welfare for lobbyists.

An expert from the General Accounting Office will testify about the size of the problem, and the inadequacies of current disclosure laws on how Federal grant money is being used. Experts from

think tanks will also testify about how taxpayer funded political lobbying threatens to bankrupt our taxpayers and corrupt our democratic process. I would like to take a moment to let you know about who will not be here today.

We invited the American Bar Association, the Nature Conservancy, as well as members of various other groups, including Common Cause, who have worked to end lobbying in Washington. All of these have declined, and I am disappointed they could not see fit to appear. Having taken millions of dollars in grants from the American taxpayer, it seems the least they could do is come today and tell us about their activities.

Again, thank you for coming. And now, Mr. Peterson, would you like to make an opening statement?

Mr. PETERSON. Thank you, Mr. Chairman, I would. I don't pretend to know a whole lot about this. But we did get involved in this issue back in the State legislature in Minnesota part of the time that I served there. I personally am opposed to nonprofit organizations, or anybody else for that matter, using Federal money or Government money to lobby the Government that they're getting the grants from. I think not only is it wrong to do this, but I also believe that it's expressly prohibited under existing laws and regulations.

And I haven't had a chance to look through all of this completely, but it seems to me that if we're going to move in this direction, we ought not just to be focusing on nonprofits. We ought to be looking at State government, local government. We ought to be looking at private corporations. And if we're going to do something, it ought to apply to everybody, not just to one group.

Mr. Chairman, if you or any others, I guess, have identified instances in which these nonprofits have engaged in illegal lobbying activities, then I think those cases should be investigated thoroughly. And I think they should be prosecuted under the existing laws. And if there are deficiencies in the current rules that govern these lobbying activities, I think they should be identified and remedied.

I also, in my former life, used to audit some Federal grants and agencies. And I think a lot of this stuff is audited. There must be some information in some way to maybe get a handle on some of this. And maybe you already know about that and I'm not aware of it. But I would be concerned, Mr. Chairman, if this committee or Congress decided to single out nonprofit groups for another layer of rules and regulations that are designed to restrict what activities they can engage in with private funds.

I am not sure exactly how we get these two things separated, but I wouldn't want us—even though I may not agree with some of these groups and we have our differences—I also wouldn't want to set up a situation where we would put them in an unfair position. So I've got a further written statement that I would like to submit for the record. I'll probably dispense with reading all of it.

I look forward to hearing from the witnesses. I apologize, I have to go over and speak on the budget here in a little bit, so I'm going to have to be leaving for a while. But I look forward to working with you on this. And I guess where I would end up is that if we can change the law or whatever needs to be done to make sure that

people are not using Government money to come up here and get more Government money.

That would be my goal, and I think should be the goal of this committee.

Mr. MCINTOSH. Thank you, Mr. Peterson, and let me say, I look forward to working with you on this. I think you're correct, we don't want to impose yet another layer of regulations. But we can give people a simple choice—you can be lobbyists or you can be grant recipients. And the difficulty, of course, will be writing legislation that accomplishes that in a way that doesn't impose regulatory burdens unnecessarily.

Let me turn now to the chairman of our full committee. Mr. Clinger has been someone from whom I've learned an enormous amount. And he's been gracious enough to authorize us to have this hearing today. Mr. Clinger.

Mr. CLINGER. Thank you very much, Mr. McIntosh. I just want to commend you for holding this hearing. This is an issue that I think deserves to be well examined, and will be. During this hearing I think we will hear all sides of the issue, and I'm looking forward to hearing the testimony of the witnesses. I particularly want to welcome to the committee room a constituent of mine, Judge Charles Brown, from Belfont, PA, who has been a dear friend for many, many years, and I know will give some very thoughtful testimony. I'm glad to have you here, Judge. Thank you.

Mr. MCINTOSH. Thank you, Mr. Clinger. Mr. Waxman, do you have an opening statement?

Mr. WAXMAN. Yes, I do, Mr. Chairman. I've always respected the House's tradition for maintaining civility in debate. We can disagree; we can have different ideologies; but we all have the fundamental right to speak and to represent our beliefs. Today, I strain to maintain that civility because I'm so deeply offended by the way this hearing is being handled.

I have no quarrel with today's general topic—scrutinizing how Government dollars are being spent is our job. Any abuses must be uncovered and eliminated. But that's not what we're doing today. Countless organizations both lobby and receive Federal funds. But you won't hear from most of them today. Instead, the subcommittee is deliberately targeting groups they find to be ideologically incorrect; like the National Council of Senior Citizens.

We aren't focusing, for instance, on the fact that many of the most powerful corporations in America receive Federal grants. I have a chart that illustrates this point; if we could have the charts displayed. Last year, the 10 major corporations listed in that chart received $100 million in grants from the Federal Government. These corporations spend tens of millions of dollars on lobbyists. Both the size of their grants and their lobby budgets dwarf those of many of the organizations being smeared today.

But we're not investigating whether they abuse their Federal aid. Similarly, there are conservative trade associations that lobby Congress aggressively and simultaneously receive millions in Federal grants. For example, the National Rural Water Association is a good example because last year, they received nearly $2 million from the Federal Environmental Protection Agency.

At the same time, they lobbied heavily to roll back the Safe Drinking Water Act. But this subcommittee hasn't slung mud at the National Rural Water Association, or demanded that it be prohibited from lobbying. The subcommittee seems to have little interest in whether universities or cities are abusing their massive Federal grants for lobbying purposes. The city of Indianapolis received over $2 billion last year from Federal agencies.

At the same time, they hired two lobby firms, Sagamore Associates and Winston & Strawn, to lobby the Federal Government. But they haven't been summoned to this star chamber. Mr. Chairman, I don't object to making sure the law is followed, but I strongly object to an ideological double standard. I also object to the way this hearing has been handled.

Two of the organizations being smeared today are the Nature Conservancy and the National Fish and Wildlife Foundation. But they were not invited to testify until yesterday, giving them virtually no notice or opportunity to prepare. That's fundamentally unfair. Unfortunately, this hearing appears to be part of a systematic effort to silence voices that disagree with the new Republican majority.

This subcommittee has, without any proof, publicly accused EPA officials of criminal conduct, simply because they release fact sheets critical of Republican legislation. Representative Armey, the majority leader, publicly chided corporations for providing financial help to certain ideologically incorrect public interest groups. And Representative Paxon, head of the Republican Congressional Campaign Committee, and Representative DeLay, the Republican whip, have warned political action committees not to give money to Democratic candidates.

Mr. Chairman, you and I have substantive disagreements. But I respect your right to your views. Civil debates waged fairly and openly is what politics in a democracy is all about. Citizens should have the right to seek redress of their grievances. They should be able to make their views known to their elected officials. What I cannot accept are the new majority's seeming efforts to coerce dissenting voices to be silent.

That crosses the line that separates a legitimate policy dispute from an abuse of power. This afternoon, I'm sorry to say, is a blatant and outrageous abuse of raw, political power.

Mr. McINTOSH. Thank you, Mr. Waxman. Before turning to my next colleague, let me just say, we're not trying to silence them. We're just saying, we're not going to give you taxpayer money to exercise your free speech rights. The next Member who has an opening statement is one of my freshman colleagues from Maryland. He has been the co-leader in this effort, and has taken an active role in drafting possible legislation still in the drafting stage.

He is somebody who I think will do a tremendous job in leading the committee's efforts to get to the bottom of this problem, and finding possible solutions. He is a new freshman Representative from Maryland—Mr. Robert Ehrlich.

Mr. EHRLICH. Thank you, Mr. Chairman. Good afternoon, my fellow subcommittee colleagues and distinguished guests. I am especially pleased to be here this afternoon. I applaud the diligent work of the chairman and Mr. Istook, and their willingness to tackle this

important issue. I share their concern for this problem—political advocacy with American taxpayer dollars—which for too long has gone unaddressed and ignored by previous Congresses.

It has been a special privilege for me to sit on this particular subcommittee, Mr. Chairman. I can think of no other committee or subcommittee in which I have had so many opportunities to participate in issues so many of my constituents have asked me to change. Because while I was campaigning, I did a lot of door-to-door, business-to-business campaigning, and personally asked the people of my district what they would like to see addressed in the 104th Congress.

The overwhelming message given to me to take to Washington was to return a sense of fiscal sanity to America and change the way Washington has worked. On November 8, 1994, Americans delivered the overwhelming message that from now on, nothing less than accountability and responsibility are acceptable from this Congress. The problem of Federal grant money misused by nonprofit associations for political advocacy does exist.

Our purpose today is to study the depth and breadth of this problem and its implications on the Federal Government, the budget process, and the American people. The focus of this hearing is narrow. We are not here today to look into Federal procurement procedure practices or executive branch lobbying by Federal agencies. This hearing will shed light into a questionable practice, which has been among the best kept secrets in Washington, DC.

It is time for American taxpayers to see the facts, and time for these same special interests to address the American taxpayers' justifiable anger at the misuse of Federal grants in the tens of billions of dollars. Federal grant recipients are using American taxpayer money to finance their lobbying and other political activities. With this hearing, we are only now beginning to glimpse how deep this problem is.

What we know now is the Federal Government provides almost $40 billion in Federal grants to over 100,000 organizations. Many of these programs are extremely good programs. And they accomplish their intended results with the Federal grant money that they are given and use the money in the most cost-efficient, cost-effective manner. I applaud these organizations for their honesty and due diligence.

However, in other instances, Federal grant money is directly used for political advocacy or comingled inappropriately with other organization money or frees up other money which otherwise would have been raised in the private sector. For every dollar of Federal grant money that flows to these organizations for nonpolitical activity, a private dollar is freed up for political activity.

In effect, special interests use taxpayers' hard-earned dollars not to help Americans but to advocate positions sometimes extreme, sometimes not, which are not shared by many American taxpayers. Or worse, many organizations pay lobbyist fees of hundreds of thousands of dollars to lobby for additional money to be spent next year. The vicious cycle continues.

Mr. Chairman, I am disappointed to learn that certain witnesses have chosen not to accept our invitation to attend this important hearing. It angers me that these organizations have the time to

take and spend taxpayer dollars; that they have the time and the people to lobby Congress vigorously; but they do not have the time to face the American taxpayer, and answer this committee's questions.

Before I arrived on the Hill, I practiced law for 12 years in Baltimore. I am a member of the American Bar Association. And as a member, my law firm and myself paid my dues. As a private citizen, however, I find it difficult to believe that the ABA, a large wealthy membership organization, has received millions of dollars of Federal grant money during the last decade, and still comes yearly to the public trough while spending millions of dollars for lobbyists to advocate polarizing positions before Congress, and to request yet more money next year.

You and I are free to join any organization that we believe appropriately represents us. If we become unhappy with the activities of that organization, we have the option to resign, to not pay our dues, to not lend our voice. As citizens and taxpayers, we do not have that choice. We must still work hard and pay our taxes, despite the use of our money for these self-serving practices.

Many would be concerned the Government has given the ABA $2 million in all taxpayer funds, while it actively lobbies, for instance, to defeat a flag burning amendment to the Constitution. Another disappointing example of the misuse of Federal grant money on political advocacy is the Nature Conservancy. Part of its Federal grant is to, "support volunteer outreach public affairs programs for the Florida Keys National Marine Sanctuary."

This money was used, including to their own report, to "develop and direct a plan to counter the opposition's push for a countywide referendum against the establishment of the sanctuary." The "opposition" referred to herein included the Conch Coalition. The referendum was blocked by a 3-to-2 vote of the Board of County Commissioners. Mr. Chairman, unfortunately, Americans have gotten used to hearing how their taxpayer dollars are wasted every day.

Almost every day, the public learns about expenditures which are illogical and sometimes absurd. However, the practice of spending taxpayer money to advance political agendas is particularly offensive in light of the sacrifices we are asking everyone to make to restore the fiscal health of our country. At a time we are undertaking the historic and difficult task of bringing the Federal budget into balance, allowing a handful of private sector organizations to continue to feather their own political nests is simply inappropriate.

Americans deserve to know that their hard-earned tax money is not being secretly spent by special interests to lobby the Government—local, State, or Federal. The bottom line is that these practices are wrong, fiscally and morally. The message is simple—stop special interests from lobbying with taxpayer money. Thank you, Mr. Chairman.

Mr. McINTOSH. Thank you, Mr. Ehrlich, and thank you for your leadership on this issue. Our next member would be Mr. Spratt. Do you have an opening statement?

Mr. SPRATT. No, I don't.

Mr. McINTOSH. OK. Mrs. Collins, would you?

Mrs. COLLINS. Thank you, Mr. Chairman. From the first day that the Republicans took control of this Congress, they have had one

consistent objective; namely, to silence the voices of their political opponents. The attack began rather immediately when the House Republicans voted to prohibit Members of the House from pooling their office resources for caucuses such as the Congressional Black Caucus, the Environmental and Energy Study Conference, and the Democratic Study Group.

The attack continued when Minority Leader Dick Armey sent a March 24 letter to his colleagues, urging them to put the heat on big business to stop contributing to nonprofit organizations that challenged Republican dogma. He cited the example of Monsanto having the audacity to give $10,000 to the Children's Defense Fund; $250 to the American Lung Association; $1,100 to the Humane Society; and $500 to the NAACP.

Senator Alan Simpson picked up the theme when he began hearings on whether the AARP should retain its tax-exempt status. He was reported to be upset that AARP had the audacity to express the concern of senior citizens that the balanced budget amendment would endanger Medicare. Last month, the chairman of our Subcommittee on Civil Service took up the battle, when he proposed that Federal employees should be prohibited from contributing their own money, through the Combined Federal Campaign, to nonprofit advocacy groups.

Now today, this subcommittee looks at a proposal to ban nonprofit groups from receiving Federal grants if they engage in political advocacy with their own money. Pressed by rightwing groups and the Heritage Foundation, internal memos make clear that the purpose of this effort is once again to silence Republican political opponents, such as the National Organization of Women, Planned Parenthood, environmental organizations, and civil rights groups.

The majority will try to pretend that this is not their goal. But just take a look at one of their memos. It states, "The spin is crucial. If this becomes a define the left or an enemies list fight, conservatives think they will lose." This effort is nothing new. Under President Reagan in 1983, OMB's right to prohibit recipients of Federal grants from spending any funds on political advocacy, even if those funds were non–Federal funds.

The OMB attempt was stopped after it met fierce opposition from this committee and the Congress in general, and now they're back. Now, if the majority party cared as much about the freedom of speech as they did about the freedom to carry assault rifles, we wouldn't even be here today. The majority party is apparently unconcerned about the impact of their proposals on advocacy groups that lean a little bit to the right.

They seem to believe that because those groups receive a few Federal grants, that they will continue to be heard. Many of those groups are financed by rich benefactors who, coincidentally, under the Republican budget plan, will get millions of additional Federal dollars in the form of a capital gains tax cut for the very rich. What is interesting about the legislative proposal that I have seen is what they do not cover.

Take, for example, the McDonnell Douglas Corp. that received $7.5 billion in contracts from DOD in 1993. Now, that's about 52 percent of its total revenue. I have a chart that is going to be put up that illustrates my point. The question is, is McDonnell Douglas

prohibited from lobbying for more Government contracts? The answer is no. Is McDonnell Douglas prohibited from sending big PAC contributions to Members of Congress who vote to give it more contracts? The answer is no.

Is McDonnell Douglas prohibited from giving gifts to Members of Congress who vote to build more airplanes? The answer is no. Now, this bill is not about good government. If it were, it would address these issues. Instead it's about speech and stifling political opposition. As a CBS news story said last week, and I quote, one Republican strategist was asked if "defining the left is about reforming the government or settling old scores."

He answered, "Oh, it would be about 40–60." Now I want to make it clear to all those who are here that I do not believe and intend to be silent while this attack takes place. Our most cherished freedom is the freedom of speech. And I intend to use my freedom to ensure that others will continue to enjoy the same freedom of speech as we in Congress have. I thank the chairman for yielding, and yield back the balance of my time.

[The prepared statement of Hon. Cardiss Collins follows:]

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ONE HUNDRED FOURTH CONGRESS

Congress of the United States

House of Representatives

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Statement of Hon. Cardiss Collins
Subcommittee on National Economic Growth, Natural Resources,
and Regulatory Affairs
Hearing on "Political Advocacy with Federal Dollars"
June 29, 1995

Mr. Chairman, from the first day that the Republicans took control of the Congress, they have had one consistent objective: namely, to silence the voices of their political opponents.

The attack began immediately, when the House Republicans voted to prohibit Members of the House from pooling their office resources for caucuses such as the Congressional Black Caucus, the Environmental and Energy Study Conference, and the Democratic Study Group.

The attack continued when Minority Leader Dick Armey sent a March 24 letter to his Republican colleagues urging them to put the heat on big business to stop contributing to nonprofit organizations that challenge Republican dogma. He cited the example of Monsanto having the audacity to give $10,000 to the Children's Defense Fund, $250 to the American Lung Association, $1,100 to the Humane Society, and $500 to the NAACP.

Senator Alan Simpson picked up the theme when he began hearings on whether the AARP should retain its tax exempt status. He was reported to be upset that AARP had the audacity to express the concern of senior citizens that the balanced budget amendment would endanger Medicare.

Last month, the Chairman of our Subcommittee on Civil Service took up the battle when he proposed that Federal employees should be prohibited from contributing their own money through the Combined Federal Campaign to nonprofit advocacy groups.

Today, this Subcommittee looks at a proposal to ban nonprofit groups from receiving Federal grants, if they engage in political advocacy with their own money. Pressed by right wing groups and the Heritage Foundation, internal memos make clear that the purpose of this effort is once again to silence Republican political opponents, such as the National Organization of Women, Planned Parenthood, environmental organizations, and civil rights groups.

Republicans will try to pretend that this is not their goal, but just take a look at one of their memos. It states, "The 'spin' is crucial; if this becomes a 'defund the left' or an 'enemies list' fight, conservatives think they will lose."

This effort is nothing new. Under President Reagan in 1983, OMB tried to prohibit recipients of Federal grants from spending any funds on political advocacy, even if those funds were non-Federal funds. The OMB attempt was stopped, after it met fierce opposition from this Committee and the Congress in general. Now they are back.

If the Republican party cared as much about the freedom of speech as they did about the freedom to carry assault rifles, we would not be here today.

The Republicans are apparently unconcerned about the impact of their proposals on advocacy groups that lean to the right. They believe that because those groups receive a few Federal grants they will continue to be heard. Many of those groups are financed by rich benefactors, who coincidentally, under the Republican budget plan, will get millions of additional Federal dollars in the form of a capital gains tax cut for the rich.

What is interesting about the legislative proposals I have seen is what they do not cover. Take for example the McDonnell-Douglas Corporation that received $7.5 billion in contracts from DoD in 1993. That's about 52% of its total revenues.

Is McDonnell-Douglas prohibited from lobbying for more government contracts? No.

Is McDonnell-Douglas prohibited from sending big PAC contributions to Members of Congress who vote to give it more contracts? No.

Is McDonnell-Douglas prohibited from giving gifts to Members of Congress who vote to build more planes? No.

This bill is not about good government. If it were, it would address these issues. Instead, it is about speech, and stifling political opposition.

As a CBS News story said last week, "One Republican strategist was asked if 'Defunding the Left' is about reforming the government or settling old scores. He answered -- quote -- 'Oh, it's about 40-60.'"

I want to make it clear to all who are gathered here that I do not intend to be silent while this attack takes place. Our most cherished freedom is the freedom of speech, and I intend to use my freedom to ensure that others will continue to enjoy the same freedom of speech as we in Congress do.

Mr. McINTOSH. Thank you very much, Mrs. Collins. Our next committee member would be the Member from Pennsylvania, Mr. Jon Fox.

Mr. FOX. Thank you, Mr. Chairman. The taxpayer-subsidized political activity is fiscally irresponsible and unjust. No hardworking American citizen should be compelled to finance lobbying activities with which he or she disagrees. As Thomas Jefferson once said, "To compel a person to furnish funds for the propagation of ideas he disbelieves is sinful and tyrannical."

Mr. Chairman, I applaud your efforts in organizing today's hearing on the lobbying practices of nonprofit groups that receive Federal grants. Clearly, the right to petition Government, to redress grievances, is a precious right, which should not be infringed upon. Individuals and organizations using funds from the private sector should be encouraged to engage in the legislative and political process without fear of regulation.

Yet it is an entirely different matter to employ coercive power of the Federal Government to force taxpayers to finance the structure of organizations which lobby Congress or other Government entities. The fundamental principle is that forcing taxpayers to underwrite advocacy organization with which they disagree is intolerable. Unfortunately, federally funded advocacy is not a new problem.

Congress recognized the potential for abuse more than 75 years ago, when it passed a law that prohibited political advocacy through the use of Federal funds. Unfortunately, the prohibition as written was too vague, too lenient, and too weakly enforced. Put simply, present auditing of Federal grants by the Government does not provide the level of scrutiny needed to root out abuse.

We are trying today to put sunshine on the problems associated with nonprofit groups which receive public funds for political advocacy, regardless of whether the advocacy or the ideology is from the right, the left, or somewhere in between. The example that's been cited previously with regard to corporations that win contracts with the Government is apples and oranges.

Corporations that may or may not win contracts do so on the basis of the lowest bid. Their political philosophy is not regarded, nor is it sought. However, with the advocacy groups, there is a political philosophy. Currently, Federal law prohibits the use of Federal funds for lobbying, according to United States Code section 1913. However, there is no clear set of guidelines as to specific prohibitive practices. In response, I must applaud the efforts of my colleagues, Chairman Clinger, Chairman McIntosh, Representatives Ehrlich and Istook, who are drafting legislation to address this very problem.

Today's hearing is of utmost importance to all of my colleagues, and to each of you here. We appreciate the opportunity to hear the witnesses, so they can shed further light on this subject. Thank you very much, Mr. Chairman.

Mr. McINTOSH. Thank you very much, Mr. Fox. While Mr. Fox was giving his statement, my staff, ever helpful Mildred Webber, pointed out that I had accidentally indicated that Senator Arlen Specter would be here later on. For those of you who were wondering what he was going to be saying on this, it is not Senator Spec-

ter—although I'd be delighted to have him—but it's Senator Simpson who will be here later on, along with Ernest Istook, who's been working on this issue in the House.

So if we could have the record corrected to that regard, that would be great. After these late night sessions, I am getting tongue tied this afternoon. The next panel member to offer an opening statement is Mr. Gutknecht.

Mr. GUTKNECHT. Thank you, Mr. Chairman. Let me correct the record. It was not a late night session; it was an all night session. As Representative Peterson said earlier, I served in the Minnesota legislature, this is not a new issue. It's one that we started wrestling with 6 or 8 years ago. We've long known that friction is caused where political rights collide.

My right to swing my fist ends where your nose begins. The rights of groups to petition their governments for redress of grievances is pitted here against the rights of the taxpayers. But I do want to say a special congratulations to the chair of this subcommittee, and to the chair of the full committee for having this hearing. Because I'm absolutely convinced that if the American taxpayers are clued in to the dirty little secret here in Washington about what's been going on in terms of funding these programs and these offices, I think they will be outraged.

Mr. Chairman, I just want to say that the status quo does not live here anymore. The pernicious practice of leveraging taxpayers' dollars to obtain even more taxpayer dollars is an idea whose time has passed. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you very much, Mr. Gutknecht. Our next panel member would be Mr. Tate of Washington.

Mr. TATE. Thank you, Mr. Chairman. I commend you, as well, for your work in bringing up this issue. A couple of points that you should be commended on. First of all, you're working on lobbying reforms, and I, like the last speaker, was shocked when I entered the State legislature to find that local lobbyists from whether it be county or other organizations would come down and lobby us for more money. I mean, using our taxpayers' money to lobby for more taxpayers' money.

I mean, there's something seriously wrong there; especially when you consider that working people are out there paying the taxes, working hard, and don't have time to come down and lobby. And then groups are in the State capital or the U.S. Capital, lobbying for things that they're against. Well, welcome to Washington, DC. Those same kind of things are happening here.

We should be making decisions based on their merits, not based on the effectiveness of particular lobbying. A reference was brought up earlier in regard to tax cuts. The thing to keep in mind is, on tax cuts or tax cuts for particular organizations, that was their money in the first place. And in regard to these caucuses that were eliminated earlier on right after the election in November, those were taxpayer-funded organizations.

I mean, elected officials, we can get together and talk about issues. We don't need it to be taxpayer funded. This is really about leveling the playing field, and we shouldn't be using the voters' money in my district to lobby against things that they are opposed to. Just as I'm opposed to federally financed congressional cam-

paigns, I'm also against federally financed lobbying against the interests of the people of the Ninth District, and many times, the views of the citizens of this State.

Mr. Chairman, you should be commended for taking this issue head on. Thank you.

Mr. McINTOSH. Thank you very much, Mr. Tate. Let the record also note that Mr. Shadegg is here, a member of the subcommittee from Arizona, and also an active participant in this process. I believe that concludes the opening statements. I would ask unanimous consent that a statement submitted by Congressman Christopher Shays, who is a member of the full committee, be included in the record of this hearing.

Mr. Shays is chairman of the Subcommittee on Human Resources and Intergovernmental Relations. He has been investigating allegations that the National Association of Installation Developers, NAID, has misused Department of Labor funds to lobby on behalf of its own interests, advocating closure of Long Beach, CA, Naval Shipyard. The NAID contract was awarded on a sole source basis by the Department of Labor, and constitutes 89 percent of the organization's annual budget.

Mr. Shay's statement discloses the results of his investigations to date. Without objection, it will be so ordered.

Let us turn now to our first panel of witnesses. In keeping with the preferred practice of this subcommittee, we are hearing from members outside of the Government first. And I'd like to call forward Ms. Polly Spare, president of the Voice of the Retarded; the Honorable Roger Zion, former Member and now honorary chairman of 60 Plus Association.

Mr. Zion was a Representative from the State of Indiana, and I'm delighted to have him here. Also, Ms. Michele Wells-Usher, who is with the Conch Coalition; Mr. Amos Eno, executive director of the National Fish and Wildlife Foundation; and Mr. Charles Brown of the Independent Sector. Welcome to all of you. I appreciate you coming today. It is the policy of Mr. Clinger, the full committee chairman, that we ask each of the witnesses to be sworn in at our hearings.

So if I could ask each of you to please rise and raise your right hand.

[Witnesses sworn.]

Mr. McINTOSH. Our first witness is Ms. Polly Spare, of the Voice of the Retarded. Welcome.

STATEMENTS OF POLLY SPARE, PRESIDENT, VOICE OF THE RETARDED; ROGER ZION, HONORARY CHAIRMAN, 60 PLUS ASSOCIATION; MICHELE WELLS-USHER, CONCH COALITION; JAMES L. MARTIN, CHAIRMAN, 60 PLUS ASSOCIATION; AMOS ENO, EXECUTIVE DIRECTOR, NATIONAL FISH AND WILDLIFE FOUNDATION; AND CHARLES C. BROWN, JR., INDEPENDENT SECTOR

Ms. SPARE. Thank you. Mr. Chairman, members of the subcommittee, I appreciate the opportunity to testify before you today about the Voice of the Retarded, VOR, and our experience with lobbying practices of nonprofit groups that receive Federal grants. I request that my full statement be made a part of the record.

Mr. McINTOSH. Without objection, so ordered.

Ms. SPARE. The issue of accountability among these groups has been of great concern to me, both as president of VOR and as a taxpayer who's painfully aware that my tax dollars may be financing lobbying interests. VOR represents thousands of mentally retarded persons and those who care for them across this country, as a not-for-profit organization. We favor a full continuum of care, and support residential living alternatives, including institutional care, which best suits the individual needs of mentally retarded persons and their families.

I myself am the mother of two severely mentally retarded adults—a 39-year-old and a 42-year-old. VOR receives absolutely no Federal grants, nor other sources of Federal funding. We operate exclusively on a donation basis, primarily through contributions from concerned parents and friends of mentally retarded persons. We're an organization of volunteers, nationally, devoted to improving the quality of life and the well-being of our family members.

Many developmentally disabled disability groups, with the specific intent of closing institutions, receive Federal grants. These groups pursue the deinstitutionalization agenda, irrespective of family concerns and the consequences that may befall those most vulnerable of our citizens—the severely mentally retarded. These groups openly engage in political activities, including advocating for the closure of institutions, and specific positions on other legislative matters, such as President Clinton's Health Security Act in 1994 and welfare reform this year.

The use of Federal funds for such a purpose not only fiercely contradicts congressional intent, there seems to be a dubious connection between the Federal funding which these groups receive and their ability to lobby here in Washington and in State capitals across the country. Aside from the debate over health care for the mentally retarded, a larger question looms. Just how much Federal money are these groups receiving, and how are they held accountable for the use of these funds?

How does the Federal Government assure that the money it invests in these groups is used as intended? Groups such as United Cerebral Palsy Association and the ARC, formerly the Association for Retarded Citizens, which are among the groups that depend heavily on Federal grants have taken clear policy positions on issues such as these, and have money available to finance their lobby campaigns.

While I do not know if grants are used specifically for political purposes, these grants certainly free up other funds that the groups receive. In a recent article in the Investor's Business Daily, I was shocked to learn that the United Cerebral Palsy Association receives 81 percent of its revenues from Government grant money, for a grand total of $374 million a year. The UCP stands as the second largest charity recipient of Federal grant money in the United States.

The ARC falls not far behind, as the fourth largest recipient, with 66 percent of its revenues totaling $316 million, coming from Federal grants. This has been a great source of frustration to VOR for some time. And our members have joined together to protect the fundamental needs of mentally retarded citizens—a full contin-

uum of care and choice in that care. However, we have been met with opposition from provider interest groups, many of which have enjoyed sizable Federal grants, and as a result, have money available to engage in political activity including lobbying.

As an association that, as I have said, receives absolutely no Federal money, it is disillusioning to be confronted around every corner of these corridors by groups that do have federally subsidized bank accounts. These organizations certainly have a right to express their opinions to policymakers, but not on the American taxpayer's tab. It seems only reasonable that special interests that receive enormous sums in Federal grants are held accountable for how they use those grants.

One example happened just this month at a presentation given in Illinois for the National Home of Your Own Alliance, which is funded through a cooperative agreement with HHS Administration on Developmental Disability. Alan Bergman, of the United Cerebral Palsy Association, presented to the federally funded alliance, a speech entitled, "Your Critical Role in Legislative Advocacy at the Federal and State Levels: The Essence of Survival."

During his presentation, Bergman said, "This conveying of information about the welfare of people with disabilities, this persuading a Member of Congress to enact legislation favorable to our cause is lobbying. And today, lobbying is a must. Any organization that does not lobby well is almost certain to get left out." He went on to provide detailed guidelines to "assist you to effectively provide that special interest perspective."

I do not argue with the importance of conveying information to Members of Congress and other elected officials. This is a fundamental part of our democratic system. But this group is clearly and admittedly funded in large part by the Federal Government. Why are they giving and receiving specific instructions on how to lobby? Last year, during the health care reform debate, Bergman was a featured speaker at a free 1-day seminar entitled, "How Health Care Reform Is Going to Change Your Life," cosponsored by other groups—the federally funded University of Illinois in Chicago; university affiliated programs.

Promotion for the seminar promised to educate attendees on how to influence pending legislation. In an action alert—memos distributed at the meeting—Bergman strongly urged those attending, including those that are federally funded, to write targeted members of the Energy and Commerce Committee, urging them to pass health care reform legislation that the committee was considering at the time.

In a memorandum, December 1993, he initiated a massive grassroots lobbying campaign for the President's Health Security Act. He wrote that recipients must lobby immediately, in order to help Congress develop the political will to vote for legislation that guarantees a national right to comprehensive health care reform. He urged association members to barrage Members of Congress with letters and meetings.

During the recent welfare reform debate, one of the various groups that fiercely lobbied against supplemental security income reform proposals was the Babylon Center, which received 16.2 percent of its funding from the Federal Government. In a letter to

Representative Jim McCrery of Louisiana, who spearheaded the SSI reform in the legislature, a group of organizations wrote in opposition to the proposed reform.

The letter recommended specific changes to replace the pending proposal, and was signed, among others, by the Babylon Center, the ARC, and the United Cerebral Palsy Associations. The examples of these groups that receive Federal grants and in turn strenuously lobby government are plentiful. I'm confident that my testimony and the materials attached in my written statement are only the tip of the iceberg.

It is refreshing to see, Mr. Chairman, that you and other Members of Congress are taking the proper steps to bring accountability to these groups, and reign in taxpayer financed lobbying. I thank you and members of the subcommittee for your attention, and welcome any questions you may have.

[The prepared statement of Ms. Spare follows:]

VOICE OF THE RETARDED
5005 Newport Drive
Suite 108
Rolling Meadows, IL 60008

'8) 253 - 6020 - Phone (708) 253 - 6054 - FAX/Phone

Statement of
Polly Spare
President
Voice of the Retarded

on
Lobbying by Groups
Receiving Federal Funds

before the
Subcommittee on National Economic Growth, Natural Resources & Regulatory Affairs
House Committee on Government Reform & Oversight

June 29, 1995

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to testify before you today about Voice of the Retarded (VOR) and our experience with the lobbying practices of nonprofit groups that receive federal grants. The issue of accountability among these groups has been of great concern to me, both as the President of Voice of the Retarded and as a taxpayer who is painfully aware that my tax dollars may be financing lobbying interests.

VOR represents thousands of mentally retarded persons and those who care for them across the United States as a not-for-profit association. We favor a full continuum of health care options for our diverse population. As parents and relatives of severely retarded citizens, we support residential living alternatives, including institutional care, which best suit the individual needs of mentally retarded persons and their families. I myself am the mother of two severely mentally retarded adults: Chris, a medically fragile 39 year old, who is blind, deaf and wheelchair-bound with the mental age of 9 months, and Sandra, also medically fragile and osteoporotic, she is a 42 year old with the mental capacity of an 18 month old baby. VOR receives absolutely no federal grants, nor other sources of federal funding, and we operate exclusively on a donation basis -- primarily though contributions from concerned parents of mentally retarded persons. We are an organization of volunteers devoted to improving the quality of life and well being of our family members.

The U.S. Congress wisely gave retarded citizens and their guardians a choice of providers: the Social Security Act mandates a "choice option" between home, community and institutional care; and the report language of the Developmental Disabilities Assistance and Bill of Rights Act Amendment of 1994 states that the Act "may not be read as a federal policy supporting the closure of institutions."

Many developmental disability groups with the specific intent of closing institutions receive federal grants. These groups pursue their deinstitutionalization agenda irrespective of family concerns or the consequences that may befall those most vulnerable of our citizens -- the severely mentally retarded. These groups openly engage in political activities, including advocating for the closure of institutions and specific

positions on other legislative matters, such as President Clinton's Health Security Act in 1994 and Welfare Reform. The use of federal funds for such a purpose not only fiercely contradicts Congressional intent, there seems to be a dubious connection between the federal funding which these groups receive and their ability to lobby here in Washington and in state capitols across the country.

Aside from the debate over health care options for the mentally retarded, a larger question looms: just how much federal money are these groups receiving, and how are they held accountable for the use of these funds? How does the federal government assure that the money it invests in groups is used as intended? I cannot imagine it was meant to be used lobbying for such controversial subjects as President Clinton's Health Security Act last Congress, or against the Welfare Reform bill recently passed by this Congress.

Nevertheless, groups such as the United Cerebral Palsy Association and the ARC (formally the Association for Retarded Citizens), which are both among the groups that depend heavily on federal grants, have taken clear policy positions on issues such as these and have money available to finance their lobbying campaigns. In a recent article in the Investor's Business Daily, entitled "Who Is Fighting Budget Cuts? Many Vocal Critics Are Feeding At The Trough", I was shocked to learn that the United Cerebral Palsy Association receives 81% of its revenues from government grant money for a grand total of $374 million. The United Cerebral Palsy Association stands as the second largest charity recipient of federal grant money in the United States. The ARC falls not far behind as the fourth largest recipient with 66% of its revenues, totaling $316 million, coming from federal grants. These groups lobby extensively, and I am outraged that my tax dollars are being used for such purposes. While I do not know if grant funds are used specifically for political purposes, these grants certainly free up other funds the groups receive.

This has been a great source of frustration for VOR for some time; our members have joined together to protect what we believe are the fundamental needs of mentally retarded citizens -- a full continuum of care and choice in that care. However, we have been met with opposition from

provider interest groups, many of which have enjoyed sizable federal grants and as a result have money available to engage in political advocacy, including lobbying. Obviously, such activity can generate additional federal grants and funding for their programs, creating a self-perpetuating, taxpayer-financed, money-making scheme. These groups are among the largest recipients of federal grants in the country. As an association that, as I have said, receives absolutely no federal funding, it is disillusioning to be confronted around every corner of these corridors by groups that do have federally subsidized bank accounts.

These organizations certainly have a right to express their opinions to policy makers, but not on the American tax payers' tab. It seems only reasonable that special interests such as United Cerebral Palsy Association and the ARC that receive enormous sums in grants from Congress are held accountable for how they use those grants. Any past attempts I have made to discover how much federal money the ARC and other groups receive -- and specifically what that money is used for -- have been stifled.

One recent example happened just this month at a presentation given in Illinois. The presentation was for the National Home of Your Own Alliance, which is a technical assistance center at the University of New Hampshire, Institute on Disability/University Affiliated Program, funded through a cooperative agreement with the U.S. Health & Human Services Administration on Developmental Disabilities. Allan Bergman, Director of State-Federal Relations of the United Cerebral Palsy Associations presented to the federally funded Alliance a speech entitled "Your Critical Role in Legislative Advocacy at the Federal and State Levels: the Essence of Survival." As I mentioned, the United Cerebral Palsy Association itself receives more than 81% of its funding in federal grant money -- $374 million.

During his presentation, Mr. Bergman said, "This conveying of information about the welfare of people with disabilities -- this persuading a member of Congress to enact legislation favorable to our cause -- is lobbying. And today lobbying is a must. Any organization that does not lobby well is almost certain to get left out." He went on to provide detailed guidelines to "assist you to effectively provide that special interest perspective."

I do not argue with the importance of conveying information to Members of Congress and other elected officials; this is a fundamental part of our democratic system. But this group is clearly and admittedly funded in large part by the federal government ... why are they giving and receiving specific instructions on how to lobby? It is outrageous, yet Voice of the Retarded runs into this quandary time and again. These federally funded organizations lobby on many controversial issues.

Last year during the heat of the health care reform debate, Allan Bergman was the featured speaker at a free one-day seminar entitled "How Health Care Reform Is Going to Change Your Life" which was cosponsored by, among other groups, the University of Illinois at Chicago University Affiliated Program in Developmental Disabilities that is funded through the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994. A promotion for the seminar described that "Bergman will explain the various health care reform proposals and how people with disabilities would be helped or hurt by the proposals." The seminar promised to educate attendees on how to influence pending legislation.

In an "Action Alert" memo distributed at the Chicago meeting, Allan Bergman strongly urged those attending (including those that are federally funded) to targeted members of the Energy and Commerce Committee, urging them to pass health care reform legislation that the committee was considering at the time. In a memo of December, 1993, Bergman initiated a massive grassroots lobbying campaign for the President's Health Security Act. In this communication, Bergman wrote that recipients must lobby immediately "in order to help Congress develop the 'political will' to vote for legislation that guarantees a national right to comprehensive health care reform." He urged association members to "barrage" Members of Congress with letters and meetings. The memo also included: an "action alert" directing members to take immediate steps to lobby in favor of the Health Security Act; talking points for meetings with legislators; a list of key issues to address; a list of targeted members on key House and Senate Committees; and other information.

During the recent Welfare Reform debate over the Personal Responsibility Act (HR 4), in which the House voted to modify the eligibility criteria for Supplemental Security Income (SSI), one of the various groups that fiercely lobbied against proposals to reform SSI was the Bazelon Center, which receives 16.2% of its funding from the federal government. In a letter to Rep. Jim McCrery (R-LA), who spearheaded SSI reform in the legislation, a group of organizations wrote in opposition to the elimination of cash benefits for certain SSI recipients. The letter went on to recommend specific actions in legislation to replace the proposal included in HR 4, and was signed, among others, by the Bazelon Center, the ARC and the United Cerebral Palsy Associations. The ARC testified against the legislation before the Ways and Means Subcommittee on Human Resources. When the bill was ultimately passed, Bazelon sent out a press release that those Members voting for the Personal Responsibility Act had voted to "cut lifeline to poor children with disabilities." This alarmist and inaccurate language was specifically designed to incite people to lobby directly against the legislation.

The examples of these groups that receive federal grants and in turn strenuously lobby government are plentiful. I am confident that my testimony and the materials attached in my written statement are only the tip of the iceberg.

It is refreshing to see, Mr. Chairman, that you and other Members of this Congress are taking the proper steps to bring accountability to these groups and reign in tax payer-financed lobbying. This issue deserves your serious consideration. I thank you and the members of the subcommittee for your attention, and welcome any questions you may have.

Mr. McINTOSH. Thank you very much, Mrs. Spare. I think we'll hear from each of the witnesses, and then return to questions from the panel. Let me also tell the witnesses that the lights in front of you there, the yellow light goes off after 4 minutes, and the red light after 5. If you could start to summarize your testimony then, that would be great, although this hearing is so important that if you feel you need to go beyond that, I'm not going to gavel it down and be strict about it. I do think it's important that we build a full record here.

Let me now turn to the next witness, actually two witnesses from 60 Plus. Mr. Zion, welcome, it's great to see you again and have you here. I understand that with you is James Martin. And I appreciate both of you coming today. Mr. Zion.

Mr. ZION. Thank you very much, Mr. Chairman, members of the committee. I'm absolutely convinced that if we had had a Government Reform and Oversight Committee when I was in Congress, we wouldn't have the serious problems we have right now. I envy you; I'd give my eye teeth to be sitting with your panel today.

Mr. McINTOSH. Thank you. I'll pass that on to Mr. Clinger, in particular.

Mr. ZION. Yes, an old friend. I'm sorry he had to leave. With your permission, just 1 minute for some general observations, and then Jim Martin will speak more specifically to the subject. Last year, Jim Inhofe from Oklahoma was on the House floor, held up pictures of his grandchildren, and said, unless we do something about it, my grandchildren are going to have to spend 75 percent of their lifetime income just paying the interest on the national debt.

I'm a grandfather. I have five grandchildren, and it really worries me. And that's why I'm so pleased that you people are in business. I was most impressed by the article in the Wall Street Journal about the 100,000 private organizations are getting $39 billion a year. I've been doing research—not on that subject, though I'm happy to have this—on other excesses in Government spending. I've written a book, which is at the publishers, that proves that we can balance the budget with your help, without touching entitlements.

A few examples. The Department of Agriculture started in 1862, with five employees, and 50 percent of the people living on the farm. Now, last year, they had 135,000 employees, and a budget of $60 billion, and 2 percent of the people living on the farm. The Department of Education started in 1976, a $9 billion budget. In 1994, it was a $29 billion budget. And I can't help but think how nice it would be if the schools had that money, instead of the bureaucrats that spend all that money shuffling papers around Washington.

When we were debating aid to families with dependent children, I was sitting next to Jack Kemp. And he was wont to do, gave me a big elbow, he said, remember this—you get what you subsidize. He said, if we start paying kids to have babies, we're going to be up to our eyeballs in babies. How right he was. In 1983, there were 3.7 million illegitimate babies; in 1993, 6.3 million—a 70 percent increase. The largest growing crop in the United States today is illegitimate babies, because we're paying them to have them.

There's $1.4 billion, I found out, that we're sending to drug and alcohol addicts to help them continue their problem. The Grace Commission points out $424 billion in Government waste. Illegal aliens are costing us $12 billion a year. I'm just getting warmed up. I'm going to quit because I want to hear from Jim, and I know you do, too. If we reduce just the paperwork and the outrageous liability settlements, health care could be reduced by 25 percent.

The Department of Energy, 17,000 Federal employees, 140,000 contract employees. They don't produce a barrel of oil or a ton of coal, they just make it difficult for the people that are trying to do so. Well, I envy you; I salute you; I wish you well as you fight to take the Government off our backs and out of our pocketbooks. But now, specifically, to the subject, my good friend, Jim Martin, who spent many years in town.

He was a legislative assistant to Senator Ed Gurney. He's done a lot of research, specifically on the subject at hand. I know you want to hear from Jim Martin. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you very much, Mr. Zion, I appreciate all of your remarks.

Mr. MARTIN. Thank you, Mr. Chairman, and members of the committee. For 2½ years now, I've chaired 60 Plus. It's a national organization of more than 300,000 seniors, who express a free enterprise, less government, less taxes philosophy. And on their behalf, I appreciate the opportunity to testify. By the way, after 2½ years, we're larger, with 300,000 members, than the 800-pound gorilla out there that's 37 years old now.

This subcommittee, Mr. Chairman, is right on target, regarding $39 billion of tax dollars going to thousands of advocacy groups with a political ax to grind. Earlier this year, I testified before the House and Senate Budget Committees about seniors advocacy groups receiving tax dollars. The thrust of my testimony was that we at 60 Plus receive no tax subsidies, seek no tax subsidies; but as we lobby, we would like a level playing field when it comes to other seniors groups that may have opposing political views.

That these groups receive millions—$85.9 million in the case of the largest and best known; $68.7 million to another lesser known, but the most political of all; and $41.1 million to an even lesser known group—is just the tip of the iceberg in the seniors field, where there are literally dozens of other seniors groups funded by the taxpayer.

I refer each of you to the attached list of seniors groups which receive tax money, and a Washington Times opinion piece we've submitted for the record. Downsizing Government has become the operative mission, since November's election. President Clinton acknowledged such in his State of the Union message. To downsize the Government, we think you either eliminate or you privatize. We think both are desperately needed.

Today, the size of the seniors field, I refer this committee to a little publicized area where billions of tax subsidies can be saved. While political advocacy is a way of life in a democracy, the way it's funded, with tax dollars, would distress Thomas Jefferson, who said, and I point out that Congressman Fox mentioned this earlier in his statement. Mr. Jefferson said, "To compel a man to furnish

funds for the propagation of ideas he disbelieves is sinful and tyrannical."

What I'm referring to is the ever growing stealth world of political nonprofit advocacy groups coming from the political left and the political right. Some organizations may be upset at this assertion, but only, I assume, if they are on the Federal take. As I researched this issue, I slowly became aware of an invisible, nonelected arm of Government which has grown like topsy in the past 30 to 40 years.

One D.C.-based nonprofit group, OMB Watch, and I believe Independent Sector, among others, claim that over 1,000 nonprofit affiliate members receive some Federal funding. Robert Woodson, president of the National Center for Neighborhood Enterprise, has done several studies on the extent to which Federal revenues for poverty programs go to hundreds of nonprofit middlemen.

He concludes that only about 30 cents of each tax dollar ever reaches the poor; the rest, consumed by Government agencies, social workers, and nonprofits. Downsizing Government—can it be done? Yes. It's being done every day by private companies; also successfully by Government. Studies have shown that privatization usually results in savings to State and local taxpayers of at least 30 percent.

But nonprofits continue to be taxpayer-funded. I had my testimony Government funded, and I struck that out and said taxpayer funded. As the chairman said earlier, it's the taxpayers' money, not the Government. But if they are to continue to be taxpayer-funded political advocates, they will use their political power to thwart efforts to privatize Government services.

And while the Federal Government prohibits "the use of Federal funds for direct or grassroots lobbying at either the Federal or State levels," it appears that there are scores, even thousands, of political advocacy groups in direct conflict with that prohibition and with Mr. Jefferson's philosophy. We agree with that. And I've submitted for the record certain articles. I'll refer to one. One example—the special health care letter which I've attached.

This is as political a document as I've seen in 33 years here. Take a good look at this. It'll make any politician or any campaign manager green with envy because of its high-technology sophistication. And it's put out by one group that receives 96 percent of its budget from the Federal—sorry, not the—the taxpayer.

And I would conclude by saying this: It's a 501(c)(4). It lobbies Congress with these dollars. That's one violation. The biggest violation, though, in my opinion, it endorses candidates. It can't be so. It says it has a PAC. But I'll tell you what. You ask Senator Gorton, Senator Santorum, Snowe, Congressman Hansen, Gunderson, Shaw, Greenwood, to name a few who have all been hammered by this group, nowhere does it ever talk about PAC on any of their literature or any of their stationery. It's always this particular council. Thank you for your time.

[The prepared statement of Mr. Martin follows:]

Testimony by James L. Martin, Chairman
of the 60 Plus Association
1616 N. Ft. Myer Dr., #1010
Arlington, VA 22209 (703) 807-2070

before the

The Subcommittee on National Economic Growth, National Resources and Regulatory Affairs of the House Government Reform and Oversight Committee
Rayburn House Office Building, Room 2154

2 PM, June 29, 1995

Mr. Chairman, members of the subcommittee, I'm pleased to represent over 300,000 senior citizens at the 60 Plus Association. I would like to introduce our Honorary Chairman, who really needs no introduction, your former colleague, Roger Zion of Indiana.

This subcommittee is right on target regarding $39 billion of tax dollars going to thousands of advocacy groups with a political ax to grind. That number is astounding, so much so that I make the following prediction. If you cut off all money currently going to the various political nonprofits tomorrow, Washington, DC would be a ghost town inside of 48 hours.

I'm also of the opinion that if you took an ax to the federal budget, you wouldn't hit solid wood for a week. Your discovery of at least $39 billion buttresses my assertion.

Until I saw the Wall Street Journal editorial last week, I thought we at 60 Plus were way off base on our own estimate. Let me explain.

Earlier this year, I testified before a House Appropriations Subcommittee and before the Senate Budget Committee about seniors advocacy groups receiving tax dollars. The thrust of my testimony was that we at 60 Plus receive no tax subsidies, seek no tax subsidies, but as we lobby, we would like a level playing field when it comes to other seniors groups that may have opposing political views, putting us at a disadvantage because they have tax dollars with which to lobby.

That these groups receive millions, $85.9 million in the case of the largest and best known, $68.7 million to another lesser known, and $41.1 million to an even lesser known group...is just the tip of the iceberg in the seniors field where there are dozens of other seniors groups funded by the taxpayer. I refer each one of you to the attached list of seniors groups which receive tax money, and the Washington Times opinion piece we have submitted for the record.

Further, to show how politics is blatantly practiced -- examine closely the attached "Special Health Care Letter" one of the groups used. It is as political a document as I've seen in my 33 years here and clearly violates existing statutes prohibiting the use of tax money to lobby Congress directly or indirectly. It would make any politician or campaign manager alive today green with envy, as to its high-tech sophistication.

Incidentally, the group that received $68.7 million in tax dollars -- that amount made up 96 percent of its entire budget, and the other group which received $41.1 million in tax dollars -- that amount made up 91 percent of its budget.

But while doing research for my testimony, I saw how the little known world of political advocacy lobbies perpetuate their fiefdoms almost entirely on the backs of the taxpayers of America.

Because I discovered that instead of a few billions, as the political intelligentsia in this town previously estimated, that there could well be $40 or $50 billion involved. But nobody believed those startling numbers. Until now and your findings, Mr. Chairman. So you're doing a great service by bringing this to the fore.

While my expertise is in the seniors lobby field, we're only talking a few hundred millions, so I would like to talk a bit about the broader picture where that $39 billion, or more, is going.

I recommend the writings of Professor Thomas J. DiLorenzo, Professor of Economics, Loyola College, Baltimore. Of his five books, three are of particular interest to these deliberations: His 1988 book, Unfair Competition: The Profits of Nonprofits, and his 1985 book, Destroying Democracy: How the Government Funds Partisan Politics.

In his latest, 1993, Hidden Politics: Progressive Nonprofits Target the States, Dr. DiLorenzo says, "The *NonProfit Policy Agenda* has three primary objectives:"

1. To politicize the nonprofit sector by formally integrating it into government,
2. To use the power of government to eliminate dissent over the role of the nonprofit sector, and
3. To shield the nonprofit sector from scrutiny.

The *Agenda* is the product of collaboration among such national organizations of nonprofit as Independent Sector, the National Council of NonProfit Associations, and the United Way of America. An appendix to the report also lists 18 "Statewide NonProfit Associations" and 15 "Organizational Resources," the latter including such organizations of America's activist left as the Advocacy Institute, Alliance for Justice, Center for Policy Alternatives, National Committee for Responsive Philanthropy, and OMB Watch.

The *NonProfit Policy Agenda* Project began in 1991 with funding from "an anonymous donor" and the AT&T, Johnson, W. K. Kellogg, and the Charles Stewart Mott Foundations.

What they want is taxpayer funds without taxpayer control over how the money is spent.

If 50 nonprofit administrations simply become propaganda arms of state government, dissent will be stifled, not welcomed. Would anyone expect that a coalition of state government employees and social workers would seriously entertain proposals by other nonprofits' to privatize government services, adopt educational vouchers, or cut taxes?

Many of the organizations involved in the *NonProfit Policy Agenda* had a long record of using tax dollars to finance a political agenda of ever-increasing government.

An example is provided by one of the *Agenda's* "Organizational Resources," the Washington based OMB Watch. OMB Watch claims over 1,000 nonprofit members. Almost all receive some federal funding.

However, as state and local governments are faced with budget shortfalls and voter resistance to higher taxes, many are maintaining and improving services -- while saving taxpayers money -- through privatization. In Chicago, Mayor Richard Daley has saved over $1 million annually by contracting out with private towing services, $337,000 by using private drug treatment centers, and $900,000 (on cleaning supplies alone) by contracting for janitorial services.

Studies have found that privatization usually results in savings to state and local taxpayers of at least 30 percent. In a 1987 survey on privatization by the International City Management Association, 99 percent of cities said they contracted out with the private sector for some services, including buildings and grounds maintenance, data processing, hospital, recreational facilities, solid waste collection and disposal, road repair, transit services, and utilities.

At least half the states now have legislation pending to privatize some government services. In 1990, West Virginia raised $20,000,000 by selling its liquor stores; Iowa did the same and reaped a similar windfall.

If these nonprofits become government-funded political advocates, as the *NonProfit Policy Agenda* recommends, they will most certainly use their new-found political power to thwart efforts to privatize government services, forming coalitions with government employee unions to assure that the main beneficiaries of state and local taxes remain these employees and nonprofit middlemen, not taxpayers and consumers.

NONPROFIT MIDDLEMEN

Government at all levels now spends about $190 billion annually on over 500 poverty programs, enough to give every man, woman, and child living below the government's poverty threshold about $6,000. This amount-roughly $24,000 per year for a family of four-is nearly twice the poverty threshold level of income.

The sad thing is that most of this money never reaches the poor. That is a startling revelation. It instead goes to hundreds of nonprofit middlemen, among others, who are part of what Robert Woodson, president of the National Center of Neighborhood Enterprise, calls "the Poverty Pentagon."

Woodson has done several studies on the extent to which federal revenues for poverty programs are diverted to the "Poverty Pentagon." He concludes that only about 30 cents of each tax dollar ever reaches the poor.

This is a startling revelation.

We at 60 Plus have long advocated states rights over federal rights, and 40 years of Federalism was rejected at the polls in November, in our opinion. The new Congress was given a mandate to try something new -- as most of the old programs left America on the verge of bankruptcy.

Specifically, 60 Plus believes it is time to take power away from Washington, and turn it over to state and local governments, thus giving ordinary citizens more say over how their money is spent. It's certaintly time to take away tax dollars for political advocacy groups, no matter what their political persuasion is.

We would remind these groups that when Mrs. Sharon Percy Rockefeller was asked how the Corporation for Public Broadcasting would survive if tax dollars were taken away, she replied by saying, "We'll not only survive, we'll prosper." That's commendable and if these advocacy groups have a sellable product, the public will flock to their cause.

This would allow more of our scarce tax dollars to reach the needy and not go into the pockets of the political advocacy groups.

In conclusion, Mr. Chairman, advocacy groups should not be allowed to run social service programs while politicking on the side. It's wrong and one of our heroes, Thomas Jefferson, would be turning over in his grave at the extent to which tax dollars are used to politick. Mr. Jefferson said, "To compel a man to furnish funds for the propagation of ideas he disbelieves and abhors, is sinful and tyrannical." We agree.

TABLE 1. Amount of Title V Funds Awarded to State and National Sponsors.
Program Year 1994-95
($ in millions)

Total	$410.4*
State agencies	$ 90.3
National organizations	$320.1
American Association of Retired Persons	$ 47.8
Association National Pro Persons Mayors	$ 12.4
Green Thumb	$100.0
National Caucus and Center on Black Aged	$ 12.2
National Council on Aging	$ 35.8
National Council of Senior Citizens	$ 60.6
National Indian Council on Aging	$ 5.1
National Asian/Pacific Resource Center on Aging	$ 5.1
National Urban League, Inc.	$ 14.3
United States Forest Service	$ 26.8

*Total does not add precisely to actual appropriation of $410.5 due to rounding. Some State agencies transfer funds to national organizations for administration in their States. Amounts shown are before transfers.

Source: U.S. Department of Labor.

SPECIAL HEALTH CARE LETTER

Seniors attending NCSC's Legislative Conference have been asked to write a letter to their Senators and Representative today that can be sent to the next stop of the "Health Care Express."

To make it as easy as possible for you, we have composed a very special three-paragraph letter that can be written, by computer, here at the NCSC Legislative Conference, but will look as though you wrote it at home.

Each letter will look different and be individually typed by the computer in one of several type faces.

The following pages contain several variations of each of the three paragraphs. All you have to do is pick your favorite paragraphs—one, two and three—and the type face you want to use for your individual letter. Please be sure that you check only one option for each paragraph and font.

THE NCSC COMPUTERS WILL DO THE REST FOR YOU!

Fill out the bottom of this form with your name, address, city, state and zip code along with the name of your Congressional representatives and your Congressional District (CD) Number. If you do not know your CD, we can find it by the Representative's name.

Drop this whole package off at the "Health Care Express" Letter-Writing desk by the escalator in the NCSC Registration Desk Lobby. Come back later in the day and your letter will be ready for your signature. Please do not mail the letter. NCSC will take care of getting it to the Caravan.

(PLEASE PRINT)

_____

(Name)

_____

(Address)

_____

(City) (State) (Zip)

_____ _____

(Congressional representative's Name) (CD)

Paragraph #1/A

_____ I appeal to you to vote to protect the employer mandate in any health reform package that is adopted by the Congress. Without the mandate, our longtime goal of universal coverage will never be realized.

Paragraph #1/B

_____ As a constituent of your district/state, I want you to know that home and community-based long-term care is vitally important to older Americans who, despite Medicare, continue to spend an average of $2,803 in out-of-pocket medical costs each year.

Paragraph #1/C

_____ The single-payer option for states is an essential component in the final health bill. Without such an option, we will never achieve universal comprehensive health care that is cost efficient.

Paragraph #1/D

_____ Pharmaceutical costs remain the largest out-of-pocket expense for the elderly, so I hope that I can count on you to support the inclusion of a prescription drug benefit in the health reform legislation now being considered by Congress.

Paragraph #1/F

_____ I am writing to urge you to support the bills adopted by the Senate and House Labor Committees plus the single-payer health care bill because they are the only bills that provide long-term care, prescription drug benefits, universal coverage, real cost containment, and an employer mandate.

Paragraph #1/G

_____ My message is simple: vote for the Senate and House Labor bills which contain universal coverage, long-term care, prescription drug benefits, and an employer mandate.

Paragraph #1/H

_____ I hope you will do everything you can to make sure health care reform comes up this session of Congress and goes to a final Floor vote.

Paragraph #1/I

_____ For more than 33 years, the five million members of the National Council of Senior Citizens have pushed for national health care reform. We are counting on you to support legislation that includes universal coverage, long-term care and an employer mandate that represents real cost sharing and does not penalize people who have already negotiated for decent health care benefits with their employer.

Paragraph #2/G

_____ The people who are without health care in this nation are not lazy or unemployed--84 percent have jobs in which their employer is content to work them long hours at low pay and then cut them loose--without insurance--when they are old, sick or broken. Its wrong. Its immoral. And I'm counting on your vote to make it right.

Paragraph #2/H

_____ When it comes time to cast your vote, I urge you to stand firm in support of three core provisions: universal coverage, long-term care, and real cost containment. Long-term care, in particular, is an issue you can expect to hear about at every political whistle-stop, as it is the issue of PRIMARY importance to older Americans and younger Americans with parents, children and siblings with multiple disabilities.

Paragraph #2/I

_____ The three leading senior citizen organizations in the U.S.--the National Council of Senior Citizens, the American Association of Retired Persons, and the National Council on Aging--all support the basic elements of the bills adopted by the Senate and House Labor Committees.

Paragraph #2/J

_____ For the Chamber of Commerce, the health care debate is largely a matter of ideology. For 38 million Americans, however, this debate is about life and death, happiness and health, economic security and personal bankruptcy. These 38 million Americans will not soon forget how you cast your vote; they will remember at the polls one way or another.

Paragraph #2/K

_____ I urge you to do everything in your power to make sure home and-community based long-term care is included in the health care reform bill that passes Congress this year. This issue is vital to middle-class Americans now taking care of disabled children and aging parents. It is vital to senior citizens who fear premature death in Medicaid nursing homes. And it is the one issue I can guarantee you will be asked about at every whistle-stop and campaign appearance you make this summer and fall.

Paragraph #3/H

_____ In the end, I hope and expect you to do the right thing and vote in favor of universal coverage, long-term care, prescription drug benefits, and real cost containment.

Paragraph #3/I

_____ Senior citizens vote in larger numbers than any other group in the nation, and there are few issues we care more passionately about than long-term care. I hope you will remember that when the day is done it isn't really health reform unless it includes long-term care.

COMPLIMENTS OF:
60/PLUS ASSOCIATION
1616 N. FORT MYER DRIVE #1010
ARLINGTON, VA 22209
(703) 807-2070 OFC.
(703) 807-2073 FAX

OP-ED

The Washington Times

* THURSDAY, JUNE 8, 1995 / PAGE A19

Guess who pays for the seniors' lobby

By James L. Martin

Last year, certain so-called senior citizens groups ripped off $200 million of taxpayer's money to lobby for bigger government. This taxpayer-funded lobbying creates a biased system which goes a long way towards explaining the inexorable growth in government over the last 40 years.

The "big three," of more than 40 liberal seniors' groups — the American Association of Retired Persons (AARP), the National Council of Senior Citizens (NCSC) and the National Council on Aging (NCOA) have three things in common. They are liberal-left in philosophy, they are heavily financed by the taxpayer, and they do not really represent the interests of senior citizens.

These organizations lobby Congress on issues as disparate as education, foreign policy, Motor Voter and striker replacement, in clear violation of existing statutes. With their bread and butter paid for by the taxpayer, they are also free to engage in extensive political activity designed to produce a more compliant congress.

So outrageous has the seniors' lobby become that Sen. Alan Simpson, Wyoming Republican, has now scheduled hearings into the financing of AARP and its funding sources. These include numerous for-profit businesses, conducted under the cover of tax-exempt status, so lucrative that AARP recently wrote a check for $135 million for back taxes owed.

Similar hearings are sorely needed into the most blatantly political of all these groups, the National Council of Senior Citizens. Receiving more than 96 percent of its budget from the taxpayer, it is inexcusable that NCSC should be allowed to browbeat the taxpayer, through the Congress, for even more funds. The issue is not philosophy; it is taxpayer funding.

As Members of Congress can verify for themselves, virtually every senior citizen has heard of the American Association of Retired Persons. AARP claims 33 million members, but analysis by staff at 60 Plus shows that actual membership is more like 18 million.

Far fewer have heard of the National Council of Senior Citizens. NCSC used to claim 5 million members, but since 60 Plus has challenged that claim, now admits that its membership is a much more modest 500,000.

It is a rare senior indeed who has any knowledge of the National Council on Aging. But Hillary Rodham Clinton knows all about them, praising them for embracing the Clinton plan for socialized medicine.

Most importantly, virtually no senior citizen has any idea that AARP gets $85.9 million in taxpayer money each year, NCSC $68.7 million, and NCOA $41.1 million. Nor do they have any idea why these organizations should be financed by taxpayers.

Ostensibly these organizations use these millions to "provide temporary part-time jobs for needy seniors." But a closer look at just one of them, the most politically partisan, the NCSC, shows that their budget, 96 percent of which is provided by the taxpayers, is used in a highly partisan fashion, prompting longtime political observers to label them nothing more than a mouthpiece for the Democratic Party and unions. Indeed, the NCSC grew out of support from the Democratic National Committee and its union affiliates when it was formed during the Kennedy-Johnson era.

A 1993 Federal Election Commission report shows that the NCSC gave $221,750 to 74 congressional candidates, all Democrats. When challenged during the 1994 campaigns, a public relations flack denied that NCSC was partisan, telling a reporter that they did indeed support Republicans.

However, 1995 FEC reports again show the same fealty to Democrats. NCSC gave $183,779 to elect 60 Democrats or to help defeat Republicans. Most noteworthy of these races were two key Senate races. NCSC gave $21,653 to Democrat Sen. Harris Wofford, who lost to Rep. Rick Santorum in Pennsylvania; and in their biggest outlay of all, NCSC gave $13,087 to Sen. Chuck Robb, Virginia Democrat, in his narrow win over Ollie North and also spent $11,418 directly against Mr. North, all the while proclaiming that they generally did not get involved in politics but felt compelled to in this case because of Mr. North's anti-Social Security bias.

At the same time, of course, NCSC was working on behalf of at least 59 other Democrats. So much for nonpartisanship. The NCSC vehemently denies that it does any politicking but their federal tax return show a monthly phone bill of $10,000 per month. That is an awful lot of calling to find jobs for "needy seniors."

Now that their benefactors, the architects of the Great Society, are out of power, the NCSC and the other taxpayer-funded seniors' groups see their empire slowly crumbling. But they are putting up a valiant fight, employing their public relations flacks to paint a rosy picture of their virtuous ways.

For example, the NCSC cites its work providing Meals on Wheels and temporary job training for seniors. For the seniors' lobby, these programs are the equivalent to the Corporation for Public Broadcasting's "Barney" and "Big Bird." But while NSCS officials describe their work in glowing terms, its own internal Audit Review Committee tells quite a different story.

The NSCS auditors made an omniscient observation more than a year before the election last November when the voters rejected 40 years of centralized government. The report said, "*the heavy reliance on governmental grants* . . . poses a potential danger to the long-term structure of NCSC. *Absent such grants*, the Council would be unable to continue its current level of operations *without seeking new revenue sources*." Furthermore, the report said, "*the assumption of office by an unfriendly federal administration at some future date could very well deliver a crippling blow to NCSC*" [emphasis added].

In the wake of last November's elections, the House and Senate budgets propose to turn these programs over to the states. So the handwriting is on the wall. It's over. The NCSC, liberally funded as part of the Great Society, will now have to heed the advice of one of its heroes, AFL-CIO founder Samuel Gompers, who said at the turn of the century, if we have a good, sellable product, "the public will flock to our cause."

Recently Sharon Percy Rockefeller said much the same thing when asked about defunding the Corporation for Public Broadcasting. "We'll not only survive, we'll prosper."

These are laudatory goals expressed by Mr. Gompers and Mrs. Rockefeller. Hundreds of other advocacy groups should follow that advice. In its simplest form, the principle should be: If you lobby, you can't take taxpayer money, no matter what the purpose is.

The only way to ensure that tax dollars are not used to perpetuate a particular philosophy is to see that lobbying groups, on the right and the left, are "black flag dead," totally defunded, otherwise they'll keep on going and going and going like the Energizer bunny.

Thomas Jefferson probably said it best: "to compel a man to furnish funds for the propagation of ideas he disbelieves and abhors, is sinful and tyrannical." A level playing field allows opposing views to compete fairly in the market place for the hearts and minds of the taxpaying public.

James L. Martin is the Chairman of the 60 Plus Association, a national senior citizens lobby dedicated to tax fairness for seniors.

Mr. McINTOSH. Thank you. I appreciate that. I think I know who you're referring to, and I've had some experience with them. Let me now turn to our next witness, Michele Wells-Usher. Michele is here from the Conch Coalition in Florida. Welcome.

Ms. WELLS-USHER. Thank you. Thank you, members of the committee and Mr. McIntosh, for having us here. I just would like to read my testimony into the record. Thank you for granting me the time to express my concerns of myself and thousands of others who feel besieged and betrayed by the questionable activities and relationships between the National Oceanic and Atmospheric Administration, Sanctuaries and Reserves Division, and several very powerful special interest groups who receive grants and financial partnerships from NOAA. I am here on behalf of all of those who believe that our rights as taxpayers, residents and voters were violated by the activities that were incurred under the contract you have before you.

I am here to respectfully but urgently request that a special oversight investigation be commenced immediately into the special relationship between NOAA's Sanctuaries and Reserves Division, and a variety of NGO's, nongovernment organizations, who appear to have received Federal moneys from NOAA to successfully defy public opinion and citizens' rights. In this contract, the Nature Conservancy got paid over $40,000 by NOAA to squash our right to hold a county referendum vote on whether we wanted 100 percent of our county to become a Federal park under NOAA's control. See item 17 on the third page. The copies of the contracts you have been given have been obtained as a response to a Freedom of Information Act request regarding the Nature Conservancy group and the FKNMS. Public Law 101–605.

Since then, we have made several FOIA requests regarding other NGO's. And none of these FOIA's to date have been answered. We believe that the Sanctuaries and Reserves Division is intentionally delaying our requests and wondering why the NOAA legal counsel are supposedly retaining all of our FOIA requests, including the request regarding the Columbus-Eisland grounding incident of August 1994.

Furthermore, we recently became aware that the county supervisor of elections, Harry L. Sawyer, has notified the State Attorney's Office of a poll that was done by a marketing group hired by the Nature Conservancy, who illegally used voter registration lists to obtain names for their survey on the FKNMS. With federally funded tactics such as this, how can we possibly have a governance of the people and by the people? It is totally unfair that we find our strictly volunteer efforts of self-determination and commitment to our resources are being usurped by those who get paid our tax dollars to thwart us. Something is very, very wrong here.

We believe this provides ample reason to investigate the nature and the real intent of this federally mandated comprehensive management plan that NOAA seeks to impose, along with their powerful and collusive so-called partnership groups who we believe directly contradict and defy what Congress intended and what the public residents deserved.

The residents, taxpayers and citizens of Monroe County are outraged by this blatant disregard for their rights. Please do not allow

this agency to squander our tax dollars on self-perpetuation and unneeded bureaucratic expansion. Please resolve to fix what is broken and not what isn't. Please don't let this become a crisis of human and civil rights. Please give us, the people of this community, the chance to manage our resources ourselves and investigate this activity now.

I would also just like to state, after listening to some of the testimony here, that the victims are all of us. And I would urge, especially those who find that this committee action questionable, to take a long look at the witnesses sitting here—the people who are volunteers who do not receive Government funds, but are here to testify on behalf of other people who cannot afford to lobby against their own tax dollars.

[The attachments to the prepared statement of Ms. Wells-Usher follow:]

The Nature Conservancy

Volunteer Program
Florida Keys National Marine Sanctuary
9499 Overseas Highway
Marathon, FL 33050
305/743-2437
Fax 305/743-2357

October 25, 1993

Ms. June Cradick
NOAA
Sanctuaries and Reserves Division
1305 East-West Highway
N/ORM2 ; 12th Floor
Silver Spring, MD 30910

RE: NA370M0122 Cooperative Agreement

Dear June:

Please find enclosed an original and two copies of the July - September 1993 performance report for the above referenced cooperative agreement.

The Key West office of The Nature Conservancy will send under separate cover the performance report for the Public Affairs Manager. The Nature Conservancy's Arlington, Virginia headquarters office will forward under separate cover the financial report.

Thank you.

Best Regards,

Mary Enstrom

Mary Enstrom
Volunteer Program Coordinator

Recycled Paper

See Instructions - Reverse

Page 1 of

U.S. DEPARTMENT OF COMMERCE
PROCUREMENT REQUEST
Requisitioner fills in only unshaded blocks

1. INVOICE ADDRESS
Department of Commerce
NOAA Grants Management Division
Attn: OA32,SSMC-2,5th floor
1335 East-West Highway
Silver Spring, MD 20910

A. REQUISITION NUMBER: NC-ND2240-3-00305

B. READY REQUISITION DATE:

2. RECEIVING OFFICE NO.	3. REFERENCE CONTRACT NUMBER	4. ORDER DATE	5. SOURCE	6. PURCHASE DELIVERY ORDER NUMBER	7. SUB.	C. SF-281

D. CHECK ONE: PURCHASE ORDER / DELIVERY ORDER / IMPREST FUND / CONTRACT / OTHER

8. TO: (Seller)
The Nature Conservancy
201 Front Street
Post Office Box 4958
Key West, Florida 33041

9. SHIP TO: (Use Bldg/Room No.—see Reverse for Format)
same as #8

10. 1099 TAX | 11. EMPLOYER IDENTIFICATION NUMBER (EIN)

E. REQUISITIONER CONTACT PERSON: June Cradick
TELEPHONE NO. 202/606-4016

12. LINE ITEM	13. ACT. CODE	14. DESCRIPTION (Double Space Between Items)	15. BUDGET OBJECT	16. ACC. LINE	17. QUANTITY	18. UNIT ISSUE	19. UNIT PRICE (If Known)	20. ESTIMATED AMOUNT
01		To support volunteer, outreach and public affairs programs for the Florida Keys NAtional Marine Sanctuary SRD Procurement # 93-202 Coop. Agr. # NA37OM0122-01	4113	01				44,100.

21. F.O.B. POINT | 22. DISCOUNT TERMS | 23. PROMPT PAYMENT | Sub-Total (This Page) 24. 44,100.0

F. REQUEST DELIVERY BY: March 1, 1993 | 25. DELIVERY DATE | 26. SHIP VIA | 27. ESTIMATED FREIGHT | TOTAL 28.

I certify that funds are available and that the above items are necessary for use in the public service. George Bryan 2/9/93

G. TITLE OF REQUEST AUTHORIZING OFFICIAL	TELEPHONE	29. ACC. LINE	30. BUREAU CODE	31. ACCOUNTING CLASSIFICATION	32. DISTRIBUTION	33. AMOUNT
Director, OCRM	202/606-4111	01	14	ND2240/8K[illegible]5B3712/4113	100%	
SIGNATURE: [signature]	DATE: 2/11/93					
TITLE OF REQUESTER: Chief, SRD	TELEPHONE: 202/606-4016					
SIGNATURE: [signature]	DATE: 2/11/93					

H. CLEARANCES AND REMARKS

Distribution—Original and one copy to Procurement

USCOMM-DC 95 5208

re: NA370M0122

34

NOAA PERFORMANCE REPORT FOR QUARTER ENDING SEPTEMBER 30, 1993

This report covers the period of July 1-September 30, 1993. It includes tasks described in the agreed upon work-plan, and other tasks outside of the work plan. The tasks below represent approximately 30% of my entire workload for the quarter:

1. Finalized pro-sanctuary ad in cooperation with Rob Fiengold of Marathon NOAA office.

2. Discussed public relations needs of the Sanctuary with Marci Roth, new organizer for the Center for Marine Conservation.

3. Drafted county Mayor Jack London's testimony to be given to U.S. Congressional Joint Hearing of the House Merchant Marine and Fisheries Committee and Committee on Natural Resources, concerning the crisis in Florida Bay and the importance of a healthy marine environment to the economy of the Florida Keys.

4. Drafted testimony of Scott Marr, President of the Keys Federation of Chambers of Commerce, to be given to Congressional Oversight Committee. Testimony stressed the importance of a healthy marine environment to the Keys tourism industry.

5. Worked with Chris Fleisher, member of Tourist Development Council, in drafting testimony to Congressional Hearing.

6. Assisted Karl Lessard, commercial fisherman, with testimony to Congressional Hearing stressing the importance of healthy marine habitat to the future of the commercial fishing industry.

7. Identified "Local Economic Interests Panel," and assisted Charlene Daugherty, senior staff person for House Natural Resources Committee, organize panel.

8. July 28,pro-Sanctuary ad (referenced above) ran in Keynoter, the day before SAC meeting.

9. July 29, pro-Sanctuary ad ran in Key West Citizen the day of Sanctuary Advisory Council (SAC) meeting.

10. Developed "Florida Bay and Monroe County Economy" fact sheet, linking the importance of a healthy marine ecosystem to the economy of Monroe County. Distributed to Congressional Oversight Committee members.

11. Attended Congressional Hearing concerning Florida Bay. Assisted in coordinating "Local Economic Interests Panel."

12. Began developing "Regulation Workshop" idea with Billy Causey.

13. US 1 radio re-ran "prop-dredging round table discussion" on "Key Issues with Bill Becker Show" referenced in last Quarterly Report.

NA390M0122

14. Met with Vernon Silver, reporter for Key West Citizen, to publicize Bay Watch Program being developed in cooperation wit' NOAA personnel (primarily Mary Enstrom). Generated front page, headline story.

15. Worked with member of Keys Deanery to develop a resolution lending support to "local, state and federal agencies...for the purpose of immediately implementing corrective measures in order to stop the deterioration of water quality in...Florida Bay, and the coral reefs..." Adopted by the Diocese of Southeast Florida at its Twenty-Fourth Annual Convention. Generated two articles in the local media.

16. Met with State Senator Daryl Jones in order to become acquainted. Discussed issue surrounding Florida Bay and the Florida Keys National Marine Sanctuary.

★★ 17. Developed and directed plan to counter opposition's push for a county-wide referendum against the establishment of the Sanctuary. Recruited local residents to speak out against referendum at two Board of County Commissioners hearings. Organized planning conference call with members of the Center for Marine Conservation, the Wilderness Society, and the Nature Conservancy to discuss plan. Plan was successful in blocking referendum (a 3-2 vote), and generated many positive articles and editorials using many of the messages discussued in plan.

18. Developed sanctuary T-shirt plan for implementation when funding source is identified.

19. Met with Ben Woodson, managing partner of Little Palm Island Resort, to discuss working together on project to promote the sustainable uses of Keys marine resources. Discussions continue.

★ 20. Met several times with NOAA and DEP staff to discuss and develop a campaign plan for educating the public, and generating public support for the Sanctuary at the upcoming public hearings on the final draft management plan. More about this in my next report.

21. Began compiling and updating a data-base list of Sanctaury supporters to be used in up-coming public hearing campaign.

Mr. McINTOSH. Thank you very much. I think you've summed up the concern that a lot of us have. Let me state, the buzzer you heard was a bell to go vote. I will stay here until one of the other Members comes back. And we'll keep taking testimony that way so we don't interrupt it. Also, I'd like to seek unanimous consent that if Senator Specter comes, we may have to recess this panel—Senator Simpson comes. Boy, once you make a mistake, it sticks with you.

When Senator Simpson comes, we may need to recess this panel or the third panel in order to hear his testimony. Seeing no objection, that will be the process we use for the remainder of the hearing. OK, our next witness will be Mr. Amos Eno, executive director of the National Fish and Wildlife Foundation. Mr. Eno.

Mr. ENO. Thank you, Mr. Chairman. At 11 a.m. yesterday, I received information about your request for a representative of the foundation to testify at today's 2 p.m. hearing on taxpayer funded political advocacy. I received the request from the committee at 4:15 p.m. yesterday. Given the remarkably short leadtime, I'll attempt to answer the questions you've asked in your letter, as well as provide basic background on the foundation.

First, let me state that we welcome the opportunity to testify and to set the record straight about the foundation. The statements made about the foundation at your press conference last week and other forums previously represent extreme distortions of fact and grossly mischaracterize our mission and activities.

To begin, the foundation was created by Congress in 1984 to foster public/private partnerships that could further fish and wildlife conservation in nonregulatory ways. We were authorized to receive Federal funds which we award as challenge grants. By law, all grants must be matched on a one-to-one basis by non-Federal funds.

We have a track record of securing better than $2 in non-Federal funds for every Federal dollar awarded. We do not use any appropriated funds for our own operations or overhead. All operating funds are raised privately. We do not lobby. We do not fund lobbying or litigation, and we do not engage in it ourselves.

We are a nonpartisan organization with a bipartisan board of directors that simply seeks a better way, a nonregulatory way to conserve our fish and wildlife resources. Our philosophical niche differs from most of the conversation community. We attempt to create partnerships. We try to use our funds to get people working together, which obviates the need for advocacy and litigation.

It would be naive to think that we can do this in every situation. But we have a proven track record of helping when people are ready to come to the table and try something different. Among our partners in conservation are corporations like Georgia Pacific, Exxon and Dow, local communities and school districts, State and Federal agencies, hunting and fishing enthusiasts and environmental groups.

It would seem to me that an organization that stretches Federal money, creates nonlitigious models for conservation and raises all of its own operating funds from private sources should be embraced, not excoriated. Now, to address your six questions directly.

Regarding the March 15 memo to our board, there's not much of a story to tell.

At the request of the Secretary's office, we passed along information regarding the National Biological Service to our board in case they wanted to express their opinions as private citizens. Please note, the memo states clearly the foundation cannot lobby, and that any actions that they might take cannot be taken as representing the foundation or its board of directors.

I am only aware of one letter that was generated as a result of this memo, and it's attached for the record. No. 2, the foundation does not fund political advocacy or litigation of any kind. Our grant guidelines, which are attached, state "the foundation will not fund political advocacy or litigation of any kind." All grantees must sign an agreement acknowledging that the grant involves an award of Federal funds and may not be used for litigation and lobbying activities.

Finally, all grantees are required to understand and comply with OMB circular A–122 which prohibits the use of Federal funds in lobbying. Grantees are required to submit quarterly reports concerning their use of Federal funds, and the foundation will not pay overhead, operating expenses, or indirect expenses, thereby eliminating the potential for grantees to use Federal funds for political advocacy or litigation.

Our grant guidelines prohibiting lobbying and litigation were made even more explicit earlier this year. We now require all grantees to inform us if they are involved with litigation not related to the project. Finally, to make sure no particular political agenda is being pursued under a foundation grant, we require a broad range of technical reviews for every project, including reviews from relevant commodity interests.

No. 3, the foundation does not receive Federal grants for our own internal use. We receive federally appropriated funds that we disburse as challenge grants. Over the past 2 years, the foundation committed approximately $18 million in federally appropriated dollars as challenge grants.

These Federal funds were matched by more than $48.5 million in non-Federal funds, and all this money went to on-the-ground conservation projects. None of the funds were used directly or indirectly to finance political advocacy. We do not use federally appropriated funds for our own operations.

No. 4, the foundation is a private, 501(c)(3) organization created by an act of Congress. We have been reauthorized by Congress five times since 1984. We have a 15-member board of directors that's appointed by the Secretary of the Interior, and we have no affiliates.

No. 5, the foundation reports to Congress every year regarding our activities and our finances. This report takes the form of our annual report and our testimony before our Authorization and Appropriations Committees, as well as providing other information that's specifically requested. The annual report lists and describes all grants that have been made in that fiscal year and details our annual audit. In addition, we were subject to an audit by the Inspector General of the Department of the Interior in 1993. None, I repeat, none of our audits have ever produced a finding.

No. 6, the foundation has made 1,207 grants to 491 different entities. This includes 363 private organizations ranging from the Nevada Cattlemen's Association to the Environmental Defense Fund, 66 State, county, and provincial agencies, 11 Federal or interstate agencies and 51 colleges and universities.

Honestly, I have no idea how many of these groups have ever or now or may engage in political advocacy. I do know that our grants are secured to prevent the use of Federal funds for such advocacy. Our mission is to find nonregulatory solutions to complex national resource issues. To do this, the players must come to the table, they must commit to trying a nonconfrontational approach to resolving an issue. We apply no political litmus test, nor do I think we should.

I hope this answers the questions of the committee. I reiterate—we want to set the record straight and end the disinformation campaign of a few against the foundation. We do not have a stable of well-heeled lobbyists prowling the Halls of Congress. We do not have a fancy press operation to get the word out about what we do.

We rely on our track record, of on-the-ground accomplishments to speak for us. And we count on the fairness of Congress to thoughtfully evaluate our performance. And I hope this faith is not misplaced. I have submitted a more detailed statement to accompany this for the hearing record. And I welcome any questions the committee has.

[The prepared statement of Mr. Eno follows:]

1120 CONNECTICUT AVENUE, NW
SUITE 900
WASHINGTON, D.C. 20036
(202) 857-0166 FAX (202) 857-0162

June 29, 1995

The Honorable David M. McIntosh
Chairman
Subcommittee on Economic Growth, Natural Resources, and Regulatory Affairs
Committee On Government Reform and Oversight
U.S. House of Representatives
Washington, DC 20515

Dear Chairman McIntosh:

At 11:00 am yesterday, I received information about your request for a representative from the National Fish and Wildlife Foundation to testify at today's 2:00 pm hearing on "taxpayer funded political advocacy." I received the request from the Committee at 4:15 pm yesterday. Given the remarkably short lead time involved, I will attempt to answer the questions you have asked in your letter, as well as provide background information about the Foundation.

First, let me state that we welcome the opportunity to testify and set the record straight about the Foundation. The statements made about the Foundation at your press conference last week and in other forums previously are generally extreme distortions of fact that grossly mischaracterize our mission and our activities.

To begin, the National Fish and Wildlife Foundation was created by Congress in 1984 to foster public-private partnerships that could further fish and wildlife conservation in non-regulatory ways. We are authorized to receive federal funds, which we award as challenge grants. By law, all grants must be matched on a one-to-one basis by non-federal funds, and we have a track record of securing better than $2 in non-federal funds for every dollar of federal funds awarded. We do not use any appropriated funds for our own operations or overhead -- all operating funds are raised privately. We do not fund lobbying or litigation, nor do we engage in it ourselves. We are a non-partisan organization with a bipartisan Board of Directors that simply seeks a better way to conserve our nation's fish and wildlife resources.

Our philosophical niche differs from most in the conservation community. We attempt to create partnerships. We try to use our funds to get people working together, which can obviate the need for advocacy or litigation. It would be naive to think that we can do this in every situation, but we have a proven track record of helping when people are ready to come to the table and try

something different. Among our partners in conservation are corporations like Georgia-Pacific, Exxon and Dow, local communities and school districts, state and federal agencies, hunting and fishing enthusiasts and environmental groups. It would seem to me that an organization that stretches federal money, creates non-litigious models for conservation, and raises all of its operating funds from private sources should be embraced, not excoriated.

Now to address your six questions directly:

1) Regarding the March 15 memo to our Board, there is not much of a story to tell. At the request of the Secretary's office, we passed along information regarding the National Biological Service to our Board in case they wanted to express their opinions as private citizens. Please note that the memo itself clearly states that the Foundation cannot lobby and that any actions that they might take could not be taken as representing the Foundation or its Board of Directors. I am only aware of one letter that was generated as a result of this memo, and it is attached for the record.

2) The National Fish and Wildlife Foundation does not fund political advocacy or litigation of any kind. Our grant guidelines (attached) state that "NFWF will not fund political advocacy or litigation of any kind." All grantees must sign an agreement acknowledging that the grant involves an award of federal funds that may not be used for litigation or lobbying activities. Finally, all grantees are required to understand and comply with OMB Circular A-122, which prohibits the use of federal funds in lobbying. Grantees are required to submit quarterly reports concerning their use of federal funds, and the Foundation will not pay overhead, operating expenses, or other indirect expenses, eliminating the potential for a grantee to use our federal funds for political advocacy or litigation.

   Our guidelines prohibiting lobbying and litigation were made even more explicit in earlier this year. We also now require that all grantees inform us if they are involved with litigation not related to the project. Finally, to make sure that no particular political agenda is being pursued under a Foundation grant, we require a broad range of technical reviews for every project, including reviews from relevant commodity interests.

3) The National Fish and Wildlife Foundation does not receive federal grants for our own internal use. We receive federally-appropriated funds that we disburse as challenge grants. Over the past two years, the Foundation committed approximately $18 million in federally appropriated funds as challenge grants. These federal funds have been matched by more than $40 million in non-federal funds and all this money has gone on-the-ground for projects. None of these funds were used directly or indirectly to finance political advocacy. We do not use federally-appropriated funds for our operations.

4) The National Fish and Wildlife Foundation is a private, 501(c)(3) organization created by act of Congress (16 U.S.C. Sections 3701-3709). We have been reauthorized by Congress five times since 1984 and we have a 15-member Board of Directors that is appointed by the Secretary of Interior. We have no affiliates.

5) The National Fish and Wildlife Foundation reports to Congress every year regarding our activities and finances. This report takes the form of our annual report and our testimony before our authorization and/or appropriation committees, as well as providing any other information that is specifically requested. The annual report lists and describes all grants that have been made in that fiscal year and details our annual audit. In addition, we were the subject of an audit by the Inspector General of the Department of the Interior in 1993. Not one of these audits has ever produced a finding.

6) The National Fish and Wildlife Foundation has made 1207 grants to 491 different entities. This includes 363 private organizations (ranging from the Nevada Cattlemen's Association to the Environmental Defense Fund), 66 state, county or provincial agencies, 11 federal or interstate agencies, and 51 colleges or universities. Honestly, I have no idea how many of these groups have ever, are now, or may ever engage in political advocacy. But I do know that our grants are secured to prevent use of federal funds for advocacy. Our mission is to find non-regulatory solutions to complex natural resource issues. To do this, the players must come to the table and they must commit to trying a non-confrontational approach to resolving an issue. We apply no political litmus test nor do I think we should.

I hope that this answers the questions of the Committee. I reiterate -- we want to set the record straight and end the disinformation campaign of a few against the Foundation. We do not have a stable of well-heeled lobbyists prowling the Halls of Congress and we do not have a fancy press operation to get the word out about what we do. We rely on our track record of on-the-ground accomplishments to speak for us and we count on the fairness of Congress to thoughtfully evaluate our performance. I hope this faith is not misplaced.

I ask to submit a more detailed statement to accompany this statement in the Hearing record, and I welcome any questions the Committee might have.

Sincerely,

Amos S. Eno
Executive Director

TESTIMONY OF AMOS S. ENO

ON BEHALF OF THE NATIONAL FISH AND WILDLIFE FOUNDATION

BEFORE

HOUSE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH

JUNE 29, 1995

Mr. Chairman and members of the Subcommittee; thank you for the opportunity to testify today. I received your request about 4:15 P.M. yesterday.

I am Amos S. Eno, Executive Director of the National Fish and Wildlife Foundation. I believe this hearing is about **change** - not running the federal government in the same old way. I support that objective. I also believe it is the same goal Congress intended when it created the National Fish and Wildlife Foundation - to bring private sector involvement to the federal government - to team the rigid bureaucracy with the imagination, infusion of private capital, and new technology of the private sector. I submit that the Foundation has been true to that mission. Our record clearly demonstrates that we have met the Foundation's Congressional mandated goal: to help the Federal fish and wildlife establishment and the private sector work together in a new and more effective fashion. That was the goal given to the Foundation by Congress in 1984 and signed into law by President Reagan. That is the goal that we have faithfully achieved in dozens of different issue areas.

Congress' vision for the Foundation was that the conservation of this nation's natural resources could be done through mutually agreed upon partnerships, and did not have to be something imposed by the federal government on states and private citizens. The Foundation's charge from the first day was to bring the private sector to the table to build private/federal partnerships, and for more than ten years we have done just that.

Let me illustrate:

I In 1992, the Fish and Wildlife Service (FWS) listed the Karner blue butterfly as an Endangered Species. By 1994, the forest products industry in Wisconsin was deeply concerned that this listing was going to impact the commercial profitability of some 100,000 acres of timber industry lands, and even a greater total amount of acreage on private, county, and state held commercial timber lands. Industry's primary concern was that the scientific basis for Karner Blue Butterfly management was inadequate, and that poor information would be used in development of management plans. So, in 1994 a dozen corporate timber interests approached the Foundation, which they respected as being able to act as an honest broker, to help ensure that the best available information would be used in development of the Habitat Conservation Plan (HCL) being prepared by the FWS for the Karner blue. Since that time, the Foundation has matched industry funds with our federal funds for five projects specifically addressing top priority research and management needs. With Foundation leadership, the Karner blue butterfly HCP will be based on state of the art science, and will include the input from both the private and public sector - an essential ingredient for success. These kinds of projects are what the Foundation does best. We become involved where historically there have been only conflicts between industry and the federal agencies with regulatory authority, and provide funds and a cooperative environment that avoids lawsuits.

II Another example involves the Foundation's role with the wind power industry. Electricity produced with wind turbines is clean, renewable and cost competitive. However, birds, particularly raptors such as the Golden Eagle, occasionally collide with

turbines and are killed. In 1990, the U.S. Fish and Wildlife Service was threatening to shut down the wind power industry on the basis of a small number of raptor deaths. The Foundation intervened, however, and turned an unfortunate conservation and potentially disastrous economic predicament into a win-win situation. The Foundation formed a partnership with KENETECH Windpower, the largest domestic producer of electricity from windpower, and helped Kenetech design and implement a research program to determine why, and under what conditions raptors collide with turbines. This project offers real hope for both reducing raptor collisions and allowing expansion of the wind power industry. Again, the Foundation turned a contentious issue into an environmental, economic, and political success.

III For many years, harbor porpoises have been killed in sink gillnets used by commercial fishermen to fish for cod in the Gulf of Maine. Recently, as the populations of harbor porpoises have plummeted, the National Marine Fisheries Service has concluded that the fishing industry must significantly reduce its take of these marine mammals. The industry had been working on a technological fix (pingers), and was convinced that this device nearly eliminated the take of porpoises, but there existed no compelling scientific evidence to that effect. Faced with crippling regulations on the industry, and unable to get the NMFS to accept previous scientific investigations on the pingers, the Foundation provided industry with nearly their last hope. At a heated session in Boston in the Spring of 1994, the Foundation was able to get members of the industry, the academic community, the New England Aquarium and the NMFS to agree to a definitive scientific experiment on the devices. Using a grant from the Foundation and funds from the NMFS, an experiment was carried out in the Fall of 1994 that indicated the pingers worked remarkably well (almost no porpoises were taken in nets with active pingers). This experiment, made possible by the Foundation, may save this industry and hundreds of private sector jobs.

These and dozens of other examples indicate, that the <u>small</u> federal appropriations made to the Foundation have allowed us to accomplish the goal Congress established for us, which has been to bring "change" to the federal resource establishment and build new partnerships in the private sector. Just one relatively small series of lawsuits over an endangered species issue between the FWS and some industry segment would dwarf all the appropriations ever given to the Foundation.

Note that the total amount of U.S. federal funds appropriated to the Foundation over ten years is less than the cost associated with the potential for disruption from any one of these individual resource issues or a lawsuit over these or a myriad of other issues where the Foundation has intervened successfully to resolve protaganistic resource disputes.

While the most important task assigned to the Foundation is to build partnerships like those I have just reviewed, the Foundation is also charged with showing that the private sector would embrace this new approach to conservation by bringing additional money

to the table, and that process began immediately. Even though Congress provided for the Foundation to use federal funds to support its operating costs for the first three years of its existence, we only did that for two. Since 1988, the Foundation has not used one penny of our federal appropriations for operations. **Let me say that again, not one penny for salaries, travel, rent or other operations.** Every federally appropriated dollar has gone to projects with our partners. We take no overhead from our federally appropriated funds. This also means that not one action by a Foundation employee, not one piece of paper distributed by the Foundation, is paid for by our federal appropriation. A fact that our accountants can precisely document.

In addition, our partners have brought more than **$110 million dollars** in non-federal funds to the table to match just $41 million in appropriated federal funds in our 9 year history, and that is from a standing start of ground zero with no dollars in the bank, no membership and no endowment. I challenge anyone to find an institution that has reduced environmental conflicts between the federal government and the private sector more cost effectively than the Foundation, and that at the same time has put good ideas to work on the ground, using federal funds as a magnet to leverage private contributions.

The Foundation, through its ability to make strategic grants, and its legislated mandate to work with various federal agencies, has been an instrument of change within the federal agencies with responsibilities for natural resource management. We document what works and what does not. We have brought private business management principles to the federal agencies that we work with, and through our grants program demonstrate alternatives to command and control. We help the agencies reach out to new constituencies through partnerships, often with historic enemies. This success has been noted repeatedly in the press over the years. For example, in the January 1995 *Forbes* magazine, where, in the editorial section, Malcom S. Forbes, Jr. says: "(U)nlike most entities that get money from Congress ($7.5 million this fiscal year), this foundation has been an extraordinarily focused success."

Specifically, here is what we do.

We operate a grants program, where we use federally appropriated funds as seed money to leverage nonfederal support for natural resource projects. The Foundation uses these annual appropriations primarily to enhance fish and wildlife management and research. The Foundation believes that we can best leverage those federal dollars by running a highly competitive challenge grants program. As a matter of law, we are required to get a 1 to 1 match for our grants. As a matter of policy, we aim for an overall match exceeding 2 to 1. In fact, we have been able to stretch those federal dollars further, **averaging $3.68** of on the ground program delivered for every federal dollar appropriated since we were created.

As a contract requirement, our grantees specifically agree not to use our funding for

lobbying or litigation. (Note contract) The matching requirements placed on our grants serve to prevent our funds from freeing up other resources for lobbying or litigation. In fact, our very existence, and the policies we have adopted create a funnel - a suction pool, drawing funds away from lobbying or litigation and towards cooperative management programs designed to solve contentious policy issues and pave the way for new ways of doing the nuts and bolts of conservation business. It is also grossly unfair and inaccurate to suggest that because the Foundation has given a grant to some organization that lobbies or litigates that this somehow confirms that the Foundation is supportive of those actions. I believe our success bears me out, that if you can show combatants a more useful, cooperative approach, you can reduce the level of conflict and work toward solutions.

Some of our grantees and partners, such as state governments and private corporations such as Potlatch, Georgia Pacific, and Chevron, sometimes lobby and take it upon themselves to litigate. Some would point out that such restraints would impede states rights and be an intrusion of the federal government into the rights of citizens. Many of our partners are state agencies. We do not believe it is our role to ask states or private partners to give up these rights as a condition of receiving funds from us. I believe we serve as a model by assuring that funds we distribute are not used for political purposes, lobbying or litigation, and I can assure you that the Foundation practices that due diligence.

To the maximum extent possible, the Foundation's grant program brings together parties of differing perspectives on resource use to seek cooperative solutions to resource management. Through Foundation grants, cooperative, voluntary non-regulatory solutions are developed. We believe that Foundation support makes for substantially different and better conservation programs, so successful in fact that agencies are often inclined to adopt our prototype as their own, such as the FWS's Partners for Wildlife Program and BLM and USDA's "Bring Back the Natives."

To accomplish this cooperative goal, all grant applications are peer reviewed. As a matter of policy, and in order to further reduce conflicts, we have grant applications reviewed by relevant state and federal agencies. In addition, we seek the review and input from groups with traditionally differing perspectives. Through this process, we encourage groups to move from business as usual, where institutional views are entrenched and combativeness with differing perspectives is encouraged, to bridging the gaps between differing perspectives and fostering cooperation. For example, we now have those concerned with the loss of salmon habitat in the Pacific Northwest working with timber companies and ranchers on cooperative voluntary programs to protect salmon spawning streams. The result of this process is defusing adversarial relationships while developing better management practices.

It is also true that when working in the environmental arena you will find individuals, organizations and companies with strong opinions on environmental issues. Over the

years, the Foundation has worked with people of a wide variety of perspectives. Some of these groups advocate, lobby, educate, litigate and act politically. **They have never done so with Foundation funding.** A fine tooth examination of Foundation grants will find some projects among the 1200 we have done that, with 20-20 hindsight, we probably could have done better. But again, we view our grants as risk capital and after awarding over 1200 grants in 9 years, overall we have had more stupendous results such as the post flood buy out of the Louisia Levee District in Iowa and the Greenland high seas salmon fishery. No matter how fine the teeth, however, you will not find any grants where federal funds were used to lobby.

Responsiveness to Congress

The Foundation also provides services beyond our grants program. The first, is our annual "Needs Assessment." This program and the documents that are prepared every year exist because we get an annual formal request from the Appropriations Committee. These documents provide a review of the President's proposed Budget and an overview of federal fish and wildlife research and management programs. It is unique in providing this review and in-depth analysis of the agencies' proposed budgets.

The "Needs Assessment" makes suggestions for agency management improvement and funding, that this year are deficit neutral, providing offsets for recommended changes in spending. It identifies areas where taxpayers are not getting the best value for their funds. Again, this series of documents is produced at no cost to the taxpayer. The Foundation raises all the funds to research, produce, print and distribute these documents. They are provided free of charge to the Appropriations Committee and other interested Congressional Offices, and are made available to anyone that requests copies.

Another function we perform, is to respond to questions and requests for information. For example, at the request of the Speaker, we have outlined potential changes to the code that could change the command and control approach to endangered species to one using economic incentives. The approach is based on a system where instead of being a liability, these species could become an asset to private property owners. We simply present the analysis as a service, and then leave Congress to work its will. We serve as a resource. As I hope you have surmised, we have considerable expertise that is available to Congress to help in its deliberations on resource issues.

That completes a brief overview of the Foundation, but I believe there are other issues of interest to the Subcommittee. As part of my testimony today I am compelled to defend the Foundation against incorrect statements about the Foundation and set the record straight about who we are and what we do. First, while there is nothing in our legislative charter prohibiting it, and it is perfectly within the law; the Foundation does not lobby.

If every person who has an opinion, and at some time lets that opinion be known to members of Congress is a lobbying organization, then everyone and every group is likely to fall into that category. It is important for me to reiterate to this Subcommittee that all the actions of the Foundation are privately funded. I submit that calling the Foundation a lobbying organization is akin to calling farmers and small businessmen lobbying organizations. In both cases, the truth lies elsewhere.

Finally, last week in announcing this hearing, several statements were made about the Foundation to which I must respond. Please do not interpret this as a lack of respect for anyone here, or a questioning of your objectives. However, because the facts presented were just plain wrong, I would like to set the record straight. The Foundation has been accused of being something it is not, and carrying out activities that it has not. Let me review the charges made against us last week and respond to them.

Accusation: The "Stopping Taxpayer Abuse" release in package of 6/22 says: "...the National Fish and Wildlife Foundation lobbied to protect the National Biological Service from cuts in the FY 95 rescission bill," and suggests NFWF used taxpayer dollars.

Fact: No taxpayers dollars have ever been used by the Foundation to lobby Congress. Foundation staff did pass on a request of the Secretary of the Interior to its Board members for their assistance, but the communication pointed out that there would be no Foundation role, and that the Board members must act as private citizens. The communication itself was not paid for by federal funds as no federal funds are used to support our operations. All federally appropriated dollars to the Foundation are meticulously accounted for by the Foundation. 100% of those federal appropriated funds are spent on projects. None of those funds are spent on the Foundation, they go to our partners to carry out contractual activities for the conservation of fish, wildlife and plants, contracts that carry specific prohibitions against lobbying or litigation.

Accusation: The same statement also says that "because these organizations are not held accountable, we don't know exactly how many tax dollars are being used for lobbying."

Fact: The National Fish and Wildlife Foundation has two annual audits. In fact, During the Bush Administration the Foundation had a favorable Department of the Interior Inspector General's audit, and has passed all these examinations with flying colors. In addition, the Foundation makes an annual report to Congress that lays out our finances. No federal funds ever appropriated by the Foundation have ever been used for lobbying.

Accusation: Attachment B of 6/22 release is presented as a "partial list of federal grant money awarded to the National Fish and Wildlife Foundation totaling $176,011.

Fact: Rather than money received by NFWF, these are grants made by NFWF.

The list identifies 9 grants made by NFWF (5 of which were to U.S. government agencies) where $176,011 in federal dollars were leveraged to $438,149 with non-federal matches. None of these funds supported lobbying or litigation.

Finally, the National Fish and Wildlife Foundation is an instrument of change. If you are for more government, bloated bureaucracy, high overhead, more litigation, entrenched positions and adversarial relationships, don't call on us. The Foundation is an entrepreneurial risk taker and are proponents of change. If you are for fiscal restraint, nonregulatory approach to resource management - let us know. That is what we do very well.

Let me be clear who we are. We do not have a stable of well healed lobbyists prowling the Halls of Congress. We do not have a fancy press operation. We do not have members, nor do we produce a slick mailing or cause public protests to get our word out. We rely on our track record of on the ground accomplishments to speak for us and we count on the fairness of a well informed Congress to thoughtfully evaluate our performance.

The National Fish and Wildlife Foundation is an instrument of change. If you are for more government, bloated bureaucracy, high overhead, more litigation, entrenched positions and adversarial relationships, don't call on us. If you are for fiscal restraint, cooperation, rather than confrontation with the private sector, nonregulatory approach to resource management - let us know. That is what we do very well.

I am happy to answer questions

CHARGE	FACT
6/22/95 Statement suggests NFWF used taxpayer dollars to lobby Congress on the National Biological Service	No taxpayers $ used (1.NFWF does not lobby 2. all operating expenses are privately raised.)
Same statement says "because these organizations are not held accountable, we don't know exactly how many tax dollars are being used for lobbying."	1. NFWF is subject to Gov. audits (always cleared with flying colors) 2. Annual reports to Congress lay out our finances 3. no fed funds are spent on lobbying 4. NFWF has had favorable IG audit
"Stopping Taxpayer Abuse" release in Package of 6/22 says "The National Fish and Wildlife Foundation lobbied to protect the National Biological Service from cuts in the FY 95 rescission bill"	NFWF did not lobby Congress or anyone else on behalf of the NBS. It did pass on a request of the Sec. of the Interior to inform Board members - that communication states there could be no Foundation role.
Same release; "Because special interest do not open their books,	NFWF provides its books to Congress and is subject to regular audits.
Attachment B of 6/22 release is presented as a "partial list of federal grant money awarded to the National Fish and Wildlife Foundation totaling $176,011.	Rather than money received by NFWF, these are grants made by NFWF. The list identifies 9 grants made by NFWF (5 of which were to U.S. government agencies) where $176,011 in federal dollars were leveraged to $438,149 with non federal matches. None of these funds supported lobbying or litigation.

Associated
Business
Consultants

Neil L. Oldridge
President

Representative Don Young
Chairman, Natural Resources Committee
U.S. House of Representatives
2331 Rayburn House Office Building
Washington D.C. 20515

March 20, 1995

Dear Representative Young:

I am writing to express support of the National Biological Service of the U.S. Department of Interior. As a fellow life-long Republican, hunter and fisherman, you are well aware of the great need for a reliable source of scientific research, inventory data and monitoring reports on America's vast biological resources. This is exactly what the National Biological Service represents to all of us.

I am an active supporter of the "Contract With America" and believe that the National Biological Service is aligned with the Contract's spirit of cost effectiveness, efficiency and service to the American people. The National Biological Service has consolidated our nation's biological data into a single, impartial and independent agency capable of providing policy makers and citizens alike information about our country's fish, wildlife and plants. This information, properly used , has the potential of assisting legislators reshape what has, in many cases, become misguided and economy damaging environmental policy.

This is not to suggest that the National Biological Service cannot be improved, rather that it is an essential repository of scientific data that can be well used as we improve old and reformulate new environmental policy decisions.

Thank you for your consideration.

Sincerely,

Neil L. Oldridge

National Fish and Wildlife Foundation
GRANT GUIDELINES

Background

The National Fish and Wildlife Foundation (NFWF) is a private, non-profit, 501(c)(3) tax-exempt organization established by Congress in 1984. NFWF works to foster cooperative partnerships to conserve fish, wildlife and plant resources. NFWF stimulates private funding for conservation through the use of challenge grants.

What is a Challenge Grant?

All grants provided by NFWF are challenge grants. NFWF awards federal matching funds appropriated by Congress which must, in turn, be matched by non-federal funds raised by the applicant.

Funding Guidelines

NFWF has five initiatives through which challenge grants are awarded to priority fish, wildlife and plant conservation efforts: 1) Conservation Education; 2) Fisheries Conservation and Management; 3) Neotropical Migratory Bird Conservation; 4) Wetlands and Private Lands; and 5) Wildlife and Habitat. Grants in these initiatives generally fall in one or more of the following areas:

- *habitat protection and restoration;*
- *species conservation--applied conservation;*
- *applied research and policy development;* and
- *education and leadership training.*

Application Process

To be considered, an applicant first provides a brief preproposal to NFWF. If the proposal meets NFWF's funding guidelines, the applicant will be invited to submit a completed grant application form, together with all appropriate attachments to NFWF. There are three proposal deadlines: April 15, August 15, December 15. Applications received after a deadline will be postponed to the next project cycle at the sole discretion of NFWF.

In evaluating grant applications, NFWF considers the following parameters. It is the responsibility of the applicant to ensure that the application addresses these questions:

- conservation need;
- conservation impact of proposed action(s);
- opportunities for substantive multi-sector involvement/coordination;
- replicability;
- innovation;
- integration of program monitoring and evaluation;
- staff qualifications;
- ability to raise non-federal matching funds;
- ability to properly manage federal grant funds (OMB Circulars A-122, A-133);
- peer reviewer comments.

NFWF will not fund:

- political advocacy or litigation of any kind;
- shortfalls in government agency budgets;
- general administrative overhead;
- multi-year grants (applicant may reapply);
- basic research (including graduate research).

National Fish and Wildlife Foundation/1120 Connecticut Avenue, N.W./Suite 900/Washington, D.C./20036
Phone 202/857-0166 Fax 202/857-0162 E-mail projects@nfwf.org

Challenge Grant Requirements

NFWF requires a minimum of a one-to-one match for all grants it awards. This match must be cash derived from non-federal sources other than the grantee (applicant). Contributed goods and services and land donations may qualify for match as well. As a rule, NFWF seeks to achieve a two-to-one ratio (non-federal to federal) for its challenge grants.

Please note:

- Matching funds must be non-federal;
- Federally appropriated funds cannot be used to match a NFWF grant (e.g., PR/DJ, ISTEA, etc.);
- Private funds raised to match a NFWF challenge grant cannot be applied against other federal matching programs;
- Matching funds must come to NFWF directly from the third-party donor (checks made payable to "National Fish and Wildlife Foundation") for distribution with federal funds to the grantee.

NFWF Contacts

To submit a preproposal or for more information on NFWF funding priorities by initiative, please contact the following individuals at 202-857-0166 (by fax: 202-857-0162):

NFWF Initiative	Contact	E-mail Address
Conservation Education	*Kathleen Pickering, Director*	*pickering@nfwf.org*
Fisheries Conservation and Management	*Whitney Fosburgh, Director*	*fosburgh@nfwf.org*
Neotropical Migratory Bird Conservation	*Peter W. Stangel, Director*	*stangel@nfwf.org*
Wetlands and Private Lands	*Sara Nicholas, Director*	*nicholas@nfwf.org*
Wildlife and Habitat	*Gary Kania, Director*	*Kania@nfwf.org*

National Fish and Wildlife Foundation/1120 Connecticut Avenue, N.W./Suite 900/Washington, D.C./20036
Phone 202/857-0166 Fax 202/857-0162 E-mail projects@nfwf.org

Mr. MCINTOSH. Thank you, Mr. Eno. And I do want to pursue, actually, a different line of questioning with you. And that was what type of pressure the Secretary brought to bear on you. And, unfortunately, my anticipated plan of being able to turn over the chairmanship of this hearing won't work because it's a quorum call followed by a vote. So I am going to have the committee stand in recess until we return from the vote. Please stand there. And I appreciate your coming today on such short notice. The committee is in recess.

[Recess.]

Mr. MCINTOSH. The committee is reconvened. There will be a series of votes, probably in about 20 minutes or so. So we may have to take a couple more recesses. Let me now turn to our last witness on this panel, although I notice he's not there. I hope he's still here with us. Oh, good. Our next witness is Mr. Charles Brown, Jr., of the Independent Sector, and I also understand with the YMCA.

Mr. BROWN. Yes.

Mr. MCINTOSH. I appreciate you coming today, and welcome.

Mr. BROWN. Thank you. My name is Charles Brown, and I am the president judge of the Court of Common Pleas of Center County, PA and the newly appointed chairman of the Public Policy Committee of the YMCA of the USA. The YMCA of the USA is a member of Independent Sector on whose behalf I am appearing today. And I do request that my full remarks be made part of the record.

Independent Sector is a nonprofit coalition of 800 corporate, foundation, and voluntary organization members with national interests and impact in philanthropy and voluntary action. The organization's mission is to create a national forum capable of encouraging the giving, volunteering, and not-for-profit initiatives that help all of us better serve people, community, and causes.

Mr. Chairman, I appreciate very much the opportunity to present this testimony. And, indeed, I am honored at this once-in-a-lifetime opportunity. However, I am deeply troubled by yours and other comments that have been made in announcing this hearing. To argue that nonprofit organizations receiving Federal grants should be barred from substantial advocacy reflects a fundamental misunderstanding of the historic relationship between nonprofits and the Government.

Nonprofits have always been involved in both service delivery and advocacy. And the public benefits from these dual roles both by providing an alternative to direct governmental delivery of public services and by enabling individuals to speak out effectively on public policy issues. Nonprofits serve to limit, rather than to expand, the power of the State. Barring Federal grantees from substantial advocacy, activity is neither grant reform nor good government.

No one knows better the extent of a community's needs for services or how best to improve the effectiveness of Federal programs than the nonprofits on the front lines of service delivery. Excluding these nonprofits will diminish, not protect, the policy process. The YMCA provides a perfect example of how the public benefits from this dual role of nonprofits as advocates and service providers.

Autonomous local YMCA's in nearly 1,000 communities across America provide a broad range of community services, including

child care, youth and adult fitness programs, outreach programs for at-risk youth and families, and an increasing array of programs for senior citizens. In 1993, Government grants accounted for 7 percent of total YMCA revenue nationwide. And for some YMCA's, the percentage was substantially higher.

YMCA's also believe that we have a civic responsibility to participate actively in the public policy process on issues related to our mission of promoting strong kids, strong families, and strong communities. I have attached my remarks, a resolution adopted by the YMCA national board in 1989 on goals of YMCA involvement in the public policy process.

Consistent with the principles set forth in this resolution, local YMCA boards participate in an active grassroots process to define a YMCA public policy agenda and to present that agenda to public officials at the Federal, State, and local level. The principal result of YMCA advocacy is not more government or less government, but better government. Let me illustrate.

YMCA's are the largest single provider of afterschool child care in the United States. In 1989, the U.S. Congress had a House version of what became the child care and development block grant. This would have made public schools—the House version would have made public schools the only eligible recipients of Federal school-age child care funds.

The YMCA of the USA gave Senator Orrin Hatch a list of scores of communities around the country that had chosen YMCA's, not schools, to run school-based child care programs. Local YMCA's simultaneously urged their Representatives and Senators to support a more flexible approach. This information and advocacy enabled Senator Hatch to lead a successful effort to prevent Congress from overriding local decisions and imposing a single federally mandated approach to school-age child care.

At a time when millions of Americans are increasingly disaffected from the political process, YMCA's are promoting precisely the sort of constructive grassroots participation essential to the renewal of our democratic institutions. YMCA's also provide the Federal Government with a community based delivery system for federally funded services that is both cost effective and highly responsive to local concerns and local values.

As the YMCA experience makes plain, the fact that many nonprofits engage both in the delivery of federally funded services and in advocacy on Federal, State, and local issues is a fundamental strength, not a weakness of our American system. Existing law properly prohibits the use of grant funds to cover either the direct or the indirect costs of lobbying.

This rule was enforced by Federal auditors. And, the level of compliance appears to be quite high. However, that apparently is an issue with many of the Members of Congress and one that is properly to be addressed. There is simply no justification for imposing more restrictive rules and burdensome, new administrative requirements at a time when nonprofits are being called on to expand their services to help offset cuts in Federal spending.

This is particularly true when nonsimilar restriction is proposed for Federal contractors who would remain free to lobby with their nongovernment funds. Finally, conditioning the receipt of Federal

grant funds on grantees' renunciation of their first amendment right to lobby with private funds raises serious constitutional concerns.

If Congress can refuse to subsidize grantee's lobbying and require strict separation of federally funded and privately funded activities, it cannot limit grantee's right to lobby with their private funds. Mr. Chairman, again, it has been an honor to appear before this committee. And I must, for all of the reasons stated above on behalf of the YMCA of the USA and on behalf of Independent Sector and its member organizations, strongly urge you and Representatives Istook and Ehrlich not to go forward with your proposed legislation. Thank you.

[The prepared statement of Mr. Brown follows:]

Summary of
Statement by

THE HONORABLE CHARLES C. BROWN, JR.
on behalf of
INDEPENDENT SECTOR

To argue that nonprofit organizations receiving federal grants should be barred from substantial advocacy reflects a fundamental misunderstanding of the historic relationship between nonprofits and government.

Nonprofits have always been involved in both service delivery and advocacy, and the public benefits from these dual roles. Both by providing an alternative to direct governmental delivery of public services, and by enabling individuals to speak out effectively on public policy issues, nonprofits serve to limit rather than expand the power of the state.

Barring federal grantees from substantial advocacy activity is neither grant reform nor good government. No one knows better the extent of a community's needs for services or how best to improve the effectiveness of federal programs than the nonprofits on the front lines of service delivery. Excluding these nonprofits will diminish, not protect, the policy process.

Existing law properly prohibits the use of grant funds to cover either the direct or the indirect costs of lobbying. This rule is enforced by federal auditors, and the level of compliance appears to be quite high. There is simply no justification for imposing more restrictive rules and burdensome new administrative requirements at a time when nonprofits are being called on to expand their services to help offset cuts in federal spending. This is particularly true when no similar restriction is proposed for federal contractors, who would remain free to lobby with their nongovernment funds.

Finally, conditioning the receipt of federal grant funds on grantees' renunciation of their First Amendment right to lobby with private funds raises serious constitutional concerns. While Congress can refuse to subsidize grantees' lobbying, and can require strict separation of federally-funded and privately-funded activities, it cannot limit grantees' right to lobby with their private funds.

Statement by

THE HONORABLE CHARLES C. BROWN, JR.
on behalf of
INDEPENDENT SECTOR

HEARINGS BEFORE THE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS
HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Room 2154, Rayburn House Office Building
2:00 p.m., June 29, 1995

My name is Charles C. Brown, Jr. I am the President Judge of the Court of Common Pleas of Center County Pennsylvania and Chairman of the Public Policy Committee of the YMCA of the USA. The YMCA of the USA is a member of INDEPENDENT SECTOR, on whose behalf I am appearing today.

INDEPENDENT SECTOR is a nonprofit coalition of 800 corporate, foundation, and voluntary organization members with national interest and impact in philanthropy and voluntary action. The organization's mission is to create a national forum capable of encouraging the giving, volunteering, and non-for-profit initiative that help all of us better serve people, communities and causes. The organization of INDEPENDENT SECTOR and its mission derive from its members' shared commitment to fundamental values relating to the creation and maintenance of a truly free society.

I appreciate very much the opportunity to present this testimony, but I am deeply troubled by Chairman McIntosh's comments in announcing this hearing. Along with Representatives Istook and Ehrlich, Chairman McIntosh has decried what he characterizes as a "vicious cycle [of] taxpayer abuse" in which federal grantees use federal grants to lobby for still more federal funding without any effective government oversight or public accountability. To put an end to these alleged abuses, Chairman McIntosh and Representatives Istook and Ehrlich have drafted legislation that would impose major new restrictions on the political advocacy activities of federal grantees.

The Historic Relationship Between Nonprofit Organizations and Government

The Chairman's comments, and his legislative proposal, reflect a serious misunderstanding of the historic relationship between private nonprofit organizations and government. Federal grantees are not, as the Chairman's comments suggest, children of the federal government whose role is to be seen but not heard, mere

tools for the delivery of federally-funded services. On the contrary, in every field of social endeavor, private nonprofit initiatives long preceded any federal involvement. Nonprofit organizations are neither creatures of nor parasites on big government.

Instead, in a very real sense these organizations reflect Americans' strong preference for less government and more private initiative. Since before the founding of the Republic, private nonprofit associations have played two essential roles in our public life. First, they have allowed private citizens to address a host of public concerns without recourse to government action. But second -- and equally important -- they have provided, along with political parties, the principal vehicle through which groups of citizens could join together to express their beliefs about the proper role of government.

As such, private nonprofit organizations are vital mediating institutions between the individual and the state. Both by minimizing the need for direct government action and by giving voice to individuals who would otherwise be largely powerless in the face of state power, the nonprofit sector creates the essential social context for our system of democratic pluralism.

The leaders of many of the world's emerging democracies have come to recognize this importance of nonprofit institutions as a bulwark against a totalitarian state, and are working to nurture a U.S.-style nonprofit sector. We should be no less concerned about preserving this aspect of our tradition than they are about replicating it.

These historical and international perspectives must inform our understanding of the evolving partnership between nonprofits and government. Over the past half century, the American people have chosen to expand the federal role in funding a broad range of public services. However, to limit the power of a centralized federal bureaucracy, Americans have chosen to have the major portion of these services delivered not by government but rather through the pre-existing network of community-based nonprofit organizations. Thus:

Church basements have become the sight of federally-funded Headstart programs;

Boys and Girls Clubs receive federal funds to start clubs in public housing projects;

YMCAs use federal funds to bring more low-income children into after-school child care programs;

Goodwill Industries receives federal funds to expand training programs for the disabled;

Federal grants enable Catholic Charities to expand programs for the homeless.

As this partnership has evolved, both sides have been concerned about preserving their distinct roles. To safeguard their fundamental autonomy, many nonprofit organizations have set limits on the amount of government funding they will accept and have adamantly defended their right to continue to speak out on public issues. Likewise, the federal government, while acknowledging the advocacy rights of private, nonprofit organizations, has required that they pay for such activity with private funds.

The Existing Bar on the Use of Federal Grant Funds for Lobbying

Accordingly, the OMB rules governing nonprofit organizations that receive federal funds require strict financial separation of grantees' privately-funded and federally-funded activities. Since 1984, these rules have expressly prohibited the use of federal funds to pay the costs of lobbying and electioneering. Strict accounting standards require federal grantees to make a reasonable allocation of overhead costs between federally- and privately-funded activities and to demonstrate that none of the overhead costs properly attributable to lobbying or political activities have been charged to the federal grant. Grantees' records are subject to review by federal auditors, who have the authority both to require repayment of lobbying or political costs charged to the federal grant and to impose penalties for willful violations.

The large percentage of federal grantees that are exempt from tax under section 501(c)(3) of the Internal Revenue Code -- the exemption category for charitable, educational, religious, and scientific nonprofits -- are subject to even more stringent tax law restrictions. All section 501(c)(3) organizations are absolutely barred from partisan political activity. Section 501(c)(3) organizations classified as "private foundations" are likewise prohibited from lobbying, while those organizations qualifying as "public charities" are subject to strict limits on the portion of their budget that can be devoted to lobbying.

By requiring strict financial separation of federal grant activity and privately funded advocacy, the OMB rules strike an appropriate balance between the government's legitimate interest in avoiding federal subvention of lobbying and political activity and the right of citizens' groups to use their private resources to speak out on public issues.

Significantly, in the early 1980s the Reagan administration considered, but ultimately rejected, more restrictive rules that would have required physical as well as financial separation -- that is, would have required federal grantees to establish wholly

separate facilities and staff for their federal grant programs and privately-funded advocacy. The practical impossibility of achieving such physical separation would have forced most grantees to choose between federal funds or private advocacy, a choice that would have hardly served the public interest.

Included as part of the same proposal -- and also ultimately rejected -- was an expansion of the definition of lobbying to encompass efforts to influence executive branch as well as legislative decisions. OMB quite properly concluded that federal policy should encourage, not discourage, grantees from working with federal agencies to improve the effectiveness of the federal programs in which they participate.

The Case Against Additional Restrictions on Privately-Funded Advocacy by Federal Grantees

Current federal grant rules recognize that the public benefits precisely because many nonprofit organizations' missions encompass both advocacy and service delivery. No one has a deeper understanding of a community's needs for low-income child care, a battered women's shelter, a hospice, or a sheltered workshop than the community-based nonprofits working day in and day out to provide these services. No one has a better grasp of how to improve the effectiveness of federal programs than the nonprofits on the front lines of service delivery. These groups' volunteers and staff leaders rightly see it as their civic duty to contribute their wisdom and commitment to the public policy process.

This synergy between advocacy and service delivery can be just as important in the case of organizations whose primary focus is advocacy. Nonprofits that have earned the trust of a community or special needs group through effective advocacy on their behalf often lend that credibility, and their substantive expertise, to federally-funded research or public education programs, dramatically increasing the effectiveness of these federal efforts.

The YMCA provides a perfect example of how the public benefits from the dual role of nonprofits as advocates and service providers. Autonomous local YMCAs in nearly a thousand communities across America provide a broad range of community services, including child care, youth and adult fitness programs, outreach programs for at-risk youth and families, and an increasing array of programs for senior citizens. In 1993, government grants accounted for 7 percent of total YMCA revenue nationwide, and for some YMCAs the percentage was substantially higher.

YMCAs also believe that we have a civic responsibility to actively participate in the public policy process on issues related to our mission of promoting "strong kids, strong families, and strong communities." I have attached a resolution adopted by the

YMCA National Board in 1989 on "Goals of YMCA Involvement in the Public Policy Process." Consistent with the principles set forth in this resolution, local YMCA boards participate in an active grass-roots process to define a YMCA public policy agenda and to present that agenda to public officials at the federal, state, and local level.

The principal result of YMCA advocacy is not more government or less government but better government. Let me illustrate with a simple example:

> YMCAs are the largest single provider of after-school child care in the country. In 1989, the House version of what became the Child Care and Development Block Grant would have made public schools the only eligible recipients for federal school age child care funds. The YMCA of the USA gave Senator Hatch a list of scores of communities around the country that had chosen YMCAs -- not the schools -- to run school-based child care programs. Local YMCAs simultaneously urged their Representatives and Senators to support a more flexible approach. This information and advocacy enabled Senator Hatch to lead a successful effort to prevent Congress from overriding local decisions and imposing a single federally-mandated approach to school age child care.

At a time when millions of Americans are increasingly disaffected from the political process, YMCAs are promoting precisely the sort of constructive grass-roots participation essential to the renewal of our democratic institutions. YMCAs also provide the federal government with a community-based delivery system for federally-funded services that is both cost-effective and highly responsive to local concerns and values.

As the YMCA experience makes plain, the fact that many nonprofits engage both in the delivery of federally-funded services and in advocacy on federal, state, and local issues is a fundamental strength -- not a weakness -- of our American system. The advocacy activities of nonprofit federal grantees are no more remarkable, or troubling, than lobbying by General Motors, Boeing, and other government contractors or, indeed, lobbying by private citizens in defense of their Social Security and veterans benefits or their farm subsidies.

Should every individual or group that receives substantial federal benefits -- grants, contracts, transfer payments, loans, etc. -- be barred from political advocacy or permitted only an insubstantial amount of advocacy? Presumably, those criticizing the advocacy activities of federal grantees would never propose such a general rule. This highly selective nature of their concern is deeply troubling.

A review of draft legislation prepared by Chairman McIntosh and Representatives Istook and Ehrlich reinforces these concerns. The draft legislation would:

Prohibit an organization from receiving federal grants for a six year period if in any year the organization's expenditures on political advocacy equal or exceed five percent or more of the first $20 million of its privately-funded expenditures, and one percent of additional privately-funded expenditures;

Broaden the impact of this rule by establishing an extremely broad definition of political advocacy; and

Impose major new record-keeping and reporting burdens on federal grantees.

We recognize that this legislative proposal is still being revised. However, our concerns arise not from the details of the proposal but from its basic premise -- that the public suffers when organizations that receive federal grants also engage in substantial advocacy activity. For all of the reasons discussed above, this premise is simply wrong. Existing requirements that grantees not spend grant funds for lobbying or political activity should, of course, be strictly enforced. However, additional restrictions are not only unnecessary but would be highly damaging to the long-standing partnership between government and the nonprofit sector. As Members of Congress consider the proposed restrictions, we urge them in particular to bear in mind the following:

There is no principled basis for limiting the advocacy activities of federal grantees but not of federal contractors.

Conditioning the receipt of federal grant funds on grantees' renunciation of their First Amendment right to lobby with private funds raises very serious constitutional concerns. While Congress can constitutionally refuse to subsidize grantees' lobbying and require strict separation of federally-funded and privately funded activities, it cannot constitutionally limit grantees' right to lobby with their private funds.

Burdening nonprofit grantees with major new record-keeping and reporting requirements will consume resources that would otherwise be available to expand services. At a time when nonprofits are being called on to help offset the cuts in federal social programs and the public is demanding less bureaucracy and greater cost-effectiveness in government programs, imposing burdensome new administrative requirements would be a big step in the wrong direction.

* * *

For all of these reasons, on behalf of INDEPENDENT SECTOR and its member organizations, I strongly urge Chairman McIntosh and Representatives Istook and Ehrlich not to go forward with their proposed legislation.

Goals of YMCA Involvement in the Public Policy Process

Advance YMCA mission objectives

Through effective public policy advocacy on mission-related issues, the YMCA can advance its mission objectives far beyond the persons YMCAs serve directly through their programs.

Provide nonpartisan education and identify consensus on issues related to the YMCA mission

The YMCA is a mainstream community organization encompassing a diversity of political perspectives. The role of the YMCA should be to help develop a consensus position that can command broad support among local associations. YMCA public policy positions will carry far more weight if they can legitimately be said to represent the consensus views of a thousand local YMCAs rather than merely the national leadership. In order to encourage and facilitate participation, the YMCA public policy process will provide reliable, balanced, and "user friendly" resource materials on the issues under consideration. The resource materials should be nonpartisan and assist YMCAs to make informed priority decisions about how to allocate public resources and YMCA advocacy efforts.

Encourage participation in the political process

At a time when millions of Americans are increasingly disaffected from the political process, a further important objective is simply to encourage understanding of and participation in the political process. As a movement whose stated objectives include helping individuals to develop their leadership capacities and to grow as responsible citizens, the YMCA has a special responsibility in this regard.

Strengthen the mission focus of YMCA leadership

Involving local YMCA leaders in a sustained, well-informed discussion about major public policy issues related to the YMCA mission can significantly strengthen their ability to provide effective, mission-focused leadership for their YMCAs and for their communities. By discussing and evaluating major public policy issues related to the YMCA mission, local YMCA leaders will develop both a broader understanding and a renewed sense of the importance of YMCA activities.

Preserve the ability of the YMCA to accomplish its mission

Through effective public policy involvement on mission-related issues, local YMCAs will reinforce the public's perception of the YMCA as a mission driven community service organization. YMCA leaders will also develop advocacy skills and strengthen important political relationships at all levels of government. The experience gained through this effort will prepare local associations to better respond to issues which may affect YMCAs' ability to serve their communities.

Adopted by the National Board of YMCAs on March 19, 1989.

Mr. McINTOSH. Thank you very much, Mr. Brown. At this point, we will have questions from the committee to any of the witnesses. And I'll lead off with some of the questions I have. We'll try to have each of us be there for 5 minutes. The first question I have is for Mr. Eno. And I appreciate your coming on short notice, as I said earlier.

The matter that I would like to look into parallels one of the concerns that first piqued my interest and really got us looking into the extensive nature of this government-funded lobbying. And that was an operation that another agency, not the Department of the Interior, but EPA set up to lobby on the contract regulatory reform issue. And they set up a network of outside groups that they enlisted in that effort.

And the memorandum that we've blown up there on the chart indicates from one of your staff members that Secretary Babbitt had engaged in a similar type of activity, calling upon your organization to in some way aid their efforts to lobby Congress to keep the biological survey.

And you indicated in the answer to one of our questions that, to the best of your knowledge, one letter was sent and that was it. I guess the question I have for you is, what was it like, and isn't there a problem when you're receiving money from the Interior Department and dependent upon them for a fair amount of the funding for your organization, and the Secretary of the Interior calls you up and says, I really need your help on this one; we need to lobby this Congress; we disagree with the way they're going on the biological survey; and we need your help?

Now, maybe they don't say explicitly, we're going to cut off your funds if you don't. But isn't there an implicit pressure as a result of them funding your activities that you need to assist them in those type of lobbying efforts.

Mr. ENO. Mr. Chairman, I think you have to understand the circumstances here because this is really a nonstory. When this letter was written in March, we had just been in frequent communication with the Secretary's office. As I said in my testimony, he appoints my board of directors. They had just appointed three new board members who happened to be Republicans. And we had been in extensive communication, as you might imagine, because that is not what you would have expected of a Democratic Secretary.

And at the end of that—or, sort of following on the heel of that, they obviously were occupied with the National Biological Survey. And they made this request of us. Now, the only reason we put that letter—or even put this matter on paper was because we had an extraordinary number of new members of the board, more than half of my board at that time were brand new. They didn't know the rules of the road.

For that matter, neither did the people in the Secretary's office. We've had a number of handlers in the Department in the last 2 years, and it's been, really, a revolving door. And we got a call from somebody in the Secretary's office who said, hey, can you guys help us on NBS? We said, no, we're not allowed to do that. Well, can your board help us? We said, no, they're not allowed to do that. Well, could they help us individually? Well, that's allowed.

Because my board members were all brand new, we did a letter to explain to them the rules of the road. Now, only one board member responded. It was Neal Oldridge, former CEO of Remington Arms. He happens to be a close friend of Chairman Young's. And he wrote a letter saying, hey, I'm a big hunter and fisherman, and we need the Biological Survey. That's all there is to it.

There was not extreme pressure. I was on the road at the time, which is why my deputy did the memorandum. I mean, she mentioned this to me by phone. And because so many of the board members were brand new, I said, put it on paper so they understand what their obligations are or are not. That's it.

Mr. MCINTOSH. Mr. Eno, I am sure that it's a rare occasion where these things are put into writing. And perhaps a more normal course would be those type of communications would be handled orally. And that's become the case more frequently here in Washington since the Freedom of Information Act. But putting it in writing is not what is troubling me.

What's troubling me is that the Secretary and his office, after you told them, no, we don't lobby as an organization; no, we don't lobby as members of the board of directors, kept pushing the matter and felt it was important to enlist your aid in that.

Mr. ENO. Mr. Chairman, it wasn't so much—I mean, I can't speak for why the Secretary felt it important. I mean, obviously, this is an important issue for him. But his staff who was handling this was new, did not know the rules of the road anymore than my board did, and was as much asking a question of us since we know what the rules are as he was exerting pressure.

He wasn't exerting pressure. Those were questions, and then we were specifying them back to our board.

Mr. MCINTOSH. Wouldn't it be a lot cleaner if we had a statute that said very clearly, as a grant recipient, you can't engage in lobbying. You can choose one or the other. In your case, you're created by a special Federal statute so there's some unique considerations. But it would be a lot easier for you to be able to point to a statute and say, it's illegal for us to do this and have that be the answer to the inquiry from the Secretary's office. Hopefully, they would respond to that.

Mr. ENO. I'm just not qualified to speak to that on this basis. I mean, we're a hybrid organization with sort of one leg in the Government because we get Federal funds—and at one time, actually, our offices were in the Department—and one side on the private sector. The bulk of my activities are in raising private moneys and dealing with the private sector side. And I'm just not qualified to answer your question at this point.

Mr. MCINTOSH. Thank you. Let me also thank Mr. Brown for coming, and, obviously, we have a different viewpoint of some of these issues. And I appreciate you coming and sharing yours.

Mr. SHADEGG. Will the gentleman yield?

Mr. MCINTOSH. Yes.

Mr. SHADEGG. If the gentleman would yield for just a moment, I'd like to follow up with the previous witness. We're left with this impression of absolute innocence. And I'd like to ask him a couple of questions to follow up.

Mr. MCINTOSH. Certainly, I'll yield.

Mr. SHADEGG. Mr. Eno, are you familiar with Steve Robinson?

Mr. ENO. Yes, sir, I am.

Mr. SHADEGG. OK, who is Steve Robinson?

Mr. ENO. He was a schedule C political appointee in the Reagan administration, who served as a Deputy Director of the Fish and Wildlife Service, and subsequently in the Bureau of Land Management. He was appointed to our board by Secretary Lujan and he served on our board for about 2 years. He resigned about a week after the election in 1992; wrote a letter that was referred to, alleging financial and other improprieties, which Secretary Lujan used to start an IG investigation of the Foundation.

The IG investigation proceeded, and we came up with an absolute clear slate. All the allegations were found to be groundless. And I mean, I can tell you a little more if you want.

Mr. SHADEGG. Well, what were the nature of his allegations?

Mr. ENO. He suggested that we lobbied and there were financial improprieties, if I remember. I mean, it was a totally fallacious letter. And he was not a particularly productive board member.

Mr. SHADEGG. Gee, it seems like you don't like him very much. He did write a letter, which does detail his allegations that your organization back at that time was engaged in involvement in political advocacy and outright lobbying for environmental causes. And he goes on to detail some of that. I take it you just think he——

Mr. ENO. I would suggest you read the IG report, sir.

Mr. SHADEGG. OK.

Mr. ENO. And I can tell you, and I urge you, if you would like to pursue this matter with my board, that his allegations were maliciously wrong and groundless.

Mr. SHADEGG. Well, he's written us a letter of his own, just yesterday, in which he details some of this information. Let me pursue it this way—wouldn't you be protected, to follow up on the chairman's question—wouldn't you be protected if there were a clear statute which would make charges of this nature unfounded on their face, because you had a statute that prohibited clearly engaging in this kind of conduct, which he alleges you engaged in, and which the Secretary is, at least on the face of his memo, urging you to engage in?

I mean, I guess I'm puzzled why you wouldn't want such a restriction in place to put you aboveboard and to protect your board members and to protect your organization from a disgruntled employee, if that's what you say this gentleman was.

Mr. ENO. Congressman, first of all, we had a reauthorization subsequent to Mr. Robinson's departure from the board. We've had five reauthorizations. If Congress wants to modify our legislation—unlike every other foundation in this room or in this country, we have specific legislation as guidelines for the foundation. And second, I'm not about to——

Mr. SHADEGG. So you're agreeing with me that to put into that legislation, and/or generically into the law, a specific prohibition against this kind of lobbying with Federal funds, grants that are given to you. It might be a good idea to protect organizations such as yours.

Mr. ENO. Possibly. I cannot—you asked me to comment on a piece of legislation that I have never seen, don't know the contents of, or what it's breadth is. So I can't comment on that, sir.

Mr. SHADEGG. No; I think we asked you to comment on an idea which the chairman asked you to comment on, and which I've asked you to comment on. And I'd appreciate your candor on it. I think it might be a good idea for your organization and similar organizations like yours to prohibit you—and to make it clear that such funds are not to be used for lobbying purposes.

And I believe you just indicated that might be a good idea, and I appreciate that. Thank you.

Mr. ENO. I think I had words put in my mouth. I didn't even respond. But if you want, I mean, as a matter of record, we put that in our grant guidelines, and if the Merchant Marine Committee and the Environment and Public Works Committee want to address that for our authorization, I have no problem with that, sir.

Mr. SHADEGG. So you have no problem with——

Mr. ENO. But recognize that my foundation is a unique foundations. There are not a lot of replicas of us all over the place.

Mr. SHADEGG. Well, it seems to be at least an issue, with regard to your foundation. And it apparently is an issue with regard to others. The issue has come up in other committees on which I sit, and where there's been other testimony—testimony about the Park Service using outside organizations to lobby on their behalf and making grants to those. It is not an issue which is unique to your organization or to others.

And I'm just trying to explore—if it's in your guidelines, then it seems to me it is a worthwhile idea, and probably a worthwhile idea to put into statute so it would apply not only to you, but to others.

Mr. MCINTOSH. If I may reclaim my time. And in fact, with the bells going off, the staff indicates to me that this 15-minute vote will be followed by two 5-minute votes. And so we'll stand in recess to go vote. If I could ask this panel to indulge us a little bit longer, I've got a few more questions, and I think some of the other Members do, as well. I appreciate you coming, and the committee is in recess.

[Recess.]

Mr. MCINTOSH. The subcommittee is reconvened. I would like to ask the current panel to suspend. We have with us Senator Simpson, who is here and on a tight time schedule. I want to first of all thank the Senator tremendously for coming over and participating. I want to also thank Chuck Blehouse, who made this happen at the staff level.

Before hearing from you, let me just say, and I don't do this gratuitously, I have admired your work as a member of the Judiciary Committee for years now, and your commitment to honesty and integrity, and to the principles of constitutional government. And your work, more recently, in uncovering some of the problems with outside lobbying groups, particularly the AARP, I think is courageous and to be commended.

So, welcome to our subcommittee. We're often referred to as the committee to cut red tape. We don't necessarily accept the status quo here over in the House. And we welcome your insight into this

particular problem of outside groups receiving Federal grants and turning around and lobbying the Congress and the Senate of the United States. So thank you very much, Senator Simpson, for coming, and please enlighten us on what you've been finding out over in the Senate.

STATEMENTS OF HON. ALAN SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING; AND HON. ERNEST J. ISTOOK, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Senator SIMPSON. Well, Mr. Chairman, you are a very courageous young man, David McIntosh. And I thank you for inviting me to testify. It reminds me of the hearings I hold myself in the Senate on Social Security. I know, don't throw anything; see, nobody's supposed to mention that. And so we won't mention it, and people your age will have nothing when we don't keep mentioning it. But that's another story.

So it is very important what you're doing. And you are going to face some extraordinary opposition, in taking on this issue, from various lobbying organizations. And you and every member of the subcommittee or the committee will need to display a substantial ration of courage to affect any reforms. Because we all know how the game is played in Washington, DC.

Whenever any type of reform is proposed, and whenever there is a danger that someone, somewhere will lose their access to Federal money, they will find the most sympathy-provoking, heart-wrenching way of making the case that the money should keep right on flowing. I can assure you at this very moment the search is being conducted for the most laudable tax exempt groups that have ever been organized, ever conceived in the mind of man.

Tireless people, selfless, altruistic beyond mention. And they will be brought here into the hallowed Halls of Congress as living breathing examples of the ravaged victims of proposed reform. Believe it, believe it. And so I think I feel we must stay focused on the nub of the problem, as I have found it to be. And you know of my own particular skirmishes with one particular tax exempt business. Their name shall remain unuttered. They shall remain nameless.

But I believe that reform is best discussed in that broad based area, untainted by perceptions of partisanship. You really can't get into that one, or even philosophy. That can get you off on a twister, too. But directly address the very aspects of the problem of funding lobbying organizations. And the challenge is first and foremost the critical task of maintaining impartial administration of government.

Look what we've done in the past, in our first century. We had terrible problems mixing political activity with government functions. Remember Daniel Webster, on the floor of the Senate, was speaking for the Bank of Boston. You can't do any better than that. And he was involved with the bank; and you can't get any better than that. And so these things have been mixed up.

And whether it be the activity with postal delivery, law enforcement, tax enforcement, anything else, we've tried to accomplish things, tried to strike a balance—like the Hatch Act, what is prop-

er, what is improper, still undergoing alteration today. Individual rights, first amendment rights, and we try to draw the line between our own political activities and our official functions. And we may disagree among ourselves about how best to do this.

But I think the goal is appropriate. And as I say, I admire you greatly. I know who you are, remember your work here, since I came to Washington in 1979, and I admire this. But in one area, we have really failed, completely failed to insulate the public good from the worst excesses of the old spoils system. The Federal Government continues to give millions and millions of dollars in Federal grant money to be administered by tax exempt lobbying organizations.

Now, when such an organization receives a Federal grant, Mr. Chairman, there is no doubt that its own political viewpoint is well advanced by that, simply because of the increased good will and improved image that it can buy with that grant money by doing things and doing good—providing services for American citizens. And in reality, the American taxpayer is providing these services.

But it is the lobbying organization that attracts the support, attracts the sympathy, attracts the allegiance, because it can pose as "good citizen" doing good, giving to the community. And one absurd example, of course, is, again, that one large tax exempt organization, nameless, which underpaid its own unrelated business income taxes by $135 million, and just wrote a check. And they received grants, and part of the purpose of the grant was to provide to that organization and its members and others tax counseling.

Now, you really need a lot of tax counseling if you have to pay $135 million in lieu of taxes. You really need all the education you can possibly have. And to think that then they go out—it is totally bizarre that Federal money is being directed into their hands for that purpose; because obviously, they're not very good at it. Their record is rather poor.

We have to be very careful. I know you will be. There are some wonderful tax exempt organizations administering Federal grants with the purest intentions. I mean that. They're providing service, solving problems. We must be careful not to cut them off, or the good work that is done, and must draw the line as to what is a way that is fair and impartial.

So I just say to you, sir, I think that where we need to go is in the distinction to be drawn between a 501(3)(c) and a 501(c)(4). And believe it or not, I think there are 50 types of (c) organizations out there. I can't even remember—26 501(c) (3), (4), (5), (6), (7)—an extraordinary number of them. But we're looking at the two, because according to the GAO study—and this fine gentleman here testified before us in the Senate—62 percent of all tax exempt organizations fall into those two categories, 501 (c)(3) or (c)(4).

Those are the two designations that are most attractive to those who aspire to tax exempt status. And it is my belief, Mr. Chairman, the very construction of the law, 501(c)(4) is incompatible with the delivery of Federal grant money. And I would propose, respectfully, simply, forbidding any 501(c)(4) organization from receiving and administering Federal grants. Even though I suggest other alternatives for the consideration of those here, who are going to be very reluctant to take that needed step.

Under current law, there's no statutory limit on how much a 501(c)(4) organization can spend on lobbying—no limit whatsoever. Contrary to 501(c)(3), which can spend a floating percentage of their revenue on lobbying, dependent on how much revenue they bring in, on up to a global lobbying cap of $1 million. But (c)(4)'s are subject to no such cap. And as a (c)(4), they contain, within that category, the most powerful organizations in this country.

The ones which send Members of Congress and their loyal staffs scurrying in abject terror, as they come through the door—they're here; they're out there right now. And they're often organizations which have hundreds of millions in annual revenue; spend tens of millions annually in their efforts to influence legislation; and yet are able to offer services, which in reality are paid for with taxpayer bucks.

Small wonder public debate is so often distorted and skewed beyond recognition, when the organizations that possess the greatest ability to do this are simultaneously being subsidized by the Federal Government, that is, you and me and the people in this room. So I would suggest, Mr. Chairman, that if an organization's principal objective is to serve the public good, and it feels it can best do this by administering public programs, then it ought to file as a 501(c)(3), and accept that category's limit on lobbying expenses.

An organization cannot simultaneously be a disinterested servant of the public good and a self-declared special interest, spending millions to lobby for its own benefit. It should have to choose between the two. By cutting off 501(c)(4)'s from Federal grant money, you would give the altruistically motivated tax free a place to go—to 501(c)(3)—without subsidizing the unlimited lobbying activities in 501(c)(4).

And finally, I believe that 501(c)(4) law requires another congressional action that is beyond the scope, I think, of this committee's inquiry, but which must be a meaningful component of (c)(4) organization reform. And that is, those who rely on commercial business activity for their revenue. As this recent GAO study shows, some of them do not, and they're merely member organizations, funded chiefly by fundraising contributions and dues. And that's what it should be all about.

But there is one, nameless again, which relies primarily on commercial income, yet lobbies in the posture of a member organization. And I think that situation should be addressed, because it permits huge business operations to associate themselves with large numbers of members, and use vast business resources to lobby in their name, even when the members do not agree with those legislative activities.

In any meaningful reform, I think that (c)(4) tax law should be changed so that any (c)(4) organization which lobbies has a demonstrated financial dependency on membership contributions and dues at some high percentage figure which can be discussed, and you will. And we will in the Senate. And so, there are many things that come up.

I'd watch out for—someone said we'll do a 5-percent limit. If it's 5 percent of its budget for lobbying reform to, in other words, prevent any organization that spends more than 5 percent of its budget on lobbying from receiving Federal grant money. I don't think

that will work. Some of these organizations, you could chop 5 percent, and they'd have millions to spend.

And one of the big ones is not the AARP. There is a group called Mutual of America. I don't know much about them, and I'm not after them. I've got enough problems. But they are a far larger 501(c) organization. They're not here, though, claiming to represent the interests of their customers the way AARP is. But under a 5-percent cap, they could still spend $25 million a year.

So a cap might be worth looking at, but I think ceilings, caps, options, I leave those things to you. I just come to tell you I wish you well. I've taken too much time. I ask the balance of my remarks be placed into the record. We'll try to answer any questions. I stand ready to work with you in the Senate on reforms. I am proud of your efforts.

You will find it a very lonely activity, but the kind of thing where your colleagues come up to you in the cloak room and say, great; and then they run right out the door. And so you'll have that, but it's a cheerful thing anyway for a while. But I'll certainly try to answer any questions that you might have.

Mr. MCINTOSH. Thank you very much, Senator Simpson. And let me say, I'm blessed with colleagues from this new freshman class who not only came up and congratulated me in the cloak room, but said, when can I come over to your hearing. And several of them will be here today, and others were expressing a desire to move forward in this. Perhaps it's our naivete as new Members of Congress that we can change the world this way and not suffer repercussions.

But be that as it may, let me ask you a couple quick questions on it. One—and it's been my contention that if you limited the lobbying activities of these organizations or forced them to choose whether they would be a lobbying organization or a grant recipient, that there would actually be more funds available from these organizations to serve the cause which they were receiving the grant for—helping the elderly, helping clean up the environment, promote local business—if that's what the Chamber does, and other types of activities that presumably we think are beneficial, as indicated by the fact that we've given them a grant.

Is that your impression—that we might actually be able to direct more of these moneys toward that type of operation and leverage them with the private sector funds that are often used or claimed to be used for the lobbying purposes?

Senator SIMPSON. I think that could be so, Mr. Chairman. I don't have figures on that. But I certainly believe that to be a very real prospect. I think when you see a group that spends $26 million or $36 million a year, just on lobbying, that you can certainly direct those funds somewhere else. Now, of course, the groups will say, well, we don't make any money off of the grants.

But the AARP shows that it expended only $71 million of the $86 million that they received. So somebody got some. And then you have a peculiar situation where we find that some of the members of the AARP have been hired with some of the grant money. They were originally volunteers, but in the course of their great transition, they became recipients of some of the money.

So I do think you could better get it to the right source. And someone else will do that, will take care of the seniors; will take care of the others. And it will just be administered by somebody who isn't raising Federal money with Federal money.

Mr. MCINTOSH. Thank you. Before I turn over to my colleagues, if they've got any questions, let me just mention that before you came, we heard some testimony from groups who didn't receive Federal funds and felt that they were actually at a disadvantage in advocating positions benefiting seniors, benefiting the disabled, benefiting the environment. Because groups who did have access to the Federal trough could often outmaneuver and out spend them in their efforts.

And they were very frustrated, because they thought they actually could better serve these groups not only in terms of advocacy, but also in the services they provide. And they probably are truly the tireless and the selfless. They don't receive payment for any of their activities. Thank you again for coming. Let me turn now to the ranking member of our committee, Mr. Peterson.

Mr. PETERSON. Nothing.

Mr. MCINTOSH. And let me turn to one of the cosponsors of legislation that we're looking at, a freshman colleague of mine, Robert Ehrlich, from Maryland.

Mr. EHRLICH. Senator, thank you for your time today. I want to pick your brain.

Senator SIMPSON. It won't take long.

Mr. EHRLICH. We're just freshman, it's really short with us. We really appreciate your coming over today. Representative Istook and the chairman and myself have gone through many discussions, as you can imagine—different drafts of different ideas. What I hear you saying today—you've basically made two points with respect to a specific, concrete, legislative proposal.

You're not a big fan of the objective 5 percent cap because, simply put, from listening to your words, it just doesn't do the job. And in the course of your testimony, you seemed to advocate more enthusiastically the 501(c)(3) floating percentage, with the objective cap of $1 million. What other concrete proposals have you run across that intrigued you recently?

I'd just like to throw that open-ended question out to you, and see where you——

Senator SIMPSON. No, no, this is the other part of my brain that just wandered in here with this note.

Mr. EHRLICH. The great part about Congress isn't it?

Senator SIMPSON. Yes, that's right. You know how that works. The two things that really do intrigue me are just simply saying that if you receive Federal money, that you cannot be involved in unlimited lobbying and blend that around. I'm not interested in the reputable groups in America. The YMCA, the gentleman was just speaking. Let me tell you, if they get 7 percent of their money from the Federal Government, that's fine with me, as long as they don't use it to go lobby the Federal Government for more money.

And if you look at the AARP, they have a book which is about an inch and a half thick called, Future for America. And everything in it is how to get money out of the Federal treasury. In fact, the National Taxpayers Foundation ran a list of what this would cost—

long-term health care for everyone in the United States, regardless of your net worth or your income.

The things in it would cost $1 trillion in 10 years. That's wrong. If they want to do that, fine, but not with Federal bucks. So that's one. The other one that intrigues me is, you might just set up, for every Federal buck you get, you lose one buck of Federal tax break. That's one—one for one, just even up. The other one, I think, is that some semblance of really doing something for your members. The AARP—we intercepted one of their own internal memorandum—60 percent of their members have no idea where they stand.

Sixty percent of the membership has no concept of what position they've taken. And the reason for it is, they don't get their money from their members and from contributions. They get it from Prudential Life Insurance Co. at $101 million a year; they get it from New York Life; from Hertz; from Hartford. I mean, this is where they get their bucks. So why should they be responsive to their dues paying members?

That to me is a very egregious thing. And those are the areas I'm dabbling with.

Mr. EHRLICH. Under your floating percentage plus objective cap alternative, do you——

Senator SIMPSON. I think if you set a cap, it has to be just a hard number, not a percentage. Because there's some that can play in any arena with a percentage.

Mr. EHRLICH. Have you discussed, analyzed any first amendment problems with that approach?

Senator SIMPSON. No, because I'm one who believes the first amendment was put on the books to protect some guy in a basement in Philadelphia who was cranking out seditious literature and not much more. And it wasn't intended to allow a guy to spend himself to oblivion to get here, or child pornography, or burning flags, if you'll pardon the expression.

Mr. EHRLICH. Thank you very much.

Senator SIMPSON. Just a silly idea I've had.

Mr. MCINTOSH. It's one of the consequences of actually reading history about the Constitution.

Senator SIMPSON. Well, I think so. One of the other Members, Mr. Spratt, do you have any?

Mr. SPRATT. Yes, sir. I'm sorry I missed your testimony, but I got here to enjoy some of the levity at the end of it, anyway. We appreciate your testimony and your being here. Let me ask you, why exclude defense contractors?

Senator SIMPSON. Why exclude?

Mr. SPRATT. Yes. Defense contractors, for example, there's been a time in defense procurement history when firms like Lockheed had nearly 100 percent of the business. We pay the direct costs, the indirect costs. We in effect pay them to lobby us. I think we've since had some procurement exemptions about charging lobbying expenses and institutional tombstone like ads that are not allowable costs.

But by and large, the Government's paying a substantial share, a far greater share of the cost of most of these defense firms than of the AARP or the American Bar Association. So given the fact that they are so heavily dependent upon the Federal Government,

sort of conduits for the money that is used to lobby us, consistently applying the principle that you're working with now, why not include defense firms?

Senator SIMPSON. Well, Congressman, I'm not—I wouldn't even attempt to broaden my activities into that area because at least defense contractors pay taxes. Somewhere down the line they pay taxes. They may have various exemptions and expenses, and maybe in their books, lobbying expenses they expense or they capitalize, I don't know. But I know what I'm looking for.

I'm looking for 501(c)(4)'s or 501(c)(3)'s that are formed to get money as nonprofit, nontax paying entities; and who then go into commercial activity and end up doing things like paying $136 million in lieu of taxes, or leasing a building for 20 years downtown for $17 million a year. Try that one. The AARP leases their building in this city for $17 million per year.

I don't think that's what the people thought of when they put in their $8 dues. So I'm into that; I'm not into the defense contractor. I know Senator Pryor, a lovely friend, has done things in that area years before. And I am not in any way involved in searching for that.

Mr. SPRATT. So the principle then is not that Federal money is being used to lobby the Federal Government, but that a Federal tax exempt privilege is being used or abused for a purpose other than which it was granted for.

Senator SIMPSON. There is an abuse, in my mind, when an organization receives grant money from the Federal Government, and uses the grant money to lobby the Congress for more money from the Federal Government.

Mr. SPRATT. What if a 501(c) whatever is a grantee under some Federal program—NIH, let's hypothesize—and in South Carolina or North Carolina, it's involved in some sort of local political activity opposing a dam or supporting some particular law that the State is considering that is totally unrelated to its Federal activity.

Nevertheless, it engages in some political advocacy at the State or local level, and is a Federal grantee. Does that bother you? Do you think that should trigger any sort of special——

Senator SIMPSON. That has always bothered me. I think Senator Kasten in the Senate in his time, there, compiled a list of 501(3)(c)'s who do blatant lobbying, but hide under the cloak of being a 501(3)(c) doing the general good. And I'm not diverting myself into that area, either. I was directed all by myself into the abuses of nonprofit status of a single large organization called the American Association of Retired Persons.

It has a revenue stream of $382 million a year, and only 40 percent of their income is from dues, or 42 percent, depending. And they then lobby the Federal Government, terrorize every single Congressperson—I've watched them do that—and then ask more from the Federal Government, as if they had no respect or responsibility for the children and grandchildren coming along behind.

That has been a personal bit of heartburn. I've been on that one for a long time, election years and nonelection years.

Mr. SPRATT. I understand that's your particular focus, but when you make law, it has sort of a generic application. It wouldn't just have applicability to AARP. How would this law that you're talking

about apply to the U.S. Chamber of Commerce? Hasn't it been a recipient of grants? Doesn't it engage in political advocacy?

Senator SIMPSON. You can throw out any name you want to. You can throw out the NRA, the Chamber, or any one you might dig up. And I'm talking about any organization that gets its bucks from the Federal Government and uses it to get more bucks to lobby the Federal Government should not be doing that. I don't care who they are.

Mr. SPRATT. Thank you very much, sir.

Senator SIMPSON. You bet.

Mr. MCINTOSH. Thank you very much, Mr. Simpson.

Senator SIMPSON. Thank you very much for your courtesy, all of you, I appreciate it.

Mr. MCINTOSH. If I can beg your indulgence 1 second. Representative Gutknecht, who's also a freshman, indicated he had a quick question.

Mr. GUTKNECHT. Thank you, Mr. Chairman, just a couple of points. First of all, I just want to point out to Representative Spratt and others that this is, according to Federal regulations code 48, it deals with Federal contractors. And embedded in there, at 31.20522 are legislative lobbying costs. And they're very specific rules and regulations about Federal contractors—what they can and cannot do, relative to lobbying the Congress and other legislative bodies.

And so we've got an awful lot of rules and regulations already that the Federal contractors have to deal with. And so I'm not certain, I think someone earlier mentioned, it's a little like comparing apples and oranges. But there is a question that I had specifically for you, Senator Simpson. And we do appreciate your coming today.

I've long believed that sunshine is one of the best antiseptics. And in your research that you've been doing for sometime now, are you satisfied that there's adequate disclosure by some of these groups in terms of what, in fact, they're up to. As I say, with most Federal contractors and people who are actively involved in the lobbying business here on Capitol Hill, they have to report virtually every penny and what they're doing with it.

What about disclosure among some of these nonprofits? Do you think that's an answer? Is there adequate disclosure now? Is there a way that we can get our arms around that?

Senator SIMPSON. Well, I think the GAO report shows some interesting things that they spend their money on. I don't know—the form 990, if I recall, that's the nonprofit tax form of the AARP, again, is done in handwriting, I think, by Edna the Enforcer. And it is not typed, and it has no commas. So when you're reading it, you're thinking you're looking at $14 million, and you're looking at $140 million.

And it just strings across the page, and it's done by some person on the west coast. So you look at it, and you think, well, it must be full disclosure. And every point, with what they're doing, are some very wonderful statements about what they do with their money, how they represent seniors and all the rest of it.

I don't know what disclosure you could get into. But I know one thing—I couldn't possibly determine or have the resources, with this organization at least, with the Andruss Foundation, which is

going to have a national conference here soon. And they'll fund it all. The Andruss Foundation, which is part of the AARP, will fund the entire conference. And it will look like seniors coming here from all over America, doing God's work.

Then they have trusts. Then remember that the guy that formed them lost his license because he was untrustworthy—Leonard Davis lost his license to peddle insurance from the State of New York. And then he decided he could get around that by having volunteers peddle insurance to a captive audience. And the whole thing started that way, on a very unsavory note.

Colonial Penn was unsavory. Lawsuits with former members, and I couldn't possibly get into it. So disclosure is a nice idea, unless you're an organization that just is a wash in cash. And I don't know how you ever track through it. I don't know that I'd want to do legislation. But they have laws; they're to follow them. And I don't allege any criminal activity in any group that I've looked into, none.

But I allege arrogance and an inability to represent their dues paying members.

Mr. MCINTOSH. Well, thank you very much, Mr. Simpson. We look forward to working with you on this.

Senator SIMPSON. Thank you for your courtesy. I shall look forward to that, Congressman McIntosh. Thank you, and thank you, Ranking Member Peterson.

Mr. MCINTOSH. I appreciate your coming. The second member of our panel of legislators is a gentleman that I've gotten to know since coming here in January, who breaks the mold in some ways. He's not looking for personal credit on a lot of these issues. And so although he's been working longer on this issue than either Bob or I have, he is quite willing to let us have this hearing, and be the ones conducting the inquiry.

And I admire and appreciate that approach, and I want to commend him for his hard work in this issue. Representative Istook is one of those Members of Congress who is fearless and willing to look at issues that no one else is willing to take on. And this is one that you've brought to all of our attentions, and I appreciate your hard work and diligence in trying to find a solution. Thank you for coming today.

Mr. ISTOOK. Well, thank you, Mr. Chairman. I very much appreciate your kind words, and I'm frankly enjoying the opportunity to work with you and Congressman Ehrlich, in particular, as well as the other members of this committee and subcommittee on what is a very significant problem with huge amounts of money being involved. And this is taxpayers' money.

I believe, Mr. Chairman, it is time to end taxpayer funded political advocacy. Over 40,000 organizations receive over $39 billion in Federal grant funds, directly. Preliminary examination of the problem so far makes it apparent that grant abuse is rampant. It needs to be addressed with systemic reform. This should not be targeted, Mr. Chairman, at any particular group. It should not be targeted at any particular political philosophy.

But we must have the U.S. Congress perform its fiduciary responsibility to the American taxpayer. And that requires the Congress to track Federal budget dollars to the point where they are

used. I feel strongly that these Federal dollars represent the hard work of many Americans who deserve the assurance that when they are compelled to pay taxes, these tax dollars should be used appropriately.

Using tax dollars for political advocacy violates the principles of free speech and free association. Just as the U.S. Supreme Court has ruled in the *Abud* v. *the Detroit Board of Education* case, that compulsory union dues cannot be used to fund political activity, so too, compulsory taxes should not be used for that purpose. The legislation that many of us are working on is only one step, but a major step, in stopping some of the fraud, the waste, and the abuse that plagues us.

The various attempts at addressing taxpayer funded political advocacy problems to date have been inadequate. If this were not the case, then we wouldn't have to be talking about legislation. The IRS code has restrictions on many nonprofit organizations, and the Byrd amendment, which was adopted in 1990, both have proved to be inadequate. Even though, Mr. Chairman, it's technically illegal to use taxpayer funds for lobbying or appropriated funds, I should say, schemes have been created to circumvent this.

They may include automatically sending a certain percentage of grant money to cover overhead for a lobbying arm of a related organization, or subgranting funds to other groups. There the audit trail ends. They say, well, it's no longer an appropriated fund; it's a grant, or it's a subgrant, or whatever it might be. The existing laws tend to be so vague that sometimes they're unenforceable.

An example, of course, might be if you look at lobbying registration and reporting requirements for those that lobby us directly here in Congress. Lobbying is not really defined in the law, so lobbyists only report their time and expenses for what they do on Capitol Hill, itself, and not time spent at their office making phone calls, studying the issues, getting groups and coalitions put together, and so forth.

So, too, the Byrd amendment never defined appropriated funds. So they're no longer considered appropriated after they've been deposited in the recipient's checking account. Now, the goal is not, and never should be, to restrict free speech. Instead, the goal is to avoid the use of tax dollars to subsidize the private speech of those who have political connections or who rely on taxpayers' money to advocate their viewpoints. I think that these are the following principles that I hope we would follow.

First, the term lobbying is too narrow to be useful. The broader term of political advocacy needs to be used and, of course, clearly defined under the law. This definition would extend to grantees of Federal money; their engaging in political campaigns; lobbying the legislative branch at the Federal, the State, or the local level. The same with lobbying the executive branch, and in efforts to influence general and specific public policy, maybe through a judicial confirmation, a political referendum, or judicial action.

Second principle—no Federal funds should be used for political advocacy, period, exclamation point. Third, no grant funds should be used to provide support to other organizations who then in turn carry on that political advocacy. Fourth, no organization which re-

ceives a Federal grant should in turn grant those funds to others, except as may be expressly authorized by law.

For example, take the Corporation of Public Broadcasting. I realize there's controversies regarding it, but it has explicit authority to make subgrants onto other entities. When a group is authorized to do so, that's fine. If they're not, they should not be making subgrants and further diffusing the accounting trail. Fifth, any Federal grantee should be subject to an audit, at the Government's request, and should be required to prove by clear and convincing evidence that any funds which they may use for political advocacy did not come from Federal funds.

Grantees should be expected to use generally accepted accounting principles. That should not require any unusual accounting methods. In fact, it would deter attempts to use them. Sixth, the Federal dollar should be followed to its point where it's actually being used, instead of simply changing hands. And finally, information about all of these grants should be available to the general public.

Now, I believe, Mr. Chairman, that you had testimony previously about the Nature Conservancy using Federal tax dollars to crush local opposition to a nature sanctuary. Now, that violated the rights of the citizens that were involved there in Florida that did not have the advantage of the Federal Government paying for them to present their political viewpoint. And yet the Nature Conservancy, from what we know of the case, used at least $44,000 and perhaps more that it obtained through the Department of Commerce.

In fact, in their own performance report that they submitted for the quarter ending September 30, 1993, the Nature Conservancy discussed 21 items, many of which appear obviously to be political advocacy. And I would like to note, from their own report, what they said they did with part of the Federal money. And these are their words: "that they developed and directed a plan to counter opposition's push for a countywide referendum against the establishment of a wildlife sanctuary."

They recruited local residents to speak out against the referendum at two board of county commissioners' hearings. They organized planning a conference call with members of the Center for Marine Conservation, the Wilderness Society, and the Nature Conservancy to discuss the plan. And then, as they wrote, "they were successful in blocking the referendum on a three to two vote of the public body, and to generate many positive articles and editorials, using their own messages," sponsored with taxpayers' money, Mr. Chairman.

Blocking a public vote, raw political advocacy, using taxpayer dollars. We have the right, Mr. Chairman, to associate freely with those who espouse principles that we endorse. The key word here is freely. When tax dollars are used for political advocacy, it is not by any definition free speech or free association. I would like to focus attention, Mr. Chairman, on some of the first amendment arguments that I realize have been discussed by different people; and to mention some of the particular cases that have been decided by the U.S. Supreme Court already.

Some opponents, I believe, have a general misconception that supposedly it's unconstitutional to prevent an organization—especially a nonprofit one—from engaging in political advocacy with taxpayer dollars. Nothing could be farther from the truth. In fact, it is unconstitutional to permit recipients of Federal funds from engaging in political advocacy with them.

In the case of *Bob Jones University* v. *The United States,* the U.S. Supreme Court noted that when the Government grants exemptions or allows deductions, all taxpayers are affected. "The very fact of the exemption or the deduction for the donor means that other taxpayers can be said to be indirect and vicarious donors." That's the Supreme Court's words.

In 1977, in *Abud* v. *Detroit Board of Education,* the Supreme Court said it was unconstitutional to require teachers to contribute dues to a union where the dues were then used to support ideological causes which the particular teacher might oppose. The Court said taxpayers should not be required, either directly or indirectly, to contribute to the support of an ideological cause they may oppose.

Where a recipient organization receives both a tax exemption and Government funding and then used that to engage in political advocacy, it's clear that the Government, and thereby the taxpayers, are both of them supporting the political views being advocated by that group. In *First National Bank of Boston* v. *Bilotti,* the Supreme Court noted that where Government action suggests an attempt to give one side of a debatable public question an advantage in expressing the views to the people, then the first amendment is painfully offended.

It violates the first amendment to use taxpayer money for political advocacy, not to try to prevent it from happening. The right of free speech includes the right not to speak. It includes the right not to support causes or ideologies with tax dollars. No taxpayer should be compelled to support a cause with which they disagree. Taxes are compulsory, not voluntary. The Federal Government has a special duty to protect the taxpayers against this abuse.

In 1983, the Supreme Court unanimously upheld the right of the Federal Government not to subsidize the lobbying activities of private, nonprofit, tax-exempt organizations. In that case, *Regan* v. *Taxation With Representation of Washington,* which was a group organized, as they said, to promote the public interest in the area of Federal taxation. They applied for tax-exempt status under section 501(c)(3) of the IRS Code.

It was denied because of their intended lobbying activity. TWR, the advocacy group, sued, based on the first amendment and equal protection claims under the fifth amendment. The Supreme Court stated this—these are their words:

> Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income.
>
> A legislature's decision not to subsidize the exercise of a fundamental right does not infringe on that right, and thus, is not subject to strict scrutiny. It was not irrational for Congress to decide that tax-exempt organizations, such as TWR should not further benefit at the expense of taxpayers at large by obtaining a further subsidy for lobbying.

We have held, again, quoting from the Court:

We held in several contexts that a legislature's decision not to subsidize the exercise of the fundamental right does not infringe that right. Congress is not required by the first amendment to subsidize lobbying. Congress, not TWR or this court, has the authority to determine whether the advantage the public would receive from additional lobbying by charities is worth the money the public would pay to subsidize that lobbying.

Now, Mr. Chairman, there's no attempt in the legislation that we are working upon to suppress or limit the first amendment rights of any recipient organization. There is no ideological classification to try to apply this to some groups or some speech and not others. That would not be right. The same standards must apply to all organizations, regardless of where they are in the political spectrum.

Potential Federal grantees would remain free to engage or not to engage in political advocacy, so long as they did not go overboard, beyond expressed limits, or use Federal tax money to do so. They are simply prevented from using a tax subsidy for political advocacy. The touchstone, the trigger for the act which we are seeking and its provisions would specifically apply to Federal grantees engaging in political activity directly or indirectly.

If you don't get Federal funds, this would not affect you whatsoever. It's only when you've asked the taxpayer for a subsidy that you would come under the guiding provisions which we seek. Mr. Chairman, I appreciate the time. I have further remarks that could be placed in the record. But I repeat that Congress is not required to subsidize lobbying, and taxpayers expect that their tax money would not go to support a point of view with which they might disagree.

It should not be used for political advocacy. I thank you, Mr. Chairman.

Mr. EHRLICH. Thank you, Representative Istook. It's been really great to work with you on this issue. I know Mr. Fox has a question, but before I turn to him, I have one area of inquiry—something that we've discussed. But I think it's important, as we create this record that we deal with all of the parameters under the first amendment here. I understand the Supreme Court's holding where nonprofits are involved, basically giving standing to all taxpayers, because all taxpayers contribute to that nonprofit status.

My area of interest, as you know however, concerns a situation where a Federal grantee that takes x amount or x percentage of Federal grant money could be subject to an objective cap on the basis, or limitation, on the basis of the private money that could be used to lobby. Could you, for the benefit of everyone here care to discuss the first amendment ramifications for such a scheme, where the threshold would be the Federal grantee taking the money, but that would give rise to a cap, with respect to private money used for lobbying for that particular grantee?

Mr. ISTOOK. Well, certainly. As you know, Mr. Ehrlich, it is a voluntary decision whether a group wishes to apply for Federal money. There's nobody that is compelled to apply for a Federal grant in order to engage in nonprofit activity or in charitable work. There's no requirement whatsoever. So it is a choice that they make; it is not forced upon them; it is a voluntary decision.

And I believe the Supreme Court standards are clear—that they wish to engage in receiving Federal subsidies in two forms: First, tax-exempt status; second, the direct application and receipt of

grant money. They make a voluntary decision to do that. And that is why I emphasize the whole trigger is the decision to seek a taxpayer subsidy.

Anyone that does not want Congress to have some sort of guidance with their activities has a clear answer. Just don't ask for Federal money; don't ask for Federal subsidy. But I think the Court decisions that I referred to are very clear, especially that *Regan* case. He who asks for a taxpayer subsidy must be willing to accept the conditions that come with it.

Mr. EHRLICH. Thank you very much. It's been great working with you, and I look forward to continuing our work on this very important issue. Representative Fox.

Mr. FOX. Thank you, Mr. Chairman. I appreciate the testimony of Congressman Istook on this issue. He has been involved long term, as well with Chairman McIntosh and Congressman Ehrlich, and I believe Congressman Peterson. The questions I would have go to your legislation that you're going to propose.

Mr. ISTOOK. Sure.

Mr. FOX. Obviously, from those of us who see that there's a need for change—and I think that the testimony today from the majority of the witnesses points out that the change is necessary. In looking at page 2 of your testimony, it goes to discussions of what we can do to make the changes. And I was wondering if we had prohibition of the grants that should be there for those groups which receive public funds and they're nonprofits, and yet they're advocating political causes or political beliefs, whether left or right or center, as we discussed previously.

This is obviously objectionable, and not in the spirit of what's correct. By what criteria would we decide whether there's advocacy? I guess that's an important issue we need to discuss for a moment, if we may.

Mr. ISTOOK. Certainly, and I agree with you. Certainly, as we had in the case, if you go to a public body and say, we don't want to have a referendum on whether you're going to have some sort of nature sanctuary in the area, that's political advocacy. You're trying to determine whether an election is going to be held or not. Political advocacy not only involves going to an executive or legislative body. I mean, it's pretty clear if somebody comes to you and says, we want legislation passed that does x, y, z, you know that they're engaged in advocacy.

But I think it does go beyond that. You have many groups that, even though they are not a party to a particular court case, spend large amounts of taxpayer money going to the courts, trying to change what the law is through the court process. Now, it's one thing if they're protecting themselves, defending themselves in a suit; if they are protecting their own nonprofit status; if they are party litigant, it's one thing.

But when they come in and say, we're going to spend all of these tens of thousands of dollars maybe on friend of the court briefs because we want to advocate a result for other people, OK, they are engaged in political advocacy. They are trying to change the law not because they have a self interest involved, but because they are trying to change society. That is political advocacy.

So I think it's important that we have a definition which incorporates advocacy that may include executive branch, legislative branch, and under some circumstances, judicial branch as well. That's why I mentioned the term lobbying is too ill-defined and too narrow. But you correctly stated that the definition of political advocacy is key. And we certainly want the input from you and others to make sure that we fashion that proper definition.

Mr. FOX. Obviously, you'll have that. Let me ask you this—with 40,000 groups receiving funds, a great number of which may have been involved in political activity, which we believe should be prohibited, why do you believe that nothing's happened up until now?

Mr. ISTOOK. Well, Mr. Fox, you like I—of course, I'm a sophomore and you're a freshman, but I'm sure you read a lot of things about how things happen in Washington, and people talk about a triangle of interests. And one part of that triangle is special interest. Special interests have been given tremendous amounts of taxpayers' money in this country. Now, you and I and other people may differ on exactly where you draw the line on defining a special interest.

But taxpayers' money has been used to create interrelationships between people in public office and groups on the outside that help people in public office to perpetuate themselves in office, and outside groups to tap into the Federal Treasury.

Mr. FOX. Perpetuate so the status quo actually kept them moving.

Mr. ISTOOK. That's right. That's why they stayed intact until, of course, now we have had a dramatic change in the makeup of the Congress itself. And so there is an evolution in some areas, and a strict and clear change in others, in the way business is done in Washington.

Mr. FOX. Does the legislation you envision, as a result of this hearing and the work you've already researched, include the additional disclosure requirements by the groups?

Mr. ISTOOK. Yes. I think that's important. Senator Simpson mentioned the form 990's that nonprofit groups are required to file. When I served in the State legislature, that's when I first became aware of the scope of this problem. There would be particular groups that would constantly be coming by to lobby us as legislators, and saying they represent this group or that. You know—oh, we're a citizen group, or a senior citizen group, or we care about health care issues.

And I began developing a practice of obtaining copies of the form 990's of different groups, and finding out what dramatic dependence they had on Government funding for their existence. And yet the only time I really heard of them really doing anything active seemed to be when they came around to lobby the Government. So it was a self-perpetuating cycle; and it needs to be broken.

Mr. FOX. Well, the form 990, which I'm holding up now, which you reference to, would need additional lines on it to include the areas that you want to see identified; am I right?

Mr. ISTOOK. Well, that is one approach. Frankly, we're not trying to approach it through the IRS Code, so we're not trying to change the form 990 requirements, since the link is not the fact of whether a group has a nonprofit status or not. The link is the fact of wheth-

er they receive Federal grant moneys. Therefore, the reporting would be to the agency which they received that Federal grant. And that's where the reporting requirement would originate, and of course then would become public record from there.

Mr. FOX. A couple other questions, if I may. I appreciate your patience and your input. What happens with a group that originally planned to just be a nonprofit group doing good work, but not be involved in political activity. And then, because of boards of directors change or the people involved in the management of it, has a new focus. How will your legislation address that kind of change? And how will you ameliorate the problem?

Mr. ISTOOK. Well, you do it by requiring the reporting standards of which we are talking, and that way you know what is a current activity. The Supreme Court case I mentioned—taxpayers with representation—as I understand it, they used the very approach of which you speak, acquiring some existing entities and changing their nature.

Certainly there's always a time lag that's involved there. But since we're talking about not only past activity, but current activity, I think we can keep that under control to make sure there's not abuses.

Mr. FOX. My final question would deal with something that Chairman McIntosh identified some weeks ago. And that is where a Federal agency got involved, through their Secretary of the agency, in advocacy for a particular bill to be passed or not to be passed. And the question I would ask you is, do you envision the work of the framers of this new bill to be involved in some respect to address that kind of problem where there's an overreaching by one branch to another branch?

Mr. ISTOOK. Sure. I definitely agree that's a problem. But, Mr. Fox, the focus of this particular effort is not to talk about the abuses which exist within the Government, but to talk about the abuses that exist with Government money going to outside entities. And I know that Chairman McIntosh is active on the particular area that you mentioned there. But we have not, at this time, lumped it in as part of the same intended legislation.

Mr. FOX. Looks like we'll be ready for another forum, then. I do appreciate your testimony, and thank you for answering the question.

Mr. ISTOOK. Sure.

Mr. EHRLICH. I believe the chairman has a question.

Mr. MCINTOSH. Thank you, Mr. Ehrlich. Thank you for chairing this session. I really just wanted to make a statement commending Mr. Istook for his interpretation of the Constitution on the first amendment, and indicating to him that it's my view that as representatives of our constituents and people who have taken an oath to uphold the Constitution, we have a duty to interpret that Constitution as we go forward in making these laws. And I think that our interpretation will be very important in determining that issue as we go forward.

I have also reached the same conclusion that you have, looking at the first amendment. And I thought I would share with you a quote from Thomas Jefferson, who was the author of the precursor to the first amendment. His statement was, "To compel a man to

furnish funds for the propagation of ideas he disbelieves and abhors is sinful and tyrannical." So in fact, Jefferson thought it was wrong, in violation of our basic liberties to use taxpayer funding to compel people to fund ideas they didn't believe in.

So I appreciate you coming today, and offering that interpretation of the Constitution; and again, for all of your work on this legislation.

Mr. ISTOOK. I thank you, Mr. Chairman. I would like, if I could have a little slight disagreement with you there—I'm really not here trying to talk about my interpretation, which is why the only cases which I cited came from the U.S. Supreme Court. They are not Ernest Istook's interpretations; they're not David McIntosh's interpretations. They are the decisions from the highest court in this country, that I think have already made it crystal clear that not only is it a case where we are not violating anyone's constitutional rights by saying that if they want Federal dollars, they will have to refrain from using them for political advocacy; but also, if they use those Federal dollars for political advocacy, they are stepping on the rights of others.

They are stepping on the first amendment rights of the taxpayers. And I think that that's clear from the Supreme Court decisions, as well.

Mr. MCINTOSH. I think that's right. My colleague is modest. My view is that your interpretation is indeed constitutionally relevant for the purpose of this committee and congressional action. And it's all the better that it's supported by the Supreme Court.

Mr. ISTOOK. I'll disengage at that point.

Mr. EHRLICH. Good move. Thanks, Ernie.

Mr. ISTOOK. Thank you very much, Mr. Chairman.

Mr. MCINTOSH. We're going to do a little hand-off here. I've been promising the first panel that we would get to them, and I appreciate their indulgence in waiting. A couple of the witnesses had to leave. I don't know if my colleagues have many questions; I had one or two that I wanted to ask. So if I could call back the first panel, which we'd asked to suspend earlier, and then we will get to the third and final panel.

Let me also indicate the committee may have some additional questions that we'll forward to you. And I would ask unanimous consent that we keep the record open to be able to include those answers in the formal record of the subcommittee; and also that your answers are under oath both now and in written response to those. Mr. Martin, did he have to leave? We'll send him the question I had for him.

Mr. Brown, as we were about to engage when we got the buzzer, and I was indicating we probably disagree about this, and I do appreciate you coming and stating your views. I was wanting to ask you a factual question, either with respect to the YMCA or the Independent Sector groups. Do you know, or would it be possible for you to find out, what percentage of their overall budgets are used in lobbying activities or advocacy activities, versus what percentage are used for more traditional service providing and other forms of overhead?

Mr. BROWN. With regard to Independent Sector, I would have to refer to that organization. I could not speak for any one of those.

As you know, Independent Sector itself does not receive Federal funds, of course.

Mr. MCINTOSH. It's a coalition of different groups.

Mr. BROWN. Right, right. Now, with regard to the YMCA of the USA, out of about $84 million, about $300,000 is spent on what we might call lobbying. I don't know what the percentage is, but that's the figure.

Mr. MCINTOSH. Sometimes those words have different meanings for different people. I take it by that you mean sort of having a representative come up and talk to elected officials here or at other levels of government.

Mr. BROWN. Yes; that is true.

Mr. MCINTOSH. Do they have any other programs? There's something that is referred to often as grassroots lobbying, which is where there are membership organizations that ask their members to write Congress and activities like that. I don't know, does the YMCA engage in that? By the way, I think that's a good activity for groups to do, because I believe in grassroots participation.

Mr. BROWN. Well, only with respect to what may affect an individual YMCA. Of course there is grassroots lobbying, and there is some money spent on that. I think it's about $14,000 was spent in 1993, as revealed by the 990 form on grassroots lobbying. So there is some of that, but it's obviously very little. But individual YMCA's who are involved in programs that do appeal, as my hometown in Central, PA, county government to get some community block grant funds for ADA renovations to our YMCA.

And I guess you could call that grassroots lobbying and talking to them about this great need that the YMCA has.

Mr. MCINTOSH. OK, I appreciate that. I might enlist your help, if you wouldn't mind, in trying to obtain that information from some of the other members.

Mr. BROWN. Yes, sir; you can count on it.

Mr. MCINTOSH. That would be great. I do think it's important to have the facts before us as we go forward in this area. The other question for you is really much more kind of philosophical. Mr. Eno had mentioned that they have a series of restrictions on people they make grants to about engaging in lobbying and political activity.

Wouldn't you see a possibility of a benefit for either those type of restrictions or a clear distinction more for the organizations, and in terms of making sure that the public continues to have confidence that they're engaging in the types of activities they think of in terms of providing services to the poor, the needy, the environment, and local communities?

And that perhaps, in order to avoid some of the problems that Senator Simpson has been uncovering over in the Senate, that there are actually some benefits that might accrue from this type of separation of lobbying and advocacy activities from providing services and benefits?

Mr. BROWN. Well, I may be naive, but I thought that had already been done by the legislation that's already in place. And it was my belief that—and by the way, Senator Simpson and I had a chance to discuss this before he testified, and we do disagree, when I said do you not need some beefing up of the enforcement of the legisla-

tion already in place. And he respectfully countered that it's impossible to do. I wasn't sure what that meant.

I think that organizations like the YMCA—and their public policy agenda is driven from the bottom, not from the top. We do have five areas of concern—child care; juvenile justice, crimes and gangs; youth health and fitness; substance abuse; and youth services. These were all decided on by the member organizations of the YMCA. And that is now the national public policy of the YMCA.

And for those who wish to contribute to the YMCA, they should know that. And we publicize that. And if they would like to have a voice in that, they'd like to have a part in seeing in their communities that there would be Federal funds available for child care, for example, then I think the YMCA's ought to be able to do that with not taxpayer funds. I don't think the YMCA or generally, as an example, Independent Sector organizations quarrel with that.

You may have certain organizations that are a problem. But this is the agenda of many of these kind of organizations—it certainly is of the YMCA—to say to people, this is what we are. And we have our mission statement clearly set forth everywhere. And we say, we do these things, and if you'd like to be heard, not as a lobbying group, but like to have these addressed by our being able to get some funds in your community, whether it's inner city or rural, I'm unclear as to how or why we should be restricted in using private funds that way.

Mr. MCINTOSH. And let me make it clear, I don't quarrel with your agenda, and trying to organize in those ways. I see a lot of benefits to communities for that. I guess I think it's very, very difficult to build those Chinese walls between the taxpayer money and the private money; and therefore to keep the integrity of the system. I think it would be better to ask you to go out and recruit private sector money to do it.

And by the way, my personal philosophy is, we can help you in that by going back to an earlier provision in the Tax Code that made it a lot easier for people to receive tax deductions for giving as individuals to those type of activities. I think the 1986 tax change made it very difficult, in some ways, to do that, particularly for small donors.

So there's a lot there that I think you're doing well. I just think we shouldn't be having a group that advocates policy be receiving the taxpayer dollars.

Mr. BROWN. Well, I'm not sure, if we can end this discussion at that point, although I'm willing to answer as many questions that you or members of the committee have, Mr. Chairman. But I'm not sure you could get me to disagree on that, either. It's just that it seems as though there is a kind of big cannon being aimed at a lot of organizations that—and again, I don't mean to do this, I know Senator Simpson left a long time ago.

But he made some nice remarks, and we appreciate it, on behalf of the YMCA. But there are other organizations that don't know exactly where this is going. At one point we're looking at legislation with a 5-percent cap, I guess you could call it, of private funds. And then a suggestion is that that wouldn't really work. So we're looking at what legislation will come out of here. That is certainly true.

Mr. McINTOSH. And let me state for the record what my intention is in that area, and that is to gather the information from this hearing, work with some of the drafting that's being done, and float a proposal that people can take a look at and see how it applies to them, give us suggestions in the process, and hopefully move that legislation very quickly.

That's my personal goal. But we don't want to do it without people having the benefit to see what it is that we would be doing in specific.

Mr. BROWN. Of course.

Mr. McINTOSH. I don't have any further questions. Do either of you have any questions for this panel? Mr. Fox.

Mr. FOX. Thank you, Mr. Chairman. I have a couple, if I may. To Mr. Eno, if I may ask you a couple questions.

Mr. ENO. Certainly, sir.

Mr. FOX. Thank you. We appreciate again the entire panel's assistance today in trying to help us get to the point where we can have some meaningful legislation to introduce and make some appropriate changes in the law. As you know, President Reagan seriously considered vetoing H.R. 2809, which established the National Fish and Wildlife Foundation in 1984.

In his March 26, 1984, statement signing this legislation into law, he wrote, "The bill's provisions taken together create ambiguity about whether the foundation is to be a private entity or an establishment within the executive branch. The statement from this bill to the effect that the foundation is to be a nonprofit, charitable corporation, and that it shall not be an agency or an establishment of the United States is contradicted by the fact that the foundation was established by Congress and endowed with the sole purpose of assisting and benefiting a Federal agency.

"Entities which are neither clearly governmental or private should not be created. I have therefore given serious consideration to vetoing the bill, even though I support its laudable objectives," said President Reagan. Do you believe President Reagan's fears were well founded in this regard?

Mr. ENO. I don't believe his fears were well founded. I mean, I think it's clear——

Mr. FOX. I mean, you may not have been there——

Mr. ENO. I tried to say that we're an odd beast. And I can tell you as an executive director of a foundation that's neither fish nor fowl, that it causes considerable headaches from time to time, and it's an unclear situation. That's why we have gone the extra level to make sure that our activities meet both the Government standards and the nonprofit standard. And we've made a success.

I mean, part of the reason we were created was to bridge the public and the private sectors, particularly in natural resources. I mean, fish and wildlife move. They migrate past political boundaries. They're difficult to manage for that reason. And for example, to address some of Congressman Shadegg's questions, would I acquiesce to a prohibition on lobbying?

Well, one of the things that's occurred to me since his question is that would prohibit grants to States. And for example, his State, I believe he's from California, is the largest recipient of foundation grants by a factor of three. If we didn't do that, my life would be

much easier, because a lot of the problems in California are massive headaches, and they're very difficult to construct grants around. And we have to work very hard to do that.

But we have made the foundation a success. We try and talk to Congress and to the corporate community and the private sector as much as possible. So I think we're bridging that gap.

Mr. FOX. OK, well, let me first just clarify that Congressman Shadegg is from Arizona.

Mr. ENO. From Arizona? OK, excuse me.

Mr. FOX. It's close.

Mr. ENO. We've done a lot of grants in Arizona, too. For example, we're underwriting bird surveys in Arizona with the State.

Mr. FOX. Right.

Mr. ENO. And again, I haven't seen the legislation he referred to, but State grants—or States are principal recipients of foundation grants. That's the point I was trying to make.

Mr. FOX. One more question, if I may. According to information provided by the foundation to several Members of Congress, the foundation's board, on November 7, 1993, provided $25,000 toward a $75,000 grant entitled Florida Keys Public Awareness Program. The foundation's own description of the grant is as follows. Disseminate conservation to local residents to generate support for protecting the Florida Bay and Florida Keys ecosystem, and for developing a management plan for the Florida Keys National Marine Sanctuary.

This description sounds remarkably similar to a grant that the National Oceanic Atmospheric Administration had at the same time. Was this grant used for some of the same purposes as NOAA's grant?

Mr. ENO. Not to my knowledge, sir. Two things—one, Congress made us the official foundation for NOAA, National Marine Fishery Service, 2 years ago in the last reauthorization process. And it's been specifically encouraging for us to do grants to help the marine sanctuary system and fisheries. For example, last year, Congress appropriated money for us to work in New England and to raise matching funds for the collapse of the New England Ground Fishery.

The nature conservancy grant was principally to work with small businesses. You have to understand, in the Florida Keys, that ecosystem has just collapsed. The entire Florida Bay is pea soup. And the economy of the Florida Keys, which is largely based on tourism and fisheries and outdoor recreation, is in grave jeopardy. And our grant was mostly to work with small businesses and acquaint them with the problems of the Florida Keys and the Everglades upstream.

For example, our March board meeting was in the Keys. And our hosts were the bankers from many of the banks in the Keys. To my knowledge, and to our audits, I don't think we had the same problem. We decided not to fund a second round of grants through the nature conservancy, though.

Mr. FOX. OK. If I could just ask a question to James Martin, if I can.

Mr. MARTIN. Yes, sir.

Mr. FOX. Excuse the bells. We appreciate your testimony earlier, regarding the problems you identified with certain senior organizations that use much of their funds for political purposes, rather than for informational purposes. Do you think the legislation that has been discussed by the chairman and others would be the solution to the problem? Or are there other areas we should be addressing, other than the legislation that's been discussed?

Mr. MARTIN. Thank you, Mr. Fox. I do believe that there are existing laws that should take care of the problem. However, they have not been enforced in the past 40 years. And I would certainly look favorably on the legislation that the chairman is offering, except this 5-percent business. I'm not too sure about that. I think you should, as someone said, you need to cut off their funding totally—make them Black Flag dead, if you will; take out all funding.

Because they're just going to come back and find a way around it, circumvent the law.

Mr. FOX. Well, I think it's clear that your 60 Plus Association has, without public funds, been able to advocate for seniors, inform them, to work on their behalf in a nonpolitical manner, which I think is consistent with the objectives that this Congress, the 104th, is trying to move forward. And whether it's House or Senate, hopefully Republican or Democrat, we think that the way to go is to have nonprofits not be involved in political activity. And your group has obviously shown well how you can achieve the public aims of helping one another without having the political overinfluence.

So I thank the chairman for allowing me to ask these questions.

Mr. EHRLICH [presiding]. Thank you, and thank you all very much. Could we call the next panel forward, too? What we're going to do is swear you in, begin your testimony. We will try to keep this hearing running. If we do not, we may be here all night. I'd like to swear you all in, if everybody would stand.

[Witnesses sworn.]

Mr. EHRLICH. Mr. Bandow, you can begin. Thank you very much for your patience. As you know, we do not control the floor schedule around here. So we appreciate it very much.

STATEMENTS OF DOUG BANDOW, SENIOR FELLOW, CATO INSTITUTE; NATWAR M. GANDHI, ASSOCIATE DIRECTOR, TAX POLICY AND ADMINISTRATION ISSUES, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE; TERRENCE SCANLON, PRESIDENT, CAPITAL RESEARCH CENTER; AND JAMES T. BENNETT, PROFESSOR, GEORGE MASON UNIVERSITY, CFACT

Mr. BANDOW. Of course. Well, I appreciate your indulgence, and I'm very sorry I have to leave for another engagement. I think that the issue you and your colleagues have taken up is a very important one. Far too often the intentions of Congress are being perverted by Federal grantors and by activist grantees. And I'd like to just give a summary of a particular case study to indicate, I think, how difficult the problem is. It's not just some of the usual suspects, in terms of more politically minded organizations, which are involved in funding political activity.

I've taken a look at some of the activities of the Center for Substance Abuse Prevention, which is an organization that has very laudable goals about eliminating or reducing alcohol, tobacco, and drug problems in our society. This of course is an issue with which no one can disagree. The problem is if one looks at the center's activities, one finds that it uses public funds to promote a host of media and political advocacy programs to promote, particularly at the local level, higher excise taxes, restrictions on advertising, and even the destruction of private billboards.

And one sees, through these activities, I think, at least a skirting of the law, in terms of lobbying for Federal budget funding for the agency itself. And just a couple of examples. I've submitted my longer testimony for the record. One example is funding of an organization called the Marin Institute, which is very active in a number of alcohol control issues.

It's an institute that talks about how its own programs do not shrink from controversy. And in its promotional materials, it speaks about the importance of building a coalition for broad social change in regard to health policy. It's an organization that works very hard to create State and national networks of community activists, and has been funded by the Federal Government to create an information project which is very explicitly to be used by alcohol activists to counteract industry.

And it speaks about the role that this sort of a data base could have played in the past for activists. And it cites such issues as industry and ownership patterns; industry promotional expenditures; background of industry spokesmen—issues that have nothing to do with health and abuse of alcohol, but rather are very politically oriented kinds of information.

Similarly, the Federal Government has underwritten studies by the University Research Corp., a private grantee involved in what they call media advocacy case studies, which promote local activists' use of the media. For example, they have a chapter devoted to a San Diego campaign by Act Up, which attempts to link alcohol with the transmission of AIDS; a chapter detailing what is called ARTFUX—F–U–X, which describes the destruction of private billboards.

And indeed, this chapter, funded by the Federal Government, logs the fact that activists are involved in the illegal destruction of private property. And the organization goes on to list lessons learned, which includes that sensationalism makes news. And it sums up the political lessons to be learned from these sorts of activities. Now, I think that any sort of local organization is quite free to engage in these sorts of activities.

The question, of course, is, should Federal funds be directed to promote and support these kinds of activities? Indeed, the Center for Substance Abuse Prevention is very high on media training for its own employees and also for community activists. And it cites as examples of the goals to be served by this media training, things such as increasing excise taxes.

And it says these are examples of social or public policies that have been advanced by community groups through the use of media advocacy techniques, which were funded by the Federal Government. The center has also helped develop and promote the Na-

tional Prevention League, which has been renamed the National Drug Prevention League, which is basically a lobbying and activist organization that has, among other things, helped promote CSAP itself, and the preservation for the funding of this Federal entity.

There are other examples like this. But I think this is a good example that shows the pervasiveness of the problem, where we have an agency with laudable goals, of course, but one which is basically using taxpayer funding to promote political objectives.

Mr. EHRLICH. If you don't mind me interrupting, Congressman McIntosh is on his way back. I am going to go vote right now. But before I left, I wanted to—I just briefly ran through your testimony, and it's wonderful; and I appreciate your appearing here today. I am very interested in your views, observations, comments concerning the discussion with the Senator, the appropriate parameters that you think might make a good piece of legislation.

You've heard the discussion, the various thought processes we've gone through at this point in time. Would you be willing to do that and submit it to the committee?

Mr. BANDOW. Certainly, I'd be very happy to.

Mr. EHRLICH. Thank you very much. With that, I'm going to take a very brief recess for 1 or 2 minutes until Congressman McIntosh gets back. We will continue at that time. And I thank you all for bearing with us very much.

[Recess.]

Mr. MCINTOSH. The subcommittee is reconvened. We are going to proceed with the testimony of Dr. Natwar Gandhi, of the General Accounting Office. Thank you very much for your indulgence, and if you would proceed.

Mr. GANDHI. Thank you very much, Mr. Chairman and members of the subcommittee. We are pleased to be here today to provide information on the revenue producing activities of tax exempt organizations. Of particular interest are the activities of charitable and educational organizations under section 501(c)(3) of the IRS Code, and social welfare organizations under section 501(c)(4). These organizations account for most tax exempt assets.

On the basis of our past work and analysis of the most recently available IRS data, we have several observations to make. First, the tax exempt community represents a large and diverse group of over a million organizations organized and operated for a variety of purposes. However, the community has been characterized by concentration of resources among some large organizations. For instance, in 1989, about 2,100 charitable and educational organizations, or roughly 1.6 percent, controlled 79 percent of all such organizations' assets and 61 percent of their revenue.

Similarly, about 300 social welfare organizations, or roughly 1.4 percent, controlled 78 percent of the assets and 69 percent of the revenue of all such organizations. Second, many tax exempt organizations have relied upon income producing activities to fund their operations. IRS data show that these organizations receive a substantial portion of their revenue from program services and other income producing sources.

For example, in 1990, such revenue accounted for 79 percent for charitable and educational organizations, and 81 percent for social welfare organizations. Program service revenue broadly refers to

fees and income organizations generate while administering programs. For example, it includes hospital charges for patient care; entrance fees to museums; fees for services at YMCA; and tuition at schools.

The IRS data also indicates that in 1990, contributions represented 20 percent of revenue of charitable and educational organizations, while membership dues accounted for 11 percent of revenues of social welfare organizations. These traditional sources of revenue for tax exempt organizations have declined considerably from 1975 as a percent of total revenue.

Our third observation concerns Government grants. Most Government grants to tax exempt organizations are received by charities. In 1991, 33 percent of these organizations received $39 billion in grants from Federal, State, or local governments, representing about 8 percent of revenues. By comparison, 16 percent of social welfare organizations received Government grants, totaling about $650 million, 3 percent of the total revenue.

Information on the nature of these grants is not available at IRS. Now, the fourth observation. Concerns of competition between the tax exempt community and taxable businesses led to enactment of the unrelated business income tax, the so-called UBIT, in 1950. However, because of exclusions established by the tax code, not all unrelated business income is taxable.

In 1993, some 37,000 tax exempt organizations—that is about 3 percent—paid almost $174 million in taxes. Both the number of organizations who pay taxes and the total amount paid has increased considerably since 1985. Fifth, the extent to which tax exempt organizations may engage in lobbying activity depends primarily on the type of organization.

Unlimited lobbying is permitted for social welfare, labor and agriculture organizations and business leagues, provided that it relates to the organization's exempt purpose. Charitable and educational organizations may generally spend no more than $1 million annually on lobbying. Further, donors may not claim a charitable deduction for contributions when those contributions are used for lobbying.

Also, members of tax exempt organizations may not deduct membership dues if the funds are used for lobbying. Finally, Mr. Chairman, our last observation—administration of and compliance with tax codes require determining whether a business activity furthers an organization's exempt purpose; and if not, whether it falls within one of the statutory exclusions. Such determination has been problematic for both IRS and taxpayers. Current controversies surround the extent to which various income sources fit the royalty exclusion.

That concludes my oral statement, Mr. Chairman. I request that my written statement be made part of the record. I will be pleased to respond to any questions. Thank you, sir.

[The prepared statement of Mr. Gandhi follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs
Committee on Government Reform and Oversight
House of Representatives

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TAX-EXEMPT ORGANIZATIONS

Additional Information on Activities and IRS Oversight

Statement of Natwar M. Gandhi, Associate Director
Tax Policy and Administration Issues
General Government Division

GAO/T-GGD-95-198

Additional Information on Activities and IRS Oversight of Tax-Exempt Organizations

Summary of Statement by
Natwar M. Gandhi
Associate Director, Tax Policy and Administration Issues
General Government Division
U.S. General Accounting Office

Over 1 million organizations are approved for tax-exempt status for a variety of reasons primarily related to charitable and educational, social welfare, or member benefit purposes. The Internal Revenue Code allows exemption under 25 organizational categories, including, for example, charities, labor unions, social clubs, and credit unions. The tax-exempt community has been (1) dominated by several categories of organizations and (2) characterized by concentration of resources among larger organizations.

Some, particularly larger, tax-exempt organizations have relied upon service fees and business-like activities to finance their operations. In 1950, Congress enacted the unrelated business income tax (UBIT) to address what was seen as competition between tax-exempt organizations and taxable businesses. In 1993, 37,045 organizations (about 3 percent of all tax-exempt organizations) paid $173.6 million in UBIT.

While tax-exempt organizations received a substantial portion of revenue from other than contributions or membership dues, government grants, reported to IRS as related income, did not comprise a major portion. Most government grants to tax-exempt organizations are received by charitable organizations; 33 percent of these organizations received such grants in 1991. Charitable organizations reported receiving $39 billion in grants from federal, state, or local governments, representing about 8 percent of their total revenue of $490 billion. Tax-exempt organizations reported most of their income as related to their exempt purposes.

The extent to which tax-exempt organizations may statutorily engage in lobbying and political activity depends upon the type of organization. For instance, social welfare organizations may engage in unlimited lobbying, while charities have restrictions. However, even when permitted, funds used for lobbying may affect the deductibility of those contributions to the taxpayer.

Numerous IRS rulings and court cases have addressed whether income is subject to UBIT. Recent controversy involves the scope of income included in the exclusion for royalty income. Deciding whether activities are substantially related to exempt purposes or qualify under exclusions to UBIT create administrative and compliance hurdles for IRS and the organizations.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to provide information to assist the Subcommittee in its inquiry into the activities of tax-exempt organizations and the revenue resulting from these activities. Of particular interest are the activities of charitable and educational organizations (Internal Revenue Code section 501(c)(3)) and social welfare organizations (Internal Revenue Code section 501(c)(4)), as these organizations represent most tax-exempt assets.

On the basis of our past work and our analysis of 1991 Internal Revenue Service (IRS) data, which was the most recent available, we have the following major observations to offer:

-- The tax-exempt community represents a large and diverse group of organizations organized and operated for a variety of purposes. However, the community has been characterized by concentration of resources among some large organizations. For instance, in 1989 about 1.6 percent of charitable and educational organizations controlled 70 percent of all such organizations' assets and 61 percent of their revenue.

-- Many tax-exempt organizations have relied upon income-producing activities to fund their operations. IRS data show that these organizations received a substantial proportion of

1990 revenue from program service activities and other sources: 79 percent for charitable and educational organizations and 81 percent for social welfare organizations. The IRS data also indicate that contributions represented 20 percent of charitable and educational organizations' revenue and membership dues represented 11 percent of social welfare organizations' revenue.

-- In 1950, concerns of competition between the tax-exempt community and taxable businesses led to enactment of UBIT. IRS data show that tax-exempt organizations have reported contributions and the bulk of their fee and business-like income as derived from activities related to exempt purposes and therefore not taxed. In 1991, 71 percent of charitable and educational organizations' revenue was reported as derived from activity related to exempt purposes.

-- Most grants to tax-exempt organizations from federal, state, or local governments are received by charitable organizations; 33 percent of these organizations reported receiving such grants in 1991. Charitable organizations reported receiving about $39 billion in grants from federal, state or local governments, representing about 8 percent of their total revenue of $490 billion. By comparison, 16 percent of social welfare organizations received government grants, totalling

about $648 million--3 percent of their total revenue. Information on the specific source is not available at IRS.

-- About 96 percent of charitable and educational organizations' 1991 income reported from unrelated activity was excluded from UBIT because the income fell under one or more of 40 exclusions. Similarly, about 75 percent of social welfare organizations' income was excluded. Exclusions include income from royalties, interest and dividends, and rents from property not financed by debt. Generally, exclusions were enacted because Congress did not believe such income, usually of a passive nature, was likely to generate competitive problems. In 1993, 37,045 tax-exempt organizations, about 3 percent of all such organizations, paid almost $174 million in UBIT.

-- The extent to which tax-exempt organizations may statutorily engage in lobbying activity depends upon the type of organization. Unlimited lobbying is permitted for social welfare organizations, provided that it relates to the organizations' exempt purpose. Charitable and educational organizations may generally spend no more than $1 million annually on lobbying. Further, donors may not claim a charitable deduction for contributions to charitable and educational organizations used for lobbying, and members of

tax-exempt organizations may not deduct membership dues if the funds are used for lobbying.

-- IRS oversight of tax-exempt organizations primarily involves recognizing organizations for tax-exempt status and subsequent examination to ensure that these organizations are organized and operated for their approved purposes, and that the proper amount of unrelated business income or other excise taxes, if any, has been paid. Administration of and compliance with the UBIT require determining whether a business activity furthers an organization's exempt purpose and, if not, whether it falls within one of the statutory exclusions. This has historically posed difficult determinations for IRS and taxpayers. Current controversy surrounds the extent to which various income sources fit the royalty exclusion.

TAX-EXEMPT COMMUNITY IS DIVERSE

Federal tax law has always provided for exemption of charitable and educational organizations. While the basis for exemption of particular organizations is not always specific, various rationales exist for tax-exempt status. These include a belief that the concept of taxable income is not applicable to nonprofit organizations supported by donations or organized for mutual benefit, and that exemption (1) assists an organization to undertake a function that governments would otherwise provide,

(2) is an appropriate subsidy for addressing social problems using approaches not available to government, and (3) compensates for restraint on capital raising. Tax-exempt status is predicated upon being organized and operated for valid purposes and does not preclude the organization from generating profit from activities in which it is engaged.

The number of tax-exempt organizations continues to increase, with over 1.1 million[1] entities recognized as tax-exempt by IRS in 1994. Organizations are recognized as tax-exempt under 25 categories in Internal Revenue Code (IRC) section 501(c). Each of these categories provides for generic or specific organizational purposes, such as charitable and educational, health, social welfare, and member benefit. Appendix I provides a list of the 25 categories and the approved purposes.

Charitable and educational organizations have historically made up the majority of the tax-exempt community. Social welfare organizations have been the second largest category of exempt organizations. These two categories represented 65 percent of the more than 1.1 million tax-exempt organizations in 1994 and 69 percent of all assets in 1990.

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[1]This total does not include certain 501(c)(3) religious organizations that are automatically tax-exempt without applying to IRS, as well as a small number of other organizations, such as farmer cooperatives.

Although the 25 statutory exemption categories encompass diverse organizational and operational purposes, great diversity also exists within the categories. For instance, 501(c)(3) organizations include educational institutions, churches, and hospitals. Organizations may be approved for exemption in furtherance of over 160 specific activities, ranging from testing products for public safety to combatting community deterioration.

Resources Have Been Concentrated

We reported in a 1987 report[2] that financial resources have historically been concentrated among a small number of tax-exempt organizations. This concentration was still evident in 1989. IRS data show that in 1989 about 2,133 charitable and educational organizations, or 1.6 percent, controlled 70 percent of these organizations' assets and 61 percent of their total revenue. Similarly in 1989, about 291 social welfare organizations, or 1.4 percent, controlled 78 percent of assets and 69 percent of revenue.

BUSINESS ACTIVITIES LED TO UBIT

Prior to 1950, all income of exempt organizations was untaxed as long as the net profits were used to further their exempt

[2]Competition Between Tax-Exempt Organizations and Taxable Businesses (GAO/GGD-87-40BR, Feb. 27, 1987).

purposes. In 1950, Congress enacted UBIT to address what was seen as competition between tax-exempt organizations and taxable entities. Tax-exempt status is predicated upon an organization being organized and operated for valid purposes and does not preclude the organization from generating profits from activities in which the organizations are engaged. However, Congress was concerned that tax-exempt organizations could expand their competitive businesses with untaxed profits while taxable entities could do so only with taxed profits. UBIT applies an income tax to a tax-exempt organization's income from an unrelated trade or business, less deductions directly connected to the production of the income. Income is subject to UBIT only if it is

-- from a trade or business;
-- regularly carried on, and
-- not substantially related to the organization's exempt purpose.

While the basic structure of UBIT has not changed since 1950, the UBIT was extended to churches, social welfare organizations, local associations of employees, and social clubs in 1969. Currently, UBIT applies to most tax-exempt organizations with unrelated business income (UBI) of $1,000 or more. In 1993, 37,045 tax-exempt organizations, about 3 percent of all such

organizations, paid $173.6 million in UBIT. IRS 1991 data[3] show that less than 1 percent of the revenue of charitable and educational organizations and 1.4 percent of the revenue of social welfare organizations was taxable unrelated business income. Appendix II contains additional information on the distribution of revenues for these organizations.

In the 1980s, complaints from small businesses of unfair competition with tax-exempt organizations made the issue a prominent one at the 1986 White House Conference on Small Business and the subject of extensive hearings before the Subcommittee on Oversight of the House Ways and Means Committee in 1987 and 1988. Numerous proposals for UBIT changes were generated, including tightening the criteria for what was considered related activity and eliminating some of the exclusions. However, these proposals were never included in a bill.

PAST RELIANCE UPON INCOME-PRODUCING ACTIVITY EVIDENT

Available IRS data through 1991 show the tax-exempt community continued to rely upon income-producing activity. This reliance

[3]These data are based on information reported by tax-exempt organizations on their annual information return (Form 990, Part VII). IRS officials advised us that these data were first reported for tax year 1989, and the reliability of the reporting has not been assessed.

has been attributed in studies by the community to increased fiscal pressure on tax-exempt organizations, particularly those in the social service area, which experienced reductions in federal funding.

Studies of the tax-exempt community have distinguished between so-called traditional revenue sources, such as contributions and gifts for charitable and educational organizations and membership dues for social welfare organizations, and income-producing or commercial-type revenue. IRS 1991 data show the most common type of income is derived from program service revenue, representing 70 percent for charitable and educational organizations and 60 percent for social welfare organizations. See Appendix III for additional information on revenue sources. Program service revenue broadly refers to fees and income organizations generate while administering programs. For example, it includes hospital charges for patient care, entrance fees to museums, fees for service at YMCAs and day care centers, and tuition at schools. Program service revenue may also be generated from commercial activity not substantially related to the organization's purpose. Other income can be derived from passive activities, such as interest, dividend, and royalty income.

Contributions and dues have decreased as a percent of tax-exempt organizations' total revenue, while the percent from fee and other income-producing activity increased. Contributions

declined from 23 percent to 17 percent of revenue from 1975 to 1990 among all tax-exempt organizations. The decrease was more dramatic among charitable and educational organizations, for which the decline was from 32 percent to 20 percent during the same period. Dues decreased from 21 percent to 5 percent of all organizations' revenue, and dues decreased from 58 percent to 11 percent for social welfare organizations during the same period. Appendix IV contains more information on revenue sources.

1991 Data Indicate Most Revenue Reported From Related Activity

The overwhelming majority of charitable and educational and social welfare organizations' revenue in 1991 was reported as income derived from activities related to the organizations' exempt purposes and not subject to UBIT. Our analysis of IRS data disclosed that this type of income accounted for 71 percent of all income reported by charitable and educational organizations in 1991. Social welfare organizations reported an even higher percentage (82 percent) of income related to exempt purposes. A breakdown of these data is shown in appendix II.

Before 1989, data were lacking on the nature and extent of tax-exempt organizations' activities, particularly how the activities related to their exempt purposes. In response to our and others' recommendations for better data, IRS revised the annual

information report (Form 990) to better capture the extent to which income is derived from activities that are related or unrelated to exempt purposes. Form 990, Part VII, Analysis of Income Producing Activities, requires organizations to categorize their income, other than charitable contributions, as (1) related to their exempt purpose; (2) unrelated business income, but subject to UBIT exclusions under IRC section 512, 513 or 514; and (3) taxable unrelated business income.

Government Grants are not a Major Revenue Source

In 1991, charitable and social welfare organizations reported receiving nearly 40 billion dollars in grants from federal, state, or local governments[4]. While aggregate information is unavailable to determine the nature of these grants, the recipient organizations reported the funds as related to their exempt purposes. Charitable and educational organizations received most of these grants--$39 billion--while social welfare organizations received $648 million. Appendix V has information on government grants.

[4]Tax exempt organizations are required to report separately on form 990 as contributions, grants whose primary purpose is to provide a service directly benefiting the public. Grants that are of direct benefit to the grantor would be recorded as a program service revenue, and, consequently can not be individually identified from the Form 990.

Government grants do not comprise a major revenue source for charitable and social welfare organizations. In 1991, government grants represented 8 percent of total revenue for charitable and educational organizations and 3 percent for social welfare organizations. Tax-exempt organizations are not required to provide information about the specific source of their grants on the publicly available Form 990.

IRS data also show that larger tax-exempt organizations rely less on government grants than smaller ones. For 1991, the top 10 percent of charitable and social welfare organizations as measured by asset size reported about 30 percent of all grant revenue while reporting about 49 percent of total revenue.

Most Unrelated Business Income in 1991
Reported as a UBIT Exclusion

Much income derived from an activity considered unrelated to organizations' tax-exempt purposes in 1991 was not taxed as unrelated business income due to statutory exclusions to UBIT. There are 40 exclusions to UBIT. For instance, UBIT does not apply to income from

-- volunteer labor;
-- services provided for the convenience of members of certain organizations;

-- the sale of donated merchandise;

-- royalties;

-- certain kinds of research;

-- interest and dividends of certain organizations; and

-- rents, if not from debt-financed property.

Generally, the exclusions were enacted because Congress did not believe that such income was likely to generate competitive problems.

Overall, 96 percent of charitable and educational organizations' 1991 unrelated business income was reported on the Form 990 as excluded from UBIT. Social welfare organizations reported about 75 percent of unrelated business income as excluded from UBIT. The most frequently mentioned exclusions cited by the largest social welfare organizations in 1991 included (1) dividends and interest, (2) proceeds from the sale of investments, (3) real property rental income, and (4) income from an activity not regularly carried on.

Amount of UBI Reported Has Been Increasing

IRS statistics show that the number of organizations engaged in UBI activity has been growing. Any tax-exempt organization with UBI gross receipts of $1,000 or more must file a Form 990-T--Exempt Organization Business Income Tax return. Between 1985 and

1993 the number of Forms 990-T filed increased 58 percent from 23,433 to 37,045. The tax reported on these returns increased approximately 343 percent during the same period, from $39.2 million to $173.6 million (in 1993 dollars), averaging $1,675 in 1985 and $4,686 in 1993. Appendix VI contains more data on filings.

Tax-Exempt Organizations May Engage in Lobbying and Political Activity

The extent to which tax-exempt organizations may statutorily engage in lobbying and political activity depends primarily upon the type of organization. Lobbying activity involves an attempt to influence legislation through such means as contacting or urging the public to contact a member or employee of a legislative body, or a government official or employee of an executive agency who is in a position to propose, support, oppose, or reject legislation. "Grass-roots" lobbying is an attempt to influence the opinion of the general public concerning legislation.

Lobbying activity is permitted for social welfare organizations providing that it relates to their tax-exempt purpose. Further, lobbying can be the primary purpose of social welfare organizations. Certain charities may spend up to a maximum of $1 million annually, depending on the size of the organization, on

lobbying activities, provided that no more than 25 percent of the lobbying expenditures involves "grass-roots" lobbying.

Political activity involves participating or intervening in a political campaign on behalf of or in opposition to a candidate for public office. Social welfare organizations can engage in political activity, provided it is not their primary activity. Political activity is generally prohibited for charitable and educational organizations.

The use of funds by tax-exempt organizations for lobbying or political activity can affect the deductibility of contributions and membership dues paid by individuals. Contributions to charitable and educational organizations are generally tax-deductible provided that the funds are not "earmarked" for either lobbying or political activity. While contributions to social welfare organizations are not tax-deductible, dues and membership fees are deductible as a business expense, if they are ordinary and necessary to conducting a taxpayer's business. These organizations must inform taxpayers if any portion of such dues and membership fees will be used for lobbying. Any such portion is not deductible to the taxpayer as a business expense.

UBIT POSES COMPLIANCE AND ADMINISTRATIVE DIFFICULTIES

As with other tax code provisions, the UBIT framework is made complex by the numerous exclusions to what is considered UBI. Additionally, the facts and circumstances of each case drive the determination as to whether an activity is substantially related to an organization's exempt purpose, creating compliance and administrative difficulties.

Numerous IRS rulings and court cases have been handed down on these issues. Whether an activity is substantially related can depend not only upon the type of exempt organization, but upon the unique circumstances involved. For instance, laboratory testing of nonpatients by a hospital has been determined in most circumstances to generate UBI; in one case, it was determined to be a substantially related activity. Defining what activity fits an exception has also been controversial. IRS has recently taken the position that income that some organizations may categorize as royalty income--an exception to UBIT--is actually income from active business services, and hence taxable UBI.

The question of the scope of the royalty exception has been interpreted differently by the courts. In a 1981 case, a court ruled that revenues from the rental of mailing lists was not the type of passive income contemplated by the royalty exclusion. More recently, the Tax Court disagreed with IRS' position to

disallow as a royalty the income from the rental of mailing lists and from a credit card affinity program.[5] IRS claimed that the royalty exclusion includes only passive income sources. The Tax Court, however, ruled that the royalty exclusion was not limited to passive income sources and that the income fit the royalty exclusion as payment for the use of intangible property. Increasingly, organizations are reported to be receiving royalty income from such sources as affinity credit cards, sales of logos, and mailing lists.

IRS Has Undertaken Compliance Initiatives

IRS' examination program for exempt organizations involves determining whether the organizations are operating in accordance with their basis for exemption and whether they are liable for any UBIT or various excise taxes. The Form 990 and/or Form 990-T are examined. In 1993, IRS examined 7,968 Form 990 returns and 1,930 Form 990-T returns.

We reported[6] in 1985 that IRS could improve its process of selecting Form 990-T returns for examination. IRS agreed and

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[5]Under affinity programs, organizations receive a payment for the use of their logos on credit cards.

[6]IRS' Examination Selection System for Exempt Organizations' Unrelated Business Income Tax (GAO/GGD-85-64, July 8, 1985).

conducted a Taxpayer Compliance Measurement Program (TCMP)[7] on exempt organizations' 1986 and 1987 Form 990-T returns to estimate compliance with reported UBIT[8] and to develop criteria to better select noncompliant organizations for examination. Compliance problems among some types of tax-exempt organizations were disclosed. Estimated voluntary compliance levels[9] ranged from 53 percent for social clubs to 75 percent for labor unions and 95 percent for various organizations under IRC 501(c)(1), (2) and (9)-(23) organizations. Estimated compliance levels for charitable and educational[10] and social welfare organizations were 56 and 58 percent, respectively.

Although design limitations in this TCMP made tax gap estimates unreliable, IRS believes that smaller organizations account for much of the UBIT noncompliance. In response to TCMP, IRS revised its audit selection criteria for Forms 990-T in 1990 and targeted specific types of organizations for educational outreach on Form 990-T filing requirements. Additionally, IRS is currently

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[7]IRS uses TCMP data to measure compliance levels, identify compliance issues, estimate the tax gap, and develop formulas for objectively selecting returns for audit.

[8]TCMP did not measure the extent to which organizations might be nonfilers.

[9]Voluntary compliance level is the ratio of tax reported to the sum of tax reported and additional tax assessed.

[10]This does not include private foundations, whose compliance level was estimated at 96 percent.

approaching its examinations by market segment, hoping to improve its examination and selection process.

In May 1994 the Subcommittee on Oversight of the House Committee on Ways and Means submitted recommendations for legislative and administrative changes to address difficulties in the administration of tax-exempt organizations. Among these recommendations were (1) an intermediate sanction short of revocation of tax-exempt status for violations of private inurement rules and (2) increased penalties for failure to file a complete and accurate Form 990. These recommendations were not acted upon at the Committee level.

Categories and Activities of Tax-Exempt Organizations

Section 501(c)	Type and activity of organization
(1)	Corporations organized under an act of Congress and operated as instrumentalities of the United States.
(2)	Title-holding corporations organized to hold title to a tax-exempt organization's property, collect its income, and deliver to it the net proceeds.
(3)	Entities organized and operated exclusively for religious, charitable, scientific, public safety testing, literacy, or educational purposes, for the prevention of cruelty to children or animals, or to foster amateur sports.
(4)	Organizations operated exclusively for the promotion of social welfare or local associations of employees whose earnings are earmarked for charitable, educational, or recreational purposes.
(5)	Labor, agricultural, and horticultural organizations organized to provide education on improving working conditions and products.
(6)	Business leagues, chambers of commerce, real estate boards, and professional football leagues organized to improve business conditions.
(7)	Clubs organized for pleasure and recreational purposes.
(8)	Fraternal beneficiary societies and associations organized to provide for the payment of life, sickness, accident, or other benefits to members and operated under a framework of self-governing branches chartered by a parent organization.
(9)	Voluntary employee beneficiary association providing for payment of life, sickness, accident, or other benefits to members of the association.

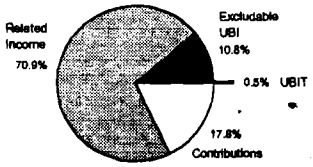
Section 501(c)	Type and activity of organization
(10)	Domestic fraternal societies and associations operated exclusively for social, educational, religious, scientific, charitable, and fraternal purposes under a framework of self-governing branches chartered by a parent organization.
(11)	Teachers' retirement fund associations organized on a local basis.
(12)	Benevolent life insurance associations, and mutual companies, such as electric, irrigation, and cooperative companies organized on a local basis.
(13)	Cemetery companies owned and operated for the benefit of their members and not operated for profit.
(14)	Nonprofit credit unions and mutual reserve funds providing loans to members and reserve funds for domestic building and loan associations, cooperative banks, and mutual savings banks (must have been organized prior to 9/1/57 if a mutual).
(15)	Mutual insurance companies or associations with net premiums not exceeding $350,000 providing insurance to members (other than life companies).
(16)	Cooperative organizations established to finance crop operations.
(17)	Trusts providing for the payment of supplemental unemployment benefits.
(18)	Trusts paying benefits under employee-funded pension plans if created prior to 6/25/59.
(19)	A post or organization promoting the welfare of past or present members of the Armed Forces.
(20)	An organization or trust providing legal services as part of a qualified group legal services plan.
(21)	Trust organized to pay black lung disability claims.

Section 501(c)	Type and activity of organization
(22)	Pension plan withdrawal liability trusts created to meet payments under section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974.
(23)	Veterans' insurance associations created to provide insurance and other benefits to member veterans.
(24)	Trusts described in section 4049 of the Employee Retirement Income Security Act of 1974.
(25)	Title-holding companies with 35 or fewer entities exempt under IRC section 401 and 501(c)(3) and governmental units.

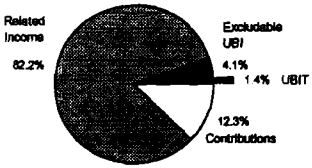
APPENDIX II

Distribution of Revenues for 1991

Charitable and
Educational Organizations



Social Welfare Organizations



Source: SOI Data.

1991 Revenue Figures for Charitable Educational Organizations and Social Welfare Organizations (in millions)

	Charitable and educational organizations		Social welfare organizations	
	Amount	Percent	Amount	Percent
Total revenue	$489,694	100	$21,786	100
Program service	344,081	70.3	13,129	60.3
Contributions, gifts, grants	86,776	17.7	2,690	12.3
Dues/assessments	5,051	1.0	2,089	9.6
Other	53,786	11.0	3,878	17.8

Source: SOI data.

Table IV.1: Major Revenue Sources for all Exempt Organizations 1975 and 1990 990 Dollars, in Billions)

	Contributions		Dues and assessments		Other revenue		Total	
Year	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
1975	$47.3	22.8	$44.7	21.5	$115.7	55.7	$207.7	100.0
1990	93.4	16.7	30.3	5.4	435.9	77.9	559.6	100.0

Source: SOI data.

Table IV.2: Major Revenue Sources for Charitable and Educational Organizations 1975 and 1990 (1990 Dollars, in Billions)

	Contributions		Dues and assessments		Other revenue		Total	
Year	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
1975	$39.4	31.6	$3.5	2.8	$81.7	65.6	$124.6	100.0
1990	80.9	19.9	5.0	1.2	320.5	78.9	406.4	100.0

ırce: SOI data.

Table IV.3: Major Revenue Sources for Social Welfare Organizations 1975 and 1990 (1990 Dollars, in Billions)

	Contributions		Dues and assessments		Other revenue		Total	
Year	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
1975	$1.6	4.6	$19.7	58.2	$12.6	37.2	$33.8	100.0
1990	1.7	8.9	2.0	10.6	15.3	80.5	19.0	100.0

Source: SOI data.

Table V.1: 1991 Grants from Fe3deral, State, or Local Governments for Charitable and Educational Organizations and Social Welfare Organizations

(Dollars in millions)

	Government grants	Total revenue	Percent of total revenue
Charitable and educational organizations	$38,775	$489,695	8%
Social welfare organizations	648	21,073	3%

Source: SOI Data.

Table VI.1: Forms 990-T Filed, UBIT Paid, 990-T Examinations, and Assessments

(Dollars in millions)

Year	Number of organizations	Filed	UBIT paid	Exams	Assessments
1990	1,022,214	33,757	$127.9	3,013	$15.8
1991	1,053,250	34,936	155.6	2,954	19.3
1992	1,082,959	36,393	181.6	2,336	46.1
1993	1,116,015	37,045	173.6	1,930	19.6

Source: IRS.

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Mr. MCINTOSH. Thank you very much, Mr. Gandhi. I've got a couple questions for you.

Mr. GANDHI. Yes, sir.

Mr. MCINTOSH. One, I mentioned in my opening statement records that we were able to obtain—and perhaps you have greater records at GAO—indicating that they had received about $2.2 million in grants in last year, the last fiscal year. Their own disclosure indicated that they received about $10 million in Federal funds. And that was disclosure they made, I don't think pursuant to any legal requirement, but they put it in their public disclosure for their members.

It struck me, upon reading that, that it was absolutely amazing that the Federal Government and the Congressional Research Service and other information that we had available to us here in Congress undercounted that by about a factor of five. Is it your impression that the current disclosure mechanisms and information tracking in this area are that systematically off base, in terms of giving us an accurate picture of where the funds are spent and which organizations receive them?

Mr. GANDHI. Well, you are right, sir, in that there is not what I would call a centralized, standardized system of collection of information on grants given to tax exempt organizations at one place. That is, if you were to push a button on a computer and say, how much grant did these guys get, you cannot get it. If the idea here is to find how much grant they got, then there ought to be some kind of systematic collection, yes, sir.

Mr. MCINTOSH. Well, let me turn to this chart over here from the Independent Sector.

Mr. GANDHI. Yes, sir.

Mr. MCINTOSH. That is based on their numbers of all the different organizations combined have expenditures of $434 billion. Of that, approximately 36.7 percent, or just under $160 billion, is from Government sources. Now, partially, that is local and State government. But that is dramatically higher than the $39 billion that the IRS indicated that an even greater number of charitable organizations receive.

So it strikes me that we have even a greater problem on our hands if we want to try to get our hands around the scope of Federal moneys that go to these organizations.

Mr. GANDHI. One problem is this difference between, say, $39 billion versus this amount that we see here, sir, is that what I have said here in terms of $40.3 billion that have gone to (c) (3), (4), (5), and (6) organizations are $39 billion just to (c)(3) organizations, these are pure Government grants. And they could be at Federal, State, or local level. What you see here, in terms of the Government funding, that could be also for program services.

And if that is for program services, then it would not show up as a Government grant.

Mr. MCINTOSH. So it might be in the form of contracts for an agency to engage in a service.

Mr. GANDHI. Yes, sir.

Mr. MCINTOSH. Now, would it be your opinion that if we wanted to make sure we were exhausted in this area, we would consider

looking at that as well as at grants, as a form of sending funding to those organizations?

Mr. GANDHI. Well, if the idea here is to make sure that the tax system purpose is being served, then I think it is IRS that really decides whether or not, when the money is given, whether that purpose has been served and enhanced. In terms of information to be gathered, then obviously, one word to the wise, a systematic way of collecting it, this kind of different delineation could be provided for in the code.

Mr. MCINTOSH. So the taxpayer could know where his money is being spent.

Mr. GANDHI. That's correct.

Mr. MCINTOSH. And particularly, whether some of it's being used for lobbying or other political activities.

Mr. GANDHI. Well, I think the current law does provide that the grantor agency wants to make sure that the money that is provided to an exempt organization doesn't go toward lobbying or political activities. I mean, there is in the present code and in the present regulation, the compliance audits, OMB circular, all these provisions are there. So whether or not they are followed is another matter.

Mr. MCINTOSH. Right.

Mr. GANDHI. But the system, the mechanism does exist today.

Mr. MCINTOSH. And we heard from Senator Simpson earlier that he was not at all satisfied that the disclosure worked in the organization he was looking into. Also, have you had any experience with organizations strictly complying with that requirement of not using the Federal funds for lobbying or political activities, but shifting their private funds out of the service areas and into the areas of lobbying and advocacy, because they have the Federal funds to pay for the other activities?

Mr. GANDHI. No, sir, we have not audited organizations along those lines. All we have done is to simply collect the data. And I think the emerging fact from our report is how the reliance of these organizations moved away from the sort of traditional source of revenue, into larger, income producing activities.

Mr. MCINTOSH. Was there a corresponding increase in Federal funds that went to those organizations?

Mr. GANDHI. It would be difficult for us to say, because we really don't look into how the Government granting changed, primarily because the data was not available.

Mr. MCINTOSH. So there's a possibility of finding data to actually track where these Federal funds are used.

Mr. GANDHI. That's right.

Mr. MCINTOSH. Thank you very much. I appreciate you coming and sharing this information with us. And as we go forward, I hope we can stay in contact with you to gather even additional data.

Mr. GANDHI. Yes, sir.

Mr. MCINTOSH. Great. I understand that Mr. Ehrlich is on his way back, so we'll continue our tag team. I'd like to now turn to our next witness, who is somebody whom I have worked with quite a bit in other areas, and understand that he's quite an expert now in terms of what type of activities are being funded by these var-

ious Federal grants and contracts. That's Mr. Terry Scanlon, who is president of the Capital Research Center.

And I welcome you here. I appreciate your hard work and effort to uncover a lot of the problems that we've located. And welcome to our subcommittee. Please fill us in with your insight.

Mr. SCANLON. Good. Thanks, Mr. Chairman, and I appreciate your complimentary introduction. It's really a pleasure to come up here and testify today. For 11 years, the Capital Research Center has examined the activities and funding sources of nonprofit groups, providing analysis on the role of philanthropy in society and public policy. We are nonpartisan, and neither solicit nor accept any Government funding.

The hour is late, and if there is no objection, I'll give you a brief summary of my testimony, and submit the full testimony for the record.

Mr. MCINTOSH. No objection; in fact, we'd be delighted.

Mr. SCANLON. I thought you would, at this hour. Every year, billions of taxpayer dollars are distributed to highly political, nonprofit interest groups that engage in advocacy and lobbying on behalf of ideological agendas. To the public, all this is just another example of the institutional corruption of Washington. They see bureaucrats funneling funds to their friends in the advocacy sector.

The agencies come to Congress asking for more money, while funding the groups that lobby for more Government funding. Having become accustomed to receiving their Treasury checks, they have a vested interest in the perpetuation of the status quo. It's a vicious circle, and breaking it will send a message that Congress is serious about a real political reform.

I would like to offer, if I may, some legislative responses to these various problems that you've been addressing this morning in this subcommittee. First, nonprofits that engage in advocacy should forfeit any possibility of receiving Federal funds. Congress should enact legislation making it clear that no taxpayer funds will go to groups engaging in advocacy activities; and it must be any advocacy activities.

If you allow grant recipients to devote even a small percentage of their budgets to advocacy, they will find a way around the restrictions. Money is fungible. Through creative accounting, shifting moneys between different accounts, and reclassifying activities, they will make a mockery of any percentage restriction. Only by insisting on zero advocacy will Congress succeed in denying funds to advocacy groups.

Second, the prohibition on advocacy must also apply to affiliate organizations, lest recipients will simply set up affiliates and subsidy organizations to engage in lobbying activities. Third, there needs to be steep fines for Government funded groups which violate the advocacy restrictions. Groups that violate the prohibition on advocacy should become immediately ineligible for any future Government grants or contracts.

Fourth, enforcement should be the primary responsibility of the Inspector General of the granting agencies. I would not recommend giving the GAO the power to audit recipient groups. From my own

experience in the Reagan administration, GAO reports were viewed by most as having little value. They are often seen as studies designed to support the preconceived notions of the person requesting the report.

Fifth, each agency should be required to provide to Congress, on a regular basis, detailed information about its grantmaking. This should include the names, with descriptions of the recipient organizations; how much they received; how long they have been receiving funding; and the actual purposes of the grant. Finally, I would also recommend that in the future, all Government witnesses appearing as representatives of interest groups before all congressional committees and subcommittees be asked, pro forma, whether their group is the recipient of any Government grant or contract.

This requirement might be called the truth in testifying rule. I commend you, Mr. Chairman, for the work that you and your colleagues have done. It's long overdue. And if the Capital Research Center can be of any assistance in developing the legislation, we'd be delighted to be asked.

[The prepared statement of Mr. Scanlon follows:]

CAPITAL RESEARCH CENTER
727 15TH STREET, N.W.
SUITE 800
WASHINGTON, D.C. 20005
PHONE: (202) 393-2600 FAX: (202) 393-2626

TERRENCE SCANLON
PRESIDENT

June 28, 1995

My name is Terrence Scanlon, and I am the president of the Capital Research Center, a nonprofit think tank in Washington. Thank you for the opportunity to testify today. For 11 years, Capital Research has examined the activities and funding sources of nonprofit groups, providing analysis on the role of philanthropy in society and public policy. We are nonpartisan and neither solicit nor accept any government funding.

Since federal funding of nonprofits is generally handled at the agency level, in the form of grants, no one can say for certain how much taxpayer money goes to the nonprofit sector. What is clear is that every year billions of taxpayer dollars are distributed to highly political nonprofit interest groups that engage in advocacy and lobbying on behalf of ideological agendas. This funding covers everything from groups promoting abortion and population control to proponents of environmental mandates and quotas.

Let me cite some examples. Many people are familiar with the fact the American Association of Retired Persons receives about one-quarter of its budget ($85.9 million) from the federal government. But that's just the tip of the iceberg. The National Council of Senior Citizens, a 501(c)(4) lobbying group, gets 96 percent of its budget (almost $70 million) from the federal cash cow. The group would not even be in business if it weren't for federal funding. Planned Parenthood receives about one-third of its funding from the taxpayers. The National Trust for Historic Preservation receives about one-fifth of its budget from the government. The Agency for International Development finances groups that promote more foreign aid spending.

Recently, Capital Research did a report on the American Public Health Association. In 1993, the group received $175,000 from HHS. Yet its advocacy activities include lobbying against the balanced budget amendment, supporting school-based clinics and condom-distribution programs, and promoting a single payer health care system. This is a group that actually believes Cuba has an enlightened health care system. In January 1994, the group's then-president noted that an APHA report concluded that Cuba "has developed an exemplary national health system." Unfortunately such cases are the norm rather than the exception.

Most of big environmental groups receive taxpayer support. Between July 1993 and June 1994, the National Audobon Society received $275,000; the Environmental Defense Fund $665,000; the Environmental Law Institute $1.4 million; the World Wildlife Fund $2.6 million.

The League of Women Voters is a beneficiary of federal largesse, as is the Consumer Federation of America. The Child Welfare League of America receives $260,000. The Population Council receives $12 Million.

Some of the recipients are among the most divisive groups in America. Many people find their activities and agendas repugnant. Often these groups engage in activities offensive to the religious beliefs of many Americans. For instance whatever one thinks about abortion, it is clear that the country is deeply divided on the issue. Given that, should the government be fueling the flames of the abortion debate by financing the biggest pro-abortion advocate in the country? Should millions of American Catholics be forced to subsidize private population control groups whose missions violate their religious beliefs? But that's exactly what's happening.

Surely the people of Virginia will be happy to know that there tax money is going to a

group that led the fight to keep Disney out of Northern Virginia. The unemployed lumber workers in the Pacific NorthWest will be glad to know their tax dollars are supporting environmentalists who have lobbied to halt logging. The millions who opposed national health care legislation will be thrilled to know they support a group that thinks the Clinton health plan was too moderate.

To the public, all this is just another example of the institutional corruption of Washington. They see bureaucrats funnelling funds to their friends in the advocacy sector. Of course in many cases the government officials came from the advocacy sector and will return there when their term expires.

Thus, the agencies come to Congress asking for more money while funding the groups that lobby for more government funding. Having become accustomed to receiving their treasury checks, they have a vested interest in the perpetuation of the status quo. It is a vicious circle and breaking it will send a message that Congress is serious about real political reform.

Nonprofits that engage in advocacy should forfeit any possibility of receiving federal funds. Congress should enact legislation making it clear that no taxpayer funds will go to groups engaging in advocacy activities. And it must be **ANY** advocacy activities. If you allow grant recipients to devote even a small percentage of their budgets to advocacy, they will find a way around the restrictions. Money is fungible. Through creative accounting, shifting monies between different accounts, and reclassifying activities they will make a mockery of any percentage restriction. Only by insisting on **ZERO** advocacy will Congress succeed in denying funds to advocacy groups.

The prohibition on advocacy must also apply to affiliate organizations, lest recipients

will simply set up affiliates and subsidiary organizations -- often run out of the same office -- to engage in lobbying activities.

There needs to be steep fines for government-funded groups which violate the advocacy restrictions. Groups that violate the prohibition on advocacy should become immediately ineligible for any future government grants or contracts.

I also would recommend that in the future all government witnesses appearing as representatives of interest groups be asked pro-forma whether their group is the recipient of any government grant or contracts.

Enforcement should be the primary responsibility of the Inspector General of the agencies. I would not recommend giving the GAO the power to audit recipient groups. From my own experience in the Reagan Administration, GAO reports were viewed by most as having little value. They are often seen as studies designed to support the preconceived notions of the person requesting the report.

Lastly, each agency should be required to provide to Congress on a regular basis detailed information about its grantmaking. This should include the names and description of the recipient organizations, how much they received, how long they have been receiving funding, and the purpose of the grants.

Mr. MCINTOSH. Thank you. I appreciate that very much. And Dr. Bennett, if I may ask you to hold on just a little bit longer, I appreciate you waiting and being here with us. I'm going to run over to vote. Mr. Ehrlich should be back to continue the hearing. One other thing, Terry, if you could provide us some examples in the research that you have engaged in of perhaps egregious efforts on groups, both on the left and the right political spectrum, where they have engaged in lobbying and received taxpayer dollars.

We've seen one here, with the American Bar Association. But it would be helpful, I think, to bring this back to the American people in a very real sense.

Mr. SCANLON. We'll be delighted.

Mr. MCINTOSH. So for the moment, the subcommittee will again stand in recess.

[Recess.]

Mr. MCINTOSH. The subcommittee is back in session.

Mr. GANDHI. Mr. Chairman, may I just make a comment? I think Mr. Scanlon, after he finished his testimony, I had a little conversation with him about GAO, the work that we have done.

Mr. MCINTOSH. I was wondering what your reaction would be to that.

Mr. GANDHI. I take strong exception to what Mr. Scanlon has said. He talks about truth in testifying, so I just want to reiterate that, one, we do not work with preconceptions; and certainly not the preconception of the requester from the Hill. And second, we simply try to provide objective, independent information to the Congress.

Mr. MCINTOSH. I appreciate you saying that, and I do appreciate your work in this area.

Mr. GANDHI. Right. And really, our work has been used extensively by the 104th Congress. As of now, within just a few months, we have testified more than 100 times before this Congress.

Mr. MCINTOSH. Yes. Let me actually interject on a slightly different matter. One proposal for both of you—and you were talking about who should be the enforcement arm. Mr. Scanlon recommended the Inspector Generals. I don't know whether you think GAO would be a good idea or not. My thought is, let's have the individual taxpayers have an incentive to be the enforcement mechanism, and give them existing rights to come in and make sure that the taxpayer money is not being used in a way that is abusive, or engaged in—if we succeed in legislation—prohibited lobbying and political activity.

I don't know whether you all have a comment on that, either now or later.

Mr. GANDHI. Do you want to go first?

Mr. SCANLON. Go ahead.

Mr. GANDHI. OK, well two points I would make. One is that first we have to establish the regulations and mechanism that are now in place, in terms of auditing compliance, auditing of the grants, that they are not adequate for us to think about something else. There are regulations now that a granting agency must make sure that the grant money is spent properly and in accordance to the regulations.

There are OMB regulations that are so-called single audit programs that make sure that the expenditure is done properly. Second is that we really have not looked into the idea of if this is not good, what else should we look into. So it's difficult for me to comment, to say whether it would be good for GAO to do that.

Mr. McINTOSH. OK. Let me just make a point on that. We have a real problem when the agency is one of the culprits in the lobbying activity, as we saw at EPA and as some of the evidence came out in today's hearing indicated that the Department of the Interior was. So regulations that they have to enforce this may be overlooked if they think it's a good idea for these groups to be in lobbying and engaged in political activities.

Let me suspend this line of questioning, and I'll come back to Mr. Scanlon and give him a chance to comment on that, so that we can hear from Dr. Bennett, since we've got another buzzer and another vote. Dr. Bennett, I do appreciate you coming, and had a chance to glance very briefly, and want to read more fully, your book on destroying democracy. I think it makes a very salient point, and I welcome you here to the subcommittee.

Mr. BENNETT. Thank you. At this hour, I guess I'll give up my professorial prerogative of 1 hour and 15 minutes. You were asking about examples from Terry Scanlon of what's going on. The book's 10 years old, and it is only 550 pages, so it just touches the surface of what's going on. But if you want examples, they're in here, chapter and verse, inside and out. And of course, the last decade, the Federal Government has exploded in size; and consequently, so has the problem.

The only thing that amazes me, and kudos to you, is that finally, after 10 years, the Congress has caught up with a couple of college professors who wrote the book.

Mr. McINTOSH. If I could ask you even perhaps to suspend on your testimony, and share with us maybe one or two of the ones that you found most poignant.

Mr. BENNETT. Well, one of them, I think, was all of the scandal surrounding this boondoggle, from the perspective of the taxpayer, called the National Endowment for Democracy, and how the Chamber of Commerce just grossly went in there and scratched and clawed for its cut of the money. That's in chapter 10, so if anybody on the left side—and especially the far left side—of the dais up there wants to know if we trashed the right wing on this, we certainly did. I'm an equal opportunity basher; and I'd like to make that 100 percent clear.

This isn't a partisan issue. But there's a whole list of dozens of pages of grants, grant numbers, purposes, and how it was used for political advocacy. Left, right, center—you name it, it's in here. And all kinds of groups—senior citizens, environmentalists, the so-called consumer activist groups—it's all in there. I tell my wife sometimes, it's one thing after another. And she says, no, it's the same damn thing over and over again. And that's what we've got here.

And I agree with most all of the statements, in the interest of closing this down. But I would like to add one other thing. First, the whining of these groups that if we make any change whatsoever, that this will be the end of civilization as we know it should

be dismissed as the total bilge that it is. It's time to get lobbyist leeches off the taxpayer's tit. Now that is putting it right down front and center.

And we've been talking a lot about sinful and tyrannical, well we've had enough sin and tyranny here, inside and outside the beltway. And if you're looking for somebody that's been sinned and tyrannized, it's me, because I pay my taxes. And basically, to get right down to it, what you're going to have to do, as Terry has said, and other people have said, is simply ban lobbying, political advocacy, whatever you want to call it, by anybody who gets Federal tax dollars.

Anything else invites and encourages continuing abuse. And I happen to be one taxpayer that's just had it to the gills. With that, I'll close.

[The prepared statement of Mr. Bennett follows:]

Statement of James T. Bennett
before the
House Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
June 29, 1995

TAX-FUNDED ADVOCACY

I am Professor of Economics at George Mason University in Fairfax, Virginia, and a member of the Board of Academic Advisors of the Committee for a Constructive Tomorrow, a consumer and environmental group which receives no government funds. For the past quarter-century, my research and writing has focused on nonprofit institutions. My statement will be brief because my views on tax-funded advocacy have been stated in great detail in a 1985 book by my colleague, Tom DiLorenzo, and me entitled **Destroying Democracy: How Government Funds Partisan Politics**.

Destroying Democracy documents how billions of federal dollars are given each year through grants and contracts to a host of special-interest organizations that engage in blatant political advocacy and public propaganda and explains why this occurs. Consumer groups, environmental activists, senior citizen lobbyists, labor unions, and grass-roots coalitions of every description have for decades used federal largesse to engage in political activity. Stated simply, bureaucrats encourage these organizations to lobby on their behalf to increase the budgets of the programs so that more grants and contracts can be targeted to these activist groups. It is a vicious cycle. Because the basic purpose of this

lobbying is to increase the size and scope of government, the vast majority of the taxpayers' money goes to groups which favor more governmental intervention in and control of economic and social issues -- leftist groups. Some groups on the right of the political spectrum have also received taxpayers' funds, as shown in Chapter XIV of **Destroying Democracy**.

I wish to make two points. First, the issue being addressed here is not the right of free speech, for this is a free country and everyone has a right to speak his or her mind. Rather, the issue is *TAX-SUBSIDIZED* speech, which Thomas Jefferson eloquently condemned in the Virginia Statute of Religious Liberty: "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical."

Second, ending tax-funded politics is not a partisan issue or an attempt to "defund the left." No organization which obtains federal funds should be permitted to engage in political advocacy in any shape, form, or fashion, regardless of its position on the political spectrum or the professed good intent of its goals. Money is fungible, so once taxpayers' funds have been given to an organization, other money is freed for political advocacy -- tax-subsidized advocacy cannot be avoided.

The time has come to end the sin and tyranny and the only way to accomplish this is to require groups seeking taxpayers' money to refrain from politics. Anything less invites -- indeed, guarantees -- the same abuse that has already gone on far too long.

Mr. MCINTOSH. Well, thank you. I really appreciate it.

Mr. BENNETT. Next time, I'll tell you what I really think.

Mr. MCINTOSH. That's right, don't spare us any of your insights into this. I can tell you this, I think you voice the sentiment of millions of Americans who pay taxes and who see the Government spending continuing to skyrocket out of control. They continue to wonder what on Earth happens. Frankly, when I go back home, the word that I get from people is, I hope you're not corrupted once you get out there into Washington.

And they are suspicious that this type of activity is in fact going on; that there is an insidious and hidden effort to have everybody scratch each other's back. The Congressmen appropriate money; the outside groups help them politically. We heard some of that detailed earlier today. I am determined to break through that. Frankly, I don't think it's in the best interest of the voters in my district, or any Americans, to see that.

Ironically, a Member commented to me on the way over that, well, who will be the advocates for the poor. And I think if you stop taking away their hard-earned money to pay for these type of activities, I think the poor will be a lot better off. And they're perfectly good advocates for themselves, if we allow them to keep their resources rather than funding them to bureaucracies, whether they are in the Government or outside of the Government, who have nice jobs and expensive office buildings here in Washington.

So I appreciate your comments. I share your sentiments totally. And I want to let you know that this subcommittee is determined to get to the bottom of this, and to craft legislation that will benefit all Americans, and particularly all taxpayers, to make sure that we don't have these organizations coming to the Federal trough. Let me now go and vote, and I would ask my colleague from Minnesota, Mr. Gutknecht, if he would take the chair.

And I had asked Mr. Scanlon earlier to provide some examples of horror stories, and he hasn't had a chance to do that.

Mr. GUTKNECHT [presiding]. Thank you, Mr. Chairman. And I apologize for what's happening today. We normally don't have this many recorded votes on a bill like this. We're running back and forth. I can speak, I think, for the entire subcommittee—we will have a good opportunity later on to review the transcripts of your testimony. But Mr. Scanlon, you were going to give us some examples, and if you would proceed, please.

Mr. SCANLON. Well, one I would mention would be the National Council of Senior Citizens. And I saw somebody, I don't know if he's still in the room, walking around with press statements during this hearing this afternoon—a representative of that group. Here's a group which is a 501(c)(4). It derives about 96 percent of its budget from the Federal taxpayer.

Active in lobbying for various benefits for senior citizens. The fact of the matter, if they didn't have this Federal largesse, they wouldn't be around. So my comment is that any group that derives 90 percent plus of their budget from the Federal trough, it just shouldn't happen. So I think the issues that we're addressing today should also be looked at by various appropriations subcommittees. And I hope they will be. This is a big, big problem.

Mr. GUTKNECHT. Dr. Bennett.

Mr. BENNETT. This point that Terry makes, with regard to the National Council of Senior Citizens, raises a very important issue. The National Council of Senior Citizens is not a senior citizens' group. It is a front for labor unions. Three-quarters of the board of directors of the National Council of Senior Citizens are heads of major labor unions.

This is a way of channeling money to labor unions in America to funnel the unionist agenda by keeping senior citizens activated. And Terry was talking about if we don't have very rigorous prohibitions on this, that affiliates will be served. And what this is is just an affiliate. It is an arm of the labor union movement in the United States. And all that is documented here in this book that I wrote with Tom DeLorenzo 10 years ago.

Mr. SCANLON. I'd also make one other comment. Many of these groups are not just those involved with poverty related issues. The National Trust for Historic Preservation receives about one-fifth of its annual budget from the taxpayer. So all these groups should be looked at carefully.

Mr. GUTKNECHT. Dr. Gandhi, did you have any other remarks for us?

Mr. GANDHI. No, sir; but I do want to point out that, of course, these examples are there, but if you look at the overall situation, when you say (c)(3) organizations, roughly only about 8 percent of their revenues come from grants. These are large numbers, $39 billion, but when you look at the overall revenues that they have, it's about 8 percent. And if you talk about larger organizations, within the (c)(3) category, it's about 5 percent of the total revenue coming from grants.

So you want to think in terms of where the overall numbers are, as well.

Mr. GUTKNECHT. Well, if I could comment on that, I think it's important to note that it would be nice to have a level playing field. And those nonprofits, such as the Capital Research Center, that do not solicit, nor would they accept, Federal money really are not playing on a level playing field. Because the people that we're dealing with and being criticized by in nearly every case is a recipient of Federal largess. It really is not a level playing field in this city.

Mr. GUTKNECHT. Well, I know of one example of one of the members of this subcommittee talked about a situation where his father was in a situation where he was actually competing against a Government sponsored agency. And so he knew firsthand what was happening out there in this regard. I would recognize Representative Fox—if you have any questions or closing comments. We're going to have to close this down here pretty quick.

Mr. FOX. Well, Mr. Chairman, I just wanted to say thank you to the witnesses and those who participated in this hearing. I think that, from our point of view, what we hope to accomplish as a result of this hearing and in future hearings—I know that Chairman McIntosh and Chairman Clinger would agree with you, Congressman Gutknecht, that what we hope to do is to find that kind of legislation which will make sure that in fact the positive changes the public wants with regard to separating the political function from the public service function can be achieved for the protection of all. And I thank you for the opportunity to have participated.

Mr. GUTKNECHT. Well, I want to thank the witnesses and the participants in this hearing. And I will end the way I began, saying that I think if the taxpayers really knew all of what's happening, with this sort of revolving door that's happening, where taxpayers' dollars are being leveraged to lobby for more taxpayer dollars, I think they would be outraged.

And we welcome your participation in that process. We thank you for putting up with us today. It's been a very unusual day here at the House. We've had meetings on top of meetings, as you've seen Members in and out between votes and going to various meetings. So we do apologize. But on behalf of Senator Simpson and Representative McIntosh, the members of this subcommittee, we look forward to working with you in the future.

Because I think this is an issue whose time has come. And as I also said, the status quo doesn't live here anymore. And as we move this Federal Government toward more fiscal responsibility, I think we also have to make some of those agencies who come here more responsible as well. So again, thank you to all the panelists and the participants. We will look forward, as I say, to reading the entire transcript and any other communications you may have that you may want to share with us in the future.

The record will remain open for 5 calendar days, or whatever the requisite number is. But if you have other information that you'd like submitted for the record, we would certainly be happy to have it. Again, thank you so much, and I'll adjourn the meeting.

[Whereupon, at 6:45 p.m., the meeting was adjourned, subject to the call of the Chair.]

ABUSE OF TAXPAYER FUNDS TO SUBSIDIZE LOBBYING AND POLITICAL ACTIVITY

FRIDAY, JULY 28, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:04 a.m., in room 2167, Rayburn House Office Building, Hon. David M. McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, Fox, McHugh, Gutknecht, Scarborough, Peterson, Waxman, Slaughter, and Kanjorski.

Also present: Clinger, Hastert, Tate, Collins of Illinois, and Meek.

Staff present: Mildred Webber, staff director; Jon Praed, chief counsel; Karen Barnes, professional staff member; David White, clerk; Bruce Gwinn, minority senior policy analyst; and Elisabeth Campbell, minority staff assistant.

Mr. MCINTOSH. The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is called to order.

Mr. Tate, having been here, we have a quorum as present. I would ask unanimous consent that when Mr. DeLay, the majority whip, arrives that we interrupt opening statements in order to allow him to testify, proceed with questioning and return to his leadership meeting.

Seeing no objection, we will proceed in that manner.

Good morning, ladies and gentlemen. I am David McIntosh from Indiana's Second District. On behalf of the entire subcommittee, I would like to thank you for coming to today's hearing. I would particularly like to thank the Members who are joining us today, Mr. Skaggs, Mr. Wicker, and Mr. DeLay are going to be here. I believe there was also one other Member; Mr. Sabo was going to attend and testify on this issue.

We appreciate all of you joining us today as we continue to talk about one of Washington's dirty little secrets: Welfare for lobbyists. For those of you who attended our first hearing last month, you will recall that we heard from a number of witnesses: Polly Spare, president of Voice of the Retarded, spoke about the fact that her organization takes no Federal money and finds that its voice is drowned out by groups who do. Ms. Spare's concerns were supported by Jim Martin and former Congressman Roger Zion with 60 Plus.

We also heard from an expert inside Congress' own General Accounting Office who testified that Government recordkeeping is so poor that it is difficult, if not impossible, for the Government to know how many tax dollars are being used for political advocacy.

Let me point out one discrepancy that became readily apparent. The IRS calculates that there are approximately $39 billion in grants going to nonprofit groups and yet the independent sector, which represents several nonprofit groups, indicates that their members report they receive about $160 billion in Federal grants and that their recordkeeping shows that it is at that level.

The inability of the Federal Government to keep track of where these grants are going, who is receiving them, and how much money is being spent, is appalling, regardless of what you think about the particular merits of this proposal. A lot has happened since that hearing. Last Monday, the House Appropriations Committee, under the leadership of Chairman Bob Livingston and subcommittee chairman John Porter, disagreed with us on terms of putting it into the appropriations bill adopted as an amendment to the Labor-HHS appropriations bill, our legislation to stop welfare for lobbyists.

That amendment, known as the Istook-McIntosh-Ehrlich amendment, has been strongly supported by the House Republican leadership from the very beginning. Were it not for the continued and unfailing support of the leadership, including Majority Whip Tom DeLay who will testify here shortly, three things would have happened: One, this bill would have died a quiet death; two, lobbyists who are on the Federal dole would have finally gotten a good night's sleep, secure in the knowledge that their gravy train was not in danger of being derailed; and three, the Federal Government would have continued to hand out billions of dollars to special interest groups who engage in political advocacy.

Public reaction by Americans when they find out about this issue is at first surprise. Time and time again when I have talked with people at home, they tell me they can't believe this is happening and then they are outraged, and then they demand that we take action now to put an end to welfare for lobbyists.

This subcommittee will continue to look into this problem, and at this point, I am going to suspend my opening statement and, pursuant to our unanimous consent agreement, call on our first witness, Majority Whip Tom Delay. We will proceed to question him and then allow him to go back to the leadership meeting, and continue then with opening statements and the rest of the hearing.

Mr. DeLay, thank you for coming and welcome to our subcommittee.

STATEMENT OF HON. TOM DELAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. DELAY. Thank you, Mr. Chairman. And I want to commend you, Mr. Chairman, and not only you but Mr. Ehrlich and Mr. Istook, who is not here, for this legislation and for having these hearings today on what I think is a very crucial issue.

As you know, there are four real problems with the way lobbyists currently use Federal grant money. The first is that political advocacy is not defined in current law and the law relating to lobbying

activities is inadequate in distinguishing what kind of activity using Federal funds is acceptable and what is not. Many activities are clearly political and yet Federal grantees are not restricted from doing them.

The second problem is fungibility. Grant dollars are being transferred to organizations that engage in political activity, freeing up private funds to increase that activity or to directly engage in prohibited political activity.

And the third problem is that because we don't know who all the Federal grantees are or the complete amount of money that they receive, no one knows where the $39 billion plus in Federal grant funds go. This creates a huge gap in accountability.

And finally, the current law strains the first amendment rights of taxpayers, according to the repeated rulings by the Supreme Court.

Fortunately, the Istook-McIntosh-Ehrlich grant reform, the IME grant reform in the Labor-HHS appropriations bill offers specific solutions to these problems. First, it defines political advocacy to not only include engaging in partisan politics and lobbying, but also seeking to influence executive or judicial decisions at the Federal, State, and local levels of government.

Second, to deal with the problem of fungibility, the prohibited political advocacy threshold limits—the threshold limits political advocacy to 5 percent of private funds up to $20 million and then limits it to 1 percent thereafter. In addition, subgranting of Federal funds is prohibited except as prohibited by Congress when a particular grant program is enacted.

And finally, recipients of block grant funds from the State and local governments become Federal grantees accountable for their use of funds to the American taxpayer.

To increase accountability among grantees, reporting requirements are established that make it clear who is receiving Federal grants and what are their purposes. Every organization, including higher education, must produce a single report consolidating all their grants, the grant award and associated administrative and overhead costs and the purpose for each grant, the purpose for which each grant was awarded and used, as well as the political advocacy that they engage in, if any.

Finally, the first amendment rights of taxpayers are shored up because of the absolute prohibition on grant funds being used for political advocacy and restrictions placed on grantees to prevent the transfer for Federal funds so that grantees won't be supporting political advocacy.

Mr. Chairman, I am in full support of this provision. The American people deserve grant reform. It is long overdue. I am sure the chairman has a long list of the horror stories of the misuse of funds, the fungibility of funds and it is time, as we started in this Congress, to open this house, let people look in and see what is going on here—and so I commend my colleagues for leading the way and holding this hearing and bringing this bill before this committee.

Mr. McINTOSH. Thank you very much, Mr. DeLay. You have stated it very eloquently, the arguments for this bill.

One of the main arguments that I have heard against it, in fact at our first hearing, some of the members of the committee were concerned that we were singling out opponents of our particular political agenda and philosophical agenda. Is it your understanding that this bill would apply to people on the left and the right, conservatives and liberals, and that it doesn't discriminate based on any form of ideology?

Mr. DELAY. I totally agree with that. I mean, this bill would affect the U.S. Chamber of Commerce, and there is no bigger supporter of free market ideals and the things that the Republican party stands for all the way to the left. And it affects anybody that receives the Federal taxpayers' money and brings accountability for the use of that money.

Mr. MCINTOSH. Thank you very much for coming and joining us today.

Let me ask if any of my colleagues would have any questions for Mr. DeLay. I appreciate your support, Mr. DeLay.

Mr. EHRLICH. Mr. Chairman, I just want to publicly thank the whip for his great leadership on this issue. Literally, we could not have gotten to the point we have reached with respect to this issue without your leadership, and we all appreciate it.

Mr. DELAY. Well, I thank you for that comment.

Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you.

We will continue now with the regular order of the committee proceedings with opening statements and then our first panel of witnesses. I appreciate everyone agreeing to allow Mr. DeLay to be able to appear today in the middle of his meeting with the leadership.

I have noticed since that first hearing that we had on this that various news organizations have begun to cover this issue and I thought I would ask unanimous consent to put into the record some of the editorials that have been written to date. We will continue to survey these and make them known to a broader group.

[The information referred to follows:]

THE DETROIT NEWS
JULY 26, 1995

Defund Advocacy Groups

The House Appropriations Committee this week approved a measure restricting lobbying by nonprofits that receive federal money. While the measure addresses a genuine problem, it will result in an unnecessarily intrusive federal bureaucracy. The real solution lies in terminating all federal grants to advocacy groups, obviating the need for intricate pieces of legislation.

Rep. Robert K. Dornan, R-Ca., has proposed precisely such a bill. He will offer it as an amendment when the committee-approved lobbying bill goes to the House floor before the August recess. The Dornan bill deserves strong Republican support and should be the one adopted by the House.

To circumvent a presidential veto, the anti-lobbying measure now approved was attached to the spending bill that finances the departments of Labor, Education and Health and Human Services. Co-sponsored by Republican Congressmen Ernest Istook, Ok., Bob Ehrlich, Md., and David McIntosh, Ind., it has two main provisions intended to plug loopholes in existing legislation. These loopholes allow nonprofits, such as the Child Welfare League of America and the League of Women Voters, to divert large sums of money for self-serving political advocacy.

One key provision caps the lobbying expenditure of nonprofits at 5 percent of their total funds — public and private. And to ensure compliance it requires groups to open their books for audits by the General Accounting Office.

The second provision prohibits not only direct lobbying but also political advocacy including protests and public-interest legal action against government agencies. For instance, the measure would prohibit the American Bar Association's recent protests against the constitutional amendment to ban flag-burning.

Given that money is fungible and there is no way of distinguishing a group's private and public funds, these provisions are at once too broad and insufficient.

L.A. Times Syndicate

Capping a group's lobbying expenses at 5 percent of its budget still leaves a lot of money for political advocacy. The AARP has an annual budget of over $100 million. A 5% cap still allows it to spend $5 million toward its never-ending quest for bigger entitlements. Besides, the cap will require taxpayers to support a bureaucracy to monitor the spending habits of these groups. Government bureaucracies, no less self-perpetuating than federally funded advocacy groups, are unlikely to result in major savings for taxpayers.

And the measure creates a constitutional problem. The sponsors of the measure are disingenous when they claim that restrictions on how groups spend their private money will not erode free speech rights. Individuals who receive federal gants cannot and should not be asked to restict petitioning with their private funds so why should groups be restricted? Were the bill to become law, such questions would embroil the federal government in a First Amendment quagmire.

Nonprofit advocacy groups receive over $39 billion in federal grants every year. There is ample evidence showing widespread abuse of this money. However, government supervision is not the answer. Just cut off the funding. If private citizens believe in a group's mission, they will voluntarily support it.

THE MUNCIE STAR

SUNDAY,

July 16, 1995

Page 10A

SCRIPTURE

"He that hath a bountiful eye shall be blessed; for he giveth of his break to the poor." — Proverbs 22:9.

EDITORIALS

A good target

Our congressman, David McIntosh, is on the way to becoming known by the enemies he makes. Since he emphasized curtailing regulatory excess and trimming non-essential government expenditures during his campaign, this has to be reassuring to his constituents.

It was just days ago that a noted network anchor (Dan Rather) referred to McIntosh as a "hatchetman," a notable lapse in journalistic objectivity when such more expressive and less judgmental terms as "lightning rod" or "pointman" are available.

One of McIntosh's more recent targets is government funding for groups that then use the money to lobby for more government funding. Since 1990 some $39 billion has gone as government grants to such private groups, including charities and unions.

McIntosh calculates that last year the Environmental Protection Agency disbursed some $90 million to such special-interest groups as the Sierra Club and the National Resources Foundation.

To be sure, not all of the money goes for lobbying, but lax accounting standards make it impossible to tell how much does. In any case, it's only fair that all the lobbying costs of a special-interest group be borne by its members. Lawyers, for example, would not seem to be in need of federal assistance, but the American Bar Association got $2.2 million in grants last year from Washington.

In a recent editorial, The Wall Street Journal noted that most of McIntosh's target groups are on the left of the political spectrum, the result of 40 years of Democratic control of Capitol Hill. Still, the Christian Coalition would be as much a target if it got federal funds as is the American Federation of State, County and Municipal Employees, which does get a federal subsidy.

It's appropriate to read into the results of the last election a certain amount of disenchantment with Big Brotherism, though McIntosh's political courage in going after Big Brother, hammer and tongs, has not been widely imitated.

We trust that his modest proposal — to require groups that get federal grants to open their books and face loss of federal funding if more that 5 percent of their budget goes to lobbying — will gradually gain ground on the basis of its inherent fairness and logic.

Causes should be funded by the folk who believe in them rather than by taxpayers who might or might not want to see their hard-earned money used without their consent to advance causes they might find obnoxious.

The Indianapolis Star
July 20, 1995
p. A8

Stop the subsidies

When the federal government gives out grant money to non-profit organizations, taxpayers assume it's money well-spent.

And much of it is. Among other things, federal grants help the poor and homeless, protect the environment and pay for child care, breast cancer detection and job training.

But much of the money doesn't do what taxpayers intended. In fact, federal grants are being used directly and indirectly by special interests to lobby the government for more spending. It's a subsidy that must be stopped.

"The government is using tax funds to nourish a network of special interests, a welfare-industrial complex, with a direct self-interest in the growth of the welfare state," says a July study by the Heritage Foundation in Washington D.C.

Groups that spend more than 5 percent of their budget on lobbying would not get government grants.

"While these organizations often claim that the money they receive helps the less fortunate, the reality is that it bolsters their own political powers, perks and prestige."

Today, Congress will take steps to end the abuse. A provision authored by Rep. David McIntosh, R-Ind., would prohibit the giving of grants to groups that spend more than 5 percent of their budget on government lobbying. The language, to be inserted into an appropriations bill, has come under heavy fire from much of the non-profit sector.

Their fears are understandable, but the measure is much-needed and long overdue.

Although firm data are hard to come by, the General Accounting Office says tax-exempt groups receive $39 billion a year in federal money. Among groups on the gift list in 1993-94: the AFL-CIO, which received more than $2 million, the Environmental Defense Fund, which got $515,000 and the American Bar Association, with $2.2 million.

In some cases, groups have flagrantly used the tax money on political causes. More often, the tax money is targeted to specific programs, which indirectly allows the organization to spend more from its operating budget on government lobbying or advocacy. For example:

- The Child Welfare League of America received more than $250,000 in federal funds from June 1993 to July 1994, then turned around and launched an advertising campaign to increase welfare spending.
- Families USA, a driving force behind the Clinton health care plan, received $250,000 from taxpayers.
- The American Nurses Association received $1 million from taxpayers in 1993-94. In 1994, the group endorsed Rep. Dick Gephardt's health care plan and actively lobbied for it.

Not all the examples come from the liberal side of the spectrum. Taxpayer grants go to gun education by the National Rifle Association and business programs sponsored by the Chamber of Commerce.

One part of the McIntosh proposal would deny funds to groups that have exceeded the 5 percent threshold during the past five years. That could change the landscape of the federal grant industry. It would also assure taxpayers their money is going to help people, not political causes.

There's nothing wrong with special interest groups lobbying for their constituencies. Quite often, they see it as a moral obligation and it is clearly their constitutional right.

It simply should not happen at taxpayer expense.

Mr. McINTOSH. One of them was by the Detroit News dated July 26, 1995, the headline was Defunding Advocacy Groups. And their point was, for instance, the measure would prohibit the American Bar Association's recent protests against constitutional amendments to ban flag burning given that money is fungible and there is no way of distinguishing a group's public and private funds, these provisions are at once broad and insufficient. The editorial goes on to suggest that we should go even further than our amendment and defund actual grants to these groups.

The Indianapolis Star has an editorial dated July 20, 1995, Stop the Subsidies. They conclude by saying there is nothing wrong with special interest groups lobbying for their constituents. Quite often they see it as a moral obligation and it is clearly their constitutional right. It simply should not happen at taxpayer expense.

And then finally there is my hometown newspaper, the Muncie Star, which by the way does not always agree with positions that I am taking, their editorial dated July 16, 1995, is titled "A Good Target." In it they say it is only fair that all lobbying costs of a special interest group be borne by its members, and then go on to say, causes should be funded by the folk who believe in them rather than by taxpayers who might or might not want to see their hard-earned money used without their consent to advance causes they find obnoxious.

A wide variety of groups which look after the American taxpayer have come forward to endorse this bill. The Association of Concerned Taxpayers, Citizens for a Sound Economy, Americans for Tax Reform, the Competitive Enterprise Institute, the Federation of Independent Businesses, the Chamber of Commerce, which Mr. DeLay indicated would themselves be affected by this legislation, and the Senior Coalition.

We will hear from two of these groups today, the National Taxpayer Union and Citizens Against Government Waste. We will also hear from Arianna Huffington, chair of the Center for Effective Compassion and senior fellow at the Progress and Freedom Foundation who has personal experience with charitable groups that are allowed in politics to rise above their charitable acts.

Since the last hearing, a few groups have also come forward to object to the bill. We have invited them today, as well, because we are interested in hearing about their concerns. The Association for Retarded Citizens [ARC], and the American Heart Association will testify against the bill. I welcome them here today and look forward to their testimony.

If I may, let me issue a challenge to those who disagree with us. While we welcome concerns about the bill, I would ask that each one of you state whether you agree with the fundamental premise that is driving Congress on this issue: Money is fungible.

Let me explain, as Mr. DeLay mentioned, if the Federal Government gives out to a charitable organization a million dollar grant and that gift from the taxpayers frees up an equal amount of private dollars to lobby or engage in political activities, then we have indirectly subsidized those lobbying efforts. But in the end, the money comes from the same pot.

The taxpayers are being abused by having this Federal subsidy of advocacy. It is entirely appropriate and urgently necessary for

Congress not only to bar the use of grant funds for political advocacy, but also to limit the amount of private dollars that can be spent on advocacy groups, by any group that is dependent upon taxpayer funds for its mission.

In essence, Congress is asking every Federal grantee to make a choice. Are you going to do charitable good deeds, or are you going to engage in political activity? If you want to do good deeds, we will support you in any way that is appropriate. However, if you want to engage in political advocacy, you will have to do it on your own time and with your own money. Every working day the Federal Government sinks $1 billion more into debt. It is our duty to the taxpayers to make sure that this money is not being used for lobbying and political activity.

As we hold our hearings today, two organizations which receive Federal grants and have a political agenda are lobbying Members of Congress against our efforts to reform the way Washington works. These groups are OMB Watch and Independent Sector, and I would ask unanimous consent to submit for the record a memo that was sent out by the Independent Sector rallying its members to come and lobby Congress against this legislation.

They are using taxpayer-funded efforts to help subsidize these organizations. I think they also realize that this is the equivalent of Custer's Last Stand, their last opportunity to lobby Congress to continue to get these grants for lobbying and advocacy groups.

[The prepared statement of Hon. David M. McIntosh and a summary of the bill follow:]

"Washington's Dirty Little Secret"
Welfare for Lobbyists

Opening Statement of Chairman David M. McIntosh
July 28, 1995
Hearing before the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs

Good morning, ladies and gentlemen. I am David McIntosh, from Indiana's second district. On behalf of the entire subcommittee, I would like to thank you for coming to today's hearing.

We appreciate you joining us today as we continue to talk about one of Washington's dirty little secrets: welfare for lobbyists.

For those of you who attended our first hearing last month, you'll recall we heard from a number of witnesses: Polly Spare, President of Voice of the Retarded, spoke about the fact that her organization takes no federal grant money and finds its voice drowned out by groups that do. Ms. Spare's concerns were supported by Jim Martin and former Congressman Roger Zion, with 60 Plus. We also heard from an expert inside Congress' own General Accounting Office, who testified government record-keeping is so poor that it makes it difficult if not impossible for the government to know how many tax dollars are being used for political advocacy.

A lot has happened since that hearing. Last Monday, the House Appropriations Committee, under the leadership of Chairman Bob Livingston and Subcommittee Chairman John Porter, adopted an amendment to the Labor, HHS Appropriations bill to stop welfare for lobbyists. That amendment, known as the Istook/McIntosh/Ehrlich amendment, has been strongly supported by the House Republican Leadership from the start. Were it not for the continued and unfailing support of the Leadership, including Majority Whip Tom DeLay who will testify here shortly, three things would have happened: One, this bill would have died a quiet death; Two, lobbyists "on the federal dole" would have gotten a good night's sleep last night, secure in the knowledge that their gravy train was not in danger of derailing; and Three, the Federal Government would continue to hand out billions of dollars a year to special interest groups that engage in political advocacy.

A wide variety of groups which look after the American taxpayer have come forward to endorse the bill: the Association of Concerned Taxpayers, Citizens for a Sound Economy, American for Tax Reform, the Competitive Enterprise Institute, the National Federation of Independent Businesses, the Chamber of Commerce, and the Senior Coalition. We will hear from two of these groups today -- the National Taxpayers' Union and Citizens Against Government Waste. We will also hear from Arianna Huffington, chair of the Center for Effective Compassion and Senior Fellow at

the Progress and Freedom Foundation, who has had personal experience with charitable group that allowed its politics to rise above charitable acts.

Since the last hearing, a few groups have also come forward to object to the bill. We have invited them today as well, because we are interested in hearing about their concerns. Association for Retarded Citizens (ARC) and the American Heart Association will testify against the bill. I welcome them here today, and look forward to their testimony.

If I may, let me issue a challenge to them, however. While we welcome concerns about the bill, I ask that each one of you state whether you agree with the fundamental premise that is driving Congress on this issue -- money is fungible. Let me explain: If the Federal Government gives a charitable organization a million dollar grant, that gift frees up an equal amount in private dollars to lobby or engage in political advocacy. But in the end, the money is coming out of the same pot -- and the taxpayers are being abused. It is entirely appropriate and urgently necessary for Congress to not only bar the use of grant funds for political advocacy, but also to limit the amount of private dollars that can be spent on advocacy by any group that is dependent on federal grants.

In essence, Congress is asking every federal grantee to make a choice -- are you going to do charitable good deeds, or are you going to engage in political advocacy? If you want to do good deeds, we will support you in any way we can. However, if you want to engage in political advocacy, you will have to do it on your own time and with your own money. Every working day, the Federal Government sinks 1 Billion dollars more into debt.

As we hold our hearing this morning, two organizations which receive federal grants and have a political agenda are lobbying Members of Congress against our efforts to reform the way Washington works. These groups are OMB Watch and Independent Sector. They are busy engaging in the very activity which must be stopped -- they are using taxpayer dollars to lobby for their own political agenda.

This Congress cannot, and will not, permit special-interest groups to prevent us from making fundamental reforms that are needed to ensure the continued well being of this country. The status quo is not good enough.

Again, thank you for coming today.

Summary of a Bill to Stop Taxpayer Funded Political Advocacy by Congressmen Istook, McIntosh, Ehrlich

General Description

Tens of thousands of special interest groups representing the entire political spectrum receive more than $39 billion in federal grants each year. While no one knows exactly what happens with all this money, we do know that large sums are being wrongly spent on political advocacy. This bill puts a stop to taxpayer funded political advocacy.

This bill attacks the problem both directly and indirectly. It *directly* prohibits any recipient of a federal grant from spending any grant funds on political advocacy. Because money is fungible, however, it also *indirectly* attacks the problem by setting reasonable limits on the amount of political advocacy that a grantee can perform with non-grant funds. Similar limits already apply to 501(c)(3) charitable organizations.

Section 1 -- Prohibition on the Use of Federal Funds

Section (a) sets out the limitations that will apply to all federal grantees. It permanently prohibits grantees from using funds from any grant to engage in political advocacy. It also bars grant applicants from receiving grants if they have expended a significant amount of money in the past 5 years on political advocacy, and bars grantees from retaining possession of federal funds if they spend a significant amount of their money from any source on political advocacy. The direct ban is absolute. Section (a) also places an obligation on the grant makers to inform all grantees that they are subject to this law.

Section (b) is the enforcement provision. Each grantee is subject to audit by the GAO, is required to follow generally accepted accounting principles (GAAP), and (if it engages in political advocacy) bears the burden of proving by clear and convincing evidence that it is in compliance with this law. Subsection (b)(2) incorporates the current *qui tams* provisions that authorize private attorney general actions for false claims made to the United States. Finally, government officials who violate this law are subject to administrative discipline and/or a $5,000 civil penalty.

Section (c) is the definitional section. "Political advocacy" is carefully defined. It starts with the definition used in the tax code that applies to 501(c)(3) non-profit charities, and expands beyond those limits where necessary. For example, it extends that definition to include participating in certain types of judicial litigation, lobbying federal and state agencies, and the laundering of funds through organizations that engage in a significant amount of political advocacy. The safe harbors that currently exist in the tax code for 501(c)(3) non-profits are retained, and expanded in a few cases. For example, the exemption for non-partisan analysis has been expanded to include the sponsoring of debates. The definition of a

AMENDMENT TO H.R.

OFFERED BY MR. ISTOOK, MR. MCINTOSH, MR. EHRLICH, MR. RIGGS, AND MR. FOX

1 SEC. ___. PROHIBITION ON THE USE OF FEDERAL FUNDS
2 FOR POLITICAL ADVOCACY.
3 (a) LIMITATIONS.—Notwithstanding any other provi-
4 sion of law, the following limitations apply to any grant
5 which is made from funds appropriated under this or any
6 other Act or controlled under any Congressional author-
7 ization until Congress provides specific exceptions in sub-
8 sequent Acts:
9 (1) No grantee may use funds from any grant
10 to engage in political advocacy.
11 (2) No grant applicant may receive any grant
12 if its expenditures for political advocacy for any one
13 of the previous five Federal fiscal years exceeded its
14 prohibited political advocacy threshold (but no Fed-
15 eral fiscal year before 1996 shall be considered). For
16 purposes of this Act, the prohibited political advo-
17 cacy threshold for a given Federal fiscal year is to
18 be determined by the following formula:
19 (A) calculate the difference between the
20 grant applicant's total expenditures made in a
21 given Federal fiscal year and the total grants it
22 received in that Federal fiscal year;

1 cure goods or services, except as specifically per-
2 mitted by Congress in the law authorizing the grant.
3 (6) Any individual, entity, or organization that
4 awards or administers a grant shall take reasonable
5 steps to ensure that the grantee complies with the
6 requirements of this Act. Reasonable steps to ensure
7 compliance shall include written notice to a grantee
8 that it is receiving a grant, and that the provisions
9 of this Act apply to the grantee.
10 (b) ENFORCEMENT.—The following enforcement pro-
11 visions apply with respect to the limitations imposed under
12 subsection (a):
13 (1) Each grantee shall be subject to audit from
14 time to time as follows:
15 (A) Audits may be requested and con-
16 ducted by the General Accounting Office or
17 other auditing entity authorized by Congress,
18 including the Inspector General of the Federal
19 entity awarding or administering the grant.
20 (B) Grantees shall follow generally accept-
21 ed accounting principles in keeping books and
22 records relating to each grant and no Federal
23 entity may impose more burdensome accounting
24 requirements for purposes of enforcing this Act.

1 (1) POLITICAL ADVOCACY.—The term "political
2 advocacy" includes—
3 (A) carrying on propaganda, or otherwise
4 attempting to influence legislation or agency ac-
5 tion, including but not limited to monetary or
6 in-kind contributions, endorsements, publicity,
7 or similar activity;
8 (B) participating or intervening in (includ-
9 ing the publishing or distributing of statements)
10 any political campaign on behalf of (or in oppo-
11 sition to) any candidate for public office, includ-
12 ing but not limited to monetary or in-kind con-
13 tributions, endorsements, publicity, or similar
14 activity;
15 (C) participating in any judicial litigation
16 or agency proceeding (including as an amicus
17 curiae) in which agents or instrumentalities of
18 Federal, state, or local governments are parties,
19 other than litigation in which the grantee or
20 grant applicant: is a defendant appearing in its
21 own behalf; is defending its tax exempt status;
22 or is challenging a government decision or ac-
23 tion directed specifically at the powers, rights,
24 or duties of that grantee or grant applicant.

1 (i) making available the results of
2 nonpartisan analysis, study, research, or
3 debate;
4 (ii) providing technical advice or as-
5 sistance (where such advice would other-
6 wise constitute the influencing of legisla-
7 tion or agency action) to a governmental
8 body or to a committee or other subdivi-
9 sion thereof in response to a written re-
10 quest by such body or subdivision, as the
11 case may be;
12 (iii) communications between the
13 grantee and its bona fide members with re-
14 spect to legislation, proposed legislation,
15 agency action, or proposed agency action
16 of direct interest to the grantee and such
17 members, other than communications de-
18 scribed in subparagraph (C);
19 (iv) any communication with a govern-
20 mental official or employee, other than—
21 (I) a communication with a mem-
22 ber or employee of a legislative body
23 or agency (where such communication
24 would otherwise constitute the influ-

1 (3) The term "legislation" includes the intro-
2 duction, amendment, enactment, passage, defeat,
3 ratification, or repeal of Acts, bills, resolutions, trea-
4 ties, declarations, confirmations, articles of impeach-
5 ment, or similar items by the Congress, any State
6 legislature, any local council or similar governing
7 body, or by the public in a referendum, initiative,
8 constitutional amendment, recall, confirmation, or
9 similar procedure.
10 (4) The term "grant" includes the provision of
11 any Federal funds, appropriated under this or any
12 other Act, or other thing of value to carry out a pub-
13 lic purpose of the United States, except: the provi-
14 sion of funds for acquisition (by purchase, lease or
15 barter) of property or services for the direct benefit
16 or use of the United States; the payments of loans,
17 debts, or entitlements; the provision of funds to or
18 distribution of funds by an Article I or III court;
19 and the provision of grant and scholarship funds to
20 students for educational purposes.
21 (5) The term "grantee" includes any recipient
22 of any grant. The term shall not include any state
23 or local government, but shall include any recipient
24 receiving a grant (as defined by subsection c(4))
25 from a state or local government.

1 (C) a brief description of the purpose or
2 purposes for which the grant was awarded;
3 (D) the identity of each Federal, state and
4 local government entity awarding or administer-
5 ing the grant, and program thereunder;
6 (E) the name and grantee identification
7 number of each individual, entity or organiza-
8 tion to whom the grantee made a grant;
9 (F) a brief description of the grantee's po-
10 litical advocacy, and a good faith estimate of
11 the grantee's expenditures on political advocacy;
12 and
13 (G) a good faith estimate of the grantee's
14 prohibited political advocacy threshold.
15 (b) OMB COORDINATION.—The Office of Manage-
16 ment and Budget shall develop by regulation one stand-
17 ardized form for the annual report that shall be accepted
18 by every Federal entity, and a uniform procedure by which
19 each grantee is assigned one permanent and unique grant-
20 ee identification number.
21 SEC. ___. FEDERAL ENTITY REPORT.
22 Not later than May 1 of each calendar year, each
23 Federal entity awarding or administering a grant shall
24 submit to the Bureau of the Census a report (standardized
25 by the Office of Management and Budget) setting forth

1 SEC. ___. SEVERABILITY.

2 If any provision of this Act or the application thereof
3 to any person or circumstance is held invalid, the remain-
4 der of this Act and the application of such provision to
5 other persons and circumstances shall not be affected
6 thereby.

7 SEC. ___. FIRST AMENDMENT RIGHTS PRESERVED.

8 Nothing in this Act shall be deemed to abridge any
9 rights guaranteed under the First Amendment of the
10 United States Constitution, including freedom of speech,
11 or of the press; or the right of the people peaceably to
12 assemble, and to petition the Government for a redress
13 of grievances.

Mr. WAXMAN. Reserving the right to address that unanimous-consent request, I would like to address a question to the Chair.

Mr. MCINTOSH. Certainly. The gentleman is recognized.

Mr. WAXMAN. You made a charge that some groups are using taxpayers' funds to lobby against your bill, to express their position against it, which the first amendment's constitutional rights are usually protected. How do you know that?

Mr. MCINTOSH. Let me clarify my statement on that, Mr. Waxman. These groups are taxpayer funded, they are subsidized, and they are engaging in the lobbying activity.

Mr. WAXMAN. Do you know whether they are using taxpayers' funds?

Mr. MCINTOSH. The problem we have is that there is no requirement for them to divulge their books. We have inquired of them to release their books so that we may inspect them in order to determine that.

Mr. WAXMAN. You have asked an advocacy group or charitable group to divulge their books to you, is that correct?

Mr. MCINTOSH. Yes, we have.

Mr. WAXMAN. That is pretty shocking, I must say, Mr. Chairman. Are we going to have a centralized collection agency in the Congress of the United States over groups that come in and make positions known to their Representatives?

Mr. MCINTOSH. Does the gentleman object to the unanimous consent——

Mr. WAXMAN. No, I don't.

Mr. MCINTOSH [continuing]. Request?

This Congress cannot and will not permit special interest groups to prevent us from making fundamental reforms that are needed to ensure that the continued well-being of this country, which is at stake. The status quo is not good enough.

Again, thank you all for coming today. I look forward to hearing from our panel of Members and then the panel of witnesses from outside organizations.

Let me turn now to Mr. Peterson, the ranking member on this subcommittee, if he has an opening statement. I understand Mr. Peterson is going to defer to Mr. Ehrlich, cosponsor of this amendment.

Mr. EHRLICH. I thank Mr. Peterson. The Chair well knows I have Waco hearings in progress, and I apologize to the committee; but I may—I will be taking my leave in 30 seconds. I would just like to emphasize one point.

I thank the Members for their interest for being here today. Just to follow up on the chairman's comments for 20 seconds. We are interested in changing the law, changing the way things have operated around here for many years. However, I have had—and my staff has had—many productive meetings with different advocacy groups over the last few weeks concerning different aspects of this proposed legislation. We are very interested in hearing your views and we are also interested in working with you if you agree with the fundamental premise that the chairman just articulated. That is certainly my attitude. I know it is the attitude on this side of the aisle.

And for those of you who appreciate that point of view, I look forward to working with you over the next few weeks to come to some sort of accord with respect to this most important piece of legislation.

I thank Mr. Peterson very much.

Mr. Chairman, I yield back.

Mr. MCINTOSH. Thank you, Mr. Ehrlich. Thank you for your leadership on this issue.

Let me turn now to Mr. Peterson.

Mr. PETERSON. Mr. Chairman, thank you for calling this hearing and I will be brief.

While I agree with the general premise of what you are trying to accomplish here, I do have some concerns in the way the bill is currently drafted, and as someone who has audited Federal agencies and had to prepare some of these documents which apparently you are going to add to the yellow book or whatever here, I am not sure if this is completely thought out the way that it ought to be, and I am kind of afraid that we are going to find out if you move ahead with this language that we might have some things jump out at us that we are not aware of at this time. So I am looking forward to learning more about this issue and listening to the different witnesses in this hearing.

It just seems to me that I have been hoping that we could move ahead with some type of lobbying reform legislation on a broader basis, and it seems to me that this is the kind of an issue that maybe would be better dealt with in the context of a lobbying reform bill when we bring that whole issue into focus covering all the aspects of lobbying.

But as I have told you I think earlier, I generally agree with what you are trying to do and I look forward to trying to work with you to address some of the concerns that I have as we go through this process and appreciate you calling the hearing.

Mr. MCINTOSH. Thank you very much Mr. Peterson.

Let me welcome your comments on the provisions and your expertise in terms of having been a former CPA. As the leadership continually reminds me and my freshmen colleagues, this is only the beginning of the process, we have opportunities to make adjustments along the way and I would very much welcome those. So thank you very, very much.

Let me turn now to Mr. Fox, the vice chairman of the subcommittee. Do you have an opening statement?

Mr. FOX. Yes I do, Mr. Chairman. I appreciate your holding these hearings and I applaud your efforts in organizing the second hearing on the lobbying practices of nonprofit groups that receive Federal grants.

Clearly the right to petition Government to redress grievances is a precious right which should not be infringed. Individuals and organizations using funds from the private sector should be encouraged to engage in the legislative and political process without fear of regulation. Yet it is an entirely different matter to employ coercive power of the Federal Government to force taxpayers to finance the structure of organizations which lobby Congress or other Government entities.

The fundamental principle that is forcing taxpayers to underwrite advocacy no matter what political dimension we speak of is unfair and I believe the taxpayers would find intolerable.

Unfortunately, federally funded advocacy is not a new problem. Congress recognized the potential for abuse more than 75 years ago when it passed a law that prohibited political advocacy through the use of Federal funds. Unfortunately, the prohibition as written was too vague, too lenient, and too weakly enforced. Put simply, present auditing of Federal grants by the Government does not provide the level of scrutiny needed to root out abuse.

Currently, Federal law prohibits the use of Federal funds for lobbying, 18 U.S. Code, section 1913. However, Mr. Chairman, there is no clear set of guidelines as to specific prohibited practices.

In response, my colleagues, Chairman McIntosh, Mr. Ehrlich, and Mr. Istook have introduced forward-thinking legislation to remedy this problem and today's hearing is of utmost importance to me and those gathered to further investigate the ways and means of solving the problem.

In regard to the question posed by the gentleman from California regarding the Government looking into the books of charities, I think we should look to only the problems we have had in Pennsylvania with a new era of philanthropy and United Way nationally, where we have had the problems with lack of oversight.

So I think that the greater oversight that we have to have this legislation would—would be able to address, and so I thank the chairman for holding these hearings and look forward to hearing from the witnesses.

Thank you very much.

Mr. MCINTOSH. Thank you very much, Mr. Fox.

Mr. Kanjorski, do you have an opening statement?

Mr. KANJORSKI. Thank you very much, Mr. Chairman.

Mr. Chairman, I appreciate that we are at a time of change here in the Congress, potentially in the country. Some people call it revolution. In terms of this document, it would indicate to me it may be reaction to something in the past that could fall under a category of being reaction. I am not as conversant with this legislation, perhaps as I should be, but having gone through it over the last several days, it is a piece of legislation that literally has frightened me.

I cannot conceive the legislators of the United States who are understanding of the American Constitution and our political process in an attempt to solve perhaps a little area that is getting some abuse, but also where legislation already applies, denying the right of the use of Federal grant money for lobbying purposes, make an all-encompassing, sweeping piece of legislation like this.

Perhaps we will be able to get into questions with counsel, but I would think almost every major corporation in America would be barred from talking to agencies, Members of Congress, and members of the executive branch under this piece of legislation. Interesting enough, your very Republican party that is the recipient of millions of dollars of grant money to hold their convention, obviously, could not talk about politics at their convention because it would be considered a violation of this statute.

I think I would be pleased because the National Endowment for Democracy where it endows the AFL–CIO, the Chamber of Commerce, the Republican party, and the Democratic party, would also be barred from any form of advocacy.

And if I remember a debate most recently on the floor by one of our colleagues, Mr. Porter Goss of Florida, he used some of those funds to go down and compile a report on Haiti and then came back to the Congress, and in a very strong advocatory way, indicated there was not a fair and proper election in Haiti in his finding, obviously, the use of Federal funds disbursed through the National Endowment for Democracy and the Republican Institute that paid the way to accomplish that end.

If you are serious and this committee is serious, as a Member of this side of the aisle, I would like to work on constructive legislation to accomplish what your purposes are. I tend to join my friend, Mr. Peterson, in saying that lobbying reform probably is the correct vehicle. And I would go one step further, that rather than finding out and having reams of material, electronically and in paperwork, submitted to Government in some sort of intelligence form, to keep track of what people are talking about and thinking about, it would be more in tune with the American process to have disclosure and accounting, and then let in a free system the electorate and their elected officials determine whether or not there is improper use.

I would have to say that almost every major corporation that I know in America would violate this because they are recipients of all kinds of grants from the Defense Department, the Chamber of Commerce.

We talk about corporate welfare, and I think this act would put most of them out of business, because I know that they are in contact with almost every Member of Congress on a regular basis in encouraging their grant or the program under which they receive their grant from, and that would, obviously, violate this suggested legislation.

So I would just suggest that if we have a problem, and I think we do have some abuse in the area, that we honestly settle down in a bipartisan way with some respect to the first amendment to the Constitution of the United States, and draft a piece of legislation or work on the lobbying reform bill to accomplish the purposes, obviously of yourself and the drafters of this legislation, but not to create a Gestapo state where, literally, a husband and wife would have to file a written report as to what they talked about in their home or in their bedroom if it had anything to do with political advocacy or position if one of them were receiving or working for an entity that received a Federal grant of the United States. I find that unacceptable, and not only unacceptable, but reprehensible.

Mr. McINTOSH. Thank you, Mr. Kanjorski. I will gladly look forward to working with you on this issue and welcome your input into the legislation.

Let me turn now to Mr. Gutknecht of Minnesota.

Mr. GUTKNECHT. Well, thank you Mr. Chairman. I was not going to say anything, but after some of the discussion we heard earlier, I do want to make a comment and particularly as it relates to the gentleman from California and his comment, that he was shocked

that you would want to know more about how taxpayer funds were being spent by some of these groups.

Personally, I would be shocked if we didn't ask about how some of these funds are being spent. I think the issue that we are really, ultimately going to get down to is more disclosure. I was surprised to learn that $39 billion in taxpayer money is going to groups that turn around and spend at least some of that money or, as was said earlier, this money is fungible and ultimately the groups come back and ask for more and more of taxpayers' money.

I don't think we are particularly interested in what people talk about in the privacy of their homes or their bedrooms, but I do think when people come up here to Capitol Hill to ask for more funds for one project or the other, I think it is legitimate for us to know exactly how much of that is being underwritten by the taxpayers of the United States of America. So I think these hearings are good.

I hope that we can work together in a bipartisan method and ultimately come to some kind of conclusion that we can all live with. But I think, ultimately, the taxpayers do expect to know that they are not seeing their tax dollars used just to turn around and advocate for more and more tax money. And I think that has been part of the problem around Congress for a long time.

I think the message that should be coming out of this Congress, once again, is that the status quo doesn't live here anymore, that we want change, that we don't want to see this kind of thing go on forever and ever. So I admire you for introducing this legislation.

I look forward to more hearings and, as I say, hopefully we can work together on a bipartisan basis.

Mr. McINTOSH. Thank you, Mr. Gutknecht.

Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman. If we are going to work on this legislation, we ought to think through the details because the devil is in the details. None of us here would say that taxpayers' money should be used for lobbying. Taxpayers' money should be used for the purpose to which it is being granted and only for that purpose. But I think there are a lot of details with this legislation that are pretty scary.

Are we going to say to somebody who gets a grant, an artist, let's say, who gets a grant to do a painting of a Republican chairman of a committee to hang on the wall that that artist can't go out and use his own money to lobby against abortions? That may be the effect of this legislation.

Are we going to say that a small group that has some grant for one purpose but has its own money for other purposes can't use its own money for its own legitimate constitutionally protected purposes of trying to influence public opinion?

Well, this legislation says you cannot engage in propaganda. Boy, that sounds like something the Soviet Union would talk about when they talk about propaganda or—I forgot the term. They used to have an all purpose term for which they imprisoned people. It is so vague. You don't want vague laws because vague laws become ex post facto and become arbitrary. You want clear laws. People should know what is to be expected of them.

And then the third thing that I worry about is what role is Government going to play? Mr. Fox, you indicated those charities that turned out to be really bad actors are really quite outrageous. Do you think the Government should have been in there monitoring their every move and that would have kept them honest? Maybe. But I hear a lot of talk from a lot of Members that we don't want more Government intrusion.

I am not sure Government could have done the job and I am interested in hearing some ideas in that regard. But then you can have everybody file something with somebody in Government because you have got to keep track of whether they have actually spent more than 20 percent or less than 20 percent of their own funds. No one is arguing about the funds for which they got money from the Government, but their own funds. So they have got to file with some Government agency with a whole bunch of bureaucrats pouring over their books whether they have exceeded that 20 percent or were under the 20 percent, and whether their rights to petition the government should be curtailed or not.

All of these things are tough questions and I am willing to work in a bipartisan way to see if we can narrow it all down.

I must tell you what bothers me is this isn't something we are going to have a lot of time to discuss because it is on the House floor next Tuesday or Wednesday. I don't think this bill has been thought through. I think the ramifications of it could be monumental and I can't see how any conservative would want it if it means more Government intrusion, more Government bureaucracy, and less personal freedom.

So those are the caveats I raise. And I am interested in hearing from our witnesses who are so patiently sitting and waiting until we all finish with our pontifications to give their views. But I think there are a lot of details that have to be thought through very carefully and I want to work on that with you if we have time before something is passed without examining it—with the thoroughness that it deserves.

And then the last point I want to raise is we only deal with grants. What about those defense contractors that get huge amounts of Government money and then use their, presumably, own private dollars to lobby us for more money to spend? They don't seem to be covered if it is a defense contract. And of course if the business is huge enough, that 20 percent limit means nothing. They don't spend—20 percent of millions of dollars is a lot different than 20 percent of thousands of dollars. So they won't have any problem having the complete freedom to lobby where a small group would be prohibited.

So these are questions I raise. I think they are legitimate questions. Don't pass them over too quickly because we are talking about a fundamental right in this country whether you are a conservative or a liberal and that is to petition your elected officials, try to influence public opinion, try to enact policies that you strongly believe are right, whether someone else agrees with you or not. Don't curtail the marketplace of ideas by Government intimidation of any sort.

Thank you.

Mr. McINTOSH. Would the gentleman yield?

Mr. WAXMAN. Certainly, I would.

Mr. MCINTOSH. Could I quote you on the need to restrain government oversight in some of our debates on regulatory issues?

Mr. WAXMAN. Any time you want to quote me, you would be probably saying some pretty wise things.

Mr. MCINTOSH. Thank you, Mr. Waxman.

I think we have time for at least one more opening statement, maybe two.

Mr. Tate, do you have an opening statement?

Mr. TATE. Yes, I do, Mr. Chairman. And I too, would like to add my thanks for you taking a lead on this issue.

The last gentleman from California spoke that this hadn't been thought through. I guess the question I have is the fact that we are subsidizing welfare basically for lobbyists is really something that hasn't been well thought out in the first place. We shouldn't be doing this.

And as I talk to people back home, I mean, they are shocked, they are outraged, they are mad at the fact when they find out that their tax dollars are being used, whether it be directly in some instances or indirectly to subsidize, whether it be the Nature Conservancy, whether it be the U.S. Chamber of Commerce, whether it be the American Bar Association, in staging a rally in opposition to the flag desecration amendment. Whether you are for or against it, that is not the issue, the fact that they were using money to go out there and do those things.

And my argument against this is not ideological or political or anything else. It is time to open the books. It is time to shine some light in there. What I have heard from the people at home, it is time to open this place up.

Now, there are a couple of arguments regarding free speech. That frustrates me because it is really not free if the taxpayers are paying for it. I mean, that is, the definition of free is when I don't pay for it. I am paying for it whether I like it or I don't. And there is something wrong with that.

The gentleman also brought up the corporations and defense contractors. I would like to show all the regulations that they have to go through right now. If we want to apply those all over to grantees, maybe we should think about that. But this is what they already have to go through. And all the books are already open and they already have to fill out these things.

There is very little oversight whatsoever on these grantees and it is time to shine some light. It is time to end Government welfare, taxpayer-funded lobbying or subsidizing of lobbyists. It is time for it to end and I look forward to moving this particular bill along and look forward to the debate next week.

Mr. MCINTOSH. Thank you, Mr. Tate.

Ms. Slaughter, do you have an opening statement?

Ms. SLAUGHTER. Thank you, Mr. Chairman.

I too am tied up with the Waco hearings and can only be here briefly, but I am absolutely baffled by this legislation. In the first place, I am almost certain it is unconstitutional. In the second place, it is certainly apparent to me that you only want to shut up people you don't want to hear from. In the third place, since I have been on this committee this year, I have never in my life seen a

group of people who wanted to both get rid of regulation and expensive oversight and now lard it on the way you have.

I have never—every time we have a bill in here, it has got something, everybody has got to stop doing this, and prove it 10 ways. Now we talk about the defense contractors lobby. Well, last year McDonnell Douglas or the year before last, out of the goodness of their heart, they live completely on Federal money, sent us a great portrait of a C–17 which none of us needed which I am fairly sure they paid for with Federal money because that is all they have.

If you want to talk about things like that, or if you want to talk about the independent expenditures on television to influence Congress, I would be happy to talk about that.

I read just this morning that $5 million has already been pledged by the top CEO's in the country for a television barrage on the balanced budget. If we are going to talk about those kinds of outside influences on Congress, and if we are going to get to the point where people who are nonprofits can't talk to us but only people who have huge amounts of money can, I frankly don't think that is going to pass muster in the United States.

This bill needs a lot of work, Mr. Chairman, a lot of work. Frankly, I agree with Mr. Peterson, that this should be done in the context of lobbying reform, not just plucked out slapped on these people.

Frankly, if we had not heard from the people who say meat inspection and poultry inspection are important, we wouldn't have been able to stop a tragedy in the Congress this year. And to shut those people up and not let them come here and talk seems to be un-American on the face of it, and I really oppose this legislation.

Mr. MCINTOSH. Would the gentlelady yield for one statement?

Ms. SLAUGHTER. I yield.

Mr. MCINTOSH. Let me reassure you, and as Mr. Kanjorski pointed out, this would apply to a lot of corporate America who receive Government grants. It is definitely not our intent to single out one point of view.

Ms. SLAUGHTER. Well, how happy is corporate America if we are going to have to go through all the bookkeeping they are going to have to go through if they come down here and talk to somebody even if—let's say, a CEO from my district comes down and meets with me, he is going to have to prove to you that that trip did not come out of any Federal money that he has received, correct?

Mr. MCINTOSH. Actually——

Ms. SLAUGHTER. And somebody is going to have to monitor that, Mr. McIntosh.

Mr. MCINTOSH. The easiest thing for them to do is to say we don't take Federal money, we won't take these taxpayer grants.

Ms. SLAUGHTER. What about universities? Let's talk about universities where an awful lot of the medical research and scientific research is being done for the country. You want them not to take the grants so that they wouldn't have to account for it and they won't have to do the bookkeeping?

Mr. MCINTOSH. Frankly, I would be happy if those groups stop lobbying. But we do have an exception.

Ms. SLAUGHTER. Do you want them to stop lobbying or stop taking the money?

Mr. MCINTOSH. Frankly, in that case, I would like to see them continue the research and stop the lobbying. But we also have provided that they can spend up to 5 percent of their receipts to engage in lobbying.

Ms. SLAUGHTER. Could the president of the University of Rochester come to see me on an issue of any importance and not—not having anything to do with his grants—and not have to prove to you or to the satisfaction of whoever this monitor is of this money, that he did not spend a dime of Federal money to come down here?

Mr. MCINTOSH. I think that is appropriate. I think if he is going to come and lobby you, particularly if he is asking for more Federal money, that he should indicate to people that he hasn't spent Federal money to do so.

Ms. SLAUGHTER. And how is he going to indicate this?

Mr. MCINTOSH. Reporting to the agency that gave him the grant.

Ms. SLAUGHTER. Every time he comes—every time I talk with them, they have to report to the agency that gave him a grant that in no time——

Mr. MCINTOSH. No. At the end of the year, he signifies that he hasn't used Federal money in order to lobby.

Ms. SLAUGHTER. You don't see this as an extra layer of bureaucracy or government on your back?

Mr. MCINTOSH. Well, as Mr. Tate pointed out, they are supposed to be reporting this anyway, if they are a charitable organization.

Ms. SLAUGHTER. Well, if you have the reports on McDonnell Douglas, I would like to know how much of that money they spent on sending all of us a great picture of the C–17, which I could have done without?

Mr. MCINTOSH. I agree we should know that. Let me at this point recess the subcommittee. I appreciate the witnesses who are Members and extremely busy in doing this.

Mrs. Meek, do you have an opening statement when we come back?

Mrs. MEEK. Yes.

Mr. MCINTOSH. Let me ask unanimous consent that we hear Mrs. Meek's statement and then proceed immediately to the panel.

Seeing no objection, that is what we will do 5 minutes after the last vote.

[Recess.]

Mr. FOX [presiding]. The subcommittee will reconvene.

I will call on Mrs. Collins, the ranking member of the full committee, for an opening statement.

Mrs. COLLINS. Thank you, Mr. Chairman.

Mr. Chairman, the policies of the new Republican majority in the House are failing with the American public. Whether it is cutting Medicare for senior citizens, eliminating the School Lunch Program for children in order to help pay for a tax break for the rich, or derail new inspection programs to detect the deadly E coli bacteria in meat, the American public has said no, no, no again.

Losing the battle for public support, the Republican majority has now turned its attention to silencing the voices of their political opponents. That is what this hearing and this amendment included in the Labor-HHS appropriations bill are all about, silencing the opposition.

The proponents of these new restrictions say they simply do not believe that the taxpayers should have to subsidize the political activities of those who receive Federal grants. Who does? Since 1979, virtually every appropriations bill has contained language prohibiting Federal grantees from using grant funds to engage in political advocacy.

Instead, the only new policy being advocated by the chairman and our colleagues, Mr. Istook and Mr. Ehrlich, is a restriction they would place on political activities that an organization pays for with its own privately generated money.

Proponents cite Thomas Jefferson in support of their radical proposal: "To compel a man to furnish funds for the propagation of ideas he disbelieves and abhors is sinful and tyrannical."

Now this quotation does not even apply to the situation that the proponents say they want to cure. No taxpayer is being compelled to provide funds so that groups he or she disagrees with can engage in political advocacy. No taxpayer funds can now nor ever should be allowed to be used for political advocacy.

However, Jefferson and every other American should agree that it is truly sinful and tyrannical to suggest that anyone should be prohibited by law from using their own money to engage in public debate on issues of public concern. This proposal runs totally counter to our country's long history of protecting political speech.

This proposal is extreme, and it is also unfair. It does not treat everyone equally. Under the proposal, only Federal grant recipients are restricted from using their own money to engage in political advocacy. Defense and other Government contractors would be able to engage freely and without limitations in the same political activities.

At the first hearing, the YMCA said this proposal would stop them from being able to talk with Senator Hatch about the need to amend the block grants program so that the YMCA could receive funds to operate after-school programs in thousands of communities across the country. Does this sound like a fair policy? I don't think so.

In contrast, General Dynamics and all the other defense contractors can lobby Members as much as they want. They can entertain Members. Sixty-eight percent of General Dynamics' total revenue in 1993 were attributable to the $2.1 billion in defense contracts it got that year.

Why should General Dynamics be able to ask Congress to fund a new purchase of fighter planes and the YMCA be prohibited from asking Congress to allow it to continue providing after-school services? This is simply unfair and reveals that the proponents of this policy are far more concerned about silencing dissent than they are about protecting the taxpayer. I find it repugnant and offensive to the great spirit of political dissent that gave birth to this country and has been the hallmark of our greatness.

I would like to ask, Mr. Chairman, that two letters be inserted into the record. In these letters, David Cole a professor of constitutional law at the Georgetown University Law Center, argues that the Istook amendment is unconstitutional.

In addition, I would like to include in the record an article by Leslie Lenkowski, president of the Hudson Institute, an organiza-

tion with which the chairman was once associated. That article recently appeared in the Chronicle of Philanthropy. In this article, Mr. Lenkowski criticizes the Istook proposal to restrict political advocacy of Federal grant recipients.

Finally, I would like to also include in the record a memo from the American Law Division of the Library of Congress's Congressional Research Service which questions the constitutionality of the Istook amendment.

I thank you for yielding, Mr. Chairman, and yield back the balance of my time.

[Note.—The memo from American Law Division was not available at the time of press.]

[The documents referred to follow:]

LESLIE LENKOWSKY

Advocacy Debate: an Unrewarding Summer Sequel

JUST AS Hollywood's summer sequels reach the movie theaters, Washington is witnessing a replay of a debate over non-profit political activities that first flared more than a decade ago.

In the early 1980s, the action was driven mostly by President Reagan's Office of Management and Budget. Today Congress is taking the lead.

In the Reagan era, the script entailed trying to limit the ways that non-profit organizations could use federal money to conduct political advocacy. Now the effort is also directed at the private support received by federal grantees.

During the Reagan years, leaders of the non-profit world protested speedily and strongly, charging that the proposed changes struck at their most fundamental interests. They are doing the same in the Gingrich era.

Yet, like most sequels, this one is likely to be far less rewarding than the original—except, perhaps, for those groups on both sides who will use the controversy to raise money and recruit new members.

That is not because the charges and countercharges lack merit. To the contrary, one of the few matters everyone agrees on is that non-profit groups that receive federal grants engage in political advocacy. The real disputes are over whether they should and how to stop them.

Congressional conservatives believe such political activity by federally supported non-profit groups is wrong and amounts to requiring the taxpayer to subsidize political views with which they might disagree. Moreover, they argue, because government grants can free up other revenue, tighter limits should also be placed on how those groups use private contributions. Indeed, some have called for prohibiting federal grantees from lobbying altogether, regardless of who pays the cost.

Defenders of non-profit organizations reply that political advocacy is often an important tool for an organization to achieve its mission. Preventing the use of private donations for such purposes not only hampers an organization's ability to succeed, but also restricts the Constitutional rights of individuals to join together in behalf of a particular cause. Moreover, they claim, there is no evidence that non-profit groups are actually using federal dollars for political activities, which is already prohibited by law.

Hearings by a House subcommittee have tried to uncover what is really going on. However, what makes this sequel likely to be so unrewarding is that even after the "facts" are ascertained, a satisfactory resolution will be hard to come by.

That is partly because of the difficulty of defining "political advocacy." A bill that is now being pushed by Republican Congressmen Robert L. Ehrlich, Jr., Ernest J. Istook, Jr., and David M. McIntosh would adopt the same definition of advocacy that the Internal Revenue Service now uses to limit the ways in

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Debate on Limiting Advocacy: Unrewarding Summer Sequel

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which federal grant recipients can influence legislation and elections. The bill would expand the activities covered by the limitations to include, for example, influencing court and executive-branch decisions.

What the drafters of the legislation are ignoring is that even though the I.R.S. has spent nearly two decades trying to refine the lobbying rules, the current standards leave enough room to march an army of lobbyists through.

FOR EXAMPLE, an organization is considered to be lobbying if it provides unsolicited advice to a member of Congress. But to avoid any problems, all a group has to do is get the member of Congress to ask for help; all of a sudden lobbying is transformed into merely providing advice or technical assistance. Barring the unlikely prospect of a tighter definition, few non-profit groups will have to change their activities much as a result of such a bill.

The effort to impose limits on the use of private funds is apt to be equally problematic.

A limited precedent for imposing restrictions on the privately financed efforts of non-profit groups does exist: The Supreme Court ruled in *Rust v. Sullivan* that the government has the legal authority to restrict what recipients of family-planning grants could say about abortion in programs financed with federal money. But whether a restriction on an activity that is clearly protected by the Constitution—political advocacy—will also stand up to a Constitutional challenge remains to be tested.

In any event, experts in charity law will almost certainly be able to identify ways by which otherwise unaffiliated non-profit groups, some of which receive federal grants and others of which do not, can legally work in tandem.

Consequently, even if the measures currently being considered in Congress are enacted, the most likely result will be a stalemate.

Conservatives will feel they have done something to "de-fund the left," but few on the left are apt to notice much difference even if the new restrictions are put into effect.

Non-profit groups would have to behave more cautiously, but they would still be able to undertake considerable political advocacy even if they were federal grantees. In place of what we have now—broad limits on a loosely defined set of activities—non-profit groups that receive federal grants (such as my own) would face tighter restrictions. But it would still be unclear what kinds of activities were affected.

A FAR SIMPLER WAY exists to deal with any problem of political advocacy by federal-grant recipients.

For nearly 75 years, laws have been on the books prohibiting the use of government money for lobbying. Missing, however, has been a serious attempt to enforce them. Rather than creating a new set of limits, Congress should employ its oversight and appropriations powers to insure that the existing rules are obeyed.

It should, in other words, put the onus on the source of the funds—not on the recipient. While that will not prevent a grantee from using private resources for political advocacy, it will, to the extent possible, stop the kind of spending most Americans deem inappropriate. The best way to avoid misuse of public funds is either to keep a better eye on them or simply not provide them at all.

Such an approach would be consistent with a far more important drama affecting the relationship between government and non-profit groups being played out elsewhere on Capitol Hill.

In trying to balance the budget, the President and Congress will be examining the merits of many federal grants that benefit non-profit organizations—money that was approved in some cases to subsidize politically favored interest groups. The battles over the House and Senate budget resolutions, and the appropriations bills that carry them out, present an extraordinary opportunity not just to find new, non-governmental ways of solving long-pressing problems, but also to lay to rest the debate over lobbying by federal-grant recipients. If serious changes in government support for non-profit groups do occur, the odds are good that lobbying the federal government will become much less significant than it is now.

It is this debate, not the one over political advocacy, on which non-profit groups should focus. And rather than acting like old soldiers fighting the previous war, those conservatives in Congress who want to revolutionize American society should do so as well.

Leslie Lenkowsky is president of the Hudson Institute and a regular contributor to these pages.

GEORGETOWN UNIVERSITY LAW CENTER

David Cole
Professor of Law

July 18, 1995

The Honorable Bob Livingston
United States House of Representatives
2406 Rayburn House Office Building
Washington, DC 20515

Dear Representative Livingston:

I write to express my opinion on the constitutionality of the recent proposal by Congressmen Istook, McIntosh, and Ehrlich to "Stop Taxpayer Funded Political Advocacy" (hereinafter "Istook bill"). I am a professor of constitutional law at Georgetown University Law Center. I have written on the subject of conditioning federal funds on speech restrictions, and have litigated several cases raising these issues.

The Istook bill is constitutionally flawed in numerous respects, most fundamentally because it restricts the rights of all federal grantees to use their own money to engage in core First Amendment protected activities, including public debate on issues of public concern, communication with elected representatives, and litigation against the government. This condition would limit the political freedoms of every grantee, from a local YMCA that received federal support for a child care program, to a scientist who received NIH funding for a medical trial, to a university that received a grant for scholarly research, to a Boys and Girls Club that obtained federal sponsorship for a drug prevention program.

The proposed bill prohibits federal grantees from using federal funds to engage in "political advocacy," very broadly defined, and also sharply restricts such grantees' use of their own non-federal money to engage in "political advocacy." Recipients of federal grants are barred from spending any more than 5 percent of their own non-federal monies on "political advocacy." The bill defines "grantees" so as not to include for-profit government contractors.

In brief, this bill impermissibly conditions eligibility for federal grants on surrendering the right to engage in a broad range of political speech on one's own time and with private resources. At the same time, it permits government contractors to engage freely and without limitation in the same political activities. Finally, its disclosure requirements violate the First Amendment right to engage in anonymous political speech. I will address these constitutional infirmities in turn.

600 New Jersey Avenue NW Washington DC 20001-2075
202-662-9078 FAX: 202-662-9412
Internet: cole@law.georgetown.edu

I. THE BILL IMPOSES AN UNCONSTITUTIONAL CONDITION ON GRANTEES' EXERCISE OF SPEECH RIGHTS WITH THEIR OWN RESOURCES

The Istook bill amounts to a classic "unconstitutional condition," because it seeks to restrict what recipients of federal funding do with their own money on their own time. In Rust v. Sullivan, 111 S. Ct. 1759 (1991), the Supreme Court upheld a restriction on the use of federal funds appropriated to family planning clinics under Title X. In upholding that program, however, the Court expressly distinguished as unconstitutional situations where "the government has placed a condition on the recipient of the subsidy rather than on a particular program or service, thus effectively prohibiting the recipient from engaging in the protected conduct outside the scope of the federally funded program." 111 S. Ct. at 1774 (original emphasis).

Thus, while government may generally regulate the use of government funds, it may not regulate what a recipient of such funds does with non-government resources. In FCC v. League of Women Voters, 468 U.S. 364, 402 (1984), for example, the Court struck down a condition that public television stations receiving federal funds not editorialize with any of their funds, whether federal or not. See also Perry v. Sindermann, 408 U.S. 593, 597-98 (1972). By contrast, the Court has upheld regulations that control only the use of government funds. Rust v. Sullivan, supra; Regan v. Taxation With Representation, 461 U.S. 540, 546 (1983) (no infringement on First Amendment rights where Congress "has simply chosen not to pay for [plaintiff's] lobbying").[1]

The Istook bill falls squarely on the unconstitutional side of the line drawn in Rust v. Sullivan. The bill's restrictions on "political advocacy" are not limited to the use of the federal funds, nor to the particular program funded, but place "a condition on the recipient of the subsidy." Rust, 111 S. Ct. at 1774. The condition imposed is sweeping in scope: its prohibition on "political advocacy" extends to virtually any public education, litigation, or lobbying effort designed to affect the outcome of a government decision. The First Amendment is designed to protect the freedom of the citizenry to speak out on matters of public concern, to use the courts, and to communicate with their elected representatives.

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[1] This Term, the Supreme Court limited even this aspect of Rust v. Sullivan, holding that the government may control the content of the speech it directly funds only where the government is speaking, or is hiring others to express a governmental message, but not where a funding program is designed to support a diversity of private expression. Rosenberger v. Rectors and Visitors of the University of Virginia, 63 U.S.L.W. 4702, 4705-06 (U.S. June 29, 1995). The Istook bill applies to all federal grant programs, including programs to support the arts, education, humanities, and public broadcasting, which under Rosenberger may not be subject to content- and viewpoint-based restrictions.

Because the bill limits grantees' rights to engage in core First Amendment activities on their own time and with their own resources, it imposes an "unconstitutional condition."

The bill restricts not only the use of non-government money during the period when an individual or entity actually has a federal grant, but also restricts the use of private money when entities are receiving no federal funds whatsoever. It bars any applicant which has spent more than five percent of its expenditures on "political advocacy" from eligibility for federal funding for a five-year period. Any entity or person that contemplated applying for a federal grant anytime in the next five years would be barred from devoting any more than five percent of its entirely non-federally-funded expenditures to political advocacy today.

The bill's "unconstitutional conditions" extend still further. It prohibits grant recipients from entering into any contract with or disbursing any federal funds (or any more than 5 percent of its own non-federal funds) to any individual or entity which has spent more than 15 percent of its expenditures on political advocacy. To enforce such a provision, grantees would have to inquire into the political practices of every employee and independent contractor with whom they do business. This bill conditions not only what a grantee can do with its own non-government money, but also what non-grantees can do with their own money. An artist, author, or physician who devotes more than 15 percent of his expenditures to "political advocacy," for example, could not be hired by a federal grant recipient to do work on a federally-funded medical pamphlet.

II. THE BILL DISCRIMINATES AGAINST GRANTEES WHILE PERMITTING CORPORATE GOVERNMENT CONTRACTORS UNLIMITED FREEDOM TO ENGAGE IN POLITICAL ADVOCACY

The Istook bill restricts the "political advocacy" of all government grantees, but does not restrict the "political advocacy" of government contractors. Corporate government contractors remain free to spend unlimited amounts of their own money on political advocacy of all times. Thus, McDonnell-Douglas would be free to engage in unlimited political advocacy with its own funds, notwithstanding substantial government contracts, but a professor who devotes more than five percent of her expenditures to public opposition to health care reform would be ineligible to receive a Fulbright scholarship for the next five years.

By treating grantees and contractors differently with respect to their freedom to engage in First Amendment protected activity, the bill would be subject to strict scrutiny under the Equal Protection Clause as well as the First Amendment. Where government treats citizens differently with respect to the exercise of fundamental rights, such as speech, its conduct is unconstitutional unless necessary to further a compelling state interest. Police Dept. of Chicago v. Mosley, 408 U.S. 92, 96 (1972); Carey v. Brown, 447 U.S. 455, 459-63 (1980). The distinction between contractors and grantees does not satisfy that test. If anything, it appears to be motivated by sheer political favoritism.

III. THE DISCLOSURE REQUIREMENTS VIOLATE THE FIRST AMENDMENT RIGHT TO ENGAGE IN ANONYMOUS SPEECH

Finally, the bill would require recipients of federal grants to report to Congress on all of their "political advocacy." That information would then be made available to the public. Thus, every doctor, artist, researcher, university, and non-profit organization that receives a federal grant would be required to disclose his, her, or its political advocacy. This requirement would plainly chill First Amendment protected activity, and violates the Supreme Court's decision this term guaranteeing the right to engage in anonymous political speech. McIntyre v. Ohio Elections Commission, 63 U.S.L.W. 4279 (U.S. Apr. 19, 1995).[2]

Sincerely,

David Cole

cc: The Honorable Newt Gingrich
The Honorable Dick Armey
The Honorable Gerald B. Solomon
The Honorable William F. Clinger, Jr.
The Honorable Henry J. Hyde
The Honorable Ernest Jim Istook
The Honorable David McIntosh
The Honorable Robert L. Ehrlich, Jr.

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[2] The Court in McIntyre distinguished disclosure requirements in campaign finance legislation, upheld in Buckley v. Valeo, 424 U.S. 1 (1976), on the ground that the state has a compelling interest in forestalling corruption in candidate elections. McIntyre, 63 U.S.L.W. at 4285. It noted that no such interest exists where, as in McIntyre and as here, the disclosure requirement extends to political speech unconnected to any candidate for public office.

Mr. FOX. Will the gentlelady yield?

Mrs. COLLINS. Yes, sir.

Mr. FOX. Madam ranking chairperson, wouldn't you agree that money is all fungible?

Mrs. COLLINS. I would agree that anyone who uses their own money has a right to speak with any kind of advocacy group that they want to.

Mr. FOX. If it is true that money is fungible, wouldn't we have to erect protections to ensure that no subsidy of speech occurs from the Federal Government?

Mrs. COLLINS. I want to say too that contract money is just as fungible as any other money.

Mr. FOX. Are you comfortable with the Congress funding the speech of others who are advocating for projects with the Government?

Mrs. COLLINS. No. Federal funds are being used for that purpose.

Mr. FOX. Well, I would just make a final comment, if I may, from our perspective, and you obviously have a right to differ. That is what all this free speech discussion is about. The Medicare, frankly, is something that we are all working on to try to preserve, protect. That is a bipartisan group that has determined even from the President's commission that Medicare is in trouble, and your opening comments discuss that. I think that is a bipartisan activity that we are all working on.

Mrs. COLLINS. I don't think Congress said a word about Medicare.

Mr. FOX. You talked about how the Republicans are trying to help protect that, that is true.

Mrs. COLLINS. About how you all are cutting the benefits, I did say that, you are absolutely right.

Mr. FOX. The nutrition program has actually increased 5.5 percent over what the administration——

Mrs. COLLINS. From now till the year 2002, you are going to reduce Medicare benefits by $270 billion, you know it and I know it.

Mr. FOX. No one has reduced anything. The Republicans——

Mrs. COLLINS. The Republicans are always talking about——

Mr. SCARBOROUGH. Regular order.

Mrs. COLLINS. Let's do have some regular order and talk about what is germane.

Mr. SCARBOROUGH. Regular order, please.

Mrs. COLLINS. What is germane in this legislation is the fact that people want to use their own money for advocacy groups.

Mr. SCARBOROUGH. Regular order, Mr. Chairman.

Mr. FOX. Let me state, the fact of the matter is, while this hearing is discussing a forward-thinking bill to try to put some proper sanity into the fact that we have had a program where grantees have been able to take the money they have to support advocacy for future government grants, the fact is that the tax cuts you have discussed in your opening remarks——

Mrs. COLLINS. That cannot be done, Mr. Chairman, under the current law.

Mr. Fox [continuing]. Excuse me, senior citizens, small business and for our families. I think the fact is that a large majority of Republicans and Democrats support that legislation.

We are now moving on to the person taking over the chair. Mr. Ehrlich is now taking over the chair.

Mr. WAXMAN. Mr. Chairman, point of parliamentary inquiry.

Mr. FOX. Yes, sir, a point of order.

Mr. WAXMAN. No, parliamentary inquiry.

Mr. FOX. State your point.

Mr. WAXMAN. Are we going to take a second round of opening statements or are we going to let our guests get their chance to testify?

Mr. FOX. We will get to the guests. Mr. Ehrlich is going to be the chair.

Mr. EHRLICH [presiding]. Mr. Waxman, it is my understanding there are no more opening statements, I believe, and, with that, Congressman Skaggs.

Mr. SKAGGS. Thank you very much.

Mr. EHRLICH. Steve, thank you.

Mr. SKAGGS. Thank you, Mr. Chairman. I appreciate the chance to speak with the subcommittee on this very important topic.

My comments will be addressed to the text that was submitted to and incorporated by the Committee on Appropriations in the Labor-HHS bill which, as far as I know, is the current state of this proposal, which has not yet been introduced as a bill.

The provisions involved here are often described as intended only to keep Government grants from being used to lobby the Federal Government, but in fact, it would have much greater reach using the long arm of the Federal Government to fundamentally cripple the ability of anyone who is covered to communicate with policymakers and to participate in the political life of our country.

In fact, if the Istook amendment were to become law, most Americans may well end up having to file certified annual reports detailing their, quote, political advocacy, unquote. That is because the conduct and activities of most Americans will probably fit under the incredibly broad definitions of "grantee" and "political advocacy" which trigger a chilling, intrusive set of reporting requirements.

Toward that end, the amendment would establish a Big Government, Big Brother system of political controls. For example, it would bring about the creation of a national data bank of political activity, covering everything from communications to contributions made by individual citizens, managed by the U.S. Government. All individuals and organizations falling under the reporting terms of the amendment—that is, most Americans—would have to file annually an itemized statement of political activity with the Federal Government.

To me, this sounds like 1984, and it is for that reason that my prepared testimony, which I hope will be included in the record, has been characterized as being on the George Orwell Memorial Speech Control and Reporting Act of 1995.

Furthermore, we would soon face a new section in many employment and purchase orders necessitated by the accounting regime, imposed by this amendment in which the question would be, "Are you now or in the past 5 years, have you engaged in lobbying or political activity of any kind? If the answer is yes, complete schedule D, itemizing the type and date of such activity, the amount you

spent on the activity, and the percentage of your annual income devoted to all such political activity expenditures." Sounds to me like 1953, and maybe we should consider bringing back the House Un-American Activities Committee.

Mr. Chairman, we should consider just what would be covered by this proposal as it is drafted: Universities and scientists getting research grants from the National Institutes of Health or the National Science Foundation; churches getting Federal grants to run child care programs; pregnant women, nursing mothers, and newborns receiving assistance under the WIC program; displaced workers and others receiving job training; farmers getting crop insurance payments and sodbuster payments; recipients of Federal disaster assistance loans or FMHA loans; irrigators getting water from the Bureau of Reclamation projects; a mining company acquiring title to mineral lands or anybody acquiring excess or surplus Federal equipment or supplies; any gun club that may get ammunition from the Defense Department or is permitted to use a Federal facility to promote marksmanship; 25 million children in the school lunch program.

In fact, Ms. Chairwoman, under this proposal more Americans would probably have to fill out political advocacy reports than now fill out income tax returns.

Another Big Brother aspect of the amendment is its approach to assure compliance with the limits on so-called political advocacy. It is an approach that is particularly troubling because we are dealing with limits on activities of a grantee that would otherwise be protected under the first amendment.

While it usually falls to the Government to prove that someone has done something wrong, an approach consistent with the presumption of innocence, the Istook amendment provides that the burden of proof will be on a covered party to establish that he has done everything right.

Furthermore, and if that weren't enough, a covered party must carry that burden of proof, not by the usual standard of civil law of preponderance of the evidence, but rather by the far more exacting and difficult standard of clear and convincing evidence, a standard usually reserved for extraordinary matters as punitive damages, and I think this is, in fact, a punitive piece of legislation. This is all the more problematic when coupled with another provision in the amendment that allows private citizens to sue a covered party and split treble damages with the U.S. Government. Talk about an invitation to litigation.

The disclosure requirements of the amendment are chillingly intrusive. A covered party who engages in any political advocacy must file with its grantmaking agency each year a certified statement describing all the covered party's political advocacy activities, listing the name and ID number of any person to whom it paid any funds originally provided by the Federal Government, and estimating the amount spent on advocacy and the amount of their political advocacy threshold.

The amendment also provides that each Federal agency making payments covered by the amendment will then send all of these disclosure statements to the Census Bureau, where they will be collated and put out on the Internet.

Is there any doubt whatsoever that academic freedom and freedom of expression more generally is put at grave risk by all this? Would anyone here like to try to explain to the colleges in your districts how we could endorse such a Rube Goldberg contraption, especially one so patently unconstitutional?

No doubt there have been some transgressions, some misuse of Federal grant money to push what some consider a biased political agenda, but the Istook amendment covers millions of people who have never received any grant in the usual sense.

Even for people who, undoubtedly, are grantees, and who have done something that could be called lobbying, this amendment would constitute capital punishment for a misdemeanor, and for all the vast majority of Federal fund recipients, from the kids getting school lunches, to the farmers getting BurRec water who have tried to work in good faith for the national interest, this amendment would be a slaughter of the innocents.

In short, Mr. Chairman, the Istook amendment is an outlandish, even perverse, mass of legislation that would intrude into the lives of hundreds of thousands of people in every congressional district across the land that would require a vast expansion of Federal bureaucracy to administer, all in an effort to put limits on the extent to which individuals or groups could use their own private resources to engage in the political life of America. It is a profound shame on this body.

Mr. EHRLICH. Thank you, sir.

We will proceed to the president of the freshman class, Mr. Wicker.

Welcome.

STATEMENT OF HON. ROGER WICKER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. WICKER. Thank you Mr. Chairman. It is a pleasure to be here.

I am Roger Wicker, Congressman from the First District of Mississippi, and I am president of the freshman class of Republicans in this 104th Congress. It might come as a surprise to you that I would tell you this morning we are not monolithic in our votes. We sometimes differ as a freshman class, and, quite frankly, we very seldom take official positions as a class.

But I do believe it is accurate to say that I speak to this committee, the subcommittee, this morning on behalf of the entire freshmen class to commend this subcommittee on its work on legislation to address welfare for lobbyists and also to speak specifically on behalf of the Istook, McIntosh, and Ehrlich amendment which will be debated on the floor of the Congress next week.

Before I begin my prepared remarks, though, Mr. Chairman, I must respond to remarks made by the distinguished ranking member of the full committee, Mrs. Collins, and I appreciate the distinguished vice chairman, Mr. Fox, challenging the gentlelady on her comments, because she said that the Republican majority was cutting Medicare funds and then she went ahead to say the Republican majority was eliminating the school lunch program, and although that doesn't have anything to do with the issue at hand, I think it is important that the truth be told at every juncture and

that statements such as the one made by the gentlelady be challenged at every opportunity.

For her to say that the Republicans are eliminating the School Lunch Program is not true. As a matter of fact, the Republicans are spending more money on the School Lunch Program than before. We are just not spending as much money as Mrs. Collins wants us to spend.

And it is absolutely untrue to say that we are cutting Medicare. The Republicans in the House of Representatives, the Republicans in the Congress, will spend $1,900 more per individual per year at the end of 7 years on the Medicare Program. So although that was not on point, it was a statement made by the ranking member of this committee and I cannot allow it to go unchallenged.

Mr. Chairman, the election in November 1994 was about the direction our Nation will take in the future, and our freshman class simply has a different vision of the role of the Federal Government than many of the long-serving liberal Democrats who controlled this body for the previous 40 years. We were sent to change the way Washington does business.

Too many taxpayers today are convinced that Congress does not work on their behalf but instead works on behalf of special interests who know how to gain access to taxpayer dollars under the guise of doing good.

We are not willing to accept the status quo. The freshman class has a different vision for America. We believe organizations which call themselves charities should perform the duties of charities, not lobby for more Federal tax dollars.

The Appropriations Committee did not include the Istook, McIntosh, Ehrlich amendment without full consideration and debate. The full committee voted 28 to 20 in favor of adding this amendment to the Labor-HHS appropriation bill.

As you know, the Appropriations Committee has frequently put limitations on the use of Federal funds, and this language is consistent with upholding our responsibilities as keepers of the purse. It is the right and duty of the Appropriations Committee and of the Congress as a whole to ensure that Federal dollars are not commingled with privately raised funds and spent on political advocacy.

The Istook, McIntosh, Ehrlich amendment accomplishes this task through the use of a prohibition on the use of Federal funds for political advocacy that will apply to all grantees, grantees of the right and the political advocacy of the left. This prohibition will be enforced through strict disclosure.

The grantees will submit an annual account to the General Accounting Office and to the agency or department which has awarded the grant to detail any political advocacy in which they have participated. The GAO will be responsible for reviewing these reports and keeping the Appropriations Committee and the Congress informed on the adherence to these new standards. All of the information will be available to the taxpayers through the Freedom of Information Act.

Mr. Chairman and members of the subcommittee, it might be useful to consider the variety of groups who have weighed in on both sides of this legislation: The Chamber of Commerce, the Na-

tional Taxpayers Union, Citizens for a Sound Economy, and the Christian Coalition have all written letters in support of this amendment.

On the other hand, Common Cause, the American Arts Alliance, the United Way, and the Alliance for Justice have all written to my office to oppose the amendment.

It might not surprise you to know that it is my general impression that groups who do not receive Federal funds typically support the Istook, McIntosh, Ehrlich amendment while groups who do receive Federal grants tend to oppose this amendment.

It is my strong conviction that no group engaged in political activity has a preemptive right to Federal taxpayer dollars in the form of a grant. This is a critical distinction to make. This is money which the Congress collects from all across the Nation and then redistributes according to the priorities we set as a Congress.

So when we hear about grant recipients taking $10,000 or $1,000,000 a year in grants and then we realize that this group spends those funds in pursuit of more Federal dollars and new regulations on American business owners, for example, we think our constituents are owed a better accounting of their money than they are currently getting.

This amendment would require that organizations open their books to GAO auditors and submit annual reports to Congress and the grantmaking agency to verify that they are spending Federal grant money on the project for which it was given, not putting together a grass-roots effort to saddle our Nation, for example, with socialized health care, higher gas taxes, or some other effort to lobby Congress for positions either on the right or on the left of the political spectrum.

In closing, I understand that some have suggested this amendment is an unconstitutional infringement of individuals' first amendment right to free speech. This free speech debate is as old as the Constitution itself, and I believe everyone is entitled to his own opinion. However, in the end, it is our job as a Congress to raise and appropriate funds on behalf of the people of this Nation.

The Istook, McIntosh, Ehrlich amendment will ensure that the voice of the voters as exhibited in the 1994 elections is heard and that their tax dollars are being used effectively and not being used for the benefit of special interest.

I thank you Mr. Chairman.

Mr. EHRLICH. Mr. Sabo, would you like to give an opening statement, sir?

Mr. SABO. Sure.

Mr. EHRLICH. You may proceed.

STATEMENT OF HON. MARTIN SABO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. SABO. Thank you, Mr. Chairman. My apologies for having to leave, but I had an important appointment I had to meet. I suppose they were lobbying.

Mr. Chairman, I have a prepared statement, and if you would put that in the record, I would appreciate it, and then let me make just some observations.

Mr. Chairman, I can't help but make the first observation that as I look at the chart behind you, I hope it wasn't paid for by taxpayer dollars. If it was, it clearly is taxpayer propaganda.

Mr. Chairman, as we considered this issue in Appropriations, I offered an amendment. I think the basic bill is wrong, but if you are going to proceed along this route, there is no reason that this limitation should simply apply to those people who receive grants; it should apply to people who receive contracts, subcontracts. My own judgment would be that it should also apply to those who receive tax preferences.

I would suggest that there is no time that more lobbyists are up here in Washington than when Ways and Means is marking up a bill, and it is, I expect, motivated by self-interest, and that is—and we talk about indirect benefit. Clearly the Tax Code is more than indirect, many times it is a very direct benefit.

But let me go beyond that. Mr. Chairman, I suppose there might be a view of life that somehow when we are elected we should maybe come build a biosphere and all of us go into that biosphere for 2 years, make our judgments, and at some time re-emerge.

But, Mr. Chairman, I would suggest, that is not the essence of American representative government. The nature of what we do is to have a variety of people try to influence what we do, and our judgment is to sort through all of those demands.

Mr. Chairman, there are, I suppose, pluses and minuses. Having been in public life for an extended period of time, one of the most fundamental changes that I have observed over that period of time are the number of folks who are organized in some fashion to try and impact what we do or don't do.

Mr. Chairman, I would suggest that expansion has been a plus, not a minus, because what I observed early in public life was that there were not many groups organized and there were a handful of groups who exerted incredible influence, and the expansion of the number of people and groups that are organized has had the impact of limiting the power of certain very select groups in our society and in the legislative process.

But, Mr. Chairman, I would also suggest that if you want to look at lobbying, the right of people to petition their government, I have always believed that you should have certain disclosure in that process, certain registrations that are realistic, then deal with it in lobbying, not by restricting the capacity of certain people depending on what their mix of outside income is and their impact to advocate and exercise their constitutional duty before us. Have it apply uniformly, whether somebody does or doesn't receive a grant, whether they do or don't have a contract or a subcontract, whether they do or don't receive a tax preference, or whether they have it or are seeking to get one.

All of those are people exercising their constitutional duty that complicates our life, makes it more difficult to arrive at a judgment. But that is what we are elected to do. Deal with it in a uniform fashion, but don't restrict that fundamental constitutional right of people. It is important.

Mr. Chairman, I would also further suggest that I think there is a distinction not always easily drawn, but there is a distinction between what we call lobbying, attempting to influence what we do,

and direct involvement in elective politics, and what I observe is that there is a growing amount of direct political activity done by groups that have tax-exempt status, not necessarily charitable status, but tax-exempt status, and frankly that does concern me, but, again, it is unrelated to whether they do or don't get a grant to do some specific governmental purpose, and I do not know how we deal with that issue within the confines of free speech.

But I observe increasing activity by nonprofit organized groups that are heavily involved in the political process and therefore are not subject to the limitations that we as candidates are, that political parties are under, but operate with huge sums of money contributed for, quote, educational purposes, that are spent directly in political campaigns for organizational purposes, for research purposes, for candidates, and I have also observed running actual television ads where, quote, they are running, quote, educational ads clearly for the purpose of impacting the outcome of a particular election.

I expect the problems here are somewhat the same as the problems we have in regulating independent expenditures. If you want to do something useful, you might look at the extent that that is beginning to happen in the political process.

And, Mr. Chairman, I would suggest that somehow to suggest, as your chart does, that what we spend in grants is simply money being shoveled to lobbyists, that is a distortion. We do substantial research grants in this country. I am not quite clear what the distinction is, as a matter of fact, in many cases between a grant and a contract.

I expect there are certain agencies, I think NSF, I think they are probably all grants. I am not sure in DOD if the money flowing to universities isn't contracts rather than grants, and I am not sure what the distinction is, and it goes on and on.

So, Mr. Chairman, I would caution you to move with care. I think you are dealing with a fundamental constitutional privilege, not only free speech but of the ability for people to petition their Government in an organized fashion.

To try and somehow make villains of certain groups I think is dead wrong, and as I listen to some of the expressions of members of this committee as they visit about this issue, Mr. Chairman, I would not want them today writing the Bill of Rights.

[The prepared statement of Hon. Martin Sabo follows:]

Statement of
Rep. Martin Olav Sabo
Before the Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
July 28, 1995

Mr. Chairman, your Subcommittee meets today for the purpose of investigating the use of federal dollars for political advocacy. As you know, the Appropriations Committee has already approved an amendment to limit the nonprofit community from using money from federal grants to engage in political advocacy.

I opposed this amendment because I find its intent to be profoundly disturbing. It is clear that this proposal will not accomplish the goal that many of its supporters attach to it. It will not stop interest groups from using federal funds to engage in political advocacy. Current law does that, so it is not necessary to pass another law to prohibit an activity which is already outlawed.

Unfortunately, the amendment is not entirely redundant. Rather than bolstering enforcement efforts for laws already on the books, it strikes far beyond current law by forbidding federal grantees from using more than five percent of their own private funds to engage in political advocacy activities. Such intrusion into the private budgeting decisions of private organizations forces the question: what exactly is being prohibited under this proposal?

Congress has both the right and the obligation to regulate its appropriated funds. Restricting the use of publicly funded political advocacy does combat the abuse of public funds. It prevents the taxpayer from supporting political views with which he or she may not agree.

Restricting the use of private funds, however, does no such thing. The government has no responsibility to regulate that money. A shift in motivation has occurred. This legislation strays far from the purpose of protecting public funds and directly into the realm of stifling political speech.

More ominous than that is the evidence that it is not merely political advocacy which is being curbed, but a particular kind of political advocacy. The key to understanding this amendment lies in its definition of who shall be placed under its control and who shall be exempted. It targets federal grantees, many of whom are nonprofit organizations, and exempts federal contractors, most of whom are corporate or business entities.

All current restrictions on the use of federal funds for political activities -- the appropriations restrictions, the Byrd Amendment, and the acquisition regulations -- apply equally to federal grantees and contractors. The Istook amendment would be the first to subject federal grantees to different political advocacy standards than federal contractors.

This is not an oversight. It is a deliberate attempt to target certain political voices while leaving others unencumbered. To test this hypothesis, I offered an amendment to the Istook amendment to the Labor, Health and Human Services appropriations bill that would have extended the prohibition to contractors and the beneficiaries of Federal loans. It failed in an 18-29 vote. Significantly, the opponents of my amendment were in large part the supporters of Mr. Istook's amendment.

The Istook Amendment not only discriminates between federal grantees and federal contractors, but it discriminates between well-funded nonprofits and those which operate on a shoe-string budget. Federal grantees would be permitted to use up to five percent of their budget for political advocacy, or up to one percent if their annual budget exceeds $20 million. Therefore, a corporate grantee with a $100 million budget in excess of their grant income would still be permitted to spend $1 million for political advocacy. It is unlikely that such a large sum would force the company to alter their lobbying budget significantly from its levels under current law. A nonprofit with a $100,000 budget in excess of their grant income, on the other hand, could face considerable difficulties with a $5,000 ceiling on their political advocacy budget.

The conclusion is obvious. This amendment engages in the worst kind of First Amendment infringement: its seeks to stifle content-based speech. I suggest that it is no coincidence that the organizations targeted by this amendment are the very organizations whose names appear on the letterheads of the mail which arrives in our offices opposing the new Republican leadership's fiscal and social agenda. I urge my colleagues to reject this ill-conceived proposal.

Mr. EHRLICH. Mr. Sabo, thank you for your comments.

It will be interesting—can you hang around for a few minutes?

Mr. SABO. Certainly.

Mr. EHRLICH. It will be interesting to explore some of your statements. I found them very interesting.

We now will have an opening statement from Mrs. Meek of Florida.

Mrs. MEEK. Thank you, Mr. Chairman.

I have listened to the debate here this morning. Of course I am appalled by what this amendment attempts to do. First of all, it violates the first rule in appropriations, and that is not to make substantive legislation on appropriations bills, and it appears that this particular effort has done that.

The second thing is that it also violates the fact that some of the people that will be impacted by this, some of the groups, have not been heard from. Hopefully, I am sure in your willingness to be fair and equitable to all groups, you would allow everyone to have a good hearing and to be able to have a chance to come before you to hear some of the things and to give their feelings about it.

I would like to know whether or not a fiscal impact statement has been made on this very vast and widespread kind of legislation and that it is going to impact on a lot of fiscal things that the Government is not doing.

First of all, you have tried to reduce the paperwork procedures in the Government. What this will do is make it much more expensive than you have ever had before. I would like to know how much it is going to cost for the General Accounting Office and OMB and all of those agencies with whom you are going to put more work, whether that has been costed out, because it appears to me that every citizen in this country will be impacted with this.

I am sure that your ideas and your rationale is a good one, that you wouldn't like for people to be able to lobby the Government using the Government funds. That seems to me to be rational. But I think that you are taking it too far. You are going much further than your original intent is, to not have people lobby us. I think I could vote for this if it were to be expanded to include corporations, to expand it to the big universities who get all of the grants in this country. I would like to see that happen so we all would be in on this.

So I think originally that your intent is good, but I just think you have singled out one group, and those are the nonprofits.

I just can't see my little senior citizens group, myself included, being able to file all these forms, and it is going to be a relief act for some people who are going to have to need help to fill out these forms.

So I just think, Mr. Chairman, that this is an invasion, No. 1, on the right of the citizens to come before us, and I think that before we come to any decision we better hear from some other groups instead of making all of these widespread kinds of regulations, and we are dealing with a part of the Republican party which has tried to cut down on some of these regulations, and this is going into another direction.

Thank you, Mr. Chairman.

Mr. EHRLICH. Thank you.

What I want to do right now is open up the panel for some questions; and I have a number of questions; and first let me—you have all raised a number of good points. I want to get into a number of these points because they are important to understand the parameters of this debate.

I believe Mr. Tate held up for, I am told, the Federal law and the Federal regs which interpret the law with respect to the Federal procurement process for corporations; and I realize the point has been made time and time again that there appears to be no difference between grantees and contractors, and obviously there is a one-foot-high body of law with respect to the Federal Government governing the ways that contractors who provide a specific good or service to the Government for consideration operate.

Now, we have yet to be able to find any law on the books that covers Federal grantees, any law of general application that covers Federal grantees, and, Congressman Skaggs, let me get into your comment concerning—and I have your statement in front of me, universities, farmers, mining companies, gun clubs, et cetera.

Sir, in a philosophical sense, is it your opinion that these groups have an unlimited right to utilize grantee money not for the specific purpose of the grant, but to lobby the Federal Government for more money? Is there a constitutional right to that money? Is that your point?

Mr. SKAGGS. No, and I think my statement is very clear on that point. There is not—what there is a constitutional right to is to do what we please with our private resources with regard to political activities and communication.

This proposal would grossly violate that overarching principle by not only restricting what one can do with Federal grant money, but what one can do with one's private funds, not just in the year of the grant, but reaching back 5 years, so that, for instance, if any individual should have, for whatever reason, decided to expend more than 5 percent of his private resources in a political campaign or activity—State, Federal or local—they are going to be prohibited for a 5-year period of being eligible for any kind of Federal grant—very broadly defined. I think that is patently unconstitutional.

Mr. EHRLICH. Is it the result of your constitutional analysis that this Government is prohibited from—and can you think of any other instance where this Government says to a recipient of Federal funds, you can take this money, but we have specific controls with respect to other aspects of your operation including private funds? Is it your opinion that is an unconstitutional analysis or unconstitutional view under the first amendment?

Mr. SKAGGS. It depends on the case and on the specifics as to exactly what the scope is. I think under any fair-minded constitutional analysis this is way beyond the pale of the rare and very narrowly defined cases in which the courts have found that appropriate. Because this deals with highly protected first amendment rights, the courts would apply what is generally referred to as a strict scrutiny standard against this.

Mr. EHRLICH. If I could stop you there, is it your opinion that a strict scrutiny standard would be applied to a situation where Federal grantees are utilizing Federal taxpayer grant money for political purposes outside the purpose of the grant?

Mr. SKAGGS. No. It would apply when you are trying to use that as the hook to get at their use of their own resources.

Mr. EHRLICH. Thank you.

Second, you talked about a clear and convincing standard in law, and I think you characterized it as an extraordinarily high standard.

Isn't it true that State statutes throughout the country are replete with clear and convincing standards, fraud statutes, et cetera, and it is really an intermediate standard between the civil standard of preponderance and the criminal standard of reasonable doubt, it is simply an intermediate standard that legal scholars are certainly familiar with?

Mr. SKAGGS. The last part of your statement is accurate, legal scholars are familiar with it. To simply dismiss it as just a way station from preponderance to beyond reasonable doubt, I think seriously distorts the effect that it would have in the context of this legislation because it is coupled with an extraordinary shift of the burden of proof, not for the Government to show that somebody has done something wrong, but for anyone—and it would affect most Americans, to demonstrate that they have not—that they have done everything right. It is a burden of proof that they would have to meet in that demonstration of compliance.

That is bad enough if it weren't also in the context of activities that are constitutionally protected under the first amendment. You put all that together, and it is a constitutional cesspool.

Mr. EHRLICH. Do you see any middle ground between what you characterize as extraordinary shifting of the burden of proof under the bill and present law which requires absolutely no reporting with respect to the use of Federal grant money by Federal grantees? Do you see any middle ground?

Mr. SKAGGS. Oh, I think given that you have just about defined the universe in between, the middle ground is ample indeed.

Mr. EHRLICH. Mr. Wicker has left us now.

Congressman Sabo, you made some very interesting observations, and I really appreciate your observations because a lot of them are my observations concerning the state of the law. Do you, sir, in view of what I said earlier, see a difference between laws that impact Federal contractors and laws that impact Federal grantees?

Mr. SABO. Oh, I expect there are a whole host of differences, but clearly somebody who applies for a grant should use the money for the purpose of the grant. If you have a research grant, you spent the money for the purpose of that grant.

Mr. EHRLICH. Correct.

Mr. SABO. And hopefully, if they have a contract, they spent it for the purpose of the contract. If they are reimbursed for a variety of reasons—I come from a farm State that has wheat and corn, where we have deficiency payments. I expect a significant part of the income of farmers in our State comes from deficiency payments.

Mr. EHRLICH. You are really getting to the bottom——

Mr. SABO. I don't think, therefore, we ought to limit their ability of drawing together to lobby us.

Mr. EHRLICH. I agree.

Mr. SABO. I believe we are in the midst right now of a discussion of Medicare and Medicaid. I don't know of any Medicare-Medicaid money that is paid directly to the people whom the programs are designed for. They are paid to providers of services.

I would not suggest that the doctors, the hospitals, the nursing homes, on and on, should not be able somehow to use their other resources in some fashion to lobby us. That is part of our life.

Mr. EHRLICH. Just quickly, I agree with everything you said, and we are getting to the bottom line here.

Mr. SABO. OK. But, Mr. Chairman, let me just say, people get grants for very specific purposes. If I understand NSF, you go through an elaborate process of filling out an application, you go through a peer review, and you get a grant for certain research purposes. DOD, we spend billions of dollars at universities. Some of those are grants. Some of those, however, are contracts for specific types of research. That might be contract. I am not sure how you draw those distinctions.

I happen to come from a community where involvement of inner city involves very substantially the public sector, nonprofit sector, working with the private sector. In some cases it is contract, sometimes it is grant.

To say that some people who are involved in housing—and some part might be grants for remodeling of a building rather than a contract—that somehow we are going to limit what they do with their nongovernment—you know, clearly if they get a grant to rehab a building, that is what it should be used for. If they have other resources, they can't express themselves to us or local housing people or the State legislature on housing programs? It gets sort of crazy.

We are heavily dependent on them to provide housing in our community. My friend, Mr. Gutknecht, has Mayo Clinic. I have no idea what the—I suspect a significant part of their income is from Medicare, Medicaid. I suspect a significant amount—and I hope they provide medical services for it. I suspect that they are also a research group. I suspect they are getting some on contract, they are getting some as grants.

But if they all got grants, that somehow that puts them in a different category than if it were a contract, that makes no sense.

Mr. EHRLICH. Well, sir, that is the existing state of the law. But I agree with everything you said, and I look forward to working with you on this bill; and I really would like to sit down with you, talk to you about this bill.

My time is up. Mr. Kanjorski from Pennsylvania.

Mr. KANJORSKI. Mr. Chairman, I wish we would have counsel available, because I have some questions on the bill itself. I think the two witnesses have raised an interesting question.

I am not sure what the term "grant" means here. When you read the provision, it says, "Grant includes the provision of any Federal funds appropriated to this or any other act or other thing of value to carry out a public purpose of the United States." I would think that that would constitute, almost everything we would do substantively would be a grant. Wouldn't you agree?

Mr. EHRLICH. If the gentleman would yield, counsel is available.

Mr. KANJORSKI. Which subsidies constitute a grant?

Mr. EHRLICH. Counsel.

Mr. PAED. I am sorry, Mr. Congressman, what was your question?

Mr. KANJORSKI. Would a subsidy constitute a grant? If the U.S. Government were to make a subsidy that would benefit one group of individuals or one individual or group of entities over another, for any reason, would that constitute a grant?

Mr. PAED. I don't believe so, sir. The bill defines a grant as——

Mr. KANJORSKI. I am reading a grant. Tell me what a grant is, because I can't make out what that means. A grant there says it includes the provision of any Federal funds appropriated under this or any other act or other thing of value to carry out a public purpose of the United States. What is that?

Mr. PAED. Mr. Congressman, you are correct in reading the definition of "grant." There is also, however, another provision of the law that says that any organization administering or awarding the grant must take reasonable steps to ensure compliance, including providing written notification to the grantee.

Mr. KANJORSKI. I understand that. That is the obligation of the person getting the benefit of the grant. I am going back to, just if you tell me—I think this says that if we provide a subsidy for an organization, that constitutes a grant. It says "anything of value." If we give somebody a piece of equipment, that is a grant. If we subsidize farming organizations, that is a grant to that individual. Wouldn't you agree?

Mr. GUTKNECHT [presiding]. Mr. Kanjorski, can I interject here just a moment?

Mr. KANJORSKI. Go ahead.

Mr. GUTKNECHT. Counsel, isn't the threshold $1 million? So we are not talking about a piece of office equipment; isn't that correct?

Mr. KANJORSKI. No, no, I am going to get around to that; I am going to get around to that. I want to find out what a grant is.

It seems to me if you are going to write an act, 250 million Americans ought to know whether or not they fall under the umbrella of the definition. I have read this. Now, I am not a constitutional lawyer, haven't practiced law for 12 years; I can't determine what this means.

Mr. GUTKNECHT. Is that a rhetorical question or——

Mr. KANJORSKI. I am trying to ask you, is a subsidy a grant?

Mr. GUTKNECHT. Is counsel prepared to answer that question?

Mr. KANJORSKI. Is a contract a grant?

Mr. GUTKNECHT. Counsel.

Mr. KANJORSKI. Grants have contracts.

Mr. PAED. No, Mr. Congressman. A contract——

Mr. KANJORSKI. So in other words, if an entity has a contract with the U.S. Government to get money, that is a contract, not a grant?

Mr. GUTKNECHT. Counsel.

Mr. PAED. According to the definitions in the bill, the contract provided to a party is not a grant.

Mr. KANJORSKI. Look at a contract of what to do. A contract between the U.S. Government and A, where we give you money to carry out a public purpose of the United States, is that a grant or a contract?

Mr. PAED. I am not sure I understand your question, Mr. Congressman. Let me try to answer it if I can though. The statute sets forward a definition of the word "grant" that says not——

Mr. KANJORSKI. Read it. Read it, and tell me what it is.

Mr. PAED. I have read it, sir.

Mr. KANJORSKI. Am I reading the right term under section 4: "The term 'grant' includes the provisions of any"—or is there another specific piece of the legislation that I am not getting to that talks about grant?

Mrs. MEEK. Will the gentleman yield?

Mr. KANJORSKI. Yes.

Mrs. MEEK. If I may give an example, Mr. Chairman, of what my colleague has reference to. I worked at a university, and we received grants all the time from the Federal Government. In order to get that grant, you must enter into a contract with the Government where you sign at the bottom, and that is a contract. So in that way, it gives a perfect example of a fact that a grant is a contract. You do not receive the Federal money until you sign a contract.

Thank you.

Mr. KANJORSKI. Reclaiming my time, if I could ask counsel—I can't even ask the question because I can't understand the definition—will you tell me what the difference is between a subsidy, a grant, and whatever it is that we are calling, in little terms, grants? I know what you have in mind. You have in mind a grant to some nonprofit organization to carry out some purpose. We call that, in the general vernacular, grants. But that is not a legal definition of the term "grant."

I would like to know what the legal definition of the term "grant" is. It is not very specific here; let me give you an example. It says it includes provisions of any funds appropriated under this or any other act or other thing of value to carry out the public purpose of the United States.

I think when the FCC grants a license to WABC, that is a grant. Is that not a grant?

Mr. GUTKNECHT. Counsel.

Mr. PAED. Mr. Congressman, in my opinion, I do not believe that that would constitute a grant.

Mr. KANJORSKI. That may be your opinion, but where is that not a grant in the language in this act?

Mr. GUTKNECHT. Can I just interject? Representative Skaggs has to leave, and so we are going to excuse him.

Mr. SKAGGS. Well, I would also be delighted to stick around to answer questions. I can't stay much longer, however, and if——

Mr. KANJORSKI. Well, maybe if I move off counsel, I could ask Mr. Skaggs some questions, if I may.

Mr. GUTKNECHT. Well, you have got about 1 minute left, Representative Kanjorski, and, just for the record, we do plan to recess at 1 p.m.

Mr. KANJORSKI. Mr. Skaggs, can you help me out? Maybe you were a constitutional lawyer, have the advice of constitutional lawyers, legislative lawyers. Can you tell me the difference between subsidy, grant, and contract, as defined in this piece of legislation?

Mr. SKAGGS. In my legal opinion, grant is all inclusive of anything of value provided with in any form with Federal appropriated funds, with the exception of the enumerated exclusions.

Mr. KANJORSKI. So a grant to a television station of a license, that would constitute a grant; is that correct?

Mr. SKAGGS. As I read this, yes.

Mr. KANJORSKI. The use of American magazines and newspapers of a special rate of the post office to carry out the purpose of delivering their particular specialized mail would constitute a grant. Therefore, no newspaper, television, or radio could carry out political advocacy of any sort for any purpose because they were the recipients of grants or would have to file under these provisions.

Mr. SKAGGS. They would have to file. They could spend up to 5 percent of their money on political advocacy.

Mr. KANJORSKI. They couldn't spend 5-percent more. They would have to allocate—is Bob Novak advocating, politically advocating, or is he commenting?

Mr. SKAGGS. I think a parceling out of that is a clear demonstration of why this is constitutionally vague and defective.

Mr. GUTKNECHT. Well, the Chair is going to have to intervene. The time has expired.

But if that is correct, then wouldn't they have to comply with the big stack of regulations that we saw earlier? I mean if that is in fact true, then it should trigger the regulations for contractors.

Mr. SKAGGS. No, it is not a Government procurement.

Mr. GUTKNECHT. But you are saying there is no difference.

Mr. SKAGGS. Oh, I am saying there is a great deal of difference. Procurement is a very narrowly defined transaction between the Government and organizations that are providing a defined thing of value to the Government. A grant is almost any instance in which the Government provides something of value to the citizen or the organization except for the very narrowly defined exceptions.

Mr. GUTKNECHT. But what about 501(c)(3)'s? Don't we already restrict their ability to do political things?

Mr. SKAGGS. We do, and we ought to use that as a sufficient answer to this whole exercise.

Mr. GUTKNECHT. I am going to turn the gavel back to Representative McIntosh. Before I do though, Representative Fox, do you have some questions?

Mr. FOX. I will just ask either member of the panel, while Mr. Skaggs has to leave—I appreciate Congressman Skaggs and also Congressman Sabo and Congressman Wicker for their testimony today—I would see a distinction, and perhaps you can enlighten me whether you agree or disagree, between a corporation or a business or entity which receives, through competitive bid, a contract with the Government and a nonprofit group, which has received funds to help the public in a general way. Do you see the distinction between those two?

Mr. SKAGGS. Generally I do, and I think that is a common sense distinction to draw and one that procurement regulations attempt to draw. The problem is, this bill doesn't do a very good job of drawing that line.

Mr. FOX. Would you be willing to work with Chairman McIntosh and the other makers of the bill to try to make the bill better——

Mr. SKAGGS. I am really not——

Mr. FOX [continuing]. To address those concerns?

Mr. SKAGGS. I am really not interested in working with anybody to undermine the fundamental political rights of American citizens.

Mr. FOX. I don't think Mr. McIntosh is trying to undermine anybody. We are trying to make it a better system so we don't have——

Mr. SKAGGS. That is all this does.

Mr. FOX. Welfare for lobbyists.

Mr. SKAGGS. That is all this does, Mr. Fox.

Mr. FOX. I guess reasonable people can differ, and we have a different point of view on it, but I do hope those who are fair-minded, Congressmen, would work with the good Chairman McIntosh, because the purpose of the hearing is to try to.

Mr. SKAGGS. Believe me, I endorse the general principle which is already in law that Federal funds shouldn't be used to lobby the Government. No argument. As soon as you start down this path to try to figure out how we can block off every conceivable way to make sure, because of the fungibility of money, that there can be no taint on private resources commingled with public resources, that then come back to talk to us or to State or local governments.

In my judgment, you are simply entering a political—a constitutional swamp, constitutional quicksand, from which it is not legally, intellectually possible to draw the kinds of distinctions that are workable to get at the kinds of problems you are trying to get to.

Mr. FOX. I appreciate your point, Congressman Skaggs.

I think what the committee is trying to do and, under Mr. McIntosh's leadership, to try to, in fact, get the information about what is going on, some information we don't have yet today, and something that we are hoping that the witnesses that will be forthcoming from organizations, from records we hope to obtain, will shed light on whether or not we, in fact, need to have further lobbying reform; so we don't have the taxpayers being charged for advocacy by special interest groups.

Mr. SKAGGS. Mr. Fox, don't you see that the very effort to dragnet in information about what private organizations do with their private resources in order to make sure that they are not doing something that you do not approve of is absolutely antithetical to the fundamental principles of this democracy?

Mr. FOX. I do not think that Mr. McIntosh or anybody on the committee is trying to find any activities we do not agree with.

Mr. SKAGGS. That is exactly what this does.

Mr. FOX. Well, that is your interpretation. I submit to you, reasonable people can differ, and the fact is that we are trying to look out for the taxpayers' dollars and we are trying to make sure, while advocacy is fine, should you be asking for a contract with the Government as a charitable entity and then also be advocating with the Government for a specific special interest legislation at taxpayer expense, and I guess we are going to have to hear more witnesses.

Mr. MCINTOSH [presiding]. Would Mr. Fox yield?

Mr. FOX. Yes, I will.

Mr. McINTOSH. Since there has been some discussion of my personal motives, let me put on the record that one entity that objects to this legislation and feels that they would be adversely affected is an entity that I care a great deal about. I worked for them between 1993 and 1994. It is the Hudson Institute in Indianapolis. They disagree with me. I generally support all of the efforts that they do. I agree with most of the things that they write and publish in terms of various positions on policy papers.

Frankly, I don't think this would limit their ability to do that work, but they feel that it would adversely affect them. Let me put that on the record as an example, that I do not seek to defund any particular point of view, but to simply say taxpayer funds should not subsidize advocacy or political activity.

Thank you, Mr. Fox.

Mr. FOX. I yield back the balance of my time.

Mr. McINTOSH. I believe Mr. Peterson would be next.

Do you have any questions? Anyone on—Mr. Gutknecht, do you have any questions?

Mr. GUTKNECHT. Thank you, Mr. Chairman. I don't know if it is my turn or not, but I do want to raise a couple of points.

First of all, I do agree with you, Representative Sabo, that that billboard behind the chairman, although I know you have never used and I know I would never use exaggeration to make a political point——

Mr. SABO. Never.

Mr. GUTKNECHT. But maybe it does go a bit far.

But I think we are having a discussion in Congress right now. In fact, it has been more heated in the Senate, and I suspect it will come over to the House sooner rather than later, about the whole idea of lobbying reform.

You know, there is a good deal of consternation in the American body politic about how much is spent by lobbyists to influence decisions here in Congress, and you have sort of said that that is not necessarily a bad thing, and I don't want to put words in your mouth, but you have talked about the sort of explosion of the number of groups that are registered here and lobby. But isn't this sort of the inverse of that?

I mean in one respect you are talking about lobbyists who give us things to influence our decisions, and on the other hand we are sort of giving lobbying groups public money to increase their activities, and somehow I have a real problem with that.

Mr. SABO. I am not aware where we give groups money for their lobbying purpose, or what we are talking about here is what they do with their non-Federal funds.

Mr. GUTKNECHT. Well——

Mr. SABO. I am no expert in lobbying reform. We are going to change who registers, I have no problem with that. I think people who lobby should register. I think they should disclose how much they spent at it. It is probably never perfectly defined. And that is appropriate. Clearly the existing laws are outdated, need to be updated, and hopefully we would do that.

That should apply to profit, for-profit companies, nonprofit companies. You know how that mix occurs in this country.

Frankly, until I came to Congress I didn't know there was such a thing as for-profit hospitals, because in my experience in Minnesota—I don't know of any. I had assumed all hospitals were nonprofit. I knew nursing homes were both for-profit and nonprofit, but our experience in Minnesota, they were all nonprofit, and, you know, it is somehow—what the relationship is between for-profits and nonprofits I expect varies all the way across the country.

Mr. GUTKNECHT. Well, if I can followup on that, there is sort of a philosophical divide here, because after you left the Minnesota house and I came a few years later, I was surprised when I first showed up at the Minnesota legislature, there were 400 registered lobbyists at the State Capitol. By the time I left, there were 1,400 registered. To me, that is disconcerting. You sort of think that is a good thing?

Mr. SABO. No, I really think the opposite. I think that means that the diversity of this country is better represented before the legislature or before the Congress, and it makes our life more difficult, it makes the job of being an elected Representative much more complicated.

You know, in many ways it would be nice if we came and appeared and it disappeared into a biosphere and nobody was here to lobby us. The reality—and, if you don't mind, I will go back in history. In our State there was a period of time there were a handful of industries that had, in my judgment, undue influence over what happened in the legislature, and the losers in that, in many cases, were other private industries. And at some point I will visit with you about that history; I don't particularly want to do it on the record.

Mr. GUTKNECHT. I appreciate that.

Mr. SABO. But, you know, there was a handful that had incredible control over what happened. That diversity eventually got broken, and part of it was broken by efforts within the Republican legislature, and it meant that there was a broader number of people trying to have impact, and it has exploded in recent years. It makes life more difficult.

But I think to have the diversity of the country represented, both in the legislature or here, is a plus, not a minus. I would hate to see if we were down to 100 groups that were lobbying us.

Mr. GUTKNECHT. I would just like to call a couple other quick points, and you and Representative Skaggs seem to believe that what we are talking about is unreasonable, but, frankly, it seems to me it is not unreasonable at all, particularly when we are talking about ultimately billions of taxpayers' dollars.

We showed you—and we have heard more testimony—one group, for example—I will just share this with you—there is one group we heard about at the last hearing that received something like 94 percent of its funding in terms of Federal moneys, and a large amount of that was ultimately coming back to lobby for more money.

Now, some of the groups that you have mentioned, that Representative Skaggs, maybe they have gone too far, but, frankly, we are only talking about a bill that is 12½ pages thick. We are talking about a disclosure statement that is one page, and it is relatively simple to do. I don't think what we are talking about is un-

reasonable, and, frankly, let me just close, and perhaps you can respond if you like.

You said that you would not want the authors of this bill to be writing the Bill of Rights. Let me read to you from the person who did write the Bill of Rights. "To compel a man to furnish funds for the propagation of ideas he disbelieves and abhors is sinful and tyrannical." That is what Thomas Jefferson said.

I think there is a philosophical divide here, and we just feel that it is wrong to compel taxpayers to pay these lobbying groups to lobby for more taxpayer dollars, and somewhere in-between, at least if we can get disclosure, we can find out how much is really happening.

Right now it strikes me that to a large degree we are like the blind man describing an elephant. We really don't know what is going on. In the contractors, we know exactly what is going on. They have to fill out a mountain of paperwork, if they have a Federal contract. But if they are getting Federal grants, we don't know much about them.

Mr. SABO. I think, Mr. Chairman, what they are filling out are expenditures that relate to that contracting. You can deal with commingling of funds. If the commingling argument makes sense for grantees, it makes equal sense for the recipients of—the people who have contracts, or for people who receive payment for services that may not be grants under contracts, or people who receive payments in some form from the Federal Government under a variety of programs that provide benefits to them.

What this bill—and I am not sure if you have the same bill as we have. What I am looking at is the Istook amendment that is currently attached to the appropriation bill. That simply is not regulating lobbying in terms of what they do, it is simply saying there is a limit on how much of their nongovernmental revenues and income they can use for the purpose of political advocacy, which is sort of loosely defined.

Mr. GUTKNECHT. Thank you.

I yield back, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Gutknecht.

Mrs. MEEK. Mr. Chairman.

Mr. MCINTOSH. Mrs. Meek, do you have any comments?

Mrs. MEEK. Will the gentleman yield for a question?

Mr. GUTKNECHT. Sure.

Mrs. MEEK. You mentioned that your research revealed, that I think you said something like, 94 percent of the nonprofit agencies are using their moneys to lobby the Government; is that correct?

Mr. GUTKNECHT. No; what I said is there is one group that we heard about last week that received 94 percent of their funding from Federal grants.

Mrs. MEEK. All right.

Mr. GUTKNECHT. And——

Mrs. MEEK. If that is true then, why is it that we don't try to increase the enforcement of our current laws instead of changing it and going in another direction? You said that evidence has shown that there are some groups who are abusing this. Why don't we improve the enforcement to go after these people who are abusing current law?

Mr. GUTKNECHT. Well, Representative Meek, I am not certain there are any laws to stop this, and, frankly, I am not certain that—actually, what I think we want to do is get at better disclosure so we know exactly what is going on out there. Maybe the problem isn't as big as some people think, but I think the American taxpayers have a right to know exactly what is happening.

We have incredibly precise rules, regulations, and laws as it relates to Federal contractors. They have to go through an incredible maze to disclose what actually happens and how much they are spending up here on Capitol Hill and in other efforts to influence legislation. Many of the nonprofits have almost no disclosure requirements, as I understand it.

Mrs. MEEK. Well, most of them, if I may go further, Mr. Chairman.

Mr. MCINTOSH. Certainly. It is actually the gentlelady's time for questioning.

Mrs. MEEK. I have the time. You do have Federal laws that prohibit this kind of use of Federal funds already. There is Federal law that covers that; am I correct?

Mr. MCINTOSH. There is—I believe it is referred to as the Byrd amendment that limits grantees from engaging in political and lobbying activities, but it has not been enforced and it is ineffective.

Mrs. MEEK. Well, that points right to my question, if I may regain my time: Why not go after the stronger enforcement of current laws that are already on the books?

Mr. SABO. Mr. Chairman, might I inquire? Do you have another panel waiting to testify?

Mr. MCINTOSH. We do have two more panels.

Mr. SABO. I am happy to answer further questions, but if you have to adjourn the meeting by 1 o'clock, I think you should.

Mr. MCINTOSH. Let me ask Mrs. Meek. Let me just briefly say the problem is that there is—it is impossible to treat—to build the Chinese walls. We need to broaden the application of current law.

Mrs. MEEK. I am sorry, Mr. Chairman, would you say that again?

Mr. MCINTOSH. We need to broaden the prohibition in current law as well as strengthen the enforcement. That is my view of the problem.

Mrs. MEEK. Thank you.

Mr. MCINTOSH. Thank you.

Let me thank you very much for coming. I appreciate the input, Mr. Sabo, on this, and Mr. Ehrlich mentioned to me before leaving that he would like to get together with you actually and discuss this because he sensed there were some points of common ground with us on this. I appreciate you coming today.

Mr. SABO. Thank you.

[The prepared statement of Hon. David E. Skaggs follows:]

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Subcommittee on
National Economic Growth, Natural Resources,
and Regulatory Affairs

Statement of
Representative David E. Skaggs
on what should be called
The George Orwell Memorial Speech Control and Reporting Act of 1995
July 28, 1995

Thank you, Mr. Chairman, for this opportunity to testify concerning certain proposed restrictions on political advocacy by the recipients of various federal payments and by those who do business with such recipients.

As I understand it, these restrictions have not yet been introduced as a bill for formal consideration by this or any other authorizing committee. However, in the form of an amendment offered by Representative Istook, they have now been added to a pending appropriations bill -- a direct violation of the House's rule against legislating on an appropriations bill, but one that the Rules Committee may seek to protect against a richly-deserved point of order. Therefore, I will address my comments to the provisions of the Istook amendment.

Those provisions are often described as intended only to keep federal grants from being used to lobby the federal government. But, in fact, it would have much greater reach -- using the long arm of the federal government to fundamentally cripple the ability of anyone who's covered to communicate with policy-makers and to participate in the political life of our country.

In fact, if the Istook amendment were to become law, *most Americans* may well end up having to file certified annual reports detailing their "political advocacy." That's because the conduct and activities of most Americans will probably fit under the incredibly broad definitions of "grantee" and "political advocacy" which trigger a chilling, intrusive set of reporting requirements.

In the process, they'll have to follow "generally accepted accounting principles," and they'll be subject to mandatory federal audits, to be released publicly. They could spend no more than five percent of their own money on certain activities and items. And if challenged on any of this, they'd have to prove their own innocence by "clear and convincing evidence," the toughest standard in civil litigation.

Advocates for the amendment say it applies to "special interest groups" getting federal "grants." They say its purpose is to keep them from spending more than five percent of their own money (yes, *their own money*) on "political advocacy." That's atrocious enough. But what's worse is that the actual language of the provision goes much further.

It applies not only to recipients of traditional money grants, but also to:

> the provision of any Federal funds, appropriated under this or any other Act, <u>or other thing of value</u> to carry out a public purpose of the United States.

The exceptions are few:

> funds for acquisition (by purchase, lease or barter) of property or services for the direct benefit or use of the United States, or the payments of loans, debts, or entitlements; or the provision of funds to or distribution of funds by an Article I or III court; and the provision of grant and scholarship funds to students for educational purposes.

The Istook amendment doesn't apply to state or local governments, but it <u>does</u> apply to anyone who receives money or a thing of value from a state or local government which uses federal funds to do so.

In short, the Istook amendment is a sweeping revision of permanent law, designed to intimidate recipients of many kinds of federal grants, payments, or benefits -- and associates of such recipients -- from exercising their constitutional rights to free expression of political views, and to petition their government.

Toward that end, the amendment would establish a big-government, big-brother system of political controls. For example, it would bring about the creation of a national database of political activity -- covering everything from communications to contributions made by individual citizens -- managed by the United States government. All individuals and organizations falling under the reporting terms of the amendment would have to file annually an itemized statement of political activity with the federal government. Sound like "1984"?

Furthermore, we would soon face a new section in many employment forms and purchase orders, necessitated by the accounting regime imposed by the amendment, in which the question would be: "Are you now, or in the last five years have you, engaged in lobbying or political activity of any kind? If the answer is "yes," complete schedule D, itemizing the type and date of such

activity, the amount you spent on the activity, and the percentage of your annual income devoted to all such political activity expenditures." Sound like 1953?

The amendment not only prohibits direct use of many kinds of federal payments for political advocacy, but prohibits any similar payment to an entity which has exceeded something called a "political advocacy threshold" for any of the preceding five years. So, the amendment would restrict political expression using even a covered party's private resources and even for years in which no federal grant or payment or other benefit was involved.

So, Mr. Chairman, just who would be covered by the Istook amendment?

Universities and scientists getting research grants from the National Institutes of Health or the National Science Foundation? Yes, these are reasonably straightforward examples of grants that would be covered by the Istook amendment.

Churches getting federal grants to run child-care programs? Yes, because there is no exception for religious organizations.

Pregnant women, nursing mothers, and newborns receiving assistance under the Women, Infant, and Children (WIC) program? Yes, because those payments are not excepted.

Displaced workers and others receiving job training? Yes, because training is obviously a thing of value.

Farmers getting crop-insurance payments and "sod buster" payments? Yes, these payments are not entitlements or otherwise excepted from coverage.

Recipients of federal disaster assistance loans or Farmers Home Administration loans? Yes, evidently, because the exception is for "payment of loans" -- which evidently means federal funds used to make payments on loan obligations of the United States and doesn't apply to funds a farmer would receive under a loan from the federal government.

Irrigators getting water from Bureau of Reclamation projects? Yes, those of us from the West know that water is a thing of value.

A mining company acquiring title to mineral lands, or anybody acquiring excess or surplus federal equipment or supplies? Yes, those are obviously things of value -- and the exception regarding property acquisition applies only to property acquired for the "direct benefit or use of the United States," not to property sold or transferred by the United States, especially at

below-market prices.

Any gun club that may get ammunition from the Defense Department or is permitted to use a Federal facility to promote marksmanship? Yes, because those are things of value.

The 25 million children in the school lunch program? Yes, because school lunches are a "thing of value" provided to carry out the "public purpose" described in the National School Lunch Act (as federal spending is always designed to serve a public purpose). School lunches aren't entitlements, nor subject to any other exceptions. The schools, as organizations of state and local governments, wouldn't be covered, but the students would be.

In fact, Mr. Chairman, under the Istook amendment, more Americans probably would have to fill out political advocacy reports than now fill out income tax returns!

And remember, Mr. Chairman, anyone covered by the amendment also would be prohibited from doing business of any sort with any other person or entity which has spent more than 15% of his/its budget on "political advocacy" during the preceding year, under the penalty of having any such expenditure count as if it were the covered party's own "political advocacy."

So, to comply with this provision, a covered party would have to require every employee or person with whom it does business to disclose his/its political activities and expenditures. In other words, the amendment not only seeks to control the political activity of the covered parties, but all persons, businesses, or other entities with whom the covered party does business.

Incidentally, Mr. Chairman, all calculations of these thresholds are to be based on the federal fiscal year. So, if covered parties, or those with whom the covered parties are doing business, happen to have a different fiscal year (as most do), they will have to convert their books to the federal fiscal year to determine compliance.

Another "Big Brother" aspect of the amendment is its approach to assure compliance with these limits on so-called "political advocacy." It is an approach that's particularly troubling because we're dealing with limits on activities of a grantee that would otherwise be protected under the First Amendment. While it usually falls to the government to prove that someone has done something wrong (an approach consistent with the presumption of innocence), the amendment provides that the burden of proof will be on a covered party to establish that he's done everything right!

Furthermore, if that weren't enough, a covered party must carry

that burden of proof, not by the usual standard of civil law, a preponderance of the evidence, but rather by the far more exacting and difficult standard of clear and convincing evidence, a standard usually reserved for extraordinary matters such as punitive damages. This is all the more problematic when coupled with another provision in the amendment that allows private citizens to sue a covered party and split treble damages with the government. Talk about an invitation to litigation!

Now the question looms large, what is "political advocacy"? For all practical purposes, its definition encompasses all manner of communication and conduct normally protected by the First Amendment: engaging in publicity, making contributions (cash or in-kind), campaigning, distributing statements, participating in litigation, challenging a government agency action, and so on, whenever the objective is getting someone elected or defeated, or exerting some influence on government policy or decisions at any level -- state, local, or federal. There are several exceptions: a grantee can respond to a government's written request for technical assistance, or make available the results of "nonpartisan analysis, study, research," or communicate with its own members (provided that any such communication is not designed to encourage the members themselves to engage in any political advocacy).

The disclosure requirements of the amendment are chillingly intrusive. A covered party who engages in any political advocacy must file with its grant-making agency each year a certified statement, describing all the covered party's political advocacy activities, listing the name and ID number of any person to whom it paid any funds originally provided by the federal government, and estimating the amount spent on advocacy and the amount of the covered party's prohibited political advocacy threshold. The amendment also provides that each federal agency making payments covered by the amendment will then send all these disclosure statements to the Census Bureau, where they'll be collated and put out on the Internet.

Enforcement of the limits on political advocacy will occur through GAO or IG audits, and through False Claims Act investigations by the grant-making agency, False Claims Act civil actions brought by the Attorney General, and, as I mentioned, by private lawsuits brought under the so-called "private attorney general" provisions of the False Claims Act. (The lengthy and detailed provisions of the False Claims Act, Title 31 U.S. Code, are incorporated by reference.)

A covered party could face liability under the False Claim Act for a penalty of $10,000, plus up to three times the amount of the grant, for submitting a false statement in support of a claim -- in this context, a grant -- if the grantee "acts in deliberate ignorance of the truth of falsity of the information." That

sounds reasonable, I suppose, until you recall the burden of proof regarding compliance: a covered party must show compliance by clear and convincing evidence. So, we are faced with the bizarre prospect that a zealous private citizen could sue a covered party for treble damages, alleging that the covered party's annual certification of political advocacy was false, and thus put the covered party to the task of proving the negative, which is tough enough to do under any circumstance, much less when this must be done by clear and convincing evidence.

I believe the potentially perverse effects of this amendment can be no better illustrated than by its application to a hypothetical, but typical, set of facts involving an NSF research grant. Let us say that the covered party is a university professor, heading a research team of several colleagues, post-doctorate fellows, graduate students, and lab assistants. They would purchase lab equipment and supplies from several companies.

Now under the Istook amendment, the professor could have spent no more than 5% of her own income on political activity for the previous five years. Heaven only knows how she would be supposed to deal with the political expenditures of her independently wealthy and activist husband, assuming they file a joint return. Meanwhile, she would have to have her entire research team and all the lab equipment and supply firms complete the questionnaire I mentioned earlier and account for their political activity. Again, what if one of them should have been so enthusiastic about civic responsibilities that he spent over 15% of his income on political advocacy that year? Presumably, he's off the team. Or, what if the same facts applied to the company that's the only source of an essential piece of equipment? There goes the project. And, of course, if any of these folks did even a little political advocacy, that would have to be disclosed and reported to NSF, which would have to report it to the Census Bureau, which would make sure that the information about the political activity of the professor and her team was as near as the Internet.

Is there any doubt that academic freedom, and freedom of expression more generally, is put at grave risk by all this? Would anyone here like to try to explain to the colleges in your districts how we could endorse such a Rube Goldberg contraption, especially one so patently unconstitutional?

No doubt, there have been some transgressions, some misuse of federal grant money to push what some consider a biased political agenda. But the Istook amendment covers millions of people who have never received any "grant," in the usual sense. Even for people who undoubtedly are "grantees" and who have done something that could be called lobbying, this amendment would constitute capital punishment for a misdemeanor. And for all the vast majority of federal funds recipients who've tried to work in good faith for the national interest, this amendment would be a

slaughter of the innocents.

In short, Mr. Chairman, the Istook amendment is an outlandish, even perverse, mass of legislation that would intrude into the lives of hundreds of thousands of people in every Congressional district, and that would require a vast expansion of federal bureaucracy to administer -- all in an effort to put limits on the extent to which individuals or groups could use <u>their own resources</u> for political activities.

Mr. McINTOSH. Why don't we call the second panel forward and go ahead and hear from them, and we may need to recess at 1 o'clock anyway or recess for a vote.

While the panel is coming forward, let's go ahead, and I would like to put on the record brief answers, and we will make available longer explanations to some of the questions that Mr. Skaggs had in his testimony, and although we disagree fundamentally on the merits of this bill, I do appreciate his asking these questions.

If you will turn to page 3 of his testimony, he asked whether various entities would be covered by the amendment. The brief answer as to universities and scientists receiving research grants is that State universities would not, they are exempt, but other universities would, as well as scientists if they receive the grants in their individual capacity. They generally are not objecting because of the 5-percent limitation. They don't feel their advocacy activities exceed that.

Churches getting Federal grants to run child care programs, the answer is no; because they are governed by the same limits under the IRS rules. I think actually the answer is yes, but it is not an additional requirement because they currently are under a similar limitation due to their tax-exempt status.

Pregnant women, nursing mothers, and newborns receiving assistance under WIC, the answer is no; they are beneficiaries, not grant recipients.

Displaced workers and others receiving job training, the answer is no; again, because they are beneficiaries, not grant recipients.

Farmers receiving crop insurance, the answer is yes, it is a hybrid program; half of it is in the form of contracts, half of it in the form of grants, and those who receive grants would be covered.

And sodbuster payments, the answer to that is no, because that is an entitlement program.

Recipients of Federal disaster assistance loans or farm homeowner administration loans, the answer is no, they would not be covered, because loans are excluded under the definition of "grants."

Irrigators getting water from the Bureau of Reclamation, the answer is no. The water may be cheap, it may be a good deal for them, but it is, in fact, a transaction and not a grant.

A mining company acquiring title to mineral lands or anybody acquiring excess or surplus Federal equipment or supplies, the answer is no, because, again, it is a transaction where there is consideration going both ways and not a grant.

Any gun club that gets ammunition from the Defense Department or is permitted to use a Federal facility to promote marksmanship: There are several gun clubs that in addition, receive grants to teach marksmanship, and they would definitely be covered.

The 25 million children in the School Lunch Program, the answer is no. We will not have another debate about school lunches as a result of this bill because it is an entitlement at this point to those children. It will be turned into a block grant, which, again will not be covered by the provisions of this bill.

I just wanted to put that on the record. I do actually believe real examples help to clarify the scope of this, and we will be making a fuller explanation as part of the record.

Let me turn now to this next panel. I really appreciate you waiting for the discussion that has taken place.

This panel is several individuals who are expert in the area of effective and good government. The first witness is Ms. Arianna Huffington, who is chair of the Center for Effective Compassion and senior fellow at the Progress and Freedom Foundation.

Ms. Huffington, thank you for coming.

STATEMENTS OF ARIANNA HUFFINGTON, CHAIR, CENTER FOR EFFECTIVE COMPASSION, AND SENIOR FELLOW, PROGRESS AND FREEDOM FOUNDATION; TOM SCHATZ, PRESIDENT, CITIZENS AGAINST GOVERNMENT WASTE; AND PAUL HEWITT, EXECUTIVE DIRECTOR, NATIONAL TAXPAYERS UNION FOUNDATION

Ms. HUFFINGTON. Thank you, Mr. Chairman. Thank you for inviting me to testify this morning.

I would like to testify both based on my personal experience in founding a partnership for children in need in Santa Barbara County and on my work with the Center for Effective Compassion, but before I start let me say that, having listened to so much of the debate this morning, I am more than grateful to you, Congressman Istook, and you, Congressman Ehrlich, for this courageous piece of legislation which I believe will go a long way toward changing a lot of the way we are addressing social problems in this country.

Mr. MCINTOSH. Thank you very much.

Ms. HUFFINGTON. To start with my experience launching the partnership for children in Santa Barbara County, we launched it at the end of 1992. It was funded for the first year by my husband's congressional salary, and his second year's congressional salary went to a similar partnership in San Luis Obispo. It was a nonpartisan partnership, and our goal was really to help children in need directly by raising funds and by encouraging others to volunteer their time.

What happened is that gradually more and more people joined the steering committee who were Democrats and nobody was really looking at political affiliation. After the election, we discovered last November that I was the only Republican on the board, and I was told that now everybody wanted to change the goal of the partnership. Instead of helping children, instead of raising money and mobilizing volunteers to help them, now they wanted the partnership to be about advocacy. They wanted us to concentrate instead on lobbying the Government to help children.

As far as I was concerned, this was completely unacceptable. I believed all along that the goal of the partnership should have been to help children directly, and therefore, since I was outnumbered, we all agreed to disband the partnership.

This was a tremendous cause of sadness to me, both because I believed in the partnership and in the good work we had done and because I was very disturbed by the kind of mind-set among very prominent, very well intentioned members of the community who

believed that advocacy was more important in helping children than helping children.

It is the same kind of mind-set that we saw demonstrated today here among critics of the amendment and that we have seen demonstrated generally in the discussion among those who oppose the amendment. It is a kind of mind-set that has really permeated the last 30 years of social policy and that, despite all the failures of the War on Poverty, despite all the unmitigated disasters that have caused so much destruction in the lives of people who are poor, who are addicted, who are homeless, we continue to perpetuate the same kind of delusion.

And not only that, Mr. Chairman, but right now we are finding that government is actively hostile to programs that do not receive help from Government, especially if they are faith based.

There is an example right now that I would like to bring to your attention of a group called Teen Challenge that deals with drug addicts. There are 130 chapters all over the country. Their success rate is close to 80 percent. Yet in Texas, the Government is trying to close them down because they do not comply with the assumption that you have to have trained professionals in order to have good success rate.

When the director of the program in San Antonio, fighting for the life of the program, argued and asked the government officials to look at their outputs, to look at their outcomes, the answer came back, outcomes are not our concern, complying with regulations is our concern.

Well, Mr. Chairman, I believe that your amendment will go a long way toward putting the emphasis on outcomes and outputs rather than good intentions and complying with the regulations.

Now, to move on to my experience with the Center for Effective Compassion, which was founded at the same time that the Partnership for Children was being disbanded, the Center for Effective Compassion is based here in Washington as part of the Progress and Freedom Foundation, and our work is based on the work of professor Marvin Olasky in his book, "The Tragedy of American Compassion."

What Professor Olasky has argued is that if we want to really solve social problems, we need to engage in charity that is personal, challenging, and spiritual, and he has used a tremendous amount of documentation to prove his point.

Professor Olasky and I have been around and visited many projects right here in Washington, DC, and we have found many beacons of hope, Mr. Chairman, that receive no Government money, that do not engage in lobbying or advocacy, but simply engage in helping turn lives around, and three of those people are here, and I would like to introduce them to you, Mr. Chairman. We have here Mrs. Hannah Hawkins.

Will you stand? Hannah.

Mr. MCINTOSH. Please reflect that Mrs. Hawkins is here in the audience.

Ms. HUFFINGTON. Hannah is running Children of Mine in Anacostia, an after-school program that she started by running it literally out of her own home with her own disability pension, that provides help and support for children from 4 years old on, who lit-

erally have nothing to do after school, many of whom get involved in crime. Without Hannah, many of them would have been shot dead by now.

Now Hannah is doing all this without a penny from the Federal Government, and she has been here all morning, and I have observed her expressions as she was listening to the kind of stories of what groups are doing with Federal taxpayer money instead of helping those in need, using the money to lobby the Government to do the work that Hannah is doing unaided in Anacostia.

And Reverend Woods—John, would you please stand? Reverend Woods runs another remarkable place here in Chinatown called the Gospel Mission. He has had some great success turning the lives of homeless addicts, alcoholics, drug addicts, around with the help of a faith-based program and without, again, 1 penny from the Federal Government.

And finally, Mr. Chairman, I would like to introduce to you Mr. Marsh Ward. Marsh Ward and Julia Lightfoot run, again, another program that deals with drug addiction, especially among the homeless here on the Hill, called Clean and Sober Streets, and, in fact, many members of various congressional staffs on the Hill have been to Clear and Sober Streets, they have volunteered their time, and it is another program that has remarkable success rates without having to comply with any government regulations, without having to lobby Government, but instead using the resources to help people directly.

Mr. MCINTOSH. Ms. Huffington, let me suspend for 1 second.

Let me commend all of you for the good work and good efforts of your projects. You embody the American spirit when you go out and contribute your own time, and money, and effort to accomplish these things, and you are to be commended by all of us here. So thank you for coming today.

Ms. HUFFINGTON. Mr. Chairman, the work we are going to be doing at the Center for Effective Compassion is to spotlight all around the country the work of people like Mr. Ward, Mrs. Hawkins, and Reverend Woods who are here today and to encourage Americans to volunteer their time and to volunteer, giving more of their money, to spread this work instead of using their time and energy to lobby the Government to do the work that we need to do.

We cannot abdicate this responsibility, Mr. Chairman. It is our responsibility to help those in need, and it is our responsibility to replace the welfare state with alternatives, and if your amendment is passed, as I hope and pray that it will be, it will not only save billions of dollars of taxpayer money but it will send a very powerful message to nonprofits.

When they are confronted with social problems, instead of asking the question they have been asking so far, which is, what is the Government going to do about it, they should be asking the question, what am I going to do about it, and only when we begin to ask this question, only when we begin to tackle each problem one at a time and each human being one at a time, will we be able to solve the major social problems facing us.

Mr. Chairman, your critics may think that this is idealistic, but America was founded by idealists and it is only idealists who

change things, not cynics, and I hope that idealists will prevail, and I sincerely hope that your amendment will be victorious.

Thank you.

[The prepared statement of Ms. Huffington follows:]

TESTIMONY FROM ARIANNA HUFFINGTON
TO THE SUBCOMMITTEE ON REGULATORY AFFAIRS
JULY 28, 1995

Mister Chairman, I would like to thank you and the members of the subcommittee for inviting me to testify. I would like to testify in favor of the amendment based both on my personal experience founding a Partnership for children in need in Santa Barbara County and on my work founding the Center for Effective Compassion.

The Partnership for the Children of Santa Barbara County was a non-partisan group founded at the beginning of 1993 to mobilize a higher level of community participation to solve the problems of children in need, both by mobilizing volunteers and by raising funds to support existing groups, serving hungry children, homeless children, children that needed medical and dental care. The Partnership's original funding came from my husband's congressional salary which, in 1993 was over $125,000. His second year's salary went to a similar Partnership formed in San Luis Obispo County. The Santa Ynez Foundation provided matching funds for many of our grants and additional funds were raised through fund-raisers and contributions from members of the community, and the county school superintendent provided us with an office, an executive director and much needed help.

I invited a prominent Democrat to be my co-chair, deliberately underlining the bi-partisan nature of the Partnership and I never concerned myself with the political affiliations of those we gradually brought on our steering committee. After the election, it became clear that political affiliations did matter! I ended up being the only Republican on

the steering committee, and the rest of my colleagues decided that because of the reductions in federal and state programs proposed by the new Republican majority in Washington, the Partnership needed to change direction.

They believe, and I quote from a letter, "the situation today calls for aggressive lobbying to ensure that important children's programs are not eliminated." I disagreed and strongly urged the Board not to change the Partnership's primary purpose which was to boost volunteerism and support existing non-profits working with children. When I was outnumbered, I decided that I could not go along with changing the role of the Partnership, and a decision was reached instead to disband it. It was a decision that caused great sadness to me not only because I deeply believed in the Partnership and the work it had done, but also because I was very concerned about the state of mind that would lead so many well-intentioned, prominent members of the community to believe that advocacy is more important than direct help to children in need.

Congress is now considering legislation that will limit the extent to which federal grantees can try to influence public policy. The idea is that you should not be using federal funds -- or private funds freed up by the receipt of federal funds -- to lobby for more federal money.

A similar argument is advanced by critics of your amendment, Mister Chairman, that it might hurt the poor by discouraging advocacy on the part of organizations that are supposed to help poor people. Advocacy of public policies that expand governmental anti-poverty efforts, these critics say, is the best thing charitable organizations can do to help the poor.

This is evidence of a serious confusion. It is a perfectly legitimate thing to urge government to adopt policies we think are good. But this is entirely different from helping those in need. Advocacy is not assistance. For an organization whose mission is to aid the needy, advocacy is a distraction at best, a betrayal at worst.

It is, of course, easier and more glamorous to spend time trying to influence Congress or some federal agency to give more to those in need than it is to confront day after day the seemingly intractable problems of poverty, homelessness, and addiction. But it is hard to justify diverting resources from those in need. For one thing, donated funds are not given to help agencies to launch lobbying campaigns, but to help those in need; and for another, advocacy for more government programs does not provide food to the hungry or shelter to the homeless. This is not what charitable organizations are suppose to be about.

But, it is answered, what one organization can do today to help the poor is just putting a finger in the dike. Creating a new government program or expanding an existing program can solve the whole problem. This is the delusion that has dominated public policy over the last thirty years and has led so many charitable organizations, out of their own zeal, to cease being agents of compassion and to become mere pressure groups.

The implicit premise here is that the best way to help the needy is not to help them, but to convince the government to help them. That is not the voice of compassion but of despair, given the record of the great society programs.

To imagine that lobbying is the best way to help the poor is a tragic abdication of responsibility. It suggests that it is not our responsibility, but the responsibility of

government, to meet human needs. Yet the essence of charity is to take responsibility for those in need, not to shove that responsibility off to someone else.

Even more, this attitude is a surrender, an admission of defeat. If we are not capable, as a caring community, to help our brothers and sisters in need, then what kind of people are we? To call on the power of government to force contributions in the form of taxation implies that we lack the generosity to give freely of our money, to say nothing of our time, for the sake of those in need. And if that is true, if Americans are really so heartless, then why should we expect the government that represents us to be any more compassionate?

And nothing is more foolish than to imagine that what the needy are really in need of can be provided by a government agency. Poverty is only partly an economic matter and the defining mark of effective charity is a personal connection that can help turn lives around.

Indeed, the government is often actually hostile to privately funded programs that work without its help -- especially if they are faith-based.

As an example, this past June, the State of Texas motioned to suspend the license of one of the most-successful faith-based substance abuse treatment programs in the country, Teen Challenge of South Texas. The citations are indicative of a governmental bias against faith-based programs: the staff lacks what the State deems to be the appropriate professional degrees and training, and the program does not follow the curriculum used in far less successful therapeutic programs.

"Why don't they look at our success rate?" asked the Reverend James Heurich, who is fighting for the life of the non-profit organization he heads, Teen Challenge of San

Antonio. John D. Cooke, Assistant Deputy Director, Program Compliance Division, Texas Commission on Alcohol and Drug Abuse, visibly bristles when the success of Teen Challenge in getting people off drugs and alcohol is cited. There are 130 Teen Challenge chapters around the country and studies have shown success rates of 70 to 86 percent, compared to single-digit rates seen by secular programs. "That's fine," he says. "But if they want to call it treatment, then state law says they must be licensed. Outcomes and outputs are not an issue for us."

But, Mister Chairman, outcomes and outputs -- rather than good intentions -- is what charitable, as well as government projects, should be about. And your amendment will help put the emphasis on the outcomes of non-profits rather than on their lobbying efforts.

The Center for Effective Compassion, which I Chair, was founded in Washington around the same time that the Partnership was disbanded in Santa Barbara. The objective of the Center for Effective Compassion is to help lead the transformation of America's efforts to provide opportunity for those who have less -- a transformation from the government-centered, bureaucratic, impersonal regime created by the Great Society to a community-oriented, decentralized, people-focused approach grounded in the historic principles of the American idea.

During the past 30 years, the Federal government has spent roughly three and half trillion dollars in a "war on poverty" designed to help poor Americans. Yet today there is broad consensus across the political spectrum that poverty in America has gotten worse. The very programs intended to help the poor have had the opposite effect, creating a "culture of poverty" in which crime, drug use and child neglect are commonplace.

The compassionate intentions of the Great Society have resulted in anything but compassionate results. From health care to housing, education to public safety, the bureaucratic programs of the welfare state are the antithesis of the caring, humanitarian approach that characterized American compassion for over 250 years, as Professor Marvin Olasky, a senior fellow and co-founder of our Center, documented in his book, "The Tragedy of American Compassion."

The Center proposes to lead this transformation by launching a national campaign to change many of our cultural assumptions regarding effective giving. We will call attention to the role that private charity already plays in American society and remind all Americans that the most effective "public assistance" programs do not involve the government at all. Our goal is to dramatically increase the level of charitable giving, as well as the number and capacity of effective charitable organizations, in an effort to meet the needs of the poor and substantially replace government programs. We will encourage people to give according to the principles of effective compassion developed by Marvin Olasky: for compassion to be effective it has to be personal, challenging and spiritual.

Through public service announcements, op-eds, speeches, talk shows, the Internet, as well as through a newsletter and the development of a national database, we will spotlight charities that practice effective compassion.

In founding the Center for Effective Compassion, the two of us have visited many community-based, poverty-fighting groups here in our own backyard, in the District, Mr. Chairman, and we have found several beacons of hope that offer true compassion. We visited Children of Mine in Anacostia, an after-school program run by a feisty, no-nonsense lady, Hannah Hawkins, who is here and whom I would like to introduce to you.

She serves up hot meals to kids, and something more -- the sort of love and attention that many of them have never received at home. And she also gives an eternal gift that government cannot provide -- Bible lessons that teach the difference between right and wrong, that bring hope and meaning to young lives.

We visited Clean and Sober Streets, a safe harbor for drug and alcohol addicts who are trying to pull their lives together. The directors, Marsh Ward and Julia Lightfoot, give addicts the close attention and caring that are unlikely in a government-run institution. And I'm delighted that Marsh Ward is here today. At the heart of the project's success are recovering addicts who act as mentors to new arrivals after they successfully complete six weeks of treatment. Mr. Ward and Ms. Lightfoot encourage everyone at the shelter, as soon as they are on their feet, to start giving back, to help others both within the shelter and in the larger community. But the program also has a big stick. Residents who are found drinking or using drugs are asked to leave. Rule-bound government shelters, loaded with professional experts, have difficulty dealing with addicts who backslide or assault fellow residents -- and as a result, they make it much harder for those who want to turn their lives around.

At the Gospel Mission in Chinatown, we listened for hours as former addicts and alcoholics talked of how they had messed up their lives again and again until the power of God and the love of people who suffered with them -- that is the literal meaning of compassion -- transformed their beliefs and values. The changes in behavior that followed allowed them to find and hold a job. The Reverend John Woods, who runs the Gospel Mission is also here with us today. Government programs often emphasize job training, but without these fundamental changes, long-term success is rare. We also visited the

Capital Hill Crises Pregnancy Center and the Northwest Center, two organizations that care for pregnant women -- often in their teens -- and for their babies both before and after birth. As they face tough choices, and through the months of pregnancy and caring for a newborn, they are offered physical and spiritual support.

At the Darrell Green Learning Center, after-school projects provide not just computer learning and a nurturing environment for the homework, but fathering for the many school kids at the Center growing up with no father. And at Martha's Table in the Shaw community, Veronica Parke has created not only a haven for children in need but also one of the most volunteer-friendly places in the District, encouraging families-- including those with pre-schoolers-- to volunteer together.

Bob Cote in Denver runs Step 13, a project that helps addicts turn their lives around. Bob calls many of the government rehabilitation programs "suicide on the installment plan." These are programs that have categorized addicts as "disabled," enabling them to pull a social security check-- often mailed directly to the local liquor store-- in order to feed their addiction. By contrast, Bob's program houses 100 men a night; they can stay as long as they need to -- provided they follow the rules, which, in addition to going to work each day, include passing breathalyzer and urine tests. If they fail these, they're out.

The price tag for this operation? $300,000 a year. No government money--in fact, Bob has said that if he took funding, he would have to comply with various government regulations that would end up costing him $2 million a year.

Bob's main competition in providing this service? The government-run shelters surrounding his building, that act as a magnet for many of his clients, drawing them away

from this life-affirming routine and back to the world of no-rules, no-responsibility, no-hope.

And through the Center we will let the world know about all the remarkable clergymen around the country, like Rev. Freddie Garcia in Texas. Thirty years ago, he was afflicted with a heroin addiction. After he found God, he enrolled in the Latin American Bible Institute in California. Following his graduation, he returned to San Antonio to open a combination church and live-in halfway house for addicts. He called his program Victory Outreach and it has now spread to more than 60 churches in Texas and New Mexico. Reverend Garcia's record for getting people cleaned up (and staying that way) is nearly 60 percent. Of course, the government couldn't let a record like that go undisturbed. And so, the Texas Drug and Alcohol Commission asked Rev. Garcia to stop referring to what he was doing as "drug rehabilitation," because he wasn't conforming to their regulations, and therefore, who cares about his incredible results!

All these places challenge people to be the best they can be. They do not have angry posters on the wall demanding that government provide "Housing Now!"

Instead, those who run them and the many who volunteer resuscitate lives by providing help that is Challenging, Personal and Spiritual: CPS for short. Like CPR, true compassion can help the drowning breathe again.

These successful programs need volunteers and contributions. After the highly visible failures of the War On Poverty, Americans are suffering from compassion fatigue. But the best way to fight the cynicism and the apathy is to practice compassion in our own lives. And every time we are overwhelmed by the magnitude of the problems, we can remember the wisdom of the Talmud: "He who saves a single life, saves the whole world."

Personal involvement is the hallmark of successfully replacing the welfare state. Ultimately, each one of us has a responsibility to get involved, to lead by example, to spend time each week personally, patiently, going out and helping -- even if it's helping one person and solving one problem in our communities.

"When funds intended to help those in need are used instead to lobby the government for help, we waste precious resources of money and time. This is an abandonment of personal responsibility to those in need. It replaces effective compassion, which is always personal, with the compulsory compassion of government programs which have dramatically failed to solve our mounting social problems."

Voting in favor of this amendment will not only save billions of dollars of taxpayer money, but it will send a powerful message to all non-profits: When confronted with a social problem, instead of asking, "What's the government going to do about it?" ask "What am I going to do about it." When you see a problem -- solve it. When you see someone hungry, feed him. When you see somebody hurting, help him. When you see somebody cold, clothe him. But don't come to Washington, and lobby the government to spend more taxpayer dollars on another failed government program. You know, there's nothing easier than being generous with other people's money. It's false generosity that quiets the conscience, that lets us play at compassion, that lets us pretend to care for the poor. Well, our conscience can no longer remain quiet. The homelessness, the hunger, the hurt that's all around us cannot be tolerated by a civilized country. And the welfare state, its supporters and its satellites, is utterly incapable of the challenge.

If that sounds idealistic -- so be it. America is a country founded by idealists, and it is idealists -- not cynics -- that will turn our neighborhoods and our county around.

Mr. MCINTOSH. Thank you very much, Ms. Huffington.

In your testimony, I couldn't help but being reminded of the statement that John F. Kennedy made in his inaugural address: "Ask not what your country can do for you, but ask what you can do for your country." And that is the principle at stake here. Thank you very, very much.

Yes; Mrs. Meek.

Mrs. MEEK. First of all, I would like to applaud Ms. Huffington and the people she brought with her this morning. I wish it were so that we could use your model throughout the country.

I want to say no one asks for Federal money; no one mandates that. During my day there was no Federal money, you realize that, we didn't receive any Federal money, so the kinds of things you are talking about had to be done.

Groups now ask for Federal money of their own volition. They are not required to do so. I wish it were so that there were these kinds of groups out there that would do it. I don't think we need Federal legislation that would prohibit them—not prohibit but discourage them from asking for Federal money. I don't think the two are incompatible. I think they are compatible. The kind of compassion that you demonstrated here is compatible with people doing that in voluntarism and also maybe asking the Federal Government for money. I don't think that they are in opposition to each other.

Ms. HUFFINGTON. Well, I am afraid my own experience proves that they are. As I said earlier, our own partnership had to be disbanded because the majority of the members of our board believed that it was more important to lobby the Government to continue helping problems for children than for us to help the children directly.

There is a certain mindset, unfortunately, that tends to minimize the impact that individuals, communities, churches, synagogues, can have when we get directly involved in helping those in need and in turning lives around.

Mrs. MEEK. And see——

Ms. HUFFINGTON. Even if I may give one more example, a very recent example of what happened with AmeriCorps. As you know, AmeriCorps was based on the belief that you have to pay people to volunteer, and now we are receiving some astounding statistics that show that it has been costing as much as $40,000 for each volunteer. On top of it, they broke the fundamental rule of not giving money to groups that engage in political advocacy, and, as Elie Segal, the chief executive officer of AmeriCorps, had to admit last week, they had to stop funding the ACORN Housing Commission because through them ACORN, a political advocacy group, was engaging in lobbying, in disrupting a speech by Speaker Gingrich.

This is the kind of thing that happens all the time despite continuing assurances by groups that they are supposed to be engaging in charity and in providing volunteers, that they will not be engaged in lobbying and political advocacy.

Mrs. MEEK. I think that further strengthens my assumption that we do have Federal laws on the books that should treat these kinds of abuses, just as you say ACORN has been called on the carpet,

so that we should strengthen the enforcement so that these kinds of abuses won't continue to happen.

Also, I think that there are several groups throughout this country, because of the kind of thing you experienced, that other groups who have seen this kind of thing happen in their groups.

But that doesn't mean because we have, say, one or two groups throughout the country who have received negative responses from compassionate work, that we should have further legislation. When we go to making the legislation, then you go into making that countrywide and nationwide, and I think we should just try and work with what those abuses are and strengthen them. And, again, I say I want to applaud you for the kind of work you have done.

Ms. HUFFINGTON. Thank you.

Mr. MCINTOSH. Thank you, Mrs. Meek. We appreciate that.

Do any of the other panelists have questions for our first witness?

Mr. GUTKNECHT. Just one.

Mr. MCINTOSH. Yes, Mr. Gutknecht.

Mr. GUTKNECHT. Real briefly, I want to thank Ms. Huffington and the other folks that are here today. She mentioned changing the mindset, and I think it really is about changing the paradigm in this country, and I can't help but think how far we have gone from de Tocqueville's America which was built on the whole idea of voluntarism. In fact, de Tocqueville is the one who originally said America's greatness is rooted in her goodness, and if America ever fails to be good, she will fail to be great.

I think it is healthy that we are having this debate in this discussion, and I think this is the first step in beginning to get back to what de Tocqueville wrote about in the 1840's that made America great, and the more—I have not read all of Dr. Olasky's book; I have read an abbreviated version. I promised during the break—that is on my reading list. I think it is instructive. I have met him about what really does work.

I remember in the State legislature we had discussions about drug rehabilitation and alcohol abuse and some of these other abuses. The truth of the matter is, we were funding something like 160 different programs directly or indirectly. There are only a couple of them that really could say they worked, and they were groups that basically didn't rely on Federal or State funds. I mean they did it with volunteers and so forth.

So I applaud you, and I applaud the other folks that have come here today, and I hope that this amendment will be the first step in beginning to get back to that basic notion of voluntarism and helping our neighbor, really helping our neighbor, not just asking the Government for another program.

Thank you very much.

Mr. MCINTOSH. If I could ask the members of the panel: We just got a message that we are about to have a vote on an amendment on the floor. Would it be possible if we recessed until 2 o'clock for all of you to return at that point? Is that compatible with your schedules?

Mr. SCHATZ. No; but we will.

Mr. McINTOSH. I appreciate it. In that case, the committee—Ms. Huffington, there were a couple Members who said they had additional questions for you, if you are able to stay or come back.

Thank you all, and the committee will be in recess until 2 o'clock.

[Recess.]

Mr. McINTOSH. The committee is reconvened. Thank you all for waiting for us. We finished up some business on the floor. There may still be votes later this afternoon. Let us turn now to the other two members of the panel.

Next up would be Mr. Tom Schatz, president of Citizens Against Government Waste. Mr. Schatz, welcome.

Mr. SCHATZ. Thank you very much, Mr. Chairman. I appreciate being here today and thank you for the opportunity to testify on the problems and dangers of taxpayer-funded political advocacy. And as Ms. Huffington mentioned, we certainly appreciate the work that you and Congressman Istook and Congressman Ehrlich have done in this area, bringing to the fore a major issue that has been a concern of many taxpayers for many years and will be even more of a concern once they become more familiar with this problem and your solution.

The Citizens Against Government Waste is concerned not only that the bloated Federal Government is sapping the life out of the economy, but it is also undermining the Republican principles that the framers installed in the U.S. Constitution by providing taxpayer funds for public advocacy efforts.

We have all heard the quote from Thomas Jefferson and I would certainly compel the readers of this hearing to pay heed to his words: "That to compel a man to furnish funds for the propagation of ideas a man disbelieves and abhors is sinful and tyrannical."

During the past 30 years, our nonprofit and public affairs advocacy groups have claimed to speak for the American people. They have proliferated as the Federal Government expands its role in our daily lives. They have become the idea factories in advertising agencies of the public policy debate. They have affected many political outcomes. But herein lies the dark secret.

Thousands of special interest groups, representing the entire political spectrum, receive billions of taxpayer dollars in the form of Government grants. In 1990, the total is estimated at more than $39 billion if you—as you have displayed on your chart up on the wall. The problem has long been recognized as an egregious abuse of our tax dollars.

Since 1919, it has been illegal to use Federal funds to lobby Congress, but the problem persists because money is fungible. A grant to an organization engaged in lobbying helps that organization funnel funds intended for research or other purposes to those activities which simply promote the organization's political agenda. This situation undermines representative government because grantmaking bureaucracy and Members of Congress can subvert the will of the people by funding advocacy groups that will further their immediate interests which do not necessarily coincide with the greater public good.

Furthermore, it is not difficult to imagine that it is within the interest of a federally funded public advocacy group to tailor its agenda to the interest of those who provide the Federal funds. In

effect, not only do taxpayers see their taxes used to lobby for increased Federal spending, which drives up the deficit and the national debt, taxpayers discover that representative government is no longer representative of their interests in an accountable, economic and efficient Federal Government.

When public moneys are used for private interest rather than the interest of the people, the American republic itself is assaulted. Whenever Government funds any political advocacy group, it effectively penalizes those who advocate opposing public policies and provides a distinct advantage to the group or groups that it favors in the clash of ideas. Under such conditions the public debate is skewed in favor of the Government-sponsored advocacy group and it undermines the rights of the people in making them well known to their representatives.

Mr. Chairman, you have heard a litany of lobbying activity by Federal grantees and I would just like to cite one that exemplifies the abuse of our tax dollars. In its annual report, the nature conservancy boasted of lobbying activities including developing and directing a plan to counter the opposition's push for a county-wide referendum against the Florida Keys National Marine Sanctuary.

Well, it must be just a coincidence, but in 1993, the Nature Conservancy was the recipient of a $44,100 grant from the National Oceanic and Atmospheric Administration. The purpose of the grant was to support volunteer outreach and public affairs programs for the Florida Keys National Marine Sanctuary. Lobbying of any sort, however noble the cause, should be completely voluntary. Good intentions do not entitle anyone to put his or her hand into the taxpayers' wallets.

In order to protect the taxpayers, an organization should be made to choose: Does it want to receive Federal grants in order to carry out activities which our lawmakers have decided are in the public interest or does it want to use its own resources to promote its own vision of the public interest? No organization should be allowed to do both. This abuse of taxpayers' wallets must stop.

Mr. Chairman, your legislation is an excellent solution to this problem and we commend you and your colleagues again for your efforts. This concludes my testimony and I will be glad to answer any questions.

[The prepared statement of Mr. Schatz follows:]

Statement of Thomas A. Schatz,
President of Citizens Against Government Waste,
Before the
House Subcommittee on National Economic Growth, Natural Resources,
and Regulatory Affairs
July 28, 1995

Mr. Chairman, thank you for the opportunity to testify today on the problems and dangers of taxpayer-funded political advocacy. My name is Tom Schatz and I represent the 600,000 members of Citizens Against Government Waste (CAGW). CAGW was created 11 years ago after the late J. Peter Grace presented to President Ronald Reagan 2,478 findings and recommendations of the Grace Commission (formally known as the President's Private Sector Survey on Cost Control). These recommendations provided a blueprint for a more efficient, effective and smaller government.

Since 1986, the implementation of Grace Commission recommendations has helped save taxpayers more than $250 billion. Other CAGW cost-cutting proposals enacted in 1993 and 1994 will save more than $100 billion over the next five years. CAGW has been working tirelessly to carry out the Grace Commission's mission to eliminate government waste.

CAGW is also concerned that the bloated federal bureaucracy is not only sapping the life out of the economy, but it is undermining the republican principles that the Framers installed in the U.S. Constitution by providing taxpayer funds for public advocacy efforts. Thomas Jefferson said, "To compel a man to furnish funds for the propagation of ideas he disbelieves and abhors is sinful and tyrannical." This is why I am pleased and honored to testify before you on the problem of taxpayer-funded political advocacy and the need to restrict the lobbying efforts of these political advocacy groups.

During the past 30 years, nonprofit public affairs and advocacy groups have claimed to speak for the American people. Concentrated in Washington, DC, and proliferating as the federal government expands its role in our daily lives and takes on an ever-increasing responsibility for perceived and imagined crises afflicting the country, public advocacy groups have become the idea factories and advertising agencies of the public policy debate. There is no denying that advocacy groups have become influential by providing information and useful arguments to policy makers, the media and the public. They affect political outcomes.

But herein lies the dark secret: thousands of special interest groups representing the entire political spectrum receive billions of taxpayer dollars in the form of government grants. In 1990, it was estimated that more than $39 billion was granted by Uncle Sam to organizations which could use the money to advance their political agendas.

The problem has long been recognized as an egregious abuse of the taxpayer. Since 1913, it has been illegal to use federal funds to lobby Congress, but the problem persists because money is fungible. A grant to an organization engaged in lobbying helps that organization funnel funds intended for research or other purposes to activities, which simply promote the organization's political agenda.

This situation undermines representative government because grant-making bureaucracies and members of Congress can subvert the will of the people by funding advocacy groups that will further their immediate interests, which do not necessarily coincide with the public good. Furthermore, it is not difficult to imagine that it is within the interest of a federally funded public advocacy group to tailor its agenda to further the interests of those who provide the federal funds. Under this scenario, not only do

taxpayers see their taxes used to lobby for increased federal spending, which drives up the deficit and the national debt, taxpayers discover that representative government is no longer representative of their interest in an accountable, economic and efficient federal government. When public monies are used for private interests, rather than the interests of the people, the American republic itself is assaulted.

Whenever government funds any political advocacy groups, it effectively penalizes those groups that advocate opposing public policies and provides a distinct advantage to the group or groups that it favors in the clash of ideas. Under such conditions the public debate is skewed in favor of the government-sponsored advocacy groups and undermines the rights of the people in making their will known to their representatives.

In Federalist Number 10, James Madison wrote that "[a]mong the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction." He defined faction as "a number of citizens, whether amounting to a majority or a minority of the whole who are united and actuated by some common impulse or passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." Today, when we speak of factions we use the term special interests, and this is what we are talking about.

Madison's solution for the power of special interests or factions was to "extend the sphere" and take in a greater variety of parties and interests to "make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult ... to act in unison with each other." This "republican remedy for the disease incident to republican government" is in

opposition to the current situation, where the federal government funds some public advocacy groups, while leaving others to fend for themselves. The current situation could be described as one is which the federal government is fostering faction.

When the interests of government and political advocacy groups coincide, a formidable network of special interest groups develops with a direct self-interest in the growth of government spending. Attempts to reduce federal spending, balance the budget and pay off the national debt face the opposition of this federally funded lobby. This illustrates the absurdity of allowing groups that receive federal grants to lobby Congress and the federal government.

Recent examples of lobbying activity by federal grantees include:

- A newspaper advertisement opposing tax cuts and limits on the growth of welfare and Medicare was produced by the Service Employees International Union which received $137,000 of federal money in 1993. The advertisement claims that Congress is looting welfare programs and stealing from the low-income, home energy assistance program to help finance corporate special interests.

- The National Council of Senior Citizens (NCSC) contributed $183,000 to political campaigns of more than 60 candidates for the 1994 elections. From July 1993 to June 1994, NCSC received $68.7 million from the federal government, 97 percent of its entire budget.

- In its annual report, The Nature Conservancy (TNC) boasted of lobbying activities, including "developing and directing a plan to counter opposition's push for a county-wide referendum against [Florida Keys National Marine] Sanctuary." In 1993, TNC

was the recipient of a $44,100 grant from the National Oceanic and Atmospheric Administration. The purpose of the grant was to "support volunteer, outreach, and public affairs programs for the Florida Keys National Marine Sanctuary."

- In 1993, the Environmental Protection Agency (EPA) funded advertising campaigns by the Environmental Defense Fund and National Audobon Society and the Interior Department gave $75,000 to the Natural Resources Defense Council for ads timed to coincide with congressional debate over the Clean Water Act.

Lobbying of any sort, however noble the cause, should be completely voluntary. Good intentions do not entitle anyone to put his or her hand in the taxpayers' wallets. In order to protect the taxpayers, an organization should be made to choose: does it want to receive federal grants in order to carry out activities which our lawmakers have decided are in the public interest, or does it want to use its own resources to promote its own vision of the public interest? No organization should be allowed to do both. The abuse of taxpayers' wallets must stop.

This concludes my testimony. I'll be glad to answer any questions you may have.

Mr. McINTOSH. Thank you very much, Mr. Schatz. I appreciate that. Why don't we at this point hear from Mr. Hewitt and then address questions to any of the panel members. Mr. Paul Hewitt is our next witness. He is the executive director of the National Taxpayer Union Foundation. Mr. Hewitt, welcome.

Mr. HEWITT. Thank you. I should note, Mr. Chairman, that I come here today as vice president for Research of the 501(c)(4) National Taxpayers Union, ever mindful of the distinction between public education and lobbying Congress. It is my pleasure to add the voice of the 300,000 members of the National Taxpayers Union to those calling for the reform of the Federal grant administration process.

Mine is a long-standing personal interest in the debate over how to best ensure that our tax dollars are not used to fund political causes with which we may disagree. During the 1980's, as a professional staffer with the Senate Governmental Affairs Committee, I worked with the Office of Management and Budget and the General Accounting Office to fashion executive branch restrictions on the direct use of grant money to fund lobbying.

OMB wanted to go further, but at that time, Congress believed that fundamental reforms in this area, reforms designed to prevent indirect taxpayer subsidies to lobbying, required legislative action. So, I am pleased to see that legislation to accomplish this is at last before you.

The NTU supports legislation included in the Labor-HHS appropriations bill to curtail the use of tax dollars to subsidize directly or indirectly lobbying or political activities designed to harm or help the candidacy of any elected official. The NTU strongly approves of measures to prevent special interest lobbies from receiving and administering Federal grants. The sums at stake are very large.

Federal grants administered by nonprofit organizations total in the tens of billions of dollars. Congress owes it to the American public to assure them that the services funded by their hard-earned tax dollars are delivered professionally and without the taint of political indoctrination.

In our opinion, the legislation before this committee would prevent such abuses. It would require the administering organizations to decide whether they are going to be professional impartial implementors of Federal grants on the one hand or special interest lobbyists on the other; no longer will they be able to have it both ways. It is no secret that the American people are sick in their hearts about the direction and quality of their Nation's Government in recent years.

Fortunately, as the last election proved, we can periodically change our Government through the ballot box. But over the past four decades there has arisen a shadow government of unelected, self-appointed representatives who have become a major part of the problem in Washington.

Among them is a growing cadre of self-interested groups who have made it their business to lobby Congress to give them grant money. We view this development as analogous to the patronage system that Woodrow Wilson sought to stamp out through his civil service reforms in the 1920's.

In the early part of this century, political hacks administered Federal programs. They were patronage employees appointed by politicians, and this system bred widespread public distrust of Government. The patronage system was inimical to efficient and effective public administration. Support for reforms came from a broad cross-section of the public, from academia and from the media.

By creating a career civil service, the President and Congress sought to implement the good-government principle that there should be a clear separation of politics and policy. Out of this a movement arose our current merit-based civil service system, as well as the Hatch Act prohibitions on Federal employee involvement in the electoral process.

These protections against the conflict-of-interest ridden involvement of Government employees in the political process to this day enjoy widespread public support. Yet, in the post-war era, there has grown up a new patronage system outside the rules that govern the career civil service.

It is a system in which powerful special interest groups lobby Congress to design grants that they will administer. These groups then work with these same Members of Congress to lobby the executive branch to ensure that the right special interest groups will get that money. It is no accident that powerful allies of former congressional committee chairman, groups like the American Association of Retired Persons, or the National Council of Senior Citizens, or the Service Employees International Union are receiving and administering grants totaling in the hundreds of millions of dollars. Anyone who believes it is mere coincidence that these powerful lobbies just happen to be the best suited to deliver taxpayer-funded services to the public knows nothing of how Washington really works.

Political scientists refer to these reinforcing relationships between interest groups, congressional committees and executive branch bureaucrats as, "the iron triangle." This triangle is called iron because it makes Government practically impervious to change. Yet when the American people finally decided to change the partisan control of Congress in 1994, they put a dent in one side of that old iron triangle.

Mr. Chairman, in attempting to end the grant patronage system that has evolved under the old system, the reformers are acting in the best traditions of the American political process. Indeed, they would be derelict if they didn't try.

We believe that it is not simply enough to disrupt the old iron triangle so that a new one can arise in its place. Rather, the Congress must enact good-government reforms to permanently weaken the ability of lobbyists to line their own pockets to pay their salaries and to support their offices with taxpayer money.

In summary, Mr. Chairman, we believe that lobbying organizations, including all 501(c)(4) advocacy organizations and their affiliates and all 501(c)(3) charitable organizations that spend more than 5 percent of their funds engaging in political advocacy should not be allowed to receive and administer Federal grants.

To those who cry that this is an extreme act of political retribution against liberal interest groups, we say that it is time to take the politics out of the grant in aid system. Conservative interest

groups shouldn't get grant money, either. To those who fret that the legislation undermines the first amendment, we say there is no first amendment right to administer Federal grants.

Separating politics from policy is in the best traditions of the career civil service and the Hatch Act, both of which have been upheld as constitutional. The National Taxpayers Union urges the Congress to tune out the shrill cries of the professional lobbyists whose funding might be affected by these reforms. They are paid to object, and that is fine, so long as they are not being paid by the taxpayer. Thank you, Mr. Chairman.

[The prepared statement of Mr. Hewitt follows:]

Statement of

Paul S. Hewitt
Vice President for Research
National Taxpayers Union
on

Taxpayer-Funded Political Advocacy

before the

Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform and Oversight
U.S. House of Representatives

July 28, 1995

Thank you for the opportunity to testify on the subject of taxpayer-funded political advocacy. I appear before this Committee to add the voice of the 300,000 members of the National Taxpayers Union to those calling for reform.

Mr. Chairman, the NTU supports legislation to curtail the use of tax dollars to subsidize, directly or indirectly, political advocacy, lobbying, or political activities designed to harm or help the candidacy of any elected representative. We strongly approve of measures to prevent lobbying organizations from receiving and administering federal grants. As members of this Committee have noted, federal grants administered by nonprofit organizations totalled about $39 billion in fiscal 1995. We owe it to the American public to assure them that the services funded by their hard-earned tax dollars are delivered professionally and without the taint of political indoctrination.

In our opinion, the legislation before this Committee would prevent such abuses. It would require the administering organizations to decide between being professional, impartial implementors of federal grants, on the one hand, or special-interest lobbyists, on the other.

It is no secret that the American people are sick in their hearts about the direction and quality of their nation's government. Fortunately, as the last election proved, we can periodically change our government through the ballot box. But in recent decades there has arisen a shadow-government of unelected, self-appointed "representatives" who have become a major part of the problem in Washington. Among them are a growing cadre of self-interested groups who have made it their business to lobby Congress for grant money.

Mr. Chairman, this development is analogous to the patronage system that President Woodrow Wilson sought to stamp out through

civil service reforms in the 1920s. In creating a career civil service, the president and Congress sought to implement the good-government principle that politics and policy should be separate. Out of this movement arose our current merit-based civil service system, as well as Hatch Act prohibitions on federal employee involvement in the electoral process. These protections against the conflict-of-interest ridden involvement of government employees in the political process to this day enjoy widespread public support.

In the postwar era, however, there has grown up a new patronage system outside the bounds of the career civil service. It is a system in which powerful special interest groups lobby Congress to design grants that they will administer; and then lobby the appointees of the executive branch to ensure that the money goes to them. It is no accident that powerful liberal allies of former Democratic congressional committee members -- groups like the American Association of Retired Persons, or the National Council of Senior Citizens, or the Service Employees International Union -- are receiving and administering hundreds of millions of dollars of federal grants. Anyone who believes it is mere happenstance that these powerful lobbies are delivering taxpayer funded services to the public knows nothing of how Washington works.

Political scientists refer to these reinforcing relationships between interest groups, congressional committees, and executive branch appointees and bureaucrats as the "iron triangle." It is called "iron" because it makes government inherently harder to change. Yet, when the American people finally decided to change the partisan control in Congress in the 1994 election they eliminated one side of the old iron triangle. Mr. Chairman, in attempting to end the grant-patronage system that has evolved over the past 40 years, you are carrying out the will of the American people. Indeed, you would derelict if you did not try.

But it is not simply enough to disrupt the old iron triangle, so that a new one can arise in its place. Rather, the Congress must enact good-government reforms to permanently weaken the ability of lobbyists to line their own pockets, to pay their salaries, and to support their offices, with taxpayer money.

In summary, Mr. Chairman, we believe that lobbying organizations -- including all 501(c)(4) advocacy organizations and their affiliates, and all 501(c)(3) charitable organizations that spend more than five percent of their funds engaging in political advocacy -- should not be allowed to receive and administer federal grants.

With that Mr. Chairman, I will conclude my remarks and take any questions the Committee may have.

Mr. MCINTOSH. Thank you very much, Mr. Hewitt.

At this point, I think I would like to defer questioning that I may have to my colleague from Minnesota, Mr. Gutknecht, because I had interrupted him before the recess.

Mr. Gutknecht, do you have questions either for Mrs. Huffington or any of the other panelists?

Mr. GUTKNECHT. Actually, Mr. Chairman, no. I thought the testimony of the witnesses has been excellent and I would forego them.

Mr. MCINTOSH. OK, thank you. I have a couple questions for the panel. Mr. Hewitt, could you tell me again what year that OMB circular that you had worked on was?

Mr. HEWITT. I believe that OMB Circular A–122 was issued in 1984.

Mr. MCINTOSH. Have you seen any appreciable difference in the behavior of Federal grant recipients as a result of that circular?

Mr. HEWITT. Well, I haven't. I think that it was a well-intended reform, but the executive branch had only so much power to reign in these organizations. I think subsequently they managed to pretty much force a revision which gutted the circular itself. It may not even be in existence anymore.

Mr. MCINTOSH. So 10 years later the problem is still with us, if not even larger.

Mr. HEWITT. I think it is worse.

Mr. MCINTOSH. Thank you. Let me ask each of the panelists if they have any opinions regarding a similar provision that the Senate adopted in lobbying reform earlier this week. It was the Simpson-Craig amendment and put simply, it required all 501(c)(4) foundations no longer engage in lobbying activities. So it was a slightly different approach, but obviously directed at a very similar problem.

Any comments on that approach versus the approach that we have been working here on this legislation in the House?

Mr. HEWITT. Well, Mr. Chairman if I could say, I believe that it is a bit too narrow of an approach. Because in singling out only 501(c)(4) organizations, we allow them to continual—continue to lobby for grants to their affiliates.

Take, for example, the American Association of Retired Persons. It has a couple of affiliate organizations which are 501(c)(3), which could still qualify for the $90 million in Federal aid. So I would think that one possible way that one could improve the Senate language would be to say 501(c)(4)'s or their affiliates.

On top of that, we believe that 501(c)(3) organizations are subject to certain accounting rules by the Internal Revenue Service, which require them to report when they spend more than 5 percent of their revenues for political advocacy. So we believe that it would be fairly simple to include those groups, as well, in the prohibition.

Mr. MCINTOSH. Any comments from the other panelists?

Mr. SCHATZ. Just quickly, Mr. Chairman, I would think that the approach you are taking would be a better one at this point. I think that it makes a little more sense. The issue to us really is taxpayer money going for—people asking for more taxpayer money and that seems to us to be the big problem, one of the reasons we have a huge national debt and deficit and, by the way, one of the reasons

that until this year people like Paul Hewitt, Arianna Huffington and myself didn't show up very often at hearings.

Mr. MCINTOSH. Thank you.

Ms. HUFFINGTON. Mr. Chairman, I feel the Senate bill would be substantially inferior to yours, to your amendment, especially from our point of view, because we believe that one of the most important messages that your amendment is sending is to nonprofits to 501(c)(3)'s which are supposed to be involved directly in the solution of social problems, like homelessness, like addiction, and therefore to exclude those groups would perpetuate the tendency to look to the government to solve those problems instead of taking action directly through those groups which often include churches, synagogues, all sorts of community activities which we want to encourage more and more.

Mr. MCINTOSH. Thank you. That actually leads to my next question which is, in your estimation, particularly Mrs. Huffington and the other panelists as well, do you think we would see more charitable activity of that type addressed at relieving social problems, providing aid to individuals and disabled, homeless, sick, drug addicts?

Do you think that the provisions such as the one that we are looking at today could actually lead to more of that activity in the private sector?

Ms. HUFFINGTON. We believe that very strongly, because if you believe that, as James Q. Wilson wrote in the *Moral Sense,* the more we practice generosity, the more generous we become. The more we practice virtues, the more virtuous we become.

Every opportunity we give to people to be directly involved in giving, in compassion, will not only be for the—to the advantage of the underprivileged and those in need, but it will also benefit those of us who are participating in this activity and it will also enhance the sense of community that everybody from the President down is talking about, but which they tend to identify with Government action. So we believe that for all sorts of, both practical and philosophical reasons, the amendment will be to the benefit of everybody involved, both those giving and those receiving help.

Mr. SCHATZ. If I could answer that, Mr. Chairman. The effort in a lot of these organizations is very focused. The staff is usually small. And the time devoted to trying to get money, if it were devoted to actually carrying out programs, would be much better spent.

Mr. MCINTOSH. Thank you.

Mr. HEWITT. If I could add, we conducted a case study of the American Association of Retired Persons and we looked into their finances in great deal and what we found was that the vast majority of the services that they provide to their members, services which might qualify as help—helping services, as opposed to sales and marketing, were funded by the taxpayer. If that money were taken away from AARP, it would have to make a very important choice.

It would have to decide whether they are going to be a marketing conglomerate or a service organization, but they couldn't have it both ways. At the very least, it would result in a more focused organization in which its members pretty much knew where they

stood with—with the AARP members—with the AARP organization.

I think that, frankly, what would happen is that AARP would continue many of its services and it would do it at the expense of its lobbying empire, but other organizations would forego the delivering of services and be pure lobbies. I think that would be cleansing choices.

Mr. MCINTOSH. Thank you, Mr. Hewitt. I might add to that—I saw an article in the New York Times recently where the reporter interviewed some organizations who provided both services and served as advocates—your prediction was correct based on the interviews there.

Obviously, it was a limited sample. But some of them did say, we would curtail our advocacy efforts. Others said, no, we feel that is the core of what we are about, but we would be willing to give up the grants. And that is the core of this bill, to ask people to make those choices.

Mr. HEWITT. There is one other point, Congressman, which is to the extent that it is your job to reduce the size and scope of the Federal Government, to clean out some of the bad programs which have accumulated like barnacles on the ship of State over the years. It will be much easier if you don't have this taxpayer-funded lobbying system here in Washington fighting against you tooth and nail every inch of the way.

Mr. MCINTOSH. Heaven knows there are enough impediments in that effort.

Ms. Huffington, do you have any comments?

Ms. HUFFINGTON. I just want to add one more example. One of the groups that we are spotlighting at the Center for Effective Compassion is a group out of Denver called Step 13 run by Bob Corte. And what Bob Corte has said as an explanation why he is not applying for Federal grants is that right now the program that he runs, which benefits over 100 men who are addicts with spectacular results costs him $300,000 a year.

If he applied and received Federal grants, it would cost him $2 million to service the same men. And this is because of the amount of regulations that he would have to comply with in order to receive Federal grants. Another reason why so many groups do not apply for Federal grants, some of the most effective groups, incidentally, is because immediately they would not be able to be faith-based. And what we are finding is that groups that are faith-based, whatever that faith may be, Christianity, Judaism, have spectacularly higher success rates.

In fact, secular programs have success rates in the single-digit rates. So whatever our own particular faith may be, we need to encourage those groups that are the most effective; after all, that is all that matters in the end. And so, again, your amendment would be very beneficial in terms of encouraging groups to be hands-on involved instead of wasting their energy and their time lobbying for Federal grants.

Mr. MCINTOSH. Thank you. I think that perspective is exactly correct, that we would be able to increase the effectiveness of those groups.

Let me just, one last throw-away question, then I will move on to the next panel.

Mr. Hewitt, you seem to be a study of the progressive era based on some of your testimony. Would you care to venture a prediction as to whether Senator La Follette and some of the other progressives would have supported this type of legislation?

Mr. HEWITT. Well, I think had they anticipated the evolution of the grant in aid system that has occurred since the 1960's, they certainly would have taken steps to prevent patronage in this area as well.

Mr. MCINTOSH. Thank you all for coming. I truly appreciate your input. And as you know, this will be going to the floor next week and so I would urge you to watch that. But as I indicated to some of my colleagues earlier today, that is only the beginning and so we need to continue to bring out this information and allow the American people to know the extent of some of the problems here. Thank you all. I appreciate it.

If we could now call forward our third panel; I appreciate your patience and willingness to wait. In particular, I want to say thank you to Richard Kirk and his son, Michael, who traveled here from Fort Wayne, IN, my home State. Welcome to Washington.

I have a bias to hearing from witnesses outside the beltway. So it is delightful to have you here even though we may not agree on all these points. Mr. Kirk is the first witness on the panel. Then also, Mr. William Dulany of Dulany and Leahy, representing the American Heart Association. Mr. Kirk, do you want to start with your testimony.

STATEMENTS OF RICHARD KIRK, ASSOCIATION OF RETARDED CITIZENS; AND WILLIAM DULANY, ESQ., DULANY AND LEAHY, REPRESENTING THE AMERICAN HEART ASSOCIATION

Mr. KIRK. Thank you. I am Richard Kirk. I am from Fort Wayne, IN. This is my son, Michael. He is 42, autistic and retarded. The issue before you today is how much of ARC's private money you will allow them to spend on lobbying. The issue for me is much more important.

What happens to Michael when I die? From my viewpoint an all-disability policy is a totally nonpartisan issue. But for the record, let me say that I have been a life-long registered Republican and believe in responsible fiscal management and Government programs that are efficient and effective.

My objective today is to convey a sense of some of the issues faced by parents of children who are retarded, and to describe the critical need for both support services and advocacy on behalf of our Nation's 7 million people with retardation.

When I conclude, I would like to introduce Michael. Following an early evaluation process, a physician and a psychiatrist recommended that Michael be placed in an institution for people with retardation. We wanted to keep Michael at home and after a rocky start, and 2 years of trying, Michael was finally accepted at age 8 at the local ARC school.

Not incidentally, my family's decision to maintain Michael at home and in his community has saved the Federal and State gov-

ernments over $1 million to date by preventing his unwarranted and costly—would you believe $212 a day institutionalization. Mike had to attend the ARC school because our school system denied him the right to a public education. But the ARC school proved to be a real blessing and gave him structure to his life until he was age 18 when he graduated to the sheltered workshop.

Mike's early years in the workshop were spent on simple assembly projects, but about 2 years ago he knocked our socks off by learning how to run a three-thread industrial sewing machine, a major new skill. We hope some day we will be—he will be so productive as to earn at least the minimum wage.

The last 4 years since losing his mother, Mike has been living in a risky situation. If I got hit by a truck, he is the one who has the real-life crisis. Last year, we applied for a spot in one of the 10 group homes run by the ARC of Allen County. The current waiting lists are long due to funding limits and there is little expectation that he will move soon.

Let's summarize. First, Mike has been and is now a complex individual with profound lifelong disabilities. He will always require support, even as he becomes more independent.

Second, intertwined in Mike's story is the increasing involvement and evolution of the ARC organization. The ARC is often there at the birth of a child and at the funeral of the parent. My wife and I spent four decades keeping Mike at home and making him part of our family and our community. We recognized early on that we would require assistance throughout his lifetime, and we knew government would need to play a major role, and that we would need to learn about laws and programs.

We would have to know what was going on regarding Federal and State disability policy so we joined the ARC. As parents, we would have a voice at every level of government and the ARC would be that voice. Thus, ARC would serve two critical functions: Advocating for laws and programs to help my son and also providing him with necessary services throughout his school years and now job training.

For many years, as we have participated in receiving services and sometimes joining the ARC in making treks to the county council's offices and the State House in Indianapolis for rights and funding, the ARC has organized, synthesized and provided the leadership, the spokesmen for people with retardation.

I have served two terms on the ARC of Allen County board of directors and I fully recognize the partnership between our agency and local, State, and Federal funding sources. Without these Federal funds, my son and hundreds of other children and adults with mental retardation served by our local agency would go unserved. No other private or public dollars are available to serve them.

Many would end up in extremely costly and inappropriate institutions. Their path toward productivity and independence would come to a dead end. I would like to emphasize, too, that the provisions of this amendment would force choices at a local and State level which would adversely affect people with retardation and this is not just a Federal event. It is troubling to me that the U.S. Congress could consider forcing the ARC to temper either their service or advocacy thrusts.

It is punitive to my son to force the ARC to decide to limit or to halt its public advocacy role. Who else is going to advocate for him? The ARC is my insurance policy for Mike after I die. I am confident I speak for 120,000 members of the ARC throughout the United States in urging the House of Representatives to remove the Istook amendment from this appropriations bill. Now I would like to introduce Michael. Michael, would you say hello?

[The prepared statement of Mr. Kirk follows:]

Governmental Affairs Office
1522 K Street, N.W., Suite 516
Washington, D.C. 20005
(202) 785-3388 / FAX (202) 467-4179
TDD (202) 785-3411

TESTIMONY

SUBMITTED BY

THE ARC

ON

LOBBYING RESTRICTIONS ON NON-PROFIT ORGANIZATIONS

SUBMITTED TO

THE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATIONAL RESOURCES AND REGULATORY AFFAIRS

OF THE

GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

FRIDAY, JULY 28, 1995

Witnesses: Richard Kirk
Michael Kirk
Members of The Arc of Allen County, Indiana

a national organization on mental retardation
formerly Association for Retarded Citizens of the United States

Good Morning. I'm Richard Kirk from Fort Wayne, Indiana. Michael here is my 42 year old son. I've been retired seven years and a widower for the last four. The issue before you is lobbying by The Arc. The issue for me is what happens to Michael when I'm gone? Let me state from the outset that I have been a life long registered Republican who strongly believes in a balanced federal budget and government programs that are efficient and effective.

My objective today is to convey a sense of some of the problems faced by parents of children who are retarded and to describe the critical need for both support services and advocacy on behalf of our nation's seven million people with retardation. When I conclude, I'd like to introduce my son Michael.

In my years of work with and on behalf of The Arc, I have come to realize that mental retardation knows no boundaries. It is found in all segments of our society. People with mental retardation come from families who are rich, middle class and poor, liberal, moderate and conservative, Republican, Democrat and Independent and from all races and religions. The Arc is a truly non-partisan association and does not and cannot endorse political candidates. It is also important to note that disability policy has evolved in recent decades in our nation from a clear and continuing bi-partisan approach.

Incredible as it may sound today, we did not have an accurate diagnosis for Michael until he was nearly five years old and already had two brothers. Michael is autistic and retarded. In 1952, autism was a word probably reserved for Webster's unabridged.

Mike spent ages 5, 6 and 7 in a hospital for children with emotional disturbance and we decided to bring him home and seek a special education program where he could attend during the day. Following an evaluation process, the physician and psychiatrist recommended that he be placed in an institution for people with retardation. We stayed with our conviction, kept Michael home and, after a rocky start and two years of trying, Mike was finally accepted in the local ARC school. My family's decision to maintain Michael at home and in his community has saved the federal and state governments over one million dollars to date by preventing his unwarranted and unbelievably costly institutionalization.

Mike had to attend the ARC school because our school system denied him the right to a public education. Mike was already well past school age when the 94th Congress, with strong encouragement from parents of The Arc, enacted mandatory education in Public Law 94-142, guaranteeing children with disabilities the right to a free, appropriate education. I often wonder how much more productive and independent Michael might be today if he had had a public school education available to him.

The ARC school proved to be a real blessing and gave structure to his life up to age 18. At 18, he "Graduated" to the sheltered workshop, where he is completing his 24th year. The workshop is his primary focus now and he is totally dedicated to it.

Mike's early years in the workshop were spent on simple assembly and sorting projects, but about two years ago he knocked our socks off by learning how to run a three thread industrial sewing machine - a major new skill. He hopes someday to be so productive as to earn at least the minimum wage and be more self-sufficient.

For the last four years, since losing his mother who was his teacher and strongest advocate, Mike has been living in a risky situation. If I got hit by a truck, he's the one who has a real life crisis. Last year we applied for a spot in one of the 10 group homes run by The Arc of Allen County, but waiting lists are long due to funding limits, and only emergencies are dealt with at this time. Given the proposed cutbacks in community-based mental retardation services this Congress is about to enact, there is little expectation that he can move soon.

Let's summarize. First, Mike has been and is now a complex individual with profound lifelong disabilities. He will always require special support even as he becomes more independent. Secondly, intertwined in Mike's story is the increasing involvement and evolution of The Arc organization. The Arc is often there at the birth of a child and at the funeral of the parent.

My wife and I have spent four decades keeping him at home and allowing him to be part of our family and our community. We recognized early on that we would require assistance throughout Mike's lifetime. We knew government would need to play a role and that we would need to learn about laws and programs. We would have to know what was going on regarding disability policy in our state capitol in Indianapolis and in Washington, D.C. So, we joined The Arc. As parents, we would have a voice at every level of government and The Arc would be that voice. The Allen County chapter of The Arc would also provide vital services to Mike throughout his life. Thus, The Arc would serve two critical functions -- advocating for laws and programs to help my son and also providing him with necessary services beginning in preschool, throughout his school years, and now job training.

Bewildered young parents facing lifelong challenges and people with retardation of all ages need the special services offered by The Arc. Parents, whose voices are fragmented and decentralized and who are busy earning a living and raising families along with meeting the diverse and constant needs of their child with mental retardation, require the centralization, policy development and advocacy of The Arc. Services and advocacy are virtually inseparable.

For the last 34 years as we've participated in receiving services and sometimes joining The Arc in making treks to county Councils' offices and the State House in Indianapolis for rights and funding, The Arc has organized, synthesized and provided the leadership as spokesman for people with retardation.

Today in Congress, there are dozens of bills being considered which will affect Mike and many other people with mental retardation. Here are some examples. The pending FY 1996 Appropriations bill will slash special education and developmental disabilities funding. The welfare reform bill will cut 250,000 poor children with disabilities from the Supplemental Security Income program; the vocational rehabilitation program would be block granted; medical and long term services under Medicaid would be cut. Community-based housing programs will be totally eliminated.

I have served two terms on The Arc of Allen County Board of Directors. I fully recognize the partnership between our agency and local, state, and federal funding sources. To help finance our early intervention, child development, job training, housing, and other programs, we receive federal funds from the Title XX Social Services and Child Care Developmental Block Grant, Vocational Rehabilitation Act, Part H Early Intervention from the Individuals with Disabilities Education Act, and Medicaid. Without these federal funds, my son and hundreds of other children and adults with mental retardation served by our agency will go unserved. No other private or public dollars are available to serve them. Many would end up in extremely costly and inappropriate institutions. Their path toward productivity and independence would come to a dead end.

The Arc at the local level, at the state level, and at the national has never and will never use its federal funds for lobbying purposes. Our federal funds provide direct services to people, services that no one else will provide.

It is troubling to me and nearly inconceivable that the United States Congress would consider forcing The Arc to temper either their service or advocacy thrusts. It is punitive to my son to force The Arc to decide to limit or halt its public advocacy role. Who else is going to advocate for him? The Arc is my insurance policy for Mike after I die. Mike and I need The Arc and we don't think it serves any useful purpose to limit the roles of The Arc. I'm confident that I speak for 120,000 members of The Arc throughout the United States in urging the House of Representatives to remove the Istook amendment from the appropriations bill that funds the Departments of Labor, Health and Human Services and Education. I find it extremely ironic that the very bill that helps my son survive is the one that seeks to still my

voice and that of The Arc as we seek to protect and improve the lives of Mike and his seven million peers.

It sure looks to me that the Istook amendment is bad public policy, doesn't solve any existing problem, and will likely make my son Michael's life worse.

That concludes my statement. Now, I'd like you to meet Michael. Michael, would you say hello?

Mr. MICHAEL KIRK. Hello.

Mr. KIRK. Thank you.

Mr. MCINTOSH. Hello, Michael. Welcome to Washington and to this subcommittee. Thank you very much for your testimony.

Mr. KIRK. Thank you. And I think——

Mr. MCINTOSH. Did you have anything—did Michael have anything he would like to add? Would you like to add anything else, Michael?

Mr. MICHAEL KIRK. No.

Mr. KIRK. No.

Mr. MCINTOSH. OK. Thank you for coming. Thank you both.

Mr. KIRK. With your permission, may we slip out or do you have any further questions or discussion?

Mr. MCINTOSH. Do you have a few minutes before the flight?

Mr. KIRK. Yes.

Mr. MCINTOSH. Would you mind, Mr. Dulany, if I address a few questions? He has to catch a flight back to Indiana.

Mr. DULANY. No.

Mr. MCINTOSH. I had a couple questions for you.

Mr. KIRK. Sure.

Mr. MCINTOSH. I wanted to make sure that we were clear about the terms of the bill because I am well aware of how general descriptions can make people nervous about legislation. When you look at the details, they find that it is not quite the same as they were worried about.

Are you familiar, Mr. Kirk, with the provision in the bill that allows for up to 5 percent of the receipts——

Mr. KIRK. Yes.

Mr. MCINTOSH [continuing]. To be spent on advocacy activities?

Mr. KIRK. Right.

Mr. MCINTOSH. To your knowledge, does the ARC spend more than that of their receipts in lobbying and advocacy efforts?

Mr. KIRK. Well, I would have to say, if you said that the ARC had private funds in Fort Wayne of $100,000 and you were going to limit them to $5,000, you couldn't cover salary of a couple staff people to go to Indianapolis or to go make a speech at a local event.

I think probably—we were trying to speculate about the amount of time of our executive director in Fort Wayne, how much time he might spend in the role of advocate in the community for the retarded, and he said he thought it was somewhere in the neighborhood of 40 percent. So yes, we would seriously exceed the 5 percent.

Mr. MCINTOSH. And that $100,000——

Mr. KIRK. Well, it is more than that. I think his private moneys actually run in the neighborhood of $700,000. So he would be limited to $35,000.

Mr. MCINTOSH. And currently he feels that he would need to spend more than $35,000 on advocacy.

Mr. KIRK. Yes.

Mr. MCINTOSH. My question, then, would be—given in your testimony you indicated there was a current shortage of some of the facilities to help people like Michael, wouldn't it be better to spend those resources in providing those facilities? $35,000 can get you several units of housing.

Mr. KIRK. Well, I think the point is, though, that from your inappropriate chart up there, if you are characterizing Michael as the animal on the left, we are not.

Mr. MCINTOSH. Certainly we weren't doing that.

Mr. KIRK. Well, that is what you have got up there.

Mr. MCINTOSH. No, my point is that a lot of these groups, because they become advocacy groups, fail to actually help Michael because they spend dollars on their own salaries as advocates, rather than dollars in providing him with housing and other facilities that he needs.

Mr. KIRK. Not quite. The budget for——

Mr. MCINTOSH. It seems to be the case of your organization. More than 5 percent of the receipts?

Mr. KIRK. I would say it is exactly the reverse, Congressman. In Fort Wayne, the ARC organization is basically a service organization just almost the exact opposite from the Voice of Retardation, for example. Our approach is to use Federal funds to provide services. Now, to achieve those Federal funds, we do have to have advocacy and promote the cause all the time.

Mr. MCINTOSH. Even at the expense of people like Michael who could use the services.

Mr. KIRK. I would say that it is for Michael to get the services because we use the Federal funds directly for the services.

Mr. MCINTOSH. By the way, let me just make a point, not to get into a dispute about numbers, but one of the problems we have been having is actually getting accurate information on this, and ARC's recent tax form from 1993 indicated that they had spent about $27,000 in lobbying activities, which would be well under the threshold of the 5 percent. Now, that could obviously change from year-to-year.

Mr. KIRK. Yes, I think that is true. But I think with your new definition you have expanded dramatically the role of advocacy, so I think that would multiply considerably. I could get some estimates on that if you would like. I am a parent in Fort Wayne. I don't have their national IRS available to me.

Mr. MCINTOSH. That would be helpful, actually. And there may be several other questions. I don't want to detain you unnecessarily.

Mr. KIRK. That is all right.

Mr. MCINTOSH. Mr. Gutknecht, do you have any questions?

Mr. GUTKNECHT. Well, a couple of quick points. If our figures are correct, ARC, you spent a lot less than 5 percent on advocacy in 1993, according to records we have been provided by the national organization. In fact, you would be able to increase the amount that you spent on advocacy under the McIntosh plan by about five-fold—more than that, seven or eight-fold. But I guess the question I would have for you—and I admire the work that ARC does.

But Mr. Kirk, what percentage would you feel comfortable with? I mean, shouldn't there be some threshold? I mean, we are hearing about some organization that has spent 70 percent of their income fundraising and the balance of it lobbying and very little ultimately goes to the purpose it is supposed to. What percentage would you feel comfortable with?

Mr. KIRK. Would you—would you permit a gentleman from ARC to help me with the issue because he has national perspective and I only have a small local.

Mr. GUTKNECHT. Ever so briefly because we are all going to have to run here and vote here pretty quick. So yes.

Mr. KIRK. This is Paul Marchand.

Mr. MARCHAND. Congressman, our response would be that the existing requirements under all nonprofits, all 501(c)(3)'s now apply—works very nicely for us. The difference with this bill is that you are squeezing it two ways.

You are significantly expanding the definition of lobbying to include practically everything that anybody ever does, which would make that 5 percent much smaller, and in that respect, that $27,000 that you compare on our national, would, balloon substantially just based on the new definition of lobbying.

Mr. MCINTOSH. Would the gentleman yield for a second?

Mr. GUTKNECHT. Mr. Chairman, could I get an answer to that question? What percentage would you feel comfortable with?

Mr. MARCHAND. We feel comfortable with current law with the same definition of lobbying. If there was a different definition of lobbying, I would have to go back and compute what would be a comfort level. I don't have a ready answer.

Mr. GUTKNECHT. So what are your restrictions now?

Mr. MARCHAND. Our restrictions now depend on how you apply the 1976 lobbying provision. You can either do a 5 percent in substantial lobbying, or you can elect to come under the new law, and that new law has a graduated percentage based on your size of your budget.

Mr. MCINTOSH. If the gentleman would yield.

Mr. GUTKNECHT. I yield back.

Mr. MCINTOSH. Could you stay with us for a second? I was very interested in one statement that you made—that our definition of advocacy included virtually everything that you want to do. I am quite certain it doesn't include providing services to individuals in need and it strikes me that perhaps we have reached the core of the difference here where it is our view that we want to use taxpayer subsidies to encourage delivery of services and not these different activities that are advocacy, which is speaking out on a view, litigation and other activities that way. I mean, I think there may be a fundamental difference in philosophy of what the proper role of these taxpayer dollars should be involved in in all of this.

Mr. MARCHAND. A side-by-side analysis of current law and in the definition of lobbying and your definition of lobbying, Mr. Chairman, I think is substantially different. Not only do you include litigation under your definition, but—and without testimony from the Pennsylvania Association for Retarded Citizens having sued the State, we never would have gotten a guarantee for the right to a public education in our land. And with that, we continue to today.

Mr. MCINTOSH. You think it is good to have taxpayer dollars suing the State.

Mr. MARCHAND. I don't believe a nickel of taxpayer dollars was used to sue the State.

Mr. MCINTOSH. Well, what percentage of your funding comes from Federal grants?

Mr. MARCHAND. At the national level—it varies year to year, but somewhere around 35 to 50 percent is Federal dollars and those dollars are won on a competitive basis and they require us to fulfill a particular service. An example of that, most of our Federal dollars today come from the Department of Labor. We provide a national job placement program where we place 1,000 plus adults with mental retardation into jobs.

Mr. MCINTOSH. You don't consider that lobbying activity.

Mr. MARCHAND. Absolutely not.

Mr. MCINTOSH. So if you say virtually everything you want to do would be defined as lobbying under our bill, are those things you really don't want to do? I mean, I am having a disconnect where you are saying we are going to shut you off from virtually everything you want to do, but up to 50 percent of your activities are providing these services.

Mr. MARCHAND. We are totally comfortable that the amount of Federal dollars that we use are not fungible for purposes of this issue. There is no way that we would be able to do the job training, for example, if we didn't have the Federal Department of Labor grant. There is no way we would be providing very low reading skilled materials and training to individuals with mental retardation and how to access their rights under the Americans with Disabilities Act without the Department of Justice grant that we have.

On the other hand, many of the things that we do in our advocacy role today would not count under the existing law in regards to lobbying.

Mr. MCINTOSH. What would be the problem with just splitting into two organizations that were separate, separately controlled, one of them provided all of those services and one of them provided all the advocacy; the advocacy group raised all of the outside money.

Mr. MARCHAND. First of all, there are not enough Mr. Kirk's to go around to run two separate organizations at the national level, the State level, and the local level.

Second, the people who provide the services tend to understand the needs and tend to recognize the gaps quickly, immediately, and they are in the best position to advocate for their clientele.

Mr. MCINTOSH. Thank you very much. Mr. Kirk, I will let you go because I have to call a recess for about 10 minutes while I go and vote, then Mr. Dulany, we will come back to you.

Mr. DULANY. Thank you.

[Recess.]

Mr. MCINTOSH. The subcommittee is reconvened.

Mr. Dulany, you are a saint for waiting through all of these votes. I appreciate you coming and testifying today. There are no more votes, and so, we will be able to continue until the end of this hearing. Why don't you now proceed with your testimony and we will see if we have any questions.

Mr. DULANY. Thank you, Chairman McIntosh, members and staff of the committee. Thank you for giving me the opportunity to be here. I am a former chairman of the board of the American Heart Association, a national organization which is located in Dallas, TX.

I am an attorney at law, practice as a country lawyer in Westminster, Carroll County, MD, which is just about 60 miles from here, but it is outside the beltway. I would like to tell you a little bit about the Heart Association. The Heart Association is the second largest volunteer health organization in the world.

We have over 4 million volunteers and we have a budget of over $300 million—or approximately $300 million. None of our funds come from grants or requests from the Federal Government. We do have a serious concern over the legislation drafted by Representatives McIntosh, Ehrlich, and Istook, which is being considered by this subcommittee as well as by the full House as part of the Labor-HHS appropriations bill.

The Heart Association is concerned with cardiovascular diseases which take an enormous toll both financially and emotionally on this Nation. Cardiovascular deaths cause almost as many deaths as all other causes of death combined and we spend—there is $128 billion spent in medical expenses each year or—either spent or lost in productivity as the result of heart disease and stroke.

The Heart Association spends most of its moneys on research and public education and private education, on cardiovascular disease and stroke. Over the years, AHA-funded research has yielded many important discoveries such as cardiopulmonary resuscitation, commonly known as CPR, life-extending drugs, bypass surgery, and other surgical techniques.

The Heart Association has spent over $1 billion in research from moneys it has raised for that purpose. While the intent of your proposal to ostensibly prohibit recipients of Federal grants from spending grant funds on political advocacy is laudable, this can be done by stronger enforcement of already existing statutes. However, the amendment sets forth stringent limits on advocacy financed by nongrant funds, further limiting the voice of the nonprofit sector and weakening the long-standing partnership between nonprofits and government.

Twenty years ago, Congress enacted legislation which expanded the ability of nonprofits to advocate before Congress. While Congress intended to limit lobbying activity by public nonprofits to certain statutory levels and prohibited participation in partisan politics, the legislation was meant to encourage public charities to bring their expertise and perspective to bear on public policy issues.

Our Members do just that, either directly or by way of their division, affiliate and national offices. I might tell you we have a $300 million budget. I will bet we have twice that much more given to us in free time of physicians, professionals such as myself, businesses in other areas, so it is a tremendous organization.

People get a tremendous amount for the dollar given to the Heart Association. Our organization which receives no Federal money is comprised of Americans from all walks of life with differing and varying political perspectives. The American Heart Association and thousands of other nonprofit health organizations stand ready to take positions on issues and to provide materials to Congress on issues effecting prevention or treatment of diseases and their impact on the American public.

It is ironic that a portion of the already limited public policy resources of the American Heart Association has been spent this session simply fighting for our right to advocate on behalf of our Members allowing us to devote far fewer resources from our disease prevention and health promotion agenda.

I might point out that this agenda is directly related to the mission of the American Heart Association and is developed from input from staff and volunteers at all levels of the organization and from each of the 50 States and the District of Columbia where we have affiliates.

Each year, a volunteer Public Affairs Policy Committee, of which I am an immediate past chair, recommends a set of legislative priorities to the board of directors for their approval. It is developed after receiving input from our volunteer leaders of our affiliates and scientific councils from all over the United States.

Our 4 million volunteers and contributors understand that an insignificant amount of our resources, in our case less than one-half of 1 percent of our total budget, will be devoted to pursuing our priorities.

I think last year our total expenditure in that area was $143,000. We feel it is our obligation to pursue a legislative and regulatory agenda in order to advance our mission. While this language now includes nonprofit organizations, the intent of the proposal remains clear. It appears to be part of a multipronged effort of Congress to politicize charitable giving and to restrict the right of nonprofits and the tens of millions of Americans they represent to have their views heard before Congress and the executive branch.

Rather than limit the nonprofit community's ability to provide expertise to policymakers and its obligation to represent individual constituencies, the Congress should address items truly in need of reform, political action committees, PAC's, campaign finance, gift giving and lobbying disclosure.

Although the proposed legislation does not directly impact the American Heart Association, many of our researchers receive funds from Federal Government for life-saving biomedical research. As volunteers for our association, many of them contact their Members of Congress on cardiovascular issues. Are they now subject to filing paperwork with the Federal Government under individual contacts with the Congress or regulatory agencies?

Frankly, the whole concept of detailing regulatory contacts seems to be a bit onerous. We believe it to be a regulatory nightmare if it is carried out as proposed. Do we or our members then need to detail each request for a proposal, each comment on regulations? Any attempt to curtail nonprofits from expressing their views before legislative and regulatory bodies will have a chilling effect on the democratic process and the rights of individuals and organizations to participate in that process.

Congress has stated that advocating for legislative and regulatory action is an appropriate and legitimate activity for charitable organizations like the American Heart Association, although 501(c)(3) organizations play a decidedly limited advocacy role as a result of strict caps on advocacy expenditures and prohibitions on engaging in partisan politics by way of campaign contributions and endorsements.

Further, of a total budget of $279.3 million last year of which nearly $100 million was spent on funding for biomedical research and $100 million for public and professional education, far less than $1 million was expended on advocacy efforts. As I mentioned before, less than one-half of 1 percent of our total budget.

As an organization that strives to work toward a better America, a more productive and healthier America, which believes it is an important partner with government and corporations in order to make a difference in the quality of life in this country, we are concerned that some Members of the House leadership are attempting to censor, prohibit and dampen legitimate organizations and corporations from carrying out programs and activities that are designed to make a difference in our society.

On the opening day of the 104th Congress Speaker Gingrich expressed a need to create a partnership and make the Congress, "more accessible to the American people." In a previous speech he stated that, "if people know you will listen to them, learn from them and help them, they want you to lead them." This does not seem to be the direction that we are taking.

Although the latest version of the proposed—of the proposal under consideration also addresses the profitmaking community, the 1-percent limit on lobbying does nothing to level an already unlevel playing field. For example, the Philip Morris Companies, which oppose our efforts to reduce the over 400,000 deaths each year from tobacco use, had operating revenue of over $10 billion in 1994. One percent of $1 billion would still allow that company to spend $100 million annually in lobbying expenditures, well over 100 times the available resources we have.

In addition, the legislation does not address government contractors. While the Nation's largest defense contractor receives $48 million in grants in 1993, it also received nearly $10 billion in contracts. We oppose the belief that the provision of corporate subsidies is acceptable while activities and partnerships to promote the health and well-being of citizens is not.

In closing, according to a statement signed onto by over 350 national nonprofit organizations, "people across the country use nonprofit organizations to learn more about key issues of the day and to link up with other citizens to create a more powerful voice." Nonprofit organizations themselves also speak to policymakers and to the public on behalf of the people they serve.

I think nonprofit organizations are truly democracy in action. Advocacy by the nonprofit sector has led to significant improvements in people's lives at the State, local, and Federal level. Thank you for giving me the opportunity to appear here on behalf of the American Heart Association and its 4 million members. I can answer any questions. I will be glad to try. I don't pretend to be an expert, but I will try to answer them.

[The prepared statement of Mr. Dulany follows:]

Office of Public Affairs
1150 Connecticut Avenue Northwest
Suite 810
Washington, D.C. 20036
Tel 202 822 9380
Fax 202 822 9883

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Statement by
William B. Dulany, Esq.

on behalf of the
American Heart Association

on lobbying restrictions placed upon
federal grantees, including nonprofits

Before the
National Economic Growth, Natural Resources and Regulatory Affairs
Subcommittee
Government Reform and Oversight Committee
U.S. House of Representatives

July 28, 1995

Good morning. My name is William B. Dulany, Esq. and I am former chairman of the board of the American Heart Association. I am an attorney with the firm of Dulany and Leahy in Westminster, Maryland. On behalf of our 4 million volunteers, I would like to take this opportunity to submit a statement to this subcommittee expressing our concern over the legislation drafted by Representatives McIntosh, Ehrlich and Istook which is being considered by this subcommittee as well as by the full House as part of the Labor/HHS appropriations bill.

The AHA is dedicated to the reduction of disability and death from cardiovascular diseases and stroke. Cardiovascular diseases take an enormous toll both financially and emotionally on this nation. Cardiovascular deaths cause almost as many deaths as all other causes of death combined, at an estimated cost in 1994 of nearly $128 billion in medical expenses and lost productivity . To combat and prevent more deaths from cardiovascular disease the AHA places an emphasis on cardiovascular research, cardiovascular education and revenue generation. It is in these areas that the AHA invests its resources. Over the years, AHA-funded research has yielded many important discoveries, such as cardiopulmonary resuscitation (CPR), life-extending drugs, bypass surgery, and other surgical techniques.

While the intent of the proposal -- to ostensibly prohibit recipients of federal grants from spending grant funds on political advocacy – is laudable,

this can be done by stronger enforcement of already existing statute. However, the amendment sets more stringent limits upon advocacy financed by non-grant funds, further limiting the voice of the nonprofit sector, and weakening the long-standing partnership between nonprofits and government. Twenty years ago, Congress enacted legislation which expanded the ability of nonprofits to advocate before Congress. While Congress intended to limit lobbying activity by public nonprofits to certain statutory levels and prohibit participation in partisan politics, the legislation was meant to encourage public charities to bring their expertise and perspectives to bear on public policy issues. Our members do just that, either directly or via their division, affiliate or national offices.

Our organization, which receives no federal money, is comprised of Americans from all walks of life, with differing and varying political perspectives. The American Heart Association and thousands of other nonprofit health organizations stand ready to take positions on issues and provide materials to the Congress on issues affecting prevention or treatment of diseases and their impact upon the American Public. It is ironic that a portion of the already limited public policy resources of the American Heart Association has been spent this session simply fighting for our right to advocate on behalf of our members, allowing us to devote far fewer resources to our disease prevention and health promotion agenda. I might point out that this agenda is directly related to the mission of the AHA and is developed with input from staff and volunteers from all levels of the Association from each of the 50 states and the District of Columbia. Each year, a volunteer public affairs policy committee, of

which I am immediate past chair, recommends a set of legislative priorities to the board of directors for their approval. It is developed after receiving input from our volunteer leaders at our affiliates and scientific councils.

Our 4 million volunteers and contributors understand that an insignificant amount of our resources, in our case less that 1/2 of 1% of our total budget, will be devoted to pursuing our priorities. We feel it is our obligation to pursue a legislative and regulatory agenda in order to advance our mission.

While this language now includes for-profit organizations, the intent of the proposal remains clear -- it appears to be part of a multi-pronged effort in the Congress to politicize charitable giving and restrict the right of nonprofits, and the tens of millions of Americans they represent, to have their views heard before Congress and the Executive Branch.

Rather than limit the nonprofit community's ability to provide expertise to policymakers and its obligation to represent individual constituencies, the Congress should address items truly in need of reform: political action committees (PACs), campaign finance, gift giving and lobbying disclosure.

Although the proposed legislation does not directly impact the AHA, many of our researchers receive funds from the federal government for lifesaving biomedical research. As volunteers for our Association many of them contact their members of Congress on cardiovascular issues. Are they now subject to filing paperwork with the federal government on their individual contacts with the Congress or regulatory agencies? Frankly, the whole concept of detailing regulatory contacts seems a bit onerous. Do we or our members

then need to detail each request for proposal, each comment on regulations? Any attempt to curtail nonprofits from expressing their views before legislative and regulatory bodies will have a chilling effect on the democratic process and the rights of individuals and organizations to participate in that process

Congress has stated that advocating for legislative and regulatory actions is an appropriate and legitimate activity for charitable organizations like the AHA, although 501(c)3 organizations play a decidedly limited advocacy role as a result of strict caps upon advocacy expenditures and prohibitions on engaging in partisan politics via campaign contributions and endorsements. Further, of a total budget of $297.3 million, of which nearly $100 million was spent on funding for biomedical research and $100 million on public and professional education, far less that $1 million was expended on advocacy efforts, as I mentioned before, less than 1/2 of 1 percent of our total budget.

As an organization which strives to work towards a better America, a more productive and healthier America, which believes that it is important to partner with government and corporations in order to make a difference in the quality of life in this country, we are concerned that some members of the House leadership are attempting to censor, prohibit and dampen legitimate organizations and corporations from carrying out programs and activities that are designed to make a difference on our society.

On the opening day of the 104th Congress Speaker Gingrich expressed the need to "create a partnership" and make the congress "more accessible to the American people." In a previous speech he stated that "if

I thank you for allowing me to express the views of the American Heart Association on this important issue.

Mr. MCINTOSH. Thank you, Mr. Dulany. A couple questions from your testimony. You indicated that the American Heart Association Inc., spent about—was it one-half of 1 percent of its budget on advocacy?

Mr. DULANY. $143,000 last year out of $297 million.

Mr. MCINTOSH. OK. Now, were you aware in the provision that is part of the appropriations bill known as the Istook–McIntosh–Ehrlich–Ryder that there is a provision that says agencies or grant recipients can spend 5 percent of their expenditures up to the first $20 million and then 1 percent of expenditures beyond that so if—for a $300 million organization, that would be about $3.8 million in advocacy. With that provision, from the way you described the American Heart Association, they wouldn't be covered by that.

Mr. DULANY. We are satisfied by the existing law and I think we are limited to $1 million under the existing law.

Mr. MCINTOSH. Right. So you are organized as a 501(c)(3)?

Mr. DULANY. That is exactly right.

Mr. MCINTOSH. I think for larger organizations like that, the existing law is more stringent on (c)(3)'s.

Mr. DULANY. And we are satisfied with the existing law. We believe that the requirements, the reporting requirements here are going to be horrendous. I think we want to get away from—you are speaking of deregulation, getting away from regulations and that sort of thing and it seems to me the proposal here is going to cause tremendous effort on the part of Government and Government agencies in regulation. But not only that for us out there in the real world, complying with Government regulations, as you well know, has gotten to the point to where we have to have employees just to do that.

Mr. MCINTOSH. I am following now. I was a little confused in your testimony where you would be worried that we would be cutting off the ability of people to speak out, which we certainly wouldn't be doing in those circumstances. So if we were to change the reporting requirements, not that I am advocating that, but put a hypothetical there. Would that solve most of your problems with this provision?

Mr. DULANY. That would be one big issue, one big relief to have that solved. But we work in coalition with other organizations and I think under your proposed law, if we work with other organizations that we may not be able to meet the requirements and we would be prohibited from working with them.

For example, we have a coalition on smoking and health. The Heart Association has been instrumental in, I think, prohibiting smoking in various places and in reducing tobacco use throughout the country and I think that——

Mr. MCINTOSH. That is an independent network that you are a member of?

Mr. DULANY. We have a coalition with other agencies to put our moneys together because we can't afford, frankly, to spend a fortune on those things, but if we work with other organizations, then we can budget enough money to be effective. And I believe that we would be restricted maybe from working with some organizations on various projects if this law was implemented.

Mr. MCINTOSH. Well, let's check with counsel on that. So you are positing a case where you might form a coalition with other organizations, say as an advocacy project on smoking.

Mr. DULANY. Right.

Mr. MCINTOSH. Regulations.

Mr. DULANY. That is right. That is not a good example because we are with big organizations there, but there could be other things.

Mr. MCINTOSH. Other things. You would contribute some of the money, they would contribute some of the money.

Mr. DULANY. That is right.

Mr. MCINTOSH. Would that be limited under the provisions of this statute?

Mr. PAED. According to my reading of the bill, no, it would not. The only restriction is if an organization ties itself to a group that does advocacy. There is a prohibition that prohibits them from engaging in business with a group that spends more than 15 percent of its expenses on advocacy, which the Congressmen felt meant that that group was largely doing advocacy. But groups that individually do a small amount of advocacy, they can bind together to accumulate their advocacy and accumulate their expenditures as long as——

Mr. MCINTOSH. As long as they are all under 15 percent?

Mr. PAED. Correct.

Mr. MCINTOSH. So it is a higher threshold than the 5 percent that they each live under.

Mr. PAED. Any one organization that receives Federal grants can do business with an organization that does up to 15 percent advocacy without that expenditure counting as the grantee's advocacy.

Mr. MCINTOSH. So there may be some situations, say if you had a coalition with a group that wasn't a grantee and—under our bill, and could, therefore, spend 100 percent of their money on advocacy, that there would be some difficulties there. Let me take that into consideration because I appreciate that, that point of view.

Although it has been my experience that there is more than one way to skin a cat, and there might be ways to accomplish the same end, but I appreciate your perspective on that. Let me also ask, I don't know where this came from, but the staff provided me with a copy of the American Heart Association Inc.'s tax return.

Mr. DULANY. Form 990?

Mr. MCINTOSH. Form 990, yes, from 1993.

Mr. DULANY. Yes.

Mr. MCINTOSH. Are those public documents? Is that the way——

Mr. DULANY. I believe they are.

Mr. MCINTOSH. Or can the organization give us a copy?

Mr. DULANY. Yes; that is one method of reporting that you already have.

Mr. MCINTOSH. OK. I was confused, and this is a little bit off the point on the legislation, except that in the process of going forward with this, I have discovered that the Government has terrible reporting mechanisms on where its grants go. But in this, it looked like the total receipts of the organization were at about $6 million, is that right, or $64 million?

Mr. DULANY. No; total receipts are $297 million, I believe.

Mr. MCINTOSH. That is what was confusing me. The way the 990 disclosed it, it was a lot less. I was wondering, is there some type of receipt that is not disclosed on there that makes up the difference?

Mr. DULANY. I think I can explain that. I am not sure I have the information here to give to you, Mr. Chairman. But the American Heart Association has a national office and then has 50 affiliates and they are separate corporations although they are affiliated under the national office. The combined effort of all under the national office is $297 million. I believe this—it says Greenville Avenue in Dallas—so this is the portion that is reported by the national office, I believe.

Mr. MCINTOSH. OK. That makes sense. And then the others would have similar reports.

Mr. DULANY. That is correct.

Mr. MCINTOSH. And the 100—the 1 percent—I am sorry, 1.2 percent.

Mr. DULANY. 1.42.

Mr. MCINTOSH. That was for the national office on what they spent on advocacy?

Mr. DULANY. Correct.

Mr. MCINTOSH. So that the States could spend more in some cases, but you would anticipate it would be roughly similar type, level.

Mr. DULANY. Probably, probably not as much. I think the national office does most of the public—we have a national public affairs office that does most of that.

Mr. MCINTOSH. They do most of it. By the way, let me digress slightly to say one of the things that the American Heart Association's done, I thought was tremendous, and that was the little label with the heart showing what types of foods were healthier to eat and this is truly a digression, but I was very disappointed when the FDA discouraged you all from going forward with that because I think private sector initiatives in that area to give people information are much better than Government-controlled information because we are always lagging behind by at least 5 to 10 years, and private organizations can. So in no way am I somebody who doesn't admire the American Heart Association and what you all have done in that and other areas.

Mr. DULANY. I think our effort might have speeded up the FDA.

Mr. MCINTOSH. That is good. If anybody can accomplish that, you deserve a lot of kudos.

Let me just close out by saying I appreciate your testimony. I think that if this bill were to go forward, you would find that some of the concerns that you might have, would not, in fact, materialize, that we have tried very carefully to craft it to allow people to have, you know, some level of participation in this debate, but as the counsel had pointed out, it was really directed at not funding organizations, that once you got over that 5 percent threshold, became significant lobbying organizations on that and we may still disagree about the merits of the bill, but that was our effort in the way we had drafted it. Well, thank you again for coming.

Mr. DULANY. Thank you.

Mr. MCINTOSH. I appreciate it. There may be some questions for you and for Mr. Kirk, so I would like to ask to keep the record open for a period of 10 days and our staff will send those on to you and we can put them into the record.

Mr. DULANY. All right, sir. Thank you very much.

Mr. MCINTOSH. Thank you.

Mr. DULANY. Thank you for the opportunity of being here.

Mr. MCINTOSH. Appreciate it.

The subcommittee will stand in recess until Wednesday morning, time and place to be announced, at which point some of the other people who had requested time to testify will be able to present more information to us. The subcommittee stands in recess.

[Whereupon, at 3:30 p.m., the subcommittee was adjourned.]

ABUSE OF TAXPAYERS FUNDS TO SUBSIDIZE LOBBYING AND POLITICAL ACTIVITY

WEDNESDAY, AUGUST 2, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:20 p.m., in room 2154, Rayburn House Office Building, Hon. David M. McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, Tate, Gutknecht, Ehrlich, Peterson, and Meek.

Also present: Representative Istook.

Staff present: Mildred Webber, staff director; Jon Praed, chief counsel; Todd Gaziano, senior counsel; Karen Barnes, professional staff member; David White, clerk; Bruce Gwinn, minority policy analyst; and Elisabeth Campbell, minority assistant.

Mr. MCINTOSH. The subcommittee will come to order.

This is a continuation of our hearing of last Friday in which we were looking at the provisions on ending welfare to lobbyists.

I am David McIntosh from Indiana's Second District. On behalf of the entire subcommittee, I would like to thank you for coming to today's continuation of the hearing. We appreciate you joining us as we continue to talk about one of Washington's best kept little secrets: Welfare for lobbyists. We are working hard to change that.

We are holding our third day of hearings because this issue is so important to the American taxpayer. Under the current system of Federal grantmaking, it is the taxpayer whose hard-earned money goes to finance political interests and advocacy efforts, interests which often conflict with the taxpayer and his own interests.

Each hearing has allowed us to examine another aspect of the issue and to solicit additional views. Today, we will hear from a trade association, the National Beer Wholesalers, and from three constitutional law experts who will discuss the constitutionality of the legislation on this issue. We will also hear from representatives from the Independent Women's Forum and the Maryland Homeless Veterans, who are here to share their views with us about the legislation.

As you know, last Monday the House Appropriations Committee under the leadership of Chairman Bob Livingston and subcommittee Chairman John Porter adopted an amendment to the Labor-HHS appropriations bill to stop this welfare for lobbyists. When the Labor-HHS bill is currently on the floor and that amendment has

been made in order under the rule, it is known as the Istook-McIntosh-Ehrlich amendment, it is very likely that there will be an amendment to the bill by Congressman David Skaggs on a motion to strike out those provisions, so the full floor will be voting on it probably sometime tomorrow. The big question that we have today is the constitutional issue, but I think it is also important to hear how different groups are reacting to this particular piece of legislation.

One thing that I wanted to read into the record, the Disabled Veterans of America have sent a letter to every Member of the House expressing their concerns about language contained in the taxpayer-funded political advocacy legislation and its adverse impact upon their ability to provide veterans with necessary services to present the veterans' claims for benefits to the Department of Veterans Affairs, the VA department.

It is their concern that this bill would preclude their giving claims assistance to veterans because of Department of Veterans Affairs benefits such as free office space and other VA services. They were also concerned that the bill would adversely impact upon their ability to act as veterans' advocates in Congress because they received this type of assistance.

It was never the intention of this legislation to interfere in any manner with the services provided by the veterans' services organizations to veterans either in pursuit of VA benefits or as veterans' advocates. It is not our intention to include the assistance VSOs receive from the Veterans' Administration to assist them in providing necessary services to veterans and their families within the definition of a grant, including the reference to the term "or other thing of value."

I might note here that the definition that has been included in the language is taken from other areas of the law and has a subtle meaning which is very narrow in scope. This issue came up at our last hearing and since then legal counsel has clarified where the drafting of that provision was taken from. We will be able to draw upon the case law and other interpretations of that preexisting statute to reassure people such as the Disabled Veterans of America that their services are not affected here.

The services provided by the veterans' service organizations under their provisions of Title 38 U.S. Code to American veterans lessen the burden on the Veterans' Administration to provide assistance to veterans and are performed in partnership with a grateful Nation. In order to ensure that these services continue unencumbered by the provisions of the bill, it is my intention to have the language of this bill modified either by amendment on the floor or in conference to clarify that these provisions do not interfere with the services provided by veterans or by veterans' service organizations.

The Disabled Veterans of America have written a letter to me indicating when we undertake that action they would not be opposing the legislation, and I would ask unanimous consent that that record be made public and—that letter be made part of the record.

[The information referred to follows:]

Motto: "If I cannot speak good of my comrade, I will not speak ill of him."

DISABLED AMERICAN VETERANS

NATIONAL SERVICE and LEGISLATIVE HEADQUARTERS
807 MAINE AVENUE, S.W.
WASHINGTON, D.C. 20024
(202) 554-3501

August 2, 1995

Congressman David M. McIntosh
Chairman
Subcommittee on Economic Growth,
Natural Resources, and Regulatory
Affairs
United States House of Representatives
B-377 Rayburn House Office Building
Washington, DC 20515

Dear Congressman McIntosh:

My staff has informed me of your assurance that attempts will be made either by floor amendment or in conference to clarify the language in the "Taxpayer Funded Political Advocacy" legislation so that the DAV and other veterans service organizations would not be considered a "grantee" based on the use of Department of Veterans' Affairs facilities and equipment. This action is necessary to ensure that this legislation does not, in any manner, interfere with DAV's ability to provide assistance to veterans in filing and prosecuting claims for benefits from the Department of Veterans Affairs.

Based on the assurance that the above corrective action will be forthcoming, I can assure you that DAV will not oppose this modified legislation.

My staff and I look forward to working with you and your staff on this matter and on other matters concerning our nation's service-connected disabled veterans. We look forward to your continued support.

Sincerely,

THOMAS A. MCMASTERS, III
National Commander

TAM:lmb

Mr. McINTOSH. I also wanted to ask unanimous consent that an opinion piece that was written by one of our witnesses from Friday's hearing, Ms. Arianna Huffington, that appeared in today's Washington Times be made a part of the record for this hearing. Seeing no objection on either of those.

[The information referred to follows:]

Why charities should first of all be charitable

By Arianna Huffington

A historic amendment comes to House floor this week that would separate the revolutionaries from the free riders. Offered by Reps. Istook, McIntosh and Ehrlich, it would ensure that non-profits which take federal funding concentrate on charitable work instead of lobbying. It is a litmus test of where we stand in the current debate: between effective compassion and government action, between personal responsibility and social indignation, between advocacy and assistance.

As Sara Melendez, President of Independent Sector, wrote in her recent Washington Post op-ed, many in the non-profit world believe that providing direct service to people in need is not the best way to help them. A measure of Ms. Melendez' disconnection with the American people is the proof she uses to back up her assertion that "most Americans support the right of charities to advocate": a poll of 800 federal employees. The best way to help the needy, we are told, is not to help them, but to convince government to help them. This is the delusion that has dominated public policy over the past 30 years and has led so many charitable organizations, many of them members of the Independent Sector, to cease being agents of compassion and to become mere pressure groups.

Advocacy of public policies that expand governmental anti-poverty efforts is assumed to be the best thing charitable organizations can do to help the poor. For those in the trenches confronting the seemingly intractable problems of poverty, homelessness, and addiction, this is a laughable assumption.

When I testified last Friday in favor of the amendment, I asked Hannah Hawkins of Children of Mine in Anacostia, Marsh Ward of Clean and Sober Streets, and the Rev. John Woods of the Gospel Mission to come with me to the hearing to provide flesh and blood evidence of effective compassion.

All three have devoted their lives — with little or no government help, and with impressive results — to helping children, addicts and the homeless. And all three of them found the time they spent last Friday on Capitol Hill worlds apart from the real work they do every day to heal broken lives. They were there to encourage others not to be there — to urge others in the non-profit world to stop walking the corridors of Congress, to quit hiding behind desks filling out grant applications in triplicate, and to get out in the streets, in the neighborhoods, in the shelters, where the real work is being done.

Nothing is more foolish than to imagine that what the needy are really in need of can be provided by a government agency. Indeed, the government is often openly hostile to privately funded programs that work without its help — especially if they are faith-based.

This past June, the state of Texas motioned to suspend the license of one of the most-successful faith-based, substance-abuse treatment programs in the country, Teen Challenge, just because its staff lacked what the state deemed to be the appropriate professional degrees.

"Why don't they look at our success rate?" asked the Rev. James Heurich, who is fighting for the life of Teen Challenge of San Antonio. There are 130 Teen Challenge chapters around the country and studies have shown success rates of 70 to 86 percent, compared to the single-digit rates of government programs. "That's fine," replies John D. Cooke of the Texas Commission of Alcohol and Drug Abuse. "But if they want to call it treatment, then state law says they must be licensed. Outcomes and outputs are not an issue for us."

Outcomes and outputs — rather than good intentions — are exactly what charitable, as well as government projects, should be about. And the Istook amendment will help put the emphasis on the outcomes of non-profits rather than their intentions and their lobbying efforts.

The compassionate intentions of the Great Society have resulted in anything but compassionate results. Poverty is only partly an economic matter, and no government check, however large, will get an addict off drugs or give a gang member the strength to leave a gang. Ultimately, each one of us has a responsibility to get involved, to lead by example, to spend time each week, personally, patiently, going out and helping — even if it's helping one person and solving one problem in our communities.

If this amendment becomes law, we will not only save billions of dollars of taxpayer money; we will send a powerful message to all non-profits: When funds intended to help those in need are used instead to lobby the government for help, we waste precious resources of money and time. This is an abdication of personal responsibility. It replaces effective compassion, which is always personal, with the compulsory compassion of government programs that have tragically failed to solve our mounting social problems.

There's nothing easier than being generous with other people's money. but it's a false generosity that quiets the conscience and only lets us play at compassion. If the alternative sounds idealistic, so be it. America is a country founded by idealists, and it is idealists, not cynics, that will turn our neighborhoods and our country around.

Arianna Huffington is a senior fellow at the Progress and Freedom Foundation, where she chairs the Center for Effective Compassion.

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Mr. MCINTOSH. Actually, at this point, let's ask my colleagues if they would have any opening statements. Mr. Peterson.

[The prepared statement of Hon. David M. McIntosh follows:]

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"Washington's Dirty Little Secret"
Welfare for Lobbyists

Opening Statement of Chairman David M. McIntosh
August 2, 1995
Hearing before the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs

Good afternoon. I am David McIntosh, from Indiana's second district. On behalf of the entire Subcommittee, I would like to thank you for coming to today's continuation of last Friday's hearing.

We appreciate you joining us as we continue to talk about one of Washington's dirty little secrets: welfare for lobbyists. We are holding our third day of hearings because this issue is so important to the American taxpayer. Under the current system of federal grant making, it's the taxpayer whose hard-earned money goes to finance political interests -- interests which often conflict with his or her own.

Each hearing has allowed us to examine another aspect of the issue and to solicit additional views. Today we will hear from a trade association, the National Beer Wholesalers, and from three Constitutional law experts who will discuss the constitutionality of the legislation on this issue. We will also hear from representatives of the Independent Women's Forum and the Maryland Homeless Veterans.

As you know, last Monday, the House Appropriations Committee, under the leadership of Chairman Bob Livingston and Subcommittee Chairman John Porter, adopted an amendment to the Labor, HHS Appropriations bill to stop welfare for lobbyists. When the Labor, HHS bill comes to the floor this week, that amendment, known as the Istook/McIntosh/Ehrlich amendment, will likely be attacked by Members and special interests groups who want to preserve their ability to lobby Congress even though they are on the federal dole. We are asking these groups and all federal grantees to make a simple, reasonable choice about their identity -- do you want to be a charitable organization OR a political advocacy organization? They can no longer be both when they are funded by the American taxpayer.

Again, thank you for coming today.

Mr. PETERSON. Thank you, Mr. Chairman. I apologize for missing most of your remarks.

Mr. MCINTOSH. They were scintillating.

Mr. PETERSON. I was just looking at this memo here where you are talking about that we have no way to determine the existing limitations and how many—no idea of how tax dollars, how many tax dollars are being used for lobbying. I think I have to disagree with you. I agree with what you are trying to do but the way that you have this constructed, I don't think when we get done with this we are going to know very much more—many more answers to these questions than we know now.

Prior to holding public office, I was a CPA and did some government auditing, and most of my experience in most of the audits that we put together, the information is put away in some black hole that nobody ever sees again, and it doesn't get beyond sometimes the regional offices or there is no way to access it, so I am not sure that this requirement that you have in here that we are going to somehow or another make this part of the Federal audit situation and require auditors to, first of all, determine how much was spent on political advocacy, which I am not sure they have the expertise or ability to do, No. 1; No. 2, to somehow or another report on this, as I think I told you before, I think it is going to take years of matching within the accounting profession and all kinds of other stuff before anything ever happens. I am not sure we are going to be able to access it, anyway. So I agree with what you are trying to do. I guess I just don't think this is the best way to accomplish it.

I, for one, would rather see us give some extra authority to the IRS or Treasury to be able to take away tax-exempt status if people, in effect, are not following these laws. It is probably too late in the process now to do that, but, you know, I would hope that we could take a look at this because I really don't think that these enforcement mechanisms are going to work in the real world and I don't think we need—we don't want to add more requirements on folks out there that aren't going to do any good. So for whatever that is worth.

Mr. MCINTOSH. Thank you very much, actually.

One thing I would like to say to my colleague from Minnesota, it is my sincere effort and hope that we can work together on this to perhaps craft language that would be acceptable as this bill moves forward.

I think it probably is at this point, because of the rule limiting the number of amendments, difficult to correct anything, but as the leadership continually reminds me, the passage on the floor is just the beginning; there is the Senate and the conference, and I would like to work with you to try to come up with an effective set of enforcement mechanisms. And I appreciate your taking a look at that as a concern.

Mr. Tate.

Mr. TATE. Mr. Chairman, I would like to publicly commend you once again. This is your third hearing, if I am not mistaken, on this particular issue, and I appreciate the fact that you have given so many of us an opportunity not only to give opening statements but to hear extensive issues on the merits of this, and I don't have to

go much further than going back to my district or talking to folks at home, on talk radio or whatever to find out how popular this particular proposal really is. Most of them start out by saying, "Excuse me, are we really funding this?"

They have heard a lot of outrageous things out of Washington, DC, and I guess nothing ceases to amaze me but they are still amazed that we are spending this kind of money especially in the face of balancing the budget that we would be diverting any kind of money to subsidizing lobbying, especially when working families are having a tough time making things meet right now, to send more of their tax dollars to Washington, DC, to fund these kinds of programs.

I am interested in hearing today from folks in the business community and folks in the legal community on their concerns, and if I don't get a chance to ask a question, I would be very interested in those in the business community's ideas or suggestions or just real-life experiences of where they have been targeted or actually had to compete with organizations that receive public funding from the taxpayers and when they have to fund their lobbying efforts on their own dime.

Once again, Mr. Chairman, this is an idea whose time has come. The public is in support of it and I look forward to, once again, your leadership on this committee and moving forward with this.

Mr. MCINTOSH. Thank you very much, Mr. Tate. I hope we will be able to raise that. I certainly will if you are called to other duties.

Mrs. Meek, do you have an opening statement?

Mrs. MEEK. No, Mr. Chairman.

Mr. MCINTOSH. Thank you for coming today. I appreciate you participating in this hearing.

Let's turn now to our first panel. It is a friend of mine, somebody who has been on both sides of this aisle and somebody's whose opinion I respect greatly on issues. It is Mr. Ron Sarasin, the president of the National Beer Wholesalers Association. As I say, he is no stranger to these surroundings. Mr. Sarasin is a former Member of the House, elected in 1972, where he served three terms representing the good people of the Fifth Congressional District of Connecticut.

Since joining the National Beer Wholesalers Association in 1990, Mr. Sarasin and the association have been instrumental in bringing these and other important issues to the front burner. Under his leadership, over 100 Members of Congress requested a Federal investigation into the alleged illegal lobbying practices by the Department of Health and Human Services.

Mr. Sarasin, I welcome you here today and I appreciate you taking the time to come and present your views to the committee.

STATEMENT OF RON SARASIN, PRESIDENT, NATIONAL BEER WHOLESALERS ASSOCIATION

Mr. SARASIN. Mr. Chairman, thank you very much. It is, indeed, a pleasure and an honor.

Mr. MCINTOSH. Excuse me, Mr. Sarasin, counsel reminds me that Mr. Clinger has asked that we swear in all of our witnesses,

and if you would not mind, I notice Mr. Shays did it even to Members of Congress yesterday, so it is flying across the board.

[Witness sworn.]

Mr. MCINTOSH. Thank you very much. Let the clerk reflect that the witness answered in the affirmative.

Mr. Sarasin.

Mr. SARASIN. Mr. Chairman, thank you very much, and ladies and gentlemen of the committee, I appreciate the opportunity to be here, to share a little agony with you and to talk to you about your legislation to end the practice of taxpayer-subsidized lobbying. The National Beer Wholesalers Association, or NBWA, represents the independent, family-owned small business distributors of malt beverages.

Just to make it a little more personal, when you see a truck that says Budweiser or Miller or Coors on it, it is not owned by the brewery in most cases; it is owned by an independent local businessman in your own community, usually family owned and operated. You may ask what our interest is, what do beer wholesalers care about political advocacy and lobbying with taxpayer dollars by Federal grant recipients.

Mr. Chairman, we have a direct interest in your legislation because our industry has been the victim of federally subsidized lobbying. We first became concerned when it became clear to us that certain Federal agencies and grant recipients were lobbying Congress and officials at other levels of Government to increase excise taxes on our products, to restrict the advertising of those products, and to otherwise harm our businesses.

And needless to say, as members of an industry that contributes $8 billion in Federal excise taxes a year and many millions more in other taxes and fees, we are perturbed to discover that our tax dollars were effectively being used to put us out of business. I will provide more details on that situation later in my testimony.

Now, first, we support your bill on general public policy grounds. As members of the committee are aware, it is unlawful to use appropriated funds to lobby. That's under current law; 18 USC 1913, which goes back at least to 1948 seems pretty unambiguous on that point. It says,

> No part of the money appropriated by any enactment of Congress shall in the absence of express authorization by Congress be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence in any manner a Member of Congress to favor or oppose by vote or otherwise any legislation or appropriation by Congress.

In addition, the appropriations acts themselves have contained similar restrictions on lobbying since the early 1950's and they also contain specific language covering Federal grantees.

However, these current prohibitions are not effective. As you will see later in my testimony, even when the grantees are caught red-handed lobbying with appropriated funds, there are no adverse consequences for violating the law. Thus, even though this weak law prohibits the use of appropriated funds to lobby directly or indirectly, it's clear to us that this is a law that is observed more in the breach than in the letter of the law.

Moreover, in an era of increasingly scarce resources, it makes no sense to allow large amounts of Federal tax dollars to be spent in this manner. Some of the richest lobbying organizations in Washington benefit from Federal grants. The American Association of Retired Persons, which has proposed an alcohol excise tax to fund health care reform, received $73 million in one recent year. The American Bar Association, which opposes tort reform, received $2.2 million in a recent year. The AFL–CIO, which supports striker replacement legislation, received $2 million. The U.S. Chamber of Commerce has received over $1 million in recent years. It's outrageous that any of these organizations on any side of the spectrum are supported by U.S. taxpayers.

Second, let me provide you with a brief description of how and why NBWA became involved in this issue in the first place. Several years ago, we became aware that a Federal agency, the Office of Substance Abuse Prevention, called OSAP, which has now been renamed as the Center for Substance Abuse Prevention [CSAP], and which is a subagency of the Department of Health and Human Services.

We became aware that they were pursuing an aggressively neoprohibitionist agenda that seemed to go very far beyond law and congressional intent. Subsequently, in 1992, 115 Members of Congress wrote the GAO to ask that OSAP's activities be investigated and we have added that GAO report as an appendix to the testimony.

The GAO found that CSAP and CSAP grantees—then it was OSAP—had violated the lobbying restriction by using conferences as occasions for grass-roots lobbying. In the case of a conference in 1992, funded in large part by an OSAP grant, time was actually set aside in the program for attendees to lobby their congressional representatives in support of pending legislation to mandate Government warnings in all licensed beverage advertisements.

GAO recommended that CSAP recover the misspent funds and to take a number of steps to make sure that Federal funds were not used for lobbying in the future. Unfortunately, there are at least two defects in GAO's work. It limited itself to a very narrow interpretation of the lobbying prohibitions to refer only to "grass-roots lobbying" at the Federal level; and it did not investigate any lobbying directed at officials other than Members of Congress.

And I note that your legislation, Mr. Chairman, by laying out a careful definition of political advocacy avoids these pitfalls.

However, the GAO's recommendations, at least with respect to recovering illegally spent funds, were not followed. In a subsequent exchange of letters, the general counsel's office of HHS told GAO that the grantees' standing was not going to be affected by its clear misuse of taxpayer dollars and they then both decided that recovery of the illegally spent taxpayer dollars wasn't going to be worth the effort and so they didn't worry about it.

The moral of the story then is under current law even if a grantee spends appropriated dollars for lobbying, the chances of the taxpayers recovering these funds and the violators of the law being punished are remote. CSAP and its granted have skirted if not violated the law on other occasions as well.

As Doug Bandow, a senior fellow of the Cato Institute, testified before your subcommittee earlier this year, CSAP has provided a great deal of money to the Marin Institute in California whose purpose is to, "identify and change the social, economic, physical, and political factors which contribute to alcohol and drug problems and, emphasis added, on political."

"The Marin Institute carried out that broad charge by, one, using a $1 million CSAP grant to establish an on-line information network to aid activists in doing political battle with the licensed beverage industry; two, running assorted federally funded media advocacy projects to push restrictions on licensed beverages; and, three, by compiling case studies on, "successful," acts of licensed beverage billboard vandalism, among other projects. Thus, the Beer Wholesalers have firsthand knowledge that the current law is inadequately formulated and inadequately enforced.

With over $39 billion in Federal grants at stake, it's time for Congress to step in and end the confusion. We believe that your legislation by establishing a firm definition of political advocacy and by setting concrete limits on the amount of lobbying that may be done by grantees who do receive tax dollars of hard-working beer wholesalers and their employees will do a great service to the grantees as well as to the taxpayers. We believe ending welfare for lobbyists is an idea whose time has come.

We thank you for the opportunity to be here today and for your consideration of our concerns.

Mr. MCINTOSH. Thank you very much, Mr. Sarasin, for joining us today.

[The prepared statement of Mr. Sarasin follows:]

NATIONAL BEER WHOLESALERS ASSOCIATION

Statement of the Hon. Ron Sarasin
President
National Beer Wholesalers Association

August 2, 1995

Mr. Chairman, thank you for affording me the opportunity to testify today in strong support of your legislation to end the practice of taxpayer subsidized lobbying. The National Beer Wholesalers Association (NBWA) represents the independent, family-owned, small business distributors of malt beverages.

You may well ask what interest beer wholesalers might have in political advocacy and lobbying with taxpayer dollars by federal grant recipients. Mr. Chairman, we have a direct interest in your legislation because our industry has been the victim of federally subsidized lobbying. In fact, NBWA has been involved in this issue for several years. We first became concerned when it became clear to us that certain federal agencies and grant recipients were lobbying Congress and officials at other levels of government to increase excise taxes on our products, to restrict the advertising of those products and otherwise to harm our businesses. Needless to say, as members of an industry that contributes $8 billion in federal excise taxes a year, and many millions more in federal and state income taxes, state sales taxes and other taxes and fees, we were perturbed to discover that our own tax dollars were effectively being used to put us out of business. I will provide more details on that situation later in my testimony.

First, we support your bill on general public policy grounds. As Members of the Committee are aware, it is unlawful to use appropriated funds to lobby. The provision at 18 U.S.C. 1913, which dates back to at least 1948, seems pretty unambiguous on this point:

1100 South Washington Street Alexandria, Virginia 22314-4494 (703) 683-4300 FAX (703) 683-8965

> No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress....

In addition, appropriations acts themselves have contained similar restrictions on lobbying since the early 1950s. The one in effect for the Department of Health and Human Services for fiscal year 1992, for example, reads:

> (a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation to support or defeat legislation pending before the Congress, except in presentation to the Congress itself. (b) No part of an appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress. P.L. 102-170, 105 Stat. 1107, 1141 [1991]

However, these current prohibitions are not effective. I seriously doubt that most grant recipients are able to segregate their funds so strictly that they can guarantee that no federally provided funds are used to lobby. As you will see later in my testimony, even when grantees are caught lobbying with appropriated funds red-handed, there are no adverse consequences for

violating the law. Furthermore, even assuming a grantee keeps its money from different sources in different pots, federal grants may be used to free up other funds for lobbying purposes. Thus, even though this weak law prohibits the use of appropriated funds to lobby, directly or indirectly, it is clear to us that this is a law that is observed more in the breach than in the letter.

Moreover, in an era of increasingly scarce resources, it makes no sense to allow large amounts of federal tax dollars to be spent in this manner. Some of the richest lobbying organizations in Washington benefit from federal grants. The American Association of Retired Persons, which has proposed an alcohol excise tax hike to fund health care reform, received $73 million in one recent year. The American Bar Association, which opposes tort reform, received $2.2 million in a recent year. The AFL-CIO, which strongly supports striker replacement legislation, received $2 million. The Consumer Federation of America and the Environmental Defense Fund, two strong lobbying entities, receive federal grants, and the U.S. Chamber of Commerce has received over $1 million a year in recent years. It is outrageous that these organizations are supported by U.S. taxpayers.

Second, let me provide you with a brief description of how and why NBWA became involved in this issue in the first place. Several years ago we became aware that a federal agency, the Office of Substance Abuse Prevention (OSAP, since renamed Center for Substance Abuse Prevention, or CSAP) in the Department of Health and Human Services, was pursuing an aggressively neo-prohibitionist agenda that seemed to go far beyond the law and congressional intent.

Subsequently, in 1992, 115 Members of Congress wrote the General Accounting Office (GAO) to ask that OSAP's activities be investigated (see Appendix A). GAO found that CSAP and CSAP grantees had violated the lobbying restriction by using the Alcohol Policy VIII conference in 1992 as a forum for grassroots lobbying. GAO also found that at a second conference, Healthy People/Healthy Environments, "appropriated funds, subject to the lobbying restriction, were used for the conference, and grassroots lobbying

did occur" (see Appendix B, "Alleged Lobbying Activities, Office for Substance Abuse Prevention," GAO/HRD-93-100, p. 10). In the case of the Alcohol Policy VIII conference, held in Washington on March 25-27, 1992, funded in large part by an OSAP grant, **time was set aside in the program for attendees to lobby their congressional representatives in support of pending legislation to mandate government warnings in all licensed beverage advertisements.** In the case of the Heathy People/Healthy Environments conference, which was completely funded by the Department of Health and Human Services, **speakers repeatedly urged attendees to lobby their representatives on pending legislation.**

GAO recommended that CSAP recover the misspent funds and take a number of steps to make sure that federal funds were not used for lobbying in the future. Unfortunately, there were at least two defects in GAO's work: it limited itself to a very narrow interpretation of the lobbying prohibitions to refer only to "grassroots lobbying" at the federal level, and it did not investigate any lobbying directed at officials other than Members of Congress. I might note parenthetically that your legislation, by laying out a careful definition of political advocacy, avoids these pitfalls.

However, the GAO's recommendations, at least with respect to recovering illegally spent funds, were not followed. In a subsequent exchange of letters, the HHS General Counsel's office told GAO that the grantee's standing was not affected by its clear misuse of taxpayer dollars. HHS and GAO then decided that recovery of the illegally spent taxpayer dollars was not worth the effort (see Appendix C). Thus, the moral of the story is, under current law, even if a grantee spends appropriated dollars for lobbying, the chances of the taxpayers recovering those funds and the violators of the law being punished are remote.

CSAP and its grantees have skirted, if not violated, the law on other occasions as well. As Doug Bandow, a senior fellow at the CATO Institute, testified before your Subcommittee earlier this year, CSAP has provided a great deal of money to the Marin Institute in California, whose purpose is to "identify and change the social, economic, physical and **political** factors

which contribute to alcohol and other drug problems [emphasis added]." The Marin Institute has carried out that broad charge by: using a $1 million CSAP grant to establish an on-line information network to aid activists in doing political battle with the licensed beverage industry; running assorted federally-funded "media advocacy" projects to push restrictions on licensed beverages; compiling case studies on "successful" acts of licensed beverage billboard vandalism, among other projects.

Another CSAP grant was used by the Washington-based Advocacy Institute to produce a pro-excise tax hike video on the 1990 California excise tax initiative, Proposition 134. The video, "The Dogs of War: Raising Alcohol Taxes in California," presents the proponents' case in heroic terms. GAO decline to examine the video because it did not constitute lobbying of federal officials.

Thus, beer wholesalers have firsthand knowledge that current law is inadequately formulated and inadequately enforced. With over $39 billion in federal grants at stake, it is time for Congress to step in and end the confusion. We believe that your legislation, by establishing a firm definition of "political advocacy" and by setting concrete limits on the amount of lobbying that may be done by grantees who receive the tax dollars of hard working beer wholesalers and their employees, will do a great service to grantees as well as taxpayers.

Ending welfare for lobbyists is an idea whose time has come. Thank you for your consideration and the opportunity to be here today.

Congress of the United States
House of Representatives
Washington, DC 20515

May 22, 1992

Mr. Charles A. Bowsher
Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

We are requesting that the GAO initiate an investigation into the use of taxpayers' dollars for direct and indirect lobbying by the Office of Substance Abuse Prevention (OSAP) under the Department of Health and Human Services.

It is our understanding that federal funds may have been used to underwrite a lobbying "Activist's Guide" that informs readers how to write a politically effective "letter to the editor." Moreover, OSAP's Prevention Pipeline newsletter urges readers to get involved in grassroots lobbying campaigns and urges support for pending bills before the U.S. Congress.

We believe it is inappropriate for OSAP to be using taxpayers' dollars, either directly or indirectly, for lobbying purposes. We would like the GAO to investigate and document all examples discovered where tax dollars are linked to lobbying or advocacy activities. For example:

1. Does OSAP, through it own publications, reference or advocate positions on legislative bills or issues pending before Congress?

2. Does OSAP provide funding for organizations that reference or advocate specific positions on legislative bills or issues pending before Congress?

3. Does OSAP provide funding for forums, conferences or meetings in which organizations or individuals invited to speak reference or advocate specific positions on legislative bills or issues pending before Congress?

Further, we would appreciate all examples and references to be physically contained in an appendix of the report. This will allow the entire Congress to fully grasp the depth and context of lobbying or advocacy that may be taking place and is being paid for by the taxpayers.

Appendix A: Letter to GAO

Mr. Charles A. Bowsher -- Page 2
May 22, 1992

We strongly support all efforts to combat alcohol abuse that are based upon documented medical studies and objective scientific research. Any attempt to use taxpayers' dollars for lobbying or advocacy of a particular political agenda does not help to solve abuse problems and should not take place.

Sincerely,

David Dreier, M.C.

Ralph M. Hall, M.C.

Craig Thomas, M.C.

Mel Hancock, M.C.

Dana Rohrbacher, M.C.

George Allen, M.C.

Wayne Allard, M.C.

William Zeliff, M.C.

Bob Stump, M.C.

Charles Taylor, M.C.

Thomas Ewing, M.C.

Richard Baker, M.C.

Bill Emerson, M.C.

Cass Ballenger, M.C.

Duncan Hunter, M.C.

Frank Riggs, M.C.

Dick Zimmer, M.C.

Jim McCrery, M.C.

Mr. Charles A. Bowsher -- Page 3
May 22, 1992

J.P. Hammerschmidt, M.C.

Bill Sarpalius, M.C.

Charles Hatcher, M.C.

Floyd Spence, M.C.

Dave Camp, M.C.

Dan Schaefer, M.C.

Howard Coble, M.C.

Jack Fields, M.C.

Arthur Ravenel, M.C.

Bill McCollum, M.C.

Richard Ray, M.C.

Tim Roemer, M.C.

Bob Smith, M.C.

Jim Bunning, M.C.

Sherwood Boehlert, M.C.

James Sensenbrenner, M.C.

Ron Packard, M.C.

Jim Ramstad, M.C.

Rick Santorum, M.C.

Marilyn Lloyd, M.C.

Joel Hefley, M.C.

Don Ritter, M.C.

Mr. Charles A. Bowsher -- Page 4
May 22, 1992

Tom Bliley, M.C.

John Boehner, M.C.

Matthew G. Martinez, M.C.

Christopher Cox, M.C.

Jim Hansen, M.C.

Don Sundquist, M.C.

Barbara Vucanovich, M.C.

Pete Geren, M.C.

Scott Klug, M.C.

Ed Pastor, M.C.

William Clay, M.C.

Owen Pickett, M.C.

Duke Cunningham, M.C.

Calvin Dooley, M.C.

Craig James, M.C.

Jim Lightfoot, M.C.

Fred Grandy, M.C.

Robin Tallon, M.C.

Charlie Rose, M.C.

Vin Weber, M.C.

Steven Schiff, M.C.

John Duncan, M.C.

Mr. Charles A. Bowsher -- Page 5
May 22, 1992

William Lipinski, M.C.

Sam Johnson, M.C.

Bill Paxon, M.C.

Don Young, M.C.

Jim Nussle, M.C.

Jon Kyl, M.C.

Jerry Lewis, M.C.

Guy Vander Jagt, M.C.

Jim Kolbe, M.C.

Tom Ridge, M.C.

Harley O. Staggers, M.C.

Butler Derrick, M.C.

Peter DeFazio, M.C.

J. Roy Rowland, M.C.

Bill Lowery, M.C.

Charlie Wilson, M.C.

Andy Ireland, M.C.

Jim Saxton, M.C.

Bill Alexander, M.C.

Larry Coughlin, M.C.

Herbert Bateman, M.C.

Esteban Torres, M.C.

James Hayes, M.C.

Mr. Charles A. Bowsher -- Page 6
May 22, 1992

Newt Gingrich, M.C.

George Gekas, M.C.

John J. Rhodes, M.C.

Claude Harris, M.C.

Bob McEwen, M.C.

Steve Gunderson, M.C.

L. F. Payne, M.C.

Dennis Hertel, M.C.

Tom Delay, M.C.

Albert Bustamante, M.C.

Phil Crane, M.C.

Henry Hyde, M.C.

Richard Armey, M.C.

Ronald Machtley, M.C.

John Myers, M.C.

Helen Bentley, M.C.

Chet Edwards, M.C.

Wally Herger, M.C.

Rod Chandler, M.C.

Gary Franks, M.C.

Bob Livingston, M.C.

Bill Orton, M.C.

Ron Marlenee, M.C.

Collin Peterson, M.C.

GAO

United States General Accounting Office

Report to Congressional Requesters

May 1993

ALLEGED LOBBYING ACTIVITIES

Office for Substance Abuse Prevention

Appendix B: GAO Report

GAO/HRD-93-100

GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-248812.2

May 4, 1993

Congressional Requesters

This report responds to your multiple requests that we investigate alleged lobbying activities of the Office for Substance Abuse Prevention (OSAP) within the Department of Health and Human Services (HHS). We received a request dated May 22, 1992, signed by 109 Members of the House of Representatives, and 6 essentially similar requests from other individual Members. All requesters are listed in appendix II.

We agreed with staff of Representatives David Dreier and Ralph Hall, representing the requesters, to investigate allegations that OSAP or its grantees used appropriated funds for direct or indirect lobbying of Members of Congress in violation of law. The alleged lobbying involved (1) items in OSAP's publication, Prevention Pipeline; (2) the Activist's Guide: 1990 National Alcohol & Other Drug Related Birth Defects Awareness Week issued jointly by OSAP and the National Council on Alcoholism and Drug Dependence; (3) a case study and its companion video, prepared by the Advocacy Institute, concerning a campaign to raise California's excise tax on alcohol; and (4) activities during two conferences, Alcohol Policy VIII, funded in large part by an OSAP grant, and Healthy People/Healthy Environments, sponsored by HHS with OSAP taking a significant role. We also agreed to report on an allegation that OSAP officials violated lobbying restrictions by sponsoring or encouraging attempts to terminate our investigation.

OSAP, like other federal agencies, is prohibited by law from using appropriated funds for "publicity or propaganda purposes, for the preparation, distribution, or use of [information] designed to support or defeat legislation pending before the Congress. . . ." Recipients of federal grants are subject to a similar restriction on their use of grant funds.

We have interpreted these prohibitions as applying primarily to "grass roots" lobbying. Grass roots lobbying consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation, or to urge those representatives to vote in a particular way.

We found no illegal lobbying by OSAP in its publications or any of its own activities. Violations of the prohibition against grass roots lobbying, however, occurred in connection with the two conferences. We found no

credible evidence for the allegation that government officials tried to have our investigation terminated.

The OSAP grantee that organized the Alcohol Policy VIII conference violated the statutory restriction by using grant funds to schedule and encourage grass roots lobbying at the conference. The grantee set aside time on the agenda for meeting with Members of Congress, and it was clear that this was to be for the purpose of lobbying for pending legislation. OSAP did not participate in planning or executing the lobbying.

Also, a violation took place at the Healthy People/Healthy Environments conference when speakers urged that the audience lobby Members of Congress in support of pending legislation. HHS, with OSAP participation, planned and financed this conference. Although HHS and OSAP neither planned nor had advance knowledge of the grass roots lobbying at this conference, appropriated funds were used for grass roots lobbying.

With respect to the specific allegations about Prevention Pipeline, none of the items published during the 2-year period we examined constituted grass roots lobbying either by OSAP or by a grantee using appropriated funds. OSAP publishes the Pipeline as part of its statutory duties to act as a clearinghouse for drug and alcohol abuse information, and to educate the public. One item in the Pipeline that was called to our attention alluded to grass roots lobbying being conducted, without OSAP funding, by a private organization.[1] In publishing the item in question, OSAP did not itself urge lobbying and cannot be held to have endorsed it.

The Activist's Guide referred to in the second allegation contains no suggestion of grass roots lobbying. The case study about the California excise tax campaign that is the subject of the third allegation, and a companion video, do not deal with federal legislation and therefore are not subject to the lobbying restriction.

A wine industry newsletter published an allegation that, at a meeting with private groups, OSAP encouraged a grass roots campaign to curtail or terminate this investigation. We found that no such meeting was held by OSAP. A meeting called by OSAP's parent agency appears to have been the one referred to in the newsletter, but participants in that meeting denied the newsletter's account, and the newsletter's anonymous source refused to talk with us.

[1]"Get Into the Advertising Act," vol. 3, no. 5 (Sept./Oct. 1990), p. 21.

We are recommending that OSAP recover improperly used grant funds from the grantee that organized the Alcohol Policy VIII conference; ensure that grantees agree not to use grant funds for grass roots lobbying; take steps to avoid being associated with such lobbying by grantees; and avoid the explicit mention in its publications of grass roots lobbying. We also recommend that HHS advise participants in government-sponsored conferences that such a conference is not an appropriate forum for grass roots lobbying.

We discussed the draft report's contents with cognizant HHS officials and incorporated their comments as appropriate.

Appendix I contains a more detailed discussion of the issues and quotes all relevant portions of OSAP and grantee publications. We retained copies of the full publications, as well as all other materials we examined, should you wish to see them.

If you have questions, please call me at (202) 512-5881. Other major contributors to this report are Robert Crystal, Assistant General Counsel; and Daniel Schwimer, Senior Attorney.

Robert G. Crystal

for Barry R. Bedrick
Associate General Counsel

Alleged "Grass Roots" Lobbying by the Office for Substance Abuse Prevention

Background

Office for Substance Abuse Prevention

The Office for Substance Abuse Prevention (OSAP), within the Department of Health and Human Services (HHS), was established as part of an effort "to provide strong federal leadership in establishing effective drug abuse prevention and education programs." [See Preamble to P.L. 99-570, 100 Stat. 3207 (1986).] OSAP's duties include developing effective drug and alcohol abuse literature, ensuring the widespread dissemination of prevention materials, providing assistance to communities to develop comprehensive strategies for substance abuse prevention, and preparing documentary films and public service announcements to educate the public concerning the dangers to health resulting from the consumption of alcohol and drugs. [42 U.S.C. § 290aa-6(b) (1988).][1]

The law requires OSAP to establish a clearinghouse for alcohol and drug abuse information. Among the functions of the clearinghouse are to disseminate information concerning (1) the health effects of alcohol and drug abuse and (2) successful alcohol and drug abuse education and prevention curricula. [42 U.S.C. § 290aa-7 (1988).]

Lobbying Restrictions

Federal law prohibits various activities by federal officials that are broadly characterized as "lobbying" or "publicity or propaganda."[2] Since the early 1950s, appropriations acts have contained provisions prohibiting the use of appropriated funds for these activities. OSAP and its grantees have in recent years been subject to the following restriction:

"(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

"(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to

[1]OSAP was renamed the Center for Substance Abuse Prevention, effective October 1, 1992. (P. L. 102-321, 106 Stat. 323.) This report uses the abbreviation OSAP, reflecting the name the agency was known by during the period covered.

[2]The word "lobbying" is not generally used in the laws that are generally referred to as prohibiting lobbying with appropriated funds. Although the word appears in the caption of 18 U.S.C. § 1913, discussed in footnote 3, it is not in the text of the law.

any activity designed to influence legislation or appropriations pending before the Congress."

[Section 509, Department of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1992, P.L. 102-170, 105 Stat. 1107, 1141 (1991).] (The same language has appeared in each of the annual appropriations for the period covered by this report.)[3]

In interpreting provisions similar to section 509, we have recognized consistently that every federal agency has a legitimate interest in communicating with the public and the Congress regarding its policies and activities, and that the law does not prevent such communication. (B-212235, Nov. 17, 1983.) This would be especially true where an agency has a statutory mandate, as does OSAP, to educate the public through the dissemination of information.

Section 509 prohibits expenditures for "grass roots lobbying," that is, for direct appeals to members of the public, suggesting that they contact their elected representatives and urge those representatives to support or oppose pending legislation, or to vote in a particular manner. [56 Comp. Gen. 889 (1977).] Congress did not intend, in passing section 509 and similar measures, to preclude all expressions by agency officials of views on pending legislation or to prevent agency officials from urging Members of Congress to adopt the agency's legislative agenda. In fact, section 509 explicitly acknowledges the propriety of "normal and recognized executive-legislative relationships." (Id.)

Scope and Methodology

In doing our work, we reviewed items in OSAP's publication, Prevention Pipeline, including one in the September/October 1990 issue describing the activist's guide published by the National Coalition on Alcohol Advertising and Family Education; the Activist's Guide issued jointly by OSAP and the National Council on Alcoholism and Drug Dependence; a case study, Taking Initiative: The 1990 Citizen's Movement to Raise California's Alcohol Excise Taxes to Save Lives,[4] and remarks at two government-sponsored conferences, Alcohol Policy VIII and Healthy People/Healthy Environments. We read all the materials in which text

[3]Under section 1913 of Title 18, U.S.C., the use of appropriations by federal officials to influence Members of Congress to favor or oppose legislation is a crime. Enforcement of criminal provisions is vested in the Department of Justice, and we therefore do not discuss the application of section 1913. However, we understand that Justice interprets section 1913 as covering essentially the same conduct prohibited by the appropriation act restrictions.

[4]The Advocacy Institute (July 1988).

constituting illegal lobbying was said to appear. In the case of Prevention Pipeline, we read not only the items specifically complained of but all editions during a surrounding 2-year period. In connection with the two conferences at which lobbying allegedly took place, we read the conference brochures, agendas, and transcripts of excerpts from speeches, and we spoke with people who attended. We viewed the video, Dogs of War: Raising Alcohol Taxes in California,[5] which is a companion to the Taking Initiative case study.

We reviewed minutes of OSAP meetings as well as other agency documents. We interviewed some of those who made the allegations, and representatives of the grantees and organizations that were the subjects of some of the allegations. We analyzed OSAP's responses to our questions on the legal issues, and we discussed our findings with officials of OSAP and of other organizations within HHS.

In connection with the charge that OSAP sponsored or encouraged attempts to terminate this investigation, we tried to speak with the anonymous source of the allegation, but that person was not willing to talk with us. However, we interviewed everyone identified as having been at the meeting that we believe was the one referred to in the allegation, at which government officials were alleged to have encouraged efforts to terminate this investigation.

Principal Findings

OSAP did not violate the law restricting use of appropriated funds for lobbying in its publications or in any of its own activities. However, an OSAP grantee violated the lobbying restriction in connection with the Alcohol Policy VIII conference. Also, grass roots lobbying took place at the Healthy People/Healthy Environments conference, funded by HHS, although without any prior knowledge or complicity by either OSAP or HHS. We found no evidence to support the allegation that OSAP tried to terminate this investigation. We discuss in the following section each of the allegations, beginning with the two conferences.

OSAP Violated Lobbying Restrictions at Alcohol Policy VIII Conference

On March 25-27, 1992, Alcohol Policy VIII, one in a series of national conferences on local, state, and national alcohol problem prevention policy, was held in Washington, D.C., sponsored by the National Association for Public Health Policy (NAPHP). The total conference budget was approximately $79,000, of which $49,000 was funded by a grant from

[5]The Advocacy Institute (July 1992).

OSAP. NAPHP said the grant was used to pay for coordination and logistical support.

We found no violation by OSAP of the anti-lobbying restriction in connection with this conference. However, the grantee, NAPHP, violated the restriction applicable to recipients of federal funds by planning for and using the conference as a forum for grass roots lobbying.

The organizers of Alcohol Policy VIII planned grass roots lobbying as an element of the conference. Dr. Michael J. Stoil, a representative of the Washington Area Council on Alcoholism and Drug Abuse (WACADA), attended both a November 1991 meeting to plan the agenda for Alcohol Policy VIII and the conference itself. Dr. Stoil told us that the agenda discussed at the November meeting included a speech by Representative Joseph Kennedy III, a sponsor of a pending alcohol advertising bill.

Participants in the meeting also discussed scheduling the best time for those attending the conference "to meet with their congressional representatives and for a Congressional Reception to be held on the Hill." In context, it seems clear that the meetings with Members were in order to lobby for the passage of the advertising bill.

Dr. Stoil said that at the planning meeting, no one questioned the need to schedule time for lobbying during the conference. He remembered that Robert Denniston, Director of OSAP's Division of Communication Programs, attended the planning meeting but did not remember whether Mr. Denniston was present for the entire session.

Consistent with the discussion described by Dr. Stoil, the organizers provided time on the Alcohol Policy VIII agenda for participants to meet with Members of Congress. The conference program for March 26 read as follows:

"3:00 P.M. Recess (to enable participants to meet with congressional representatives on Capitol Hill, facilitated by Center for Science in the Public Interest, National Council on Alcoholism and Drug Dependence and others)

"6:00 - 7:00 p.m. Congressional Reception"

Dr. Stoil attended the conference. He said that speakers urged members of the audience to contact Members of Congress in support of the pending alcohol advertising legislation. This is confirmed by excerpts from an

unofficial transcript of the proceedings. We provided OSAP officials with copies of the transcript, and they did not question its accuracy.

OSAP officials told us that the agenda item at Alcohol Policy VIII for meeting with congressional representatives was scheduled "without knowledge of, acquiescence in, or approval by OSAP," that OSAP was not represented on the agenda development committee, and that no one from OSAP was involved in planning the agenda or developing the conference.

We have confirmed the substance of OSAP's statements. Mr. Denniston, the OSAP official identified by Dr. Stoil as having been at the meeting at which the conference agenda was planned, said that he was there only for a few minutes, in order to coordinate logistics between NAPHP's Alcohol Policy VIII conference and the Healthy People/Healthy Environments conference that is discussed in the next section and that was scheduled to take place during the same period, also in Washington. His account is consistent with that of Dr. Stoil, who acknowledged that Mr. Denniston may not have been present throughout the meeting.

Mr. Denniston also said that he was not on the planning committee for Alcohol Policy VIII and had no knowledge of the planned agenda item for those attending the conference to meet with Members of Congress. Although the Acting Director of OSAP made brief opening remarks at the conference, no one from OSAP was on the agenda as a presenter or a moderator. Neither the transcript of remarks at the conference nor Dr. Stoil attributed any of the statements at the conference urging lobbying to OSAP officials.

While OSAP officials and employees did not encourage or participate in it, NAPHP's planning for and conducting of grass roots lobbying at this conference violated the anti-lobbying restriction. Grantees have an independent obligation under the law to avoid use of grant funds for grass roots lobbying. The appropriation act restriction (section 509(b)) expressly applies to the use by grantees of funds derived from appropriations "to pay the salary or expenses of any grant or contract recipient . . . related to any activity designed to influence legislation or appropriations pending before the Congress."[6]

We recognize that the OSAP grant covered approximately two-thirds of the conference cost and that the rest of the funding presumably came from

[6]The criminal prohibition in section 1913 of Title 18, U.S.C., does not apply to contract or grant recipients.

nonfederal sources. However, grass roots lobbying was an inextricable part of the planning process for the conference and of the events that took place. We believe that it would be strained and artificial to suggest that the prohibited activities were solely attributable to nonfederal funds.

Grantees are liable for funds not spent in accordance with law or grant requirements. OSAP should recover federal funds used by the grantee for expenses of grass roots lobbying in connection with the Alcohol Policy VIII conference.

Also, OSAP should institute controls to avoid funding activities of which grass roots lobbying is an element. OSAP's funding agreements with grantees should require that grants not be used for activities that involve grass roots lobbying, or to pay the salary or expenses of grantees' employees or agents while they engage in such activities. (OSAP currently requires grantees to certify that they have not used appropriated funds to engage in "lobbying," but, as used in the certification, that term does not include grass roots lobbying.)

Violations of Lobbying Restrictions Occurred at Healthy People/Healthy Environments Conference

The Healthy People/Healthy Environments conference was held in Washington, D.C. on March 23-25, 1992. The conference was convened by the Secretary of Health and Human Services and was called "the Secretary's National Conference on Alcohol-Related Injuries," although four other departments (Education, Housing and Urban Development, Labor, and Transportation) were also identified as sponsors. HHS funds were used to pay for the conference. (A major portion of the funding was from the appropriation for the Alcohol, Drug Abuse, and Mental Health Administration, the parent agency of OSAP.) The conference was attended by people representing federal and state governments as well as the private sector. OSAP personnel participated in the conference in several capacities: they served on steering committees and spoke at conference sessions.

A few speakers at the Healthy People/Healthy Environments conference reportedly engaged in grass roots lobbying—they encouraged participants to lobby Members of Congress in support of pending legislation. Unlike the grantee-organizers of Alcohol Policy VIII, government officials in charge of planning Healthy People/Healthy Environments did not authorize or encourage this action. The speakers who engaged in grass roots lobbying were not government employees, and we found no reason to believe that the conference sponsors knew in advance that the grass

roots lobbying would occur. Nevertheless, appropriated funds, subject to the lobbying restriction, were used for the conference, and grass roots lobbying did occur.

We recognize that HHS and OSAP cannot control what invited speakers at a conference may choose to say. However, the Healthy People/Healthy Environments conference was directly sponsored and funded by the government. In those circumstances, we believe it is reasonable to adopt some controls at least to deter the use of the conference as a forum for grass roots lobbying. One such measure would be to provide guidance in advance to speakers, explaining that, because of legal restrictions on federal funds, grass roots lobbying is inappropriate.[7]

Items in Prevention Pipeline Did Not Violate Lobbying Restriction

We found no violation of the lobbying restriction in Prevention Pipeline. The primary purpose of Prevention Pipeline, published every other month by OSAP acting in its clearinghouse capacity, is to stimulate the exchange of information among national, state, and local prevention specialists. It offers discussions of new prevention materials, research findings, funding opportunities, conference proceedings, and the activities of community-based and national groups. Information for publication is submitted by readers, federal government agencies—particularly those within HHS—and national, state, and local organizations working to prevent alcohol and drug abuse.[8]

We found, in our review of all issues of Prevention Pipeline over a 2-year period, several items that discussed pending legislation and expressed the views of organizations on that legislation but made no appeal to members of the public suggesting that they contact their representatives in Congress to support or oppose the pending legislation. This kind of discussion is proper.

One item called to our attention by requesters, "Get Into the Advertising Act," in the September/October 1990 Pipeline, raised a question about

[7]OSAP currently requires that documents for grant-supported conferences include a disclaimer to the effect that government support does not imply endorsement of information presented at the conference. However, this requirement does not address government-sponsored conferences like Healthy People/Healthy Environments. In any event, we believe that something more than a disclaimer is warranted to advise participants that grass roots lobbying is inappropriate.

[8]For example, the Pipeline has published information submitted by the United Way, the Anheuser-Busch Companies, the Departments of Agriculture and Housing and Urban Development, the National Highway Traffic Safety Administration, the Responsible Beverage Service Council, the National Council on Alcoholism and Drug Dependence, Mothers Against Drunk Drivers, and the Center for Science and the Public Interest, among others.

compliance with the anti-lobbying restriction. However, we found that publication of the item did not violate the restriction.

The item reported that the National Coalition on Alcohol Advertising and Family Education—

"which has been strongly endorsing and lobbying for legislation requiring warning labels on alcoholic beverages, has now developed an activist's guide for communities that want to help spread the message."[9]

The item went on to say that the activist's guide helps people "show their support in various ways, including writing to U.S. Senators to urge support." The item did not refer to any specific legislation or indicate that any was then pending, nor did it expressly endorse the idea of writing to Members of Congress in support of legislation.

In fact, alcohol labeling legislation was pending before the Congress at that time, and the activist's guide, What You Can Do to Support Health and Safety Warning Messages in Alcohol Ads, described in the item is largely concerned with promoting its enactment. Among the techniques the guide recommends for doing so is that people "write to your Senators and Representative to urge them to cosponsor" one of the pending bills.[10]

OSAP disseminates material from diverse sources without necessarily agreeing with the policies or practices of all those sources. OSAP could not perform its function as a clearinghouse if it published only information it approves of or that is consistent with its policies. In recognition of this, Prevention Pipeline includes the following disclaimer: "Publication of information and products does not imply endorsement by OSAP or the Federal Government."

However, while satisfying its clearinghouse role, OSAP must also prevent use of appropriations for prohibited practices like lobbying. OSAP cannot be a pure conduit, without attention to the content of what it publishes, because the Pipeline is financed with appropriated funds. In order to avoid violation of the anti-lobbying restrictions, OSAP must exercise some control over the content of the Pipeline, beyond merely publishing a disclaimer.

[9]Vol. 3, no. 5, p. 21.

[10]The activist's guide itself does not violate federal restrictions on lobbying because, according to OSAP, no federal funds or personnel were involved in producing or disseminating it.

OSAP acted properly in publishing the item describing the activist's guide. The Pipeline item did not identify specific legislation or directly urge readers to take any action. OSAP's clearinghouse function, and its responsibility to disseminate information about techniques for controlling alcohol abuse, support publication of information of the kind represented by the activist's guide. Telling the public that a private group is urging the enactment of labeling legislation, and that it has published a guide for those who wish to help in that effort, is consistent with these duties.

Yet, while OSAP did not expend appropriations for grass roots lobbying in this instance, OSAP should have been more sensitive to the controversial aspect of this item while compiling material for inclusion in the Pipeline. Readers could have been informed of the existence of the activist's guide without explicit reference to the part of it that suggested writing to Senators to urge support for a bill.

Activist's Guide Did Not Violate Lobbying Restriction

We found no violation of the law by OSAP relating to the publication titled Activist's Guide: 1990 National Alcohol & Other Drug-Related Birth Defects Awareness Week, issued jointly by the National Council on Alcoholism and Drug Dependence (NCADD) and OSAP. (This is not the same activist's guide discussed in the previous section in connection with the allegations about Prevention Pipeline.)

This publication (hereafter referred to as the NCADD Guide) was supported with federal funds. Its purpose is to educate the public on how to draw attention to the issue of alcohol and drug-related birth defects. It provides information and suggestions for building coalitions, obtaining funding, and using the media effectively. It also sets forth strategies to improve treatment of women and updates the status of state and local initiatives affecting pregnant women.

The NCADD Guide contains no suggestion that members of the public contact legislators concerning pending legislation, nor even any mention of pending legislation. The purpose of the NCADD Guide—promoting public awareness of alcohol-related birth defects—is consistent with OSAP's duties, which include "develop[ing] effective drug and alcohol abuse prevention literature" and educating the public concerning "the dangers to health resulting from the consumption of alcohol and drugs." [42 U.S.C. § 290aa-6(b) (1988).]

California Case Study and Video Did Not Violate Restriction

Neither the case study entitled Taking Initiative: The 1990 Citizens' Movement to Raise California Alcohol Excise Taxes to Save Lives nor its companion video, Dogs of War: Raising Alcohol Taxes in California, violated the anti-lobbying restrictions.

We found nothing in the case study or video, both prepared by the Advocacy Institute, and funded by OSAP, to suggest that members of the public contact members of Congress with regard to any pending federal legislation. Both dealt with aspects of the Proposition 134 campaign in California. Proposition 134 was a state initiative to raise excise taxes on alcoholic beverages and to use the revenues for alcohol-related programs. The case study and video describe the process of getting Proposition 134 on the California ballot, the opposition from the alcohol industry, the media campaign for passage, and the political battle over enactment.

The case study and video do not constitute grass roots lobbying. They refer to legislation—Proposition 134 itself—but only at the state level. We have held that restrictions on grass roots lobbying like the one under discussion here do not apply to activities in connection with state legislation. (B-214455, Oct. 24, 1984; B-193545, Mar. 13, 1979; B-193545, Jan. 29, 1979.)

Allegations About Attempts to Halt GAO's Investigation of OSAP Were Unfounded

We found no credible basis to conclude that OSAP or any other federal agency tried to halt this investigation. The only evidence for that charge comes from an anonymous account of a meeting said to have been held by OSAP. The source of the allegation would not talk with us. We found that a meeting did take place but that OSAP was not involved, and the allegations about the meeting were uniformly contradicted by everyone we identified as having been present.

Wine Business Insider, an industry newsletter, reported in July 1992 that soon after Members of Congress asked us to conduct this review, OSAP officials called a meeting to "launch a lobbying effort to stop the investigation."[11] Attributing the information to a source within HHS, the newsletter reported that representatives of "advocacy groups"—specifically the Advocacy Institute, the National Coalition to Prevent Impaired Driving (NCPID), and the Center for Science in the Public Interest (CSPI)—were at the meeting.

[11]Vol. 2, nos. 11 and 12 (July 31, 1992), p. 1.

The newsletter reported that the following strategies were developed at the meeting: (1) OSAP would provide the advocacy groups with names and addresses of organizations receiving OSAP funding; (2) the groups would alert both their own members and OSAP grant recipients of the request for the GAO investigation; and (3) at OSAP's suggestion, the groups would draft letters to be sent by group members and others to Members of Congress, urging that the Members dissociate themselves from the request.

In addition, congressional staff provided us with a copy of a June 1992 publication issued by NCPID, one of the organizations alleged to have planned the campaign with OSAP to stop this investigation. The NCPID publication describes efforts by the National Beer Wholesalers Association to initiate a GAO investigation of OSAP and contains a sample letter to Members of Congress urging that they withdraw their names from the request to GAO, and a list of all Members who signed the request.

The appropriations act lobbying restriction is not applicable to this situation. It applies only to lobbying with respect to legislation pending before the Congress, not to efforts directed at affecting a GAO investigation. No such lobbying is alleged to have been discussed or to have taken place at the meeting.

We did not need to decide the related question of whether it would be a misuse of appropriated funds, apart from the lobbying restriction, for a federal agency to mount a campaign to thwart a congressionally requested GAO investigation, because we found no credible evidence that OSAP or any other agency did so. (As discussed in the following paragraph, we believe that the meeting referred to in the newsletter involved not OSAP but its parent agency.)

OSAP categorically denied the newsletter's allegations, stating that OSAP officials did not attend a meeting such as the one described in the newsletter and that no one within OSAP instigated or participated in the drafting of letters either to Members of Congress or to GAO. OSAP said that lists of OSAP grantees are public information, routinely given out, but that it did not provide any of these lists in order to derail this investigation or to start a letter writing campaign.

OSAP denied any prior involvement in or knowledge of the activities by NCPID and the Advocacy Institute in relation to this investigation. OSAP said that neither NCPID nor the Advocacy Institute had ever directly received an OSAP grant or contract; NCPID received small amounts of funds for travel

expenses to federal conferences and for technical assistance, and the Advocacy Institute received OSAP funds as a subcontractor on a few projects.[12]

We asked the staff of the Wine Business Insider to put us in touch with their source within HHS. A spokesperson for the newsletter informed us that they had urged, and would continue to urge, the source to come forward to GAO. However, the source has not done so and none of the available evidence supports the allegations in the newsletter of improper behavior by OSAP personnel or any other government officials.

We asked the groups identified in Wine Business Insider as having been represented at the meeting whether they knew of such a meeting. They corroborated OSAP's statement that they did not meet with OSAP, but they informed us of a meeting they had attended during the time in question with Dr. Elaine Johnson, the Acting Administrator of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), then the parent organization of OSAP.[13]

It seems likely that the meeting with ADAMHA is the one referred to in the newsletter. Dr. Johnson held the meeting, at her request, with representatives of NCPID, CSPI, NCADD, and the Legal Action Center on May 28, 1992, shortly after Members of Congress had requested this investigation, and this investigation was discussed.

Participants in the meeting uniformly contradicted the newsletter's account of what took place. We interviewed everyone we were able to identify as having attended the May 28 meeting. (We found no indication that anyone from OSAP was present.) All said that the purpose was to discuss the deteriorating relationship of ADAMHA and OSAP with the alcohol industry. Dr. Johnson was concerned about the alcohol industry's complaints that industry representatives were being excluded from conferences and were not communicating with agency officials. The discussion centered around ways for ADAMHA to communicate better with the industry, so that ADAMHA could more effectively carry out its mission.

[12]Congressional staff brought to our attention a letter from NCPID to Samuel K. Skinner, then Secretary of Transportation, urging that he bar the alcoholic beverage community from participation in a seat belt use campaign, and a letter from NCPID urging support of a pending bill to control alcohol advertising. These activities by NCPID were not financed by appropriated funds and therefore do not violate the appropriations act restriction.

[13]ADAMHA was reorganized and renamed the Substance Abuse and Mental Health Administration, effective Oct. 1, 1992. [P. L. 102-321, 106 Stat. 323 (1992).] We refer to it in this report as ADAMHA, as it was known during the period covered.

All the participants denied that the purpose or subject of the meeting was to launch a lobbying effort to stop this investigation. While admitting that the GAO investigation was discussed, they said that it was as an illustration of the deteriorated relations between ADAMHA and the industry.

Those who were present also denied that anyone provided the advocacy groups with names and addresses of organizations receiving OSAP funding, or that Dr. Johnson suggested that the advocacy groups draft sample letters to be sent to members of Congress urging that members remove their names from the request. The advocacy groups acknowledged that they alerted their members of the request for this investigation. NCPID, without using grant funds, encouraged its members to write to their representatives in Congress urging that they stop the investigation. However, the groups said that they took these actions on their own initiative, and we found no evidence to contradict that.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Rockville MD 20857

September 23, 1993

Barry Bedrick, Esq.
Office of the General Counsel
General Accounting Office
Room 7904-A
411 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bedrick:

This letter responds to one of the findings in the May, 1993, General Accounting Office (GAO) Report on Alleged Lobbying Activities by the former Office of Substance Abuse Prevention (OSAP) within the Department of Health and Human Services and to various subsequent discussions between our offices.

In the GAO report, one of the findings was that although OSAP had not violated the anti-lobbying restriction in connection with the Alcohol Policy VIII Conference on March 25-27, 1992, the National Association for Public Health Policy (NAPHP), a recipient of an OSAP conference grant, had violated this restriction. Your report concluded that "OSAP should recover federal funds used by the grantee for expenses of grass roots lobbying in connection with the Alcohol Policy VIII conference."

Since the publication of your report, NAPHP has challenged the factual underpinnings of your findings in connection with the Alcohol Policy VIII conference. In part, NAPHP claims that Federal funds were not, in fact, used for lobbying activities. Unfortunately, we do not have the resources, either personnel or monetary, to resolve this factual dispute. Moreover, in our best estimation, either none of or a negligible portion of the OSAP grant went toward the activity identified as lobbying in your report.

Accordingly, we do not believe that it is necessary to attempt to recover any Federal funds from NAPHP, as recommended in your report. Other than the issue raised in your report, NAPHP's performance under the conference grant was more than acceptable. We propose, therefore, to take no recovery action with regard to NAPHP. We also propose to inform NAPHP that it remains in good standing with this Agency and that its ability to respond to future requests for proposals and applications generated by this Agency will not be compromised. Your written concurrence with this proposed course of action would be greatly appreciated.

If you have any questions or if you wish to discuss this matter further, please do not hesitate to contact me.

Yours sincerely,

Annette C. Hamburger
Attorney

cc: J. Leone
V. Smith

GAO United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

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B-248812

October 13, 1993

Annette C. Hamburger, Attorney
Office of General Counsel
Department of Health & Human Services
Rockville, Maryland 20857

Dear Ms. Hamburger:

In our report, "Alleged Lobbying Activities by the Office of Substance Abuse Prevention" (GAO/HRD-93-100), we found that illegal lobbying had occurred during a conference sponsored by the Office (now the Center) for Substance Abuse Prevention (CSAP). We recommended that whatever funds were determined to have been spent for that purpose be recovered by the Department of Health and Human Services (HHS) from the National Association for Public Health Policy (NAPHP), the grantee that had organized the conference using CSAP funds.

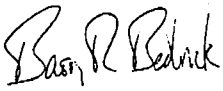
In your September 23 letter, you ask that we concur in your proposal that the Department take no recovery action with regard to NAPHP. You explain that NAPHP has "challenged the factual underpinnings" of our findings, that in HHS' best estimation "either none of or a negligible portion" of the grant was used for the activity identified as lobbying, and that to make the necessary factual determinations would require resources that the Department cannot readily provide. We agree that, under the circumstances, it would in all likelihood not be cost-effective to attempt to make such factual determinations or to pursue recovery.

You also ask for our concurrence in your proposal "to inform NAPHP that it remains in good standing with [HHS] and that its ability to respond to future requests for proposals and applications generated by [HHS] will not be compromised."

414:3:6

You explain that, apart from this one issue, the performance of the grantee was "more than acceptable." Our report did not intend to suggest that NAPHP was not acting in good faith. Consequently, we know of no reason why NAPHP should not remain in good standing, or why it should not be eligible for funding in future.

Sincerely yours,



Barry R. Bedrick
Associate General Counsel

Mr. McINTOSH. I think the case history that you presented to us is very telling, particularly in response to one of the arguments that opponents of our legislation have argued, that Federal law already prohibits the use of taxpayer dollars from lobbying. And we have seen anecdote after anecdote of cases where that current provision, known as the Byrd amendment, is not working, and I think you have given us probably one of the most concrete examples to date, complete with the GAO investigation that proves that taxpayer funds were, in fact, used. And it is quite remarkable to me that they would have the chutzpah to actually take time out in one of their conferences to go and lobby Congress knowing that they were funded with that type of grant money. I appreciate that record and your bringing it forward.

What I wanted to explore with you is would you say this type of response, both by the agency of benign neglect in terms of monitoring its grantees and by the grantees in flagrantly ignoring restrictions and going ahead and lobbying for causes they think are good and, therefore, justify violating the antilobbying provisions, is this common or is this a unique occurrence?

Mr. SARASIN. I think it's very common, Mr. Chairman. In this case, I wouldn't be as charitable to say that with CSAP, it's benign neglect. It's a dedicated policy. They have an agenda and the agenda is in working in cahoots really with others who share their philosophy. The agenda is to do in the licensed beverage industries and to create all kinds of restrictions.

Congress never decided that's the direction they should go, but that's the direction they are going. And to accomplish that they rig conferences, they bring in their own people. They pay for the transportation costs and everything else of the people who were there to testify. They exclude any representative from the licensed beverage industry. They are prohibited from participating, which is in violation of another law, the Freedom of Access Act, and they blithely go on, create their own record and then say that the world wants them to do these things.

Well, they are using Federal taxpayer dollars in a way that's totally unconscionable and it's that kind of thing that we believe would be at least slowed down with your legislation.

Mr. McINTOSH. Turning to the question that Mr. Tate posed in his opening statement, do your members feel they are having to compete essentially with these government-funded groups in trying to get their message out?

Mr. SARASIN. Oh, of course. And the government groups and their allies are saying, well, that's OK, because somehow the private sector is doing their thing and the licensed beverage industry, our people, are advertising their products and competing for market share and doing the things that people are allowed and encouraged to do in a free enterprise economy.

That bothers the government regulators and their allies and so they feel they have an obligation to spend taxpayer dollars to counter the private sector efforts and have no qualms about doing that and some of the things are really atrocious. But they continue to spend taxpayer funds and we believe this kind of legislation would help to put the brakes on those policies.

Mr. MCINTOSH. One of the examples that we saw earlier in the first hearing was the case of the National Wildlife Federation that receives Federal money and as part of its charter is prohibited from lobbying. One of its internal memos to its board basically revealed that the Secretary of Interior had pressured them nonetheless to recruit their board members to lobby against various changes in the Endangered Species Act.

Is it your impression that the offices in HHS similarly recruit these outsiders who they also give grant money to in order to pursue their agenda?

Mr. SARASIN. We can provide for the record, Mr. Chairman, chapter and verse where that's occurred over and over again.

The GAO report, which I believe is—either is or will be part of the record—indicates a couple of specific examples of that occurring and a couple of others where GAO investigated and decided they didn't have enough information.

For example, it was our impression based on fairly reliable information at the time that when the GAO request was made, that sort of made the people over at OSAP and their allies go a little bit ballistic. They held a big meeting to try to figure out how to stop the investigation. Well, suddenly no one could document the meeting or maybe it didn't happen. In fact, in the GAO record is a reference that, well, they really held a meeting to figure out how to get the licensed beverage industry more involved in a positive way in the things they were doing, you know. Frankly, if I believed that, I'd believe in the tooth fairy. That just isn't where they're coming from.

Mr. MCINTOSH. Let me ask you, calling on your experience when you were a Member here, is this type of lobbying a relatively new phenomenon? Is it something that's grown up since the 1970's or was it something that was present then, but perhaps not talked about as much?

Mr. SARASIN. I think it's grown dramatically in the last 20 years. When I was on that side of the dais, I—at least I was not aware of it as much as I am today and maybe it's simply because I am now running a trade association and involved on a daily basis with that kind of activity and I may not have paid enough attention to it before.

I think it's grown. I think it's much more dramatic than it used to be. The stakes are certainly larger. The dollars are greater that are being spent in this area and spent against the interests of other Americans who are trying to use their own after-tax dollars to make their point of view known.

Another example, Mr. Chairman, which I think is atrocious and was also in the GAO report, and which GAO didn't find to be a problem because it affected State legislation. You will recall a referendum in California a few years ago dealing with an excise tax increase on licensed beverages. There were pretty good arguments for and against that excise tax increase in that referendum. The referendum lost.

HHS, through CSAP, funded a video on how not to let that happen again, called the Dogs of War, and it was just the big, bad alcohol industry got involved and because they got involved, the ref-

erendum was lost and we're not going to let that happen again. And the credit line says, funded with a grant from CSAP.

Now, it seems to me that that isn't the business of the Federal Government, getting involved in this kind of activity. GAO said, well, it affected State legislation so it didn't bother them. Your bill, Mr. Chairman, would get at it whether it is State, local, or Federal.

Mr. MCINTOSH. That is right. And because the problem occurs everywhere.

Let me tell you, when I go home, I am continually barraged by people who receive Federal money lobbying essentially for their programs to be continued. And then when I go and actively seek out just the average person on the street, and I spend a lot of time going into lunchrooms in factories and asking people, "Any message for Washington?" it is totally different. They are not saying spend more on their favorite program. In fact, usually what they are saying to me is, "Cut our taxes. We are having difficulty making ends meet. My wife and I are both working and we are raising kids."

I think it's our responsibility to put an end to this type of lobbying at least when it is taxpayer subsidized, and people have a free speech right to advocate their positions, including coming and asking for money from us, but I don't think we should go and tax working men and women to help subsidize those efforts.

Mr. SARASIN. Well, obviously I agree with you, Mr. Chairman. And the tax code supposedly recognizes that and Mr. Peterson raised the issue before: Is there another way to get at it? The tax status of the National Beer Wholesalers Association is a 501(c)(6). We are a trade association. We are allowed to lobby. Although Congress passed a law that our members are not allowed to deduct any of the dollars used for lobbying, and we have to account very strictly for that. Every dime we spend on their behalf for lobbying is something that comes out of their bottom line. It's dollars between them and feeding their family.

Other organizations, charitable organizations, 501(c)(3)'s are not supposed to lobby at all, are not supposed to do any substantial lobbying. They are not in the same position under the tax laws as my association is and yet for years they have been violating the law and doing a fair amount—more than a fair amount of lobbying, I believe, usually to try to get more money out of the Federal Government or create another Government program.

The problem is the IRS doesn't enforce the laws that exist today and their rule of thumb used to be that anything substantial in the IRS vernacular meant about 5 percent of the resources being dedicated to lobbying.

So I don't think you are out of line at all here and I think that certainly the Congress has got to get involved in trying to monitor this stuff because you have agencies that are going off with their own agenda. They don't care what happens to the Congress, they figure you're temporary. And it's time to reverse that.

Mr. MCINTOSH. We are going to change things during our temporary tenure here.

One other quick question for you, does your association and your members engage in activities that are, I would call, charitable in nature but essentially public-service-type warnings to people of the dangers of excessive drinking?

Mr. SARASIN. We do a lot of that, not only National Beer Wholesalers Association on their own, but in cooperation with the Beer Institute, which is the trade association of brewers, with the major breweries, and with others in the licensed beverage industry.

There are a lot of things we do. We support a group called the Licensed Beverage Information Council which provides grants to organizations around the country who are dealing with alcohol abuse and drunk driving and underage drinking. We have committed millions of dollars as an industry in this area.

If you believe what the Federal Government says, though, you can't listen to what we have to say. We are the bad guys, we are the enemy. No group should take money from us because we can't be trusted. They lay that out explicitly that we are the bad guys and anything that discusses moderation or responsible use of licensed beverages is prohibited.

Mr. MCINTOSH. So the Government agencies are telling charitable groups don't accept money or funding from you, take it from us?

Mr. SARASIN. Exactly.

Mr. MCINTOSH. And then they are turning around and asking them to be part of their lobbying effort?

Mr. SARASIN. Be part of the lobbying effort and go out with the agenda they have.

The problem, Mr. Chairman, is that there isn't anyone that will defend alcohol abuse or drunk driving or underage drinking. The problem is that the Government is concerned about drinking. They don't see a distinction between drinking and drugging. They don't see a distinction between illicit drugs and the moderate and responsible use of licensed beverages. And that's what they broadcast. And that's the philosophy they are trying to get across.

It's not that we couldn't—in fact, if we pooled our efforts, we could probably accomplish a great deal more than we are accomplishing today. And we keep offering that but we're looked at as the enemy, the guys in the black hats and we can't be trusted, and they tell their people don't take our money. Don't take any money from the licensed beverage industry. Don't support a designated driver program, for example. This is CSAP's language. Don't support a designated driver because somehow it implies that it's OK for everybody else to drink too much. Well, that's not the implication at all. So rather than have safe, sober drivers on the highway, the Federal Government would just as soon just not get at that and that's crazy. That's foolish. But they do it all the time.

Mr. MCINTOSH. It is not the first and, unfortunately, probably won't be the last example of idiocy in the Federal Government.

Mr. SARASIN. Well, we—no one has a trademark on that or a lock on it. But it is really out of hand and it has got to be reined in, and I think this bill goes a long way toward making that happening.

Mr. MCINTOSH. Again, thank you for coming. Let me turn now to my colleague, Mr. Peterson.

Do you have any questions of Mr. Sarasin?

Mr. PETERSON. Well, I don't know if you understood; it seemed like you did, a little bit of what I was getting at. Does your group

have any problem if we can figure out some less bureaucratic way and more certain way to enforce this?

Mr. SARASIN. I don't think there is a less bureaucratic way and I'm not convinced this is a bureaucratic way. For example, the bill that Congress passed last year on denying deductibility for lobbying is a heck of a lot more bureaucratic than this bill will be in application.

Mr. PETERSON. I don't think I agree with you. You haven't seen these yellow book requirements on Federal audits. You ought to go read one of them sometime. I am sure this is going to end up with a yellow book requirement that is going to be unreal.

Mr. SARASIN. But we are all subject to Federal audits, Congressman, and they are all pretty miserable if you ever have to go through one.

Mr. PETERSON. Right.

Mr. SARASIN. But I think the Congress has got to say at some point to these agencies, wait a minute, we set the policy around here and we'll decide what direction the politics in it ought to take, not the agencies. And what we have are just a number of groups that are living off the Federal Government to a large extent and that's wrong.

I mean, there isn't anything in this bill that I see that prohibits anyone from having a point of view or getting others to go along with them or anything else, but you don't have to take Federal dollars in the process and you shouldn't be using Federal dollars to espouse a political philosophy.

Mr. PETERSON. I don't disagree at all with what you are saying. My problem is this: What this bill is, it says that GAO is going to put these audit requirements on these grants.

Mr. SARASIN. I think it says they are subject to audit from time to time, and it doesn't mean that everybody gets an audit all the time but it's like the IRS audit. We are all—personally we are all subject to an audit, it's supposed to keep us honest.

Mr. PETERSON. When you say this, what happens is the GAO then established guidelines and then the individual auditors, private auditors of all these different folks have to follow these guidelines. And there's going to be a separate section now where in any audit of any Federal program, you are going to have a separate section as to whether they meet these political advocacy limits, and there is going to have to be an opinion on that, I suppose, and whatever else GAO decides to come up with in conjunction with the auditing entities that do this kind of work.

I am just telling you that when we put the internal control requirements on these agencies, I mean, what developed out of that was this huge book and all these requirements and all this paperwork that nobody pays any attention to. You can't even find out whether people meet their internal control requirements or not because most of these agencies do not have them accumulated anyplace where anybody can find them. They are certainly not put together in a way you can access them in a lot of cases.

My concern is we are going to go through all this commotion and make all this work out there and I am not sure we are going to be able to accomplish all that much in the end. That is all I am saying.

It just seems to me that we would be better off putting this in the tax area where they are more used to doing this kind of stuff and we won't have to get into all this audit stuff. And if you violate, they are going to yank your (c)(3) or (c)(4) or whatever it is.

I don't think we are going to accomplish what we want and I think I want to accomplish what you want to accomplish. My only concern is in my past experience in dealing with this in the real world, I just don't think that this is going to end up accomplishing what we want.

So my question—I guess my question just was this: If we can come up with another way, are you guys willing to consider that? You are not hung up on how we get this done if we get it done right?

Mr. SARASIN. Oh, no. We're concerned about—obviously, Congressman, we are concerned about what happens and the way it is happening and the fact that taxpayer dollars are being used in ways they should not be used. The manner in which that is done, we certainly would—are not locked in stone, but we feel this proposal is much better than anything else that's been suggested and the alternative is business as usual and that's not acceptable.

Mr. PETERSON. No, I am not saying business as usual and I haven't had time—and it is my own fault I didn't get working on this earlier. I think we can come up with some different ways to do that that are going to accomplish more and have less of an obtrusive behavior in the way it operates. Thank you.

Mr. MCINTOSH. Thank you, Mr. Peterson. I appreciate it.

Let me, if I could pause for a second, Mr. Istook is one of the cosponsors of the bill, he wanted to participate particularly for the second panel on constitutional issues.

Is there unanimous consent that he could join us for the remainder of this hearing?

Mr. PETERSON. Fine with me.

Mr. MCINTOSH. Seeing no objection. Welcome, Mr. Istook.

Mr. ISTOOK. Thank you. I have to leave in a bit.

Mr. MCINTOSH. Mr. Gutknecht.

Mr. GUTKNECHT. Thank you, Mr. Chairman.

I want to pursue a couple of points that were raised and I want to really get back to this, the IRS issue, but first of all, I was intrigued and I only caught the last part. You were discussing one of these seminars where they actually talked about defacing outdoor advertising.

Could you tell us a little more about that? Do you have any documentation about that? That was fascinating.

Mr. SARASIN. We have and can provide the Government's own documents. CSAP puts out a book called Prevention Pipeline, which is designed to be an aid to the practitioners in the field, the people who are out working for various drug and alcohol groups around the country. It has a bias, however, that's pretty much an antialcohol bias from our perspective. I mean, again, we are not in favor of alcohol abuse but we certainly are not opposed to alcohol use and moderate and responsible drinking but the Federal Government, or at least, HHS is. And their bias is displayed in that document.

GAO looked at that and that's in the GAO report, because a couple of years ago we complained about the bias in that document as well and they said, well, it's really not the official position of the Federal Government or Health and Human Services or CSAP and they kind of have a disclaimer in the front of it that says, this is not to be used or interpreted as official policy. However, you never see anything that's provided by the licensed beverage industry in there. There's a bias in it.

One of the groups they talk about with great praise is a group called Artfux, a-r-t-f-u-x, Artfux. Artfux is designed to deface billboards and vandalize billboards and take off licensed beverage advertising and, I assume, tobacco advertising and so forth and the attitude is, well, you have to break a few eggs in order to succeed. This is sort of the philosophy or the language——

Mr. GUTKNECHT. That was Karl Marx.

Mr. SARASIN. Well, it doesn't surprise me.

Break a few eggs and it's OK—the message conveyed is it's OK and, gee, isn't this wonderful. And they talk—I can recall another one. This is again an official Government publication, another incident where a school teacher was saying that she's taking a lead from this group that's defacing billboards, and she's getting her kids to bring in magazines and deface the advertisements that are in the magazines to change the advertisement if it's a beer ad or something like that, because those, of course, are bad. And again it's talked about with great favor, isn't this a wonderful program, if you want some more information here is where you get it.

These are our dollars being used for this purpose and it's wrong. It's just plain wrong. There's something wrong with that picture.

Mr. GUTKNECHT. Mr. Chairman, I appreciate the testimony and hopefully we are going to succeed this afternoon on the House floor of, at least, getting the ball rolling on this side.

I do concur, at least in part, with my colleague, Representative Peterson from Minnesota. I do hope that we will not preclude pursing this thing through the IRS. As a matter of fact, I would suggest perhaps that this subcommittee under the direction of Representative McIntosh, send a letter to the IRS, because if the IRS has time now, at least it has been published, that they intend to do this random audit of all taxpayers and if they have enough time and staff to go after otherwise law-abiding citizens, I would hope that they would pursue the law, at least, as aggressively as it relates to the nonprofit organizations and their use of what may be taxpayers dollars and enforcing the IRS statutes as they are today.

So I would suggest perhaps we, at least, pursue that. I don't think they are mutually exclusive. I think we can pursue this legislation as it is and I am going to support it. But I think we also should perhaps send a message to the IRS that we think, considering all the other things that they have in mind in terms of audits, that perhaps they need to be more aggressive in pursuing the laws that exist right now for the use of funds by these 501(c)(3)'s and (c)(4)'s and so forth.

I appreciate your testimony and I will discuss this later with Mr. McIntosh and his staff. Thank you.

Mr. MCINTOSH. Thank you, Mr. Gutknecht. I will look forward to sitting down with you on that.

Mrs. Meek, do you have any questions for our first witness?

Mrs. MEEK. Mr. Chairman, I don't have any particular questions. I would just like to reiterate my concerns from our first hearing so our panelists can hear them.

I just feel that we do have regulations and we have guidelines and we have statutes which govern this now. And I feel that if the abuses are that strong, that we should double the enforcement to try the persons or groups that are making these abuses.

I just find it difficult to put something in the statute which is already there. It is already covered. It just needs enforcement, which leads me to something which I mentioned the very first day. What is going to be the fiscal impact of all of this? This is going to cost money. You are going to need people to keep these accounts. You are going to need people for the enforcement. No one yet has said to me the amount of money that this is going to cost the Government. I can understand that in the end you are trying to save money, but you are going to spend an enormous amount trying to follow these guidelines.

All right. You have no penalties, as I have read it, for the infringement. Perhaps someone will explain that to me before this is over. What are the penalties, fiscal as well as otherwise, for this infringement? Personally, I do not think we need further legislation in this regard.

Thank you, Mr. Chairman.

Mr. SARASIN. May I comment on that Congresswoman?

Mrs. MEEK. Yes.

Mr. SARASIN. Thank you.

Yes, it would be wonderful if current laws were enforced, but they don't go far enough. As I pointed out, there is the current law the prohibition that says the grantee's recipients of Federal dollars may not lobby the Congress. It doesn't say anything about lobbying State and local government.

And so you have a situation that at least we're familiar with and bothered by where HHS has decided that by the year 2000, 30 States should raise the excise tax on beer. That's a policy they have established. It's called Healthy People 2000. They have amended it recently and one of their goals is that 30 States will raise the excise tax on beer. And they are paying people to go out and make that happen.

Well, what business is it of the Federal Government to tell the States how to run their tax situation; and I submit to you none, and so you've got Federal dollars being expended to raise taxes on somebody else.

Now, because we're the great beneficiary of this increased tax, we certainly don't want that to happen, but that's their stated philosophy—I mean, their stated goal. And they are paying groups to go make that happen. And that's wrong, there's something wrong with that picture and this bill gets at that and the current law currently does not.

So I think there is a need for a change in the law and the McIntosh proposal goes a long way to make that happen. And as I read it, Mrs. Meek, there are some penalties stated in the proposal especially for the grantees and the Government people who give away all these dollars and who work their—work their wiles

in the manner in which it has been done in the past. We're talking about $39 million, apparently. That's a lot of money.

Mrs. MEEK. If I may go back a little bit further, Mr. Chairman.

Mr. MCINTOSH. Certainly.

Mrs. MEEK. What is the use then of going back 5 years, making it retroactive 5 years?

I've read the constitutional paper that the majority raised but is it constitutional in your mind to make owners of farms, or whatever, enter this and have small businesses choose between a political advocacy with their own funds this year, for an example.

A small group, one of the ones listed here, may use their own money this year to pay for their political advocacy and why is it fair if they are getting a Federal grant to prohibit them from getting a Federal grant during the next 5 years? They use their own money——

Mr. SARASIN. It doesn't prohibit them from getting Federal grants. It prohibits them from engaging in political advocacy if they are receiving and spending a substantial amount of their resources engaging in political advocacy if they are receiving Federal grants. The 5 years——

Mrs. MEEK. Suppose they use their own funds?

Mr. SARASIN. Five years is prospective. It doesn't go back before 1996, as I recall reading the statute, and I would assume it's to average it out.

Let me just give you my own experience or our own experience in the National Beer Wholesalers Association. We're a lobbying group. We're a trade association. Our lobbying expenses vary from year to year.

It would depend on what happens. You know we react a lot as a trade association to whatever the Congress is doing. If the Congress isn't doing too much, from our view, we don't have to spend too much to do the research and put the resources to work. But if you look back over time and you'd see that on average we may spend x amount of dollars over the years, but 1 year to the next, those numbers can change, so I assume the purpose of the 5 years is really to work out an average to determine if the 5 percent has been violated.

Mr. MCINTOSH. If the gentlelady would yield?

Mrs. MEEK. I just want to quote something from the amendment, if I may?

Mr. MCINTOSH. Certainly.

Mrs. MEEK. To further—give further credence to my question.

On page 76, line 12, and I read: No grant applicant may receive any grant if its expenditures for political advocacy for any one of the previous 5 Federal fiscal years exceeds its prohibited political advocacy threshold, but no Federal fiscal year before 1996 shall be considered. And that shows you they do have that 1-year gap there.

For purposes of this title, the prohibited political advocacy threshold for a given fiscal year—and then they go ahead to talk about the formula.

But I want to go back to ask you the same question: Is it constitutional to make the owners of these farms and small businesses choose between political advocacy with their own funds this year

and getting a Federal grant during the next 5 years? Is it constitutional?

Mr. SARASIN. Well, I don't—Congresswoman, I don't hold myself—I'm an attorney but I don't hold myself out as a constitutional authority, nor would my constitutional professors who have helped me out that way.

I think it is. I think when you look at other laws the Congress has enacted—for example, we objected to the changing of the drinking age from 18 to 21. A lawsuit was brought. The courts said—the Supreme Court eventually said, and obviously I'm paraphrasing, that Congress could do that. And one of the arguments before the Supreme Court, was the Constitution gives the authority to set those ages to the States.

The 21st amendment, which repealed prohibition, gave the authority to deal with the sale and transportation of beverage alcohol to the States pretty clearly. But the Supreme Court said the Congress can do what it did, which was to withhold highway funds unless the States had a 21-year-old drinking age. That's what they did. They didn't say the age was going to be changed. They just said if you don't change it, Mr. State or Mrs. State, you're not going to get highway funds.

And I don't see anything differently here. It's whether or not you are—no one is entitled to Federal grants, so any kind of a prohibition or string could be put on them.

Mrs. MEEK. One last question. Then would you hold that same kind of prohibition up against the people who sell weapons?

Mr. SARASIN. Would I? I'm not sure I follow——

Mrs. MEEK. Large corporations. Would you advocate the same rule of thumb which you just finished describing, would you hold the people who make weapons to the same measure?

Mr. SARASIN. You're saying should the people who make weapons be denied Federal grants if they spend more than 5 percent of their money lobbying?

Mrs. MEEK. Yes.

Mr. SARASIN. I think this bill specifically exempts defense contractors and——

Mrs. MEEK. And that was my reason for asking you. It's in the bill. I want to know what you think.

Mr. SARASIN. I think the issue is—with all due respect, I think the issue is quite different. And again, I hadn't thought about it very much. I'm not sure I'd be prepared to offer much in the way of a solution.

Mr. MCINTOSH. If the gentlelady would yield?

Let me clarify one thing about the bill on that point. It exempts Federal contracts so that somebody who provides a service of value to the United States, but if that same entity, say Lockheed that delivers airplanes, also receives a grant, they would not be exempt just because they are a contractor. So if they are a grantee while they have other activities, they would be covered by this.

And part of the reason for distinguishing between contracts and grants is that contracts do have an extensive reporting requirement and are prohibited from using the Federal funds for lobbying. I wanted to just clarify that distinction in the bill.

Any more questions?

Mrs. Meek.

Mrs. MEEK. How you can distinguish that the way they lobby us with all these big planes and all of these C–17's and all the things they lobby us with. I am wondering if that is going to be now prohibited.

Mr. MCINTOSH. If they also receive a grant for research purposes, they would be covered by this. If they don't, they wouldn't. My answer is we are biting off part of the world of lobbying, we are not covering it all, I will admit that, and do what you can do, and if there is a demonstration that there is a problem in other areas, then we can look at that.

That is my personal view on it.

Mrs. Meek, did you have any other questions?

Mrs. MEEK. No. Thank you.

Mr. MCINTOSH. Mr. Istook, do you have any questions for this panel or would you like to make a statement at this point?

Mr. ISTOOK. Mr. Chairman, I don't have questions for the gentleman, except that I do want to express my appreciation for the efforts of his organization. I think it is especially commendable when groups that could be out there applying for Federal grants, that certainly could find a way to participate in all the largesse that is flowing out of the Government, instead take a principled stand and recognize that taxpayers' money should not be used to fund advocacy.

So I certainly want to commend the gentleman and all of those who have been working with him in his organization for their interest in this issue and their advice and assistance.

I thank the gentleman.

Mr. SARASIN. Thank you, Mr. Istook.

Mr. MCINTOSH. Thank you, Mr. Istook.

Thank you very much, Mr. Sarasin. I appreciate you coming today and participating in this. I think the information you brought forward will be very valuable and yet again showing an example of how the agencies are misusing their grant processes to engage in lobbying activities and how the outside organizations become part of that.

Mr. SARASIN. Thank you, Mr. Chairman.

Mr. MCINTOSH. Let's turn now to our second panel on constitutional issues. And as the panel is coming forward, I wanted to read for my colleagues the statement that the Clinton administration has issued on this bill related to this particular provision, and it is part of a longer letter that was sent up to Congress in which the President indicated that the bill as written would be something that he would veto.

And I will paraphrase from it and submit for the record the entire statement, because I think it is important to know what the administration says.

Bottom line, the President is urging that the House delete this provision and it says that he has concerns that it is a broad attack upon the exercise of fundamental rights protected by the first amendment.

Congress may under some circumstances restrict the use to which Federal moneys are put. However, insofar as this provision forecloses the exercise of protected rights with other than Federal

funds, it would be deemed a penalty for that exercise and thus would be unconstitutional. It would limit the ability of organizations to participate in administrative or judicial proceedings and appearances before State and local entities. In addition, it is now widely agreed that much is to be gained when private organizations and charities work in partnership with the Government to implement social policies.

One of the reasons I wanted to read it is I would be interested in the panelists' response to the administration's view on the constitutional issue.

Our panel today has three witnesses in it. The first is the Honorable Timothy Flanigan, former Assistant Attorney General, Office of Legal Counsel at the U.S. Department of Justice. He is currently of counsel with Jones, Day, Reavis & Pogue. I know Mr. Flanigan from his work at the Office of Legal Counsel and his responsibilities there included advising the President on constitutional issues.

Thank you for coming and joining us today, Mr. Flanigan.

I'm sorry, I need to swear in the whole panel again. The staff is reminding me.

[Witnesses sworn.]

Mr. MCINTOSH. Let the record show that each of the witnesses answered in the affirmative.

Mr. Flanigan, please proceed.

STATEMENTS OF TIMOTHY FLANIGAN, FORMER ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, U.S. DEPARTMENT OF JUSTICE, CURRENTLY COUNSEL WITH JONES, DAY, REAVIS & POGUE; JOHN HARRISON, PROFESSOR, UNIVERSITY OF VIRGINIA SCHOOL OF LAW; AND DAVID COLE, PROFESSOR, GEORGETOWN UNIVERSITY LAW CENTER

Mr. FLANIGAN. Mr. Chairman, that's a sobering exercise to engage in, particularly with respect to constitutional law. I hope that we will be able to find some truth here today.

I'm reminded of the story concerning the man who was sailing over the countryside in a hot air balloon and found himself quite lost and shouted down to a fellow in the field below and asked him: Where am I? And the fellow in the field said: You're in a balloon. From which the fellow in the balloon discerned that the man on the ground was a lawyer because his statement was perfectly accurate and totally useless. I hope that what we can do here today is a little bit more useful.

To set the stage, let me just remind the committee that when we're talking about constitutional limitations on the authority of Congress to act, we're talking about the ability of Congress to address a problem. To the extent that common sense tells us that this problem exists, the constitutional arguments, if they are given their full flower, respond that Congress is unable to address the problem before it. I don't believe that's the case, as my written testimony indicates.

I'm going to now proceed to summarize that testimony.

The fundamental premise with which we deal is that the Federal Government has no legal obligation to fund or otherwise subsidize fundamental rights guaranteed by the U.S. Constitution. This point

has been underscored by the Supreme Court repeatedly. There are limits, of course. The principal limit is that Congress may not use its power to fund some activities and not to fund others as a means of invidiously discriminating against points of view.

As Congressman Istook has explained, the proposal before the committee is merely intended to curb the practice of receipts of Federal grants, whatever their viewpoint, from using Federal funds to finance lobbying and other forms of political advocacy.

The bill also, I think, has another commendable feature and that is it recognizes the fundamental fungibility of cash. Anyone who deals in financial matters will tell you that cash matters are sort of like a thing you push down on one side and something raises up on the other. If you only limit the use of Federal funds to—for a specific purpose where a particular grantee might have both, the grantee is then free to use a greater portion of its private funds for that purpose.

Now, critics of the proposal have argued that the Constitution forbids any Federal restriction on grantees' use of funds from private, nongovernmental sources for political advocacy. I submit that that proposition is demonstrably false. Indeed, the Supreme Court expressly rejected it in its most recent decision the area of *Rust* v. *Sullivan.*

I would like to take a moment and read for the committee a little of the language from the *Rust* decision. This is Chief Justice Rehnquist writing for the court.

He said: "Petitioners"—in this case, which involved, of course, title X abortion funding—"Petitioners also contend that the regulations violate the first amendment by penalizing speech funded with non-title X money. They argue that since title X requires that the grant recipients contribute to the financing of title X projects through the use of matching funds and grant-related income, the regulation's restrictions on abortion counseling and advocacy penalize privately funded speech. We find this argument flawed for several reasons."

And I will just allude to the first. The court said, "The recipient is in no way compelled to operate a title X project. To avoid the force of the regulations, it can simply decline the subsidy."

I think that's the essence of what we are talking about here. The grant recipient in each case is free of course simply not to be a grant recipient. *Rust* is not the only authority that is on point here. The court's decisions prior to *Rust* affirmed that principle in a variety of contexts.

For example, as the members well know, receipt of Federal election funds requires that candidates abide by limitations on the spending of their own funds. In upholding that restriction in *Buckley* v. *Valeo,* the Supreme Court noted again candidates could simply forgo funding.

As an aside, I would just like to note that the Congressional Research Service report on this issue, which I had a chance to read in the last day, purports to rely substantially on *Buckley* but it inexplicably ignores that language from *Buckley.* Instead, the CRS report analogizes the bill to another restriction invalidated in *Buckley* that applied to all private actors regardless of their receipt of

Federal funds. And clearly, those portions of *Buckley* are not pertinent to this analysis.

My copanelist, Professor Cole, in his second letter to this committee, I believe retreated from his initial position and acknowledged that the Congress can, under *Rust*, impose some restrictions on the use of funds from Federal—non-Federal sources. He paints that power, however, as a narrow one that extends only to non-Federal funds used in the same Government program.

Let me just say—I notice I've got a light burning here—that I don't think that's a fair reading of *Rust*. I don't think it gives full effect to the language that I quoted earlier.

And let me just say in closing that the common thread among the Supreme Court decisions that I believe are relevant to this legislation is that Congress can impose restrictions that might otherwise run afoul of the first amendment, provided that it creates an escape hatch of some sort, provided that it creates an opportunity for the entity subject to the restrictions to engage in the political advocacy in some other way.

And here my reading of this legislation is that grant recipients are permitted to use affiliates and of course they are permitted to use a portion of their own funds to engage in political advocacy.

Thank you.

Mr. GUTKNECHT [presiding]. Thank you, Mr. Flanigan.

[The prepared statement of Mr. Flanigan follows:]

LIMITING AND MONITORING POLITICAL ADVOCACY BY RECIPIENTS OF FEDERAL GRANTS

Testimony before the
Subcommittee on National Economic Growth,
Natural Resources, and
Regulatory Affairs
of the
Committee on Government Reform and Oversight
of the
U.S. House of Representatives

August 2, 1995

Timothy E. Flanigan, Esq.
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3850

Mr. Chairman and members of the committee:

Thank you for the opportunity to testify today on the constitutionality of a legislative proposal to limit federal funding of political advocacy. In my view, the proposed legislation's limitations on grantees' political advocacy would pass muster under the First Amendment.

It is well settled that the Federal government has no legal obligation to fund or otherwise subsidize fundamental rights guaranteed by the U.S. Constitution. The Supreme Court has underscored this point time and again.[1]

Of course, it is equally well established that Congress may not discriminate invidiously against disfavored points of view.[2] The Istook-McIntosh-Ehrlich proposal would not, however, discriminate against any particular group or viewpoint. As Congressman Istook has explained, the proposal is merely intended to curb the practice of recipients of Federal grants, whatever

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[1] See Regan v. Taxation With Representation, 461 U.S. 540, 549 (1983) ("a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right"); Harris v. McRae, 448 U.S. 297, 317, n. 19 ("A refusal to fund protected activity, without more cannot be equated with the imposition of a 'penalty' on that activity").

[2] See Regan, 461 U.S. at 548 (the government may not "discriminate invidiously in its subsidies in such a way as to 'ai[m] at the suppression of dangerous ideas'") (quoting Cammarano v. United States, 358 U.S. 498 (1959)).

their viewpoint, from using Federal funds to finance lobbying and other forms of political advocacy.

The bill also recognizes the fungibility of cash. It reflects the judgment that a mere prohibition on the use of grants would be easily circumvented by advocacy groups, who could, with federal grants in hand, devote a greater proportion of their private funds to political advocacy.

Critics of the proposal have argued that the Constitution forbids <u>any</u> federal restriction on grantees' use of funds from private, non-governmental sources for political advocacy. That proposition is demonstrably false. Indeed, the Supreme Court expressly rejected it in the most recent decision in this area, <u>Rust v. Sullivan</u>.[3]

<u>Rust</u> upheld the constitutionality of HHS regulations that prohibited Title X projects from engaging in family planning activities. Although much of the debate in <u>Rust</u> concerned restrictions on the use of federal funds, the <u>Rust</u> decision is particularly important here because the <u>Rust</u> Court also <u>expressly upheld</u> the regulation's application to <u>non-federal funds</u>.

The HHS regulations at issue in <u>Rust</u> prohibited the application of any dollars in a Title X project -- whether public

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[3] 111 S.Ct. 1759 (1991).

or private -- to abortion related activities. The petitioners in Rust made the same argument as do opponents of the bill here: i.e., that the regulations violated the First Amendment by restricting speech funded with non-Title X monies.

The Rust Court expressly rejected that argument and upheld the application of the regulations to non-federal funds. The Court reasoned that "Title X subsidies are just that, subsidies. . . . [T]o avoid the force of the regulations, [the recipient of a federal subsidy] can simply decline the subsidy."[4] In reaching this unsurprising conclusion, the Court emphasized that it had "never held that the Government violates the First Amendment simply by offering that choice."[5]

Nor is Rust the only authority on point. The Court's decisions prior to Rust affirmed that principle in a variety of contexts. For example, as the Members well know, receipt of federal election funds requires that candidates abide by limitations on spending their own private funds. In upholding that restriction in Buckley v. Valeo,[6] the Supreme Court noted that candidates could simply forgo federal funding.

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[4] 111 S. Ct. at 1775, n. 5.

[5] Id.

[6] 424 U.S. 1, 57, n. 65 (1976).

As an aside, I should note that the Congressional Research Service report on these issues, which purports to rely substantially on Buckley, inexplicably ignores this aspect of the case. Instead, CRS analogizes this bill to other restrictions, invalidated in Buckley, that applied to all private actors, regardless of their receipt of federal funds. Obviously, such provisions have no similarity to the present bill.

In his second letter, Professor Cole, in a retreat from his initial position, acknowledged that Congress can under Rust impose some restrictions on the use of funds from non-federal sources. He paints that power, however, as a narrow one that extends only to non-federal funds used in the same government "program."

To be sure, Rust distinguished the HHS regulations from limitations on "the recipient of the subsidy rather than on a particular program or service." Id. at 1774. The principles and precedent upon which Rust relied, however, are not so easily limited to the facts of that case. What concerned the Court were prohibitions that "effectively prohibit[ed] the recipient from engaging in the protected conduct outside the scope of the federally funded program." Ibid. A significant reason the Title X regulations survived constitutional scrutiny was that they did not prohibit all abortion-related speech. As the Court explained

"they merely require that the grantee keep such activities separate and distinct from Title X activities."[7]

Here too, the Rust decision is consistent with earlier precedent. In FCC v. League of Women Voters,[8] for example, the Court addressed a section of the Public Broadcasting Act of 1967 that forbade any noncommercial education station receiving Federal grants from "engag[ing] in editorializing." The Court struck down the law as violative of the First Amendment. In an aspect of the case ignored by critics of the present proposal, however, Justice Brennan, writing for the Court, suggested that the statute -- under which "a noncommercial educational station that receives only 1 percent of its overall income from grants is barred absolutely from all editorializing"[9] -- would nevertheless be constitutional if it allowed the stations to establish 'affiliate' organizations which could editorialize with nonfederal funds.[10] Justice Brennan gave no hint that in such circumstances the federal restrictions still could be applied only to federally funded "programs" or "projects." Not even such an unswerving supporter of a broad reading of the First Amendment

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[7] See Rust, 111 S.Ct at 1774.

[8] 468 U.S. 364 (1984).

[9] 468 U.S. at 400.

[10] Id. Under the amendment suggested by Justice Brennan, the statute's flat prohibition on editorializing would continue to apply to private as well as public funds raised by the station itself.

as Justice Brennan was willing to take the extreme approach urged by critics of the present proposal.

Similarly, the Court in Regan v. Taxation With Representation,[11] upheld restrictions on lobbying by tax-exempt organizations -- again including lobbying with private funds -- because those organizations could create affiliates to engage in lobbying. Critics of the proposal to limit government funding of political advocacy suggest that Congress's "intent" in enacting the statute at issue in that case was merely to restrict the use of federal funds. The statute, however, went well beyond that. Indeed, use of federal funds that was not at issue; rather the focus was on use of private tax-deductible contributions.

The common thread among these Supreme Court decisions is that Congress may impose restrictions that might otherwise run afoul of the First Amendment provided that it creates appropriate safe harbors for free speech activity. Opponents of the proposal to limit federal funding of political advocacy flatly deny that Congress has the power to restrict the use of wholly private funds. They are able to maintain that view only as long as they ignore the Supreme Court's decisions in a number of cases expressly permitting Congress to restrict the use of private funds for free speech activities as a condition to receipt of

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[11] 461 U.S. 540 (1983).

federal subsidies, as long as Congress preserves an outlet for protected speech activities.

The Istook-McIntosh-Ehrlich proposal is framed precisely to fit within these principles. Under the proposal, a grantee may use a reasonable amount of private funds for the purpose of political advocacy. Moreover, the grantee is not prohibited from creating a separate affiliate that engages in such advocacy. The close fit between the reasonable conditions imposed by the bill and the government's interest in not directly or indirectly subsidizing political advocacy reinforces the bill's constitutionality.[12]

For these reasons, I believe that the Istook-McIntosh-Ehrlich proposal's limitation on federal grantees' political advocacy would be upheld in the face of a challenge under the First Amendment.

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[12] Cf. Dolan v. City of Tigard, 114 S.Ct. 2309, 2316-17 (1994) (doctrine of unconstitutional conditions requires "essential nexus" between the condition and the state interest); United States v. National Treasury Employees Union, 115 S.Ct. 1003, 1016-17 (1995).

Mr. GUTKNECHT. I think we will go ahead to Mr. Cole.

And then we will take questions of the whole panel.

Mr. COLE. Thank you, Mr. Chairman.

I have prepared written remarks and I'm just going to summarize them here, but I'd ask that my written remarks be made part of the record.

It's important, I think, to focus precisely on how this bill works in analyzing its constitutionality.

Mr. Flanigan has given you generalities, but I think it's important to look at the concrete specifics and particularly with respect to Congressman Peterson's concerns and Congresswoman Meek's concerns. And to make it concrete, I'd like to use as an example Georgetown University, my employer, which like all universities in the United States receives some Federal grants, a small amount of Federal grants.

As a result of this bill, Georgetown would be restricted in how it spends its private moneys wholly unrelated to any Federal grant. Even if the only Federal grant that Georgetown received was a $10,000 research grant for artificial intelligence, Georgetown would be restricted by this bill in how it used a $3 million gift from the Catholic Church or from a generous alumnus.

Georgetown would be barred from using any more than 5 percent of those private funds for political advocacy. Even if Georgetown was not receiving any Federal money today but thought that it might apply some time in the next 5 years for a Federal grant, it would have to restrict its private expenditures on political advocacy today. And here Congresswoman Meek was exactly correct in characterizing the effect of the language which she quoted and Mr. Sarasin was wrong.

It restricts the private expenditures of entities that are receiving no Federal grants whatsoever but who might think they might want to apply for a Federal grant sometime in the future.

Third, I think this is in some ways the biggest concern for someone like Congressman Peterson, Georgetown would be required to monitor the political activities of every faculty member, staff employee, student, contractor, or guest speaker at Georgetown because the bill counts as Georgetown's political advocacy any disbursement of funds to any individual or entity who spends more than 15 percent of that individual's money on political advocacy. Georgetown would then have to report that information to the Government.

Now, if you multiply that by the thousands of Federal grantees and the millions upon millions of U.S. citizens who get disbursements of funds in one way or another from institutions that get Federal grants, you've instituted the most massive federally mandated monitoring of political activity this country has ever known. From Republicans who urge that government should get off the backs of the people, this is ironic. I think it's also unconstitutional, as I'll suggest in a moment.

Now, if a private corporation got a $10 million contract to do artificial intelligence research, it would be subject to none of these restrictions that Georgetown is covered by. Let me make clear, I'm not testifying on behalf of Georgetown here, I'm just using it as an example.

There are three constitutional problems with this bill. First, it imposes an unconstitutional condition on grantees because as a condition of getting a Federal grant or even applying for a Federal grant, grantees have to restrict how they spend their own money on their own time on political speech.

Second, it violates the equal protection clause by discriminating between Government contractors and Government grantees, restricting grantees' freedom to speak, but not contractors.

And third, the disclosure requirements and monitoring requirements violate the first amendment right to speak and associate anonymously.

I will address these briefly.

As to unconstitutional conditions, the basic idea here was set forth in *Rust* v. *Sullivan.* The Government can generally restrict the use of its own funds and it can restrict the use of private moneys in a project funded by the government, but it cannot restrict the grant recipient's use of private moneys beyond the scope of the government grant.

So what the Supreme Court said in the *Rust* v. *Sullivan* case, which involved title X family planning restrictions, is that the Government was perfectly OK in restricting Planned Parenthood's advocacy of abortion within a federally funded title X family planning program.

But it could not condition Planned Parenthood's receiving that grant on Planned Parenthood restricting its abortion advocacy outside of the title X family planning program.

Unlike the title X restrictions, this bill does not merely limit how Federal grants are used nor how moneys are used in federally funded projects. Rather, it imposes a restriction on the grant recipient's use of private moneys on their own time, entirely beyond the scope of the Government grant. That is exactly what the Supreme Court said would be unconstitutional in *Rust.*

Under this bill, if Planned Parenthood receives a Federal grant for its title X family planning program, assuming title X survives the cuts, it would be barred from spending more than 5 percent of its wholly private money, wholly outside of the title X program on abortion-related political advocacy.

The bill also violates the equal protection clause by treating grantees and Government contractors differently. Grantees are radically restricted in their freedom to engage in political advocacy with their own money and on their own time. Federal contractors are free to do so, however.

You need only look at the Washington Post over the past 2 weeks to see that Federal Government contractors engage in significant political advocacy. The front section of the Post has been filled over the past few weeks with ads from defense contractors hawking their particular military weapon, and I have an example here.

This is an advertisement which ran last Wednesday in the front section of the Washington Post by Northrop-Grumman selling the B–2 bomber. Yesterday in the paper, there was another ad selling the B–2 bomber, an ad for McDonnell Douglas selling the F–18 and two ads from General Dynamics selling the *Seawolf* submarine.

I am not sure who is going to buy this B–2 bomber. I am certainly not. The only people who are going to buy it obviously are

Members of Congress. They are lobbying. This would be restricted political advocacy if it was engaged in by a grantee, but when it is engaged in by a defense contractor, it is permitted.

I notice my time is up, so I will just briefly talk about disclosure requirements. As I have noted, the bill would require massive monitoring of U.S. citizens' political advocacy, would require that that advocacy then be reported to the Government and then made available to the public.

The Supreme Court this term held that the first amendment protects the right to engage in anonymous politic speech in the *McIntire* case.

The Supreme Court has also held that the first amendment protects the right to engage in anonymous political association, yet this bill would require all grantees to disclose their political advocacy and to disclose their political associational activities even when those activities are engaged in totally with their own money and on their own time.

Political advocacy is not a dirty word. In fact, under the first amendment it receives the highest protection that the Constitution provides. The effect of this bill essentially would be to insulate Government officials from speech, from the public, on issues that they are making decisions on. The first amendment is designed to say that that is precisely when policy legislators need to hear from the public.

It is perfectly legitimate for Congress to restrict the use of Federal funds, and everything that the beer wholesalers complained about is already illegal. All you have to do is enforce the law as it stands. But what is not legitimate to do, and indeed what is unconstitutional to do, is to use the fact that somebody gets a $5,000 grant to restrict millions of dollars of private political speech and to require the monitoring of millions of U.S. citizens' political activities.

Thank you.

[The prepared statement of Mr. Cole follows:]

Testimony of

David Cole
Professor of Law
Georgetown University Law Center

before the

House Committee on Government Reform and Oversight
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs

concerning

"Stop Taxpayer Funded Political Advocacy" Bill

August 2, 1995

I. INTRODUCTION

Mr. Chairman, thank you for inviting me to testify on the constitutional issues raised by the proposal to "Stop Taxpayer Funded Political Advocacy" (hereinafter "Political Advocacy bill"), recently approved by the House Appropriations Committee. I am a professor of constitutional law at Georgetown University Law Center. I have written on the subject of conditioning federal funds on speech restrictions.[1] In addition, I have litigated several cases raising these issues.[2] I have provided legal consultation to Independent Sector on the constitutional issues raised by the Political Advocacy bill.

The Political Advocacy bill is constitutionally flawed in several respects. Its most fundamental flaw is that it restricts the rights of all federal grantees to use their own money to engage in core First Amendment protected activities, including public debate on issues of public concern, communication with elected representatives, and litigation against the government. This condition would limit the political freedoms of every grantee, from a local YMCA that gets federal support for a child care program, to a scientist who applies for NIH funding for a medical trial, to a university professor who receives a fellowship for scholarly

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[1] David Cole, Beyond Unconstitutional Conditions: Charting Spheres of Neutrality in Government-Funded Speech, 67 N.Y.U. L. Rev. 675 (1992).

[2] Bullfrog Films v. Wick, 847 F.2d 502 (9th Cir. 1980) (holding that speech conditions on educational certificates for documentary films violate the First Amendment); Massachusetts v. Sullivan, 899 F.2d 53 (1st Cir. 1990) (holding that restrictions on Title X family planning clinics violate the First Amendment), vacated in light of Rust v. Sullivan, 500 U.S. 949 (1991); Gay Men's Health Crisis v. Sullivan, 792 F. Supp. 278 (S.D.N.Y. 1992) (holding that CDC restrictions on federally-funded AIDS education violate the First Amendment); Finley v. National Endowment for the Arts, 795 F. Supp. 1457 (C.D. Cal. 1992) (holding that NEA restrictions on arts grants violate the First Amendment), appeal pending.

research, to a Boys and Girls Club that obtains federal sponsorship for a drug prevention program.

There is nothing wrong with providing that federal grants themselves are not to be used for political advocacy. The government is generally free to define how its own grant money is to be used. But there is already an existing OMB Circular, A-122, that expressly forbids the use of grant monies for political advocacy.

This bill does not seek simply to codify OMB Circular A-122, but to expand restrictions on political advocacy to an unprecedented extent. It does not seek merely to limit what grant recipients do with grant money, or even with matching funds in a federally-funded project. Rather, it seeks to have the government control what grant recipients do with their own money, on their own time, outside of any project funded with federal dollars. As such, it plainly violates well-established principles of constitutional law.

The bill has three fundamental constitutional problems. First, it impermissibly conditions eligibility for federal grants on surrendering the right to engage in a broad range of political speech on one's own time and with one's own resources. Second, it imposes these conditions selectively on individuals and nonprofit entities that obtain federal grants, but permits government contractors, who receive a much larger amount of federal money annually, to engage freely and without limitation in the same political activities. Third, its disclosure requirements, which would require millions of Americans to reveal their political activities to the government and/or federal grantees, violate the First Amendment right to engage in anonymous political speech and association.

I will address these problems in turn, but will first summarize briefly how the bill would work.

II. WHAT THE POLITICAL ADVOCACY BILL DOES

As noted above, under current law federal grantees are forbidden from using federal grants to engage in lobbying. Most federal grants implicitly forbid such activity: for example, an NIH grant to conduct research into hearing aids could not be used for political advocacy, just as it could not be used to study skin cancer. Grants are earmarked for particular ends, and must be used for those ends. Moreover, as noted above, an OMB Circular expressly bars the use of grant money for political advocacy.

One provision in the Political Advocacy bill, §1(a)(1), would essentially codify the existing prohibition on using grant money for political advocacy. The rest of the bill, however, is designed to restrict federal grantees' and others' use of their own non-federal money to engage in "political advocacy." Specifically, recipients of federal grants are barred from spending any more than 5 percent of their own non-federal monies on "political advocacy." §1(a)(3).

The bill also restricts the political freedom of entities not receiving grants. Any person or organization that devotes more than 5 percent of his, her, or its own private expenditures to political advocacy is barred from applying for a federal grant for the next 5 years. §1(a)(2). Thus, anyone who thinks they may apply for a grant sometime in the next five years must drastically curtail their private expenditures on political speech in the meantime.

In addition, federal grantees are barred from purchasing any goods or services from any individual or entity that devotes more than 15 percent of its wholly private expenditures to political advocacy. §1(a)(4). And any disbursement of funds -- including private funds -- by a grantee or a grant applicant to persons or organizations that devote more than 15 percent of their expenditures to political advocacy is itself defined as "political advocacy." §1(c)(1)(D). Thus, the Political Advocacy bill reaches out to restrict not only the private expenditures of all grantees and would-be grantees, but also anyone who does business with a grantee.

The bill defines "political advocacy" extremely broadly. It includes what is commonly understood to constitute lobbying and political contributions, but it also includes speech to the public on issues pending before a legislature or agency, and litigation against the government where the entity is not a defendant, or is not challenging a government decision "directed specifically at the powers, rights, or duties of that grantee or grant applicant." §1(a)(1),(2).

This definition is broader than any current definition of lobbying. First, it is broader because current definitions do not restrict privately funded activities at all, but only limit federally-funded activities. Second, the definition extends beyond current definitions by including attempts to influence administrative agency action, such as rulemaking; attempts to influnce state and local laws; public interest litigation; and any disbursement of funds to someone who engages in more than 15% political advocacy.

The bill imposes new reporting requirements. Every federal grantee that engages in any political advocacy would have to describe that advocacy to the government, and that information would then be made available to the public. §2. In addition, in order to comply

with the law federal grantees would be required to monitor the private political advocacy of every employee and every person or entity to whom they disburse funds.

Finally, the bill is selective in its imposition of these unprecedented restrictions. The restrictions apply to all grant recipients, such as hospitals, YMCA's, teachers, schools, scientists, and nonprofit entities, but do not apply to government contractors. §1(c)(4).

III. THE BILL IMPOSES AN UNCONSTITUTIONAL CONDITION ON CITIZENS' EXERCISE OF SPEECH RIGHTS WITH THEIR OWN RESOURCES

The Political Advocacy bill amounts to a classic "unconstitutional condition," because it seeks to restrict what U.S. citizens can do with their own money on their own time. As noted above, it restricts the political freedoms of grant recipients, would-be grant recipients, and those who do business with grant recipients. All of these restrictions are unconstitutional for the same reason: the government may not require persons to forego constitutional freedoms to qualify for a federal benefit. The Political Advocacy bill impermissibly requires private citizens to restrict their private expenditures on political speech in order to qualify for federal grants, or even to do business with a federal grantee.

The "unconstitutional conditions" doctrine holds that government may not condition access to a government benefit on the surrender of a constitutional right. The Supreme Court most recently addressed this doctrine in Rust v. Sullivan, 111 S. Ct. 1759 (1991). The Court's analysis in Rust makes clear beyond a doubt that the Political Advocacy bill, if enacted, would be unconstitutional.

In Rust, the Court upheld a regulation barring federally-funded Title X family planning projects from advocating abortion with project funds. In doing so, however, it expressly

distinguished the Title X regulation from laws that restrict what grant recipients can say or do beyond the scope of a federally-funded project, on their own time and with their own resources. The former restriction, limited to a federally funded project, is generally permissible; the latter restriction is unconstitutional.

The Rust Court explained that the unconstitutional conditions doctrine applies where "the government has placed a condition on the recipient of the subsidy rather than on a particular program or service, thus effectively prohibiting the recipient from engaging in the protected conduct outside the scope of the federally funded program." 111 S. Ct. at 1774 (original emphasis). By contrast, the Court found, the Title X regulations "govern the scope of the Title X project's activities, and leave the grantee unfettered in its other activities." Id. (emphasis supplied).

Thus, Rust teaches that while government may generally regulate the use of government funds, it may not regulate what a recipient of such funds does with non-government resources. In FCC v. League of Women Voters, 468 U.S. 364, 402 (1984), for example, the Court struck down a law requiring that public television stations receiving federal funds not editorialize with any of their funds, whether federal or not. See also Perry v. Sindermann, 408 U.S. 593, 597-98 (1972). By contrast, the Court has upheld regulations that regulate only the use of government funds. Rust v. Sullivan, supra; Regan v. Taxation With Representation, 461 U.S. 540, 546 (1983) (no infringement on First Amendment rights where Congress "has simply chosen not to pay for [plaintiff's] lobbying").[3]

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[3] This Term, the Supreme Court limited even this aspect of Rust v. Sullivan, holding that the government may control the content of the speech it directly funds only where the government is speaking, or is hiring others to express a governmental message, but not where

The Political Advocacy bill falls squarely on the unconstitutional side of the line drawn in Rust v. Sullivan. The bill's restrictions on "political advocacy" do not merely "govern the scope of the [federally-funded] project's activity," and they do not "leave the grantee unfettered in its other activities." 111 S. Ct. at 1774. Rather than merely restricting the federally funded program, they place "a condition on the recipient of the subsidy." Id.

Indeed, the Political Advocacy bill would virtually reinstate -- with even broader brush -- the law struck down in FCC v. League of Women Voters. In that case, "a noncommercial education station that receives only 1% of its overall income from [federal] grants" was "barred from using even wholly private funds to finance its editorial activity." 468 U.S. at 400. Under the Political Advocacy bill, a television station "that receives only 1% of its overall income from [federal] grants" would be a federal grantee, and therefore would similarly be "barred from using even wholly private funds to finance" political advocacy. League of Women Voters compels the invalidation of the Political Advocacy bill.[4]

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a funding program is designed to support a diversity of private expression. Rosenberger v. Rectors and Visitors of the University of Virginia, 63 U.S.L.W. 4702, 4705-06 (U.S. June 29, 1995). The Political Advocacy bill applies to all federal grant programs, including programs to support the arts, education, humanities, and public broadcasting, which under Rosenberger may not be subject to content- and viewpoint-based restrictions.

[4] In a letter circulated July 21, 1995 by Congressman Dick Armey to his Republican colleagues, Timothy Flanigan suggests that because the Political Advocacy bill bars recipients from using 95% rather than 100% of their expenditures for political advocacy, it might survive constitutional scrutiny. Under this reasoning, League of Women Voters would have come out differently if the law had "merely" banned public television stations from using 95% of their private funds to editorialize. And Speiser v. Randall, 357 U.S. 513 (1958), which invalidated a law that offered a property tax exemption only to persons who did not advocate the overthrow of the United States government, would have come out differently if the state had offered the tax exemption to persons who devoted no more than 5% of their own money to such advocacy.

The Political Advocacy bill imposes a sweeping condition: its prohibition on "political advocacy" extends to virtually any public education, litigation, or lobbying effort designed to affect the outcome of a federal, state, or local government decision. The First Amendment is designed to protect the freedom of the citizenry to speak out on matters of public concern, to use the courts, and to communicate with their elected representatives. Because the bill limits grantees' rights to engage in core First Amendment activities on their own time and with their own resources, it imposes an "unconstitutional condition."

Grantees are not the only persons whose rights would be violated by the Political Advocacy bill. The bill also restricts the use of private money by entities and persons receiving no federal funds whatsoever. It bars anyone who has spent more than five percent of their expenditures on "political advocacy" from eligibility for federal funding for a five-year period. Under this provision, anyone who contemplated applying for a federal grant anytime in the next five years would be barred from devoting any more than five percent of their entirely non-federally-funded expenditures to political advocacy today. For example, if I were even thinking about applying for a Fulbright fellowship at any time in the next five years, I would have to refrain from devoting more than 5% of my private expenditures today to political advocacy. That restriction affects people who are not receiving, and may well never receive, any federal grants. There is no guarantee that I, or any of the thousands of other

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"[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." Schneider v. New Jersey, 308 U.S. 147, 163 (1939). Just as government cannot exclude a speaker from a public park by claiming that he is free to speak elsewhere, so government cannot control 95% of an individual's speech by claiming that she is free to do as she pleases with the remaining 5%.

applicants, will actually get a Fulbright. Yet all of us would have to surrender our constitutional rights even to be eligible to apply.

In addition to grantees and potential grant applicants, the bill also restricts the freedom of all who wish to do business with a federal grantee. It prohibits grant recipients from purchasing any goods or services with grant funds from any individual or entity which has spent more than 15 percent of its expenditures on political advocacy. And it counts any disbursement of funds whatsoever to such an entity as "political advocacy," so that grantees and grant applicants would also be restricted in their ability to contract with such entities even with their private monies. In this way, the bill extends its restrictions on speech even to persons who have never and will never apply for a federal grant. An artist, author, or physician who devotes more than 15 percent of his expenditures to "political advocacy," for example, could not be hired by a federal grant recipient to do work on a federally-funded medical pamphlet. And even if such a person were hired by the grantee with non-grant funds, that hire would count toward the 5% ceiling on the grantee's privately-funded "political advocacy."

To enforce such a provision, grantees would have to inquire into the political practices of every employee and independent contractor with whom they do business, raising separate constitutional concerns discussed in Section V of my testimony, infra. And anyone who seeks to do business with federal grantees or even federal grant applicants would for all practical purposes have to restrict their political speech expenditures.

Some have suggested that these restrictions are little different from those that already govern 501(c)(3) nonprofit organizations, which are not permitted to engage in substantial

lobbying. The differences, however, could not be more stark. The Supreme Court upheld the 501(c)(3) restriction on lobbying only because under a parallel provision of the tax code, 501(c)(4), nonprofits can set up sister organizations that are unrestricted in their lobbying. Regan, 461 U.S. at 544 and n.6. The only requirement is that the 501(c)(3)'s tax-deductible contributions are not used to subsidize lobbying of the 501(c)(4) affiliate. As a result of this scheme, the 501(c)(3) limitation does not impermissibly restrict organizations' freedom to lobby with private monies; rather, "Congress has merely refused to pay for the lobbying out of public moneys." 461 U.S. at 545.

By contrast, the whole thrust of the Political Advocacy bill is to restrict grantees from engaging in political advocacy with their own money. If the bill sought only to limit federal funding of political advocacy, it would stop after §1(a)(1), which provides that "No grantee may use funds from any grant to engage in political advocacy." The rest of the bill, however, is directly addressed to restricting use of grantees' non-government monies, and therefore cannot be analogized to the regulatory scheme upheld in Regan, which was upheld precisely because it left grantees free to spend their non-government monies in any way they deemed fit.

Timothy Flanigan suggested in his letter defending the Political Advocacy bill that "the proposal in no way limits a grantee from creating a wholly separate and distinct entity that independently raises private funds without the grantee's assistance and that spends such funds on political advocacy without the grantee's involvement." This suggestion, namely that entity separation would save the bill from constitutional invalidation, fails for several reasons.

First, entity separation would defeat the purpose of the bill, which is to limit grantees' and potential grant applicants' freedom to spend their own non-federal money on political advocacy. Everything beyond §1(a)(1) would make little sense if entity separation were an option. For example, §1(a)(2) bars all persons and organizations who have devoted more than five percent of their annual expenditures to political advocacy from applying for a federal grant for five years. If organizations and individuals could avoid that restriction by creating a separate entity and applying through that entity for the grant, the prohibition would be meaningless. The Political Advocacy bill does not permit entity separation on its face, as did the nonprofit tax code reviewed in Regan, and given the statute's evident purpose in restricting private expenditures, a court could not in good faith read such a provision into the statute.

Second, entity separation is simply not an option for many if not most federal grantees. Many federal grantees are individuals -- scholars, scientists, doctors, artists, etc. A violinist who receives an NEA grant cannot divide herself into separate entities.

Third, even if entity separation were an option, the bill's provisions would make it unduly burdensome, by making it all but impossible for a separate entity to be housed in the same location as the grantee, or to share any services with it. In Regan, the Supreme Court held that entity separation served the precise purpose of limiting the law's effect to a refusal to subsidize lobbying, without restricting the recipient's freedom to lobby through its 501(c)(4) affiliate. Justice Blackmun, in his concurrence, stated explicitly that if separation requirements mandated anything more onerous than arms-length dealing in order to guard against subsidization of lobbying, they would be unconstitutional. 461 U.S. at 553-54 (Blackmun, J., concurring).

The restrictions the Political Advocacy bill imposes on grantees' financial dealings with others would make separation highly burdensome, and indeed impossible even for those entities that could conceivably create a separate grant-receiving entity.

Imagine a community youth organization -- call it CYO -- that receives a federal grant for a drug education program, but seeks to spend 20% of its annual private-money expenditures on political advocacy concerning legislative measures to increase safety in the schools and to increase criminal penalties for drug trafficking to minors. In order to avoid the bill's restrictions on the organization's freedom to use its own money for such political advocacy, the CYO would have to create a separate grant-receiving entity -- call it the CYO-Federal Grantee. That entity would not only have to have separate books, but it could not purchase any goods or services with federal funds from the CYO itself. Thus, it could not share a photocopying machine or a phone line with the CYO by reimbursing the CYO for photocopying or phone services. It could not lease space from the CYO. In short, for all practical purposes it would have to be a separately housed entity altogether. And if that entity raised non-federal funds, it would be barred from disbursing any more than 5% of those funds to the CYO for any purpose.

Accordingly, entity separation cannot save the Political Advocacy bill from its "unconstitutional condition" infirmity. Moreover, were the bill amended to permit entity separation with no restrictions other than separate books, the bill would not materially alter the current status quo, under which federal grantees may not use federal grants for political advocacy, but are entirely free to use funds outside the federally-funded project for such

advocacy. All it would do is add a layer of unnecessary and wasteful bureaucracy to federal grant-giving.

Most fundamentally, entity separation would defeat the very purpose of the Political Advocacy bill, which is plainly to restrict the way that grant recipients use their non-federal funds for political speech. That is the core purpose of the bill, and it is that purpose which makes the bill an "unconstitutional condition."

IV. THE BILL DISCRIMINATES AGAINST GRANTEES WHILE PERMITTING GOVERNMENT CONTRACTORS UNLIMITED FREEDOM TO ENGAGE IN POLITICAL ADVOCACY

The Political Advocacy bill restricts the "political advocacy" of all government grantees, but does not restrict the "political advocacy" of government contractors. Corporate government contractors remain free to spend unlimited amounts of their own money on political advocacy. Thus, McDonnell-Douglas is free to engage in unrestricted political advocacy with its own funds, notwithstanding substantial government contracts, but a professor who devotes more than five percent of her expenditures to public advocacy in support of the Contract With America would be ineligible to receive a Fulbright scholarship for the next five years.

By treating grantees and contractors differently with respect to their freedom to engage in First Amendment protected activity, the bill is subject to strict scrutiny under the Equal Protection Clause as well as the First Amendment. Where government treats citizens differently with respect to the exercise of fundamental rights, such as speech, the differential treatment is unconstitutional unless necessary to further a compelling state interest. Police Dept. of Chicago v. Mosley, 408 U.S. 92, 96 (1972); Carey v. Brown, 447 U.S. 455, 459-63

(1980). In Mosley, for example, the Court struck down a government ordinance that selectively permitted labor unions to picket outside a school, but barred all other public demonstrations. The City could have barred all demonstrations around the school, but violated the Equal Protection Clause by restricting some groups' speech while tolerating others.

The distinction between contractors and grantees drawn by the Political Advocacy bill does not satisfy strict scrutiny. If anything, government contractors do at least as much if not more lobbying and political advocacy than federal grantees. Last year alone, defense contractors' political action committees contributed $4.2 million to House members, $1.2 million of which went to members of the House National Security Committee.[5] Defense contractors "'use lots of lobbying strategies, ranging from mobilizing subcontractors to meet with members, grass-roots lobbying and advertising.'"[6]

Defense contractors routinely take out expensive advertisements in the Washington Post, New York Times, or on television when defense appropriations bills are about to be considered. For example, a defense appropriations bill is scheduled for consideration in the House this week, with the fate of the B2 bomber at stake. Last week, Northrop Grumman, which makes the B2 bomber, hand-delivered letters to members on the Hill advocating support for B2 bombers, and for two weeks it has run a series of large advertisements in the Washington Post to the same effect.[7] All of this activity would indisputably count as "political

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[5] Michael Remez, Political Contributions Deployed in Battle for Defese Contracts, Hartford Courant, July 13, 1995, at A5.

[6] Id. (quoting Nancy Watzman, co-author of study by Center for Responsive Politics on defense contractors' lobbying and campaign contributions).

[7] See, e.g., Washington Post, July 31, 1995, at A4; July 26, 1995, at A20; July 24, 1995, at A18. A copy of the July 26 advertisement is attached as Exhibit A to my testimony.

advocacy" under the bill if engaged in by a grantee, yet government contractors would remain free to spend as much money as they choose on such efforts.

There is not even a rational basis for the bill's differential treatment of grantees and contractors, much less the compelling interest required to justify differentials in treatment of speech. Moreover, courts would likely subject the distinction to particularly rigorous scrutiny, out of concern that it was motivated by political favoritism toward government contractors, who are major contributors to Congressional campaign coffers.[8]

V. THE DISCLOSURE REQUIREMENTS VIOLATE THE FIRST AMENDMENT RIGHT TO ENGAGE IN ANONYMOUS SPEECH AND ASSOCIATION

Finally, the bill would require recipients of federal grants to report to the federal government on all of their privately-funded "political advocacy," and would require all who do business with a grantee to divulge their political activities to the grantee. Information

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[8] In Regan v. Taxation With Representation, 461 U.S. at 546-551, the Court upheld the 501(c)(3) restriction on lobbying against an equal protection challenge. TWR argued that veterans' organizations were not subject to the same lobbying restrictions. The Court noted first that it has always treated tax regulations with deference. 461 U.S. at 547-48. Second, it noted that since the 501(c)(3) restriction was simply a decision not to subsidize lobbying, speech interests were not implicated, and only a rational relationship test would apply. Id. at 548-50. Finally, the Court concluded that our longstanding policy of compensating veterans for risking their lives for their country provided a rational basis for treating veterans' groups differently from other nonprofit groups. Id. at 550-51.

The Political Advocacy bill is quite different. Most importantly, unlike the tax code, this bill does not merely decline to subsidize speech with federal dollars; it restricts grantees' speech with their own money and on their own time. Second, it does so selectively, singling out government contractors for favorable treatment, without legitimate reason. And third, it is not a tax bill, and is not subject to the deference accorded such legislation.

reported by the grantee to the federal government would then be made available to the public. Thus, every doctor, artist, researcher, university, and non-profit organization that receives a federal grant would be required to disclose his, her, or its political advocacy to the government and to the public. This requirement would plainly chill First Amendment protected activity, and violates the Supreme Court's decision this term guaranteeing the right to engage in anonymous political speech. McIntyre v. Ohio Elections Commission, 63 U.S.L.W. 4279 (U.S. Apr. 19, 1995).[9]

Because "political advocacy" is defined to include traditional associational freedoms, such as contributing to a group, or communicating with members of a group, the requirement that all "political advocacy" be disclosed would also infringe on First Amendment associational rights. The Supreme Court has held that individuals have a First Amendment right not to disclose their political associations. In NAACP v. Alabama, 357 U.S. 449, 462 (1958), the Court recognized that "inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association," and "compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective ... restraint on association." Accordingly, "state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." 357 U.S. at 460-61.

The freedoms recognized as essential in NAACP v. Alabama would be directly infringed by the Political Advocacy bill. Grantees would be required to divulge their every

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[9] The Court in McIntyre distinguished disclosure requirements in campaign finance legislation, upheld in Buckley v. Valeo, 424 U.S. 1 (1976), on the ground that the state has a compelling interest in forestalling corruption in candidate elections. McIntyre, 63 U.S.L.W. at 4285. But no such interest exists where, as in McIntyre and as here, the disclosure requirement extends to political speech unconnected to any candidate for public office. Id.

disbursement of funds to organizations or persons who devote more than 15% of their expenditures on political advocacy. That information would then be available to any member of the public, and to the government. This would have a particularly chilling effect on organizations advocating unpopular or controversial causes, as the Court recognized in NAACP v. Alabama. 357 U.S. at 460.

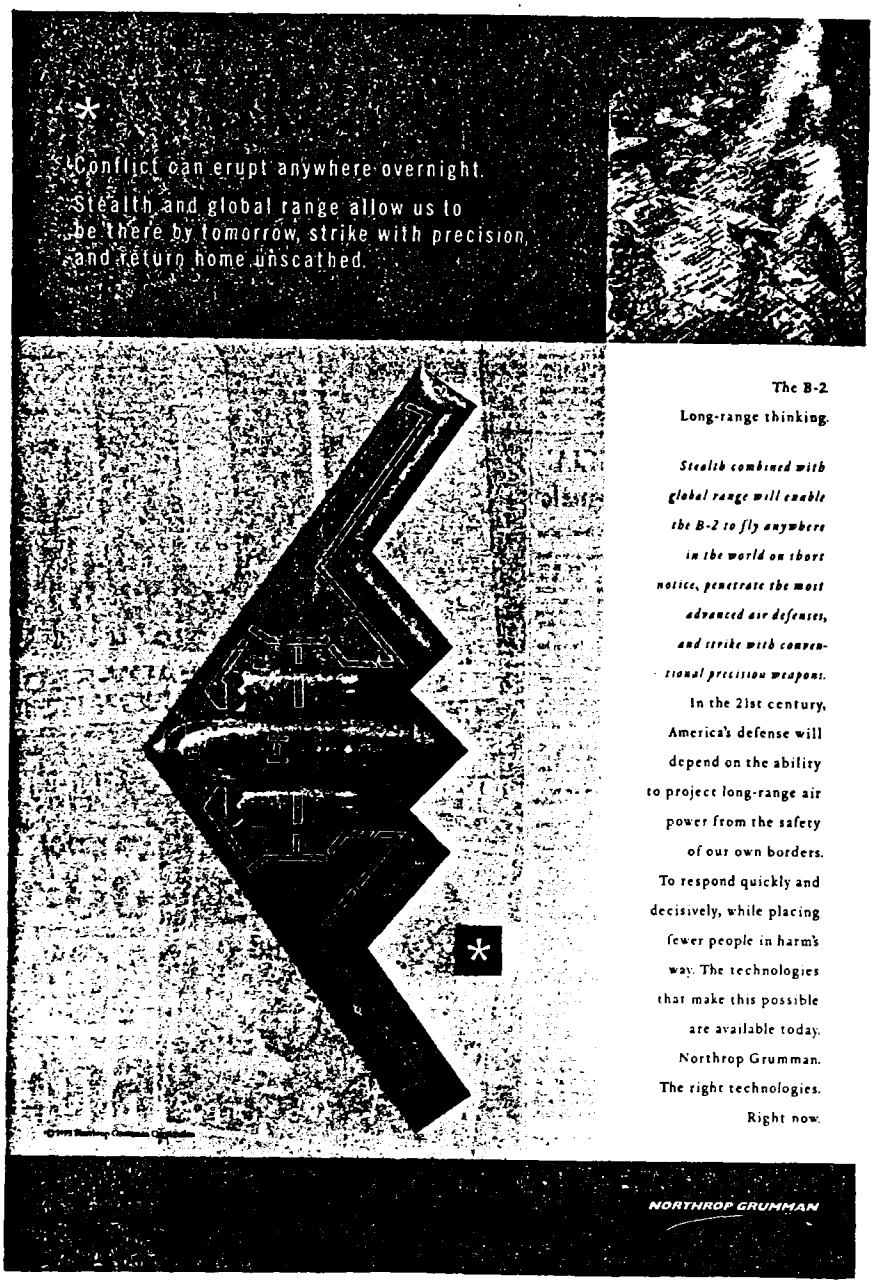
To make this more concrete, consider what the bill would require of my employer, Georgetown University. Like virtually every institution of higher education in the country, Georgetown receives federal funds to support research and educational programs. As a federal grantee, Georgetown would have to describe to the government all the privately-funded political advocacy in which it engaged.

In addition, Georgetown would have to monitor the private political activity of all persons to whom it disburses any money, including all faculty, staff, and students. Where a contract is funded by federal dollars, Georgetown would be barred from contracting with anyone who spent more than 15% of his or her private expenditures on political advocacy. And even where no federal dollars are involved, as is true of the bulk of Georgetown's financial transactions, any disbursement by Georgetown to an individual or entity that devotes more than 15% of their private expenditures to political advocacy would have to be counted as "political advocacy" by Georgetown, and reported to the government.

Multiply this kind of monitoring and reporting on private political advocacy by the thousands of institutions and individuals who receive federal grants, and it becomes clear that the Political Advocacy bill will result in unprecedented monitoring of privately-funded political advocacy, violating the letter and spirit of the right to anonymous speech and association.

VI. CONCLUSION

In the name of stopping "Taxpayer Funded Political Advocacy," this bill would infringe on the basic First Amendment freedoms of thousands of individuals, universities, hospitals, and associations to engage in basic political speech. Our system is government is predicated on a wide-open and vigorous public debate about legislative and agency action. The bill acts as if there is something wrong with political advocacy. There is not; indeed, without it, it is not clear how a representative government would function. It is of course appropriate to ensure that federal grants be used for the purposes to which they are dedicated, but this bill is not necessary to do that. It is both inappropriate and unconstitutional to use the carrot of a federal grant to impose widespread restrictions on the freedom of citizens to engage in political speech with their own resources, and on their own time.


Conflict can erupt anywhere overnight.
Stealth and global range allow us to be there by tomorrow, strike with precision, and return home unscathed.
The B-2.
Long-range thinking.
Stealth combined with global range will enable the B-2 to fly anywhere in the world on short notice, penetrate the most advanced air defenses, and strike with conventional precision weapons.
In the 21st century, America's defense will depend on the ability to project long-range air power from the safety of our own borders. To respond quickly and decisively, while placing fewer people in harm's way. The technologies that make this possible are available today. Northrop Grumman. The right technologies. Right now.
NORTHROP GRUMMAN

Mr. GUTKNECHT [presiding]. Thank you, Mr. Cole.

We will go on to Mr. Harrison, and then we will take some questions.

Mr. HARRISON. Thank you, Mr. Chairman.

I will ask that my statement be entered in the record.

Mr. GUTKNECHT. On that point, all of you will have an opportunity, and, without objection, all of you will have the opportunity to revise and extend your remarks, and we will put into the permanent record any written documentation you would like.

Mr. HARRISON. Thank you, Mr. Chairman. Do you know how long it takes to buy one of these on the installment plan? I would sort of like one, but I probably can't afford one unless I am allowed to spend until about the year 4000.

The fundamental point I want to make here is that as the Supreme Court understands this area of the law, one of the crucial questions, perhaps the crucial question, is, what is Congress seeking to accomplish? What is the purpose that it is pursuing? And a clearly impermissible purpose, something Congress isn't allowed to do, is to set out—and everyone agrees with this—is to set out to limit what private people can do with their private money by way of political advocacy.

On the other hand, what Congress clearly may do is make sure that Federal funds, taxpayer dollars, do not go to support political advocacy, and the court cases also make clear some of the things that Congress can do in order to accomplish that.

For example, the case involving the Internal Revenue Code, Regan against Taxation With Representation, shows that one of the things Congress can do is require separation of entities, is require that federally supported activities, federally subsidized activities, be carried on through legal entities that are separate from those that engage in political activities. That is the difference between a section 501(c)(3) and a section 501(c)(4) organization. Entity separation is permissible.

Another thing that Congress can do—and these two together I think make up the heart of this proposal. Another thing that Congress can require is the financial separation of two programs: one program that involves both Government money and private money and is pursuing a goal Congress wants to have pursued, and another program that involves only private money but is pursuing a goal that is perfectly lawful but that Congress doesn't want to subsidize. Those two can be financially separated to make sure that none of the Federal tax dollars leak over from one into the other.

In order to comply with this amendment, what organizations and exactly what they have to do depends on a number of things. What organizations are going to need to do is employ entity separation and financial separation to make sure that what Congress wants done with respect to Federal funds really happens.

One point to think about here is that the simple requirement that Federal funds not be spent for political advocacy, not be spent for private political purposes, can itself, under certain circumstances, lead a reasonable private person who wants to comply with the law to engage in entity separation and financial separation.

Consider the charitable organization that engages in both charitable activities and grassroots lobbying—and here I am borrowing an example from Professor Cole—and has a telephone line, during the day uses the telephone line for charitable undertakings, at night its volunteers use the phone line to engage in grassroots lobbying.

It gets a Federal grant. The federally funded activities need a telephone too. Suppose it uses the Federal grant to pay part of its telephone bill. Depending on how it is billed, it may be subsidizing its political activities by—if it has the same kind of arrangement I do with the phone company where you pay a single flat rate; it now costs less for them to use the phone for lobbying because somebody else is paying part of it. What is going on is that the taxpayer funds are paying some of the overhead.

There are other ways to set up the billing system so as to allocate the cost differently and make sure that the Federal grant doesn't pay the overhead. That's financial separation.

What a grantee that wanted to really make sure that the Federal Government wasn't paying any of its overhead would do would, I think, engage in entity and financial separation. It would hide them off, and it would hide them off so that none of its political activities were subsidized by the taxpayers, even by way of picking up overhead.

You know, if you are going to spend $40 billion, you can carry a lot of overhead and you can convey a number of important implicit subsidies for private political activity. So just built into the very idea of saying that Federal funds can't be spent for private lobbying, right there, in addition to any additional restrictions, are going to be certain—if you are really serious about it, are going to be certain limitations on how organizations can set themselves up and how they have to keep their activities financially separate from one another.

Let me also just say something briefly about the different regimes for Federal contractors and Federal grantees, although it is important to remember of course that the same organization, sort of depending on the degree of entity separation, a number of other things—in principle, the same organization, as has been pointed out, can be a grantee and a contractor; it can receive a grant for one purpose and a contract for another.

But the point I want to make is that Congress has a complex regime designed to make sure that Federal contractors can't use Federal funds to lobby, that they lobby only with their own money.

I will confess, I don't know very much about that system, and I hope I never have to learn very much about it. But Congress has a regime to do that. It has a regime and is talking about changing that regime to make sure that grant funds are not used to support private political activity.

Congress, within the structures of the equal protection component of the fifth amendment's due process clause, has substantial ability—Congress is the expert in doing this sort of thing.

Mr. Peterson understands accounting. He understands what is the best way to be sure you get compliance, and somebody like that is the expert in the difference between a contract and a grant. Congress has substantial authority to distinguish different cases, and

the courts recognize that, especially in the area of Federal spending and subsidies administered through the tax system.

I would be very surprised if the fact that there was one regime to prevent the misuse of Federal funds for contracts and another regime to prevent the misuse of Federal funds for grants would create a serious constitutional difficulty.

Thank you.

[The prepared statement of Mr. Harrison follows:]

Statement of
John C. Harrison
Associate Professor of Law
University of Virginia

Committee on Government Reform and Oversight
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
United States House of Representatives

Prohibition on the Use of Federal Funds
for Political Advocacy

August 2, 1995

At the Subcommittee's request I have considered the constitutionality of the Istook-McIntosh-Ehrlich amendment to prohibit the use of federal funds for political advocacy.

It is useful to begin with Justice Holmes' observation that "[g]eneral propositions do not decide concrete cases." Lochner v. New York, 198 U.S. 45, 76 (1905) (Holmes, J., dissenting). This is a field of constitutional law in which that is emphatically true. The area of government spending is one in which catch phrases are common. They provide, however, little guidance as to the proper resolution of actual questions of law.

For example, it is sometimes said that Congress may not condition receipt of federal payments on waiver of a constitutional right. That statement obscures rather than illuminates. May Congress provide that only socialists are permitted to receive social security? No, it may not. On the other hand, may Congress provide that military recruiters are to be fired if they advocate pacifism on duty? Of course it may.

A well known example of the latter principle is the former version of the Hatch Act, under which most federal employees were forbidden to engage in certain political activities such as managing a partisan campaign. Congress would never think of generally forbidding Americans from managing partisan political campaigns and a law like that would contravene the First Amendment. But the Supreme Court found that such a restriction on government employees, a restriction that applied to their own time and the use

of their own funds, was permissible. United Public Workers v. Mitchell, 330 U.S. 75 (1947).

Another phrase one often encounters is that Congress may not accomplish indirectly what it may not accomplish directly. That too is misleading. For example, the Court has held that although Congress and the States may not criminalize certain abortions, they may have a policy of preferring childbirth to abortion. Moreover, they may implement that policy through spending programs, with the goal and result that there are fewer abortions than there otherwise would be. Compare Roe v. Wade, 410 U.S. 113 (1973), with Harris v. McRae, 448 U.S. 297 (1980). Those cases show that there is a goal -- a reduction in the number of abortions -- that Congress may pursue one way but not another. One could say that Congress may pursue that goal indirectly but not directly. What matters is that Congress may pursue that goal through spending programs but not through criminal regulation of individual conduct.

I do not mean to suggest that the First Amendment does not apply to public employment or spending programs. Of course it does. But it applies differently to different kinds of government activity. That is what the catch phrases so often obscure.

Although it is dangerous to attempt to capture the Supreme Court's First Amendment doctrine in any short formulation, it seems to me that the Court distinguishes among the purposes that Congress pursues when it makes decisions on what we might call speech-related grounds. The great principle is that the suppression of speech, and certainly the suppression of any particular message, is

an impermissible purpose. On the other hand, certain other purposes that may seem similar are just as clearly permitted.

In particular, Congress may decide that it does not want to subsidize political activity; it may decide that taxpayer dollars should not go to private political action. In doing so Congress draws a distinction between political activities and other activities that it may not draw in other contexts. But when it comes to government subsidies, that distinction is quite permissible. Indeed it is motivated by considerations that are themselves related to the First Amendment: the view that people should not be called on to support political activity with which they disagree.

At this point it is natural to respond that it is one thing for Congress to say that government money may not be used in a certain way, another thing for it to say that private money may not be used in a certain way. Surely Congress may no more condition the receipt of public benefits on an agreement to refrain from political speech than it may criminalize political speech.

Once again, that is not exactly correct. On the contrary, the Internal Revenue Code has a distinction like this built into it, a distinction that the Supreme Court has upheld. Organizations that engage in certain kinds of political activity do not qualify for the benefits of section 501(c)(3). That has real economic significance: contributions to section 501(c)(3) organizations are tax deductible, contributions to certain other non-profit organizations are not deductible. The Court in Regan v. Taxation

With Representation, 461 U.S. 540 (1983), found this to be permissible. The Court characterized deductibility of contributions as a government subsidy, the equivalent of a cash grant, and said that Congress may condition the receipt of that subsidy on the decision not to engage in certain political activity. That prohibition goes beyond the use of government funds and extends to private funds: if an organization wishes to qualify for deductibility under section 501(c)(3), there are limits on the ways in which it may use its own funds.

The standard response to this argument is that the Internal Revenue Code does not exert such a strong control over the expenditure of private funds for political activity because it permits the formation of affiliated tax-exempt organizations that engage in political activity, contributions to which are not deductible. The net effect of the Code, goes the argument, is to require that political activities be carried on by an entity that is separate from the entity that qualifies under section 501(c)(3).

Read most narrowly, then, Taxation With Representation holds that Congress may require that entities that receive federal subsidies be separate from those that engage in political activity. Insofar as it does this, the amendment is constitutional under the Court's cases. That is because the requirement of entity separation properly implements Congress' permissible goal of ensuring that federal funds are not used for private political activity. One way to make sure that federal money is not so spent

is to separate organizations that receive federal money from those that engage in political undertakings.

Congress' power to ensure that federal funds are spent only in the way Congress wishes, however, goes beyond the power to require entity separation. The Court in Rust v. Sullivan, 500 U.S. 173 (1991), upheld a regulation designed to ensure that no federal funds went to support programs that used abortion as a method of family planning. The regulation conditioned federal support of a program on an agreement that none of the program's funds be so used, even though some of those funds were provided by private people. In order to ensure that federal money was spent only on Congress' purpose, not a purpose for which Congress thought taxpayer dollars inappropriate, the regulation required that the federally-funded program be financially and physically separate from any other program. The Court specifically approved that provision in the regulation. 500 U.S. at 195-196. Receipt of federal support was conditioned on compliance with rules concerning the expenditure of private funds.

Once again, the Court's reasoning centered on the permissible purpose of ensuring that taxpayer dollars not go for certain uses. The requirement of physical and financial separation, the Court concluded, was proper in order to achieve that purpose.

The Court's doctrine appears to be that although Congress may not pursue the goal of limiting the expenditure of private funds for political purposes, it may employ restrictions on the ways in which private funds are to be spent, along with other measures, to

ensure that the people's money really is spent for Congress' purpose and not to further any private political agenda. In particular, in order to achieve that purpose Congress may require separation of entities and the physical and financial separation of activities.

Here is an illustration. In Rust the Court upheld a regulation that required financial separation of abortion-related and non-abortion-related activities. That separation, which entailed restrictions on the use of private money, was permissible because it was in the service of controlling the use of government funds. By contrast, consider proposals for "voluntary" limitations on expenditures in campaigns for the House and Senate. Under some of those proposals, receipt of federal matching funds would be conditioned on an agreement not to spend more than a certain amount.

If those who maintain that this legislation is unconstitutional are correct, such a system is plainly impermissible. That, however, is not my point here. Rather, I think that such a condition would be unconstitutional, even though the condition in Rust was constitutional. The difference should be clear by now: the restrictions in Rust, like the restrictions in this amendment, are ancillary protections to ensure that public funds are spent only for public, not private, purposes. But the limitations on private money in the campaign context serve no such purpose, because the private money that may not be spent if the condition is accepted and the public money that may be spent are

for the very same purpose: an election campaign. The reason for the condition in the election context has nothing to do with the uses to which public money are put. It is there simply to limit campaign expenditures as such, a purpose that the Court has indicated is impermissible. Buckley v. Valeo, 424 U.S. 1, 48-49 (1976).

The same point emerges from another of the leading cases in this field, FCC v. League of Women Voters of California, 468 U.S. 364 (1984). That case is sometimes cited for the proposition that Congress may not control the expenditure of non-federal money. It is important, however, to understand that case as applying the principle that Congress may adopt measures that limit the use of private funds only insofar as it does so in order to enforce a limit on the use of federal funds.

In League of Women Voters the Court found invalid a ban on editorializing by television and radio stations that received federal funds through the Corporation for Public Broadcasting. The Court emphasized that federal funds made up only a small proportion of stations' total funding. By focusing on that fact, the Court, I think, reflected its understanding that the limit on editorializing was difficult to rationalize as a limit on the use of federal funds. Indeed, the Court explained that it would have been quite another matter for Congress to require that editorializing be done through an affiliated organization receiving no federal funds. Such a separation requirement, the Court implied, would be a reasonable way of ensuring that federal funds

are used only for Congress' purpose. 468 U.S. at 399-401. But Congress, instead of requiring separation, forbade editorializing. The conclusion the Court seems to have drawn was that the limitation was not truly proportioned to the permissible end of controlling taxpayer money.

The crucial question here is not whether the amendment has any effect on how private money may be spent or how organizations are put together. Rust and Taxation With Representation say that such effects can be permissible. The question is whether Congress' measures are proportioned to the permissible purpose of limiting the use of taxpayer dollars for private political activity. The limitations contained here are so proportioned.[1]

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[1] This testimony is provided as a public service for the Subcommittee. It is not presented on behalf of any client or the University where I teach.

Mr. GUTKNECHT. Thank you, Mr. Harrison.

I wasn't quite clear. Are you testifying on behalf of the bill or against the bill?

Mr. HARRISON. I am testifying on behalf of its constitutionality.

Mr. GUTKNECHT. You believe it is constitutional.

Mr. HARRISON. Oh, yes.

Mr. GUTKNECHT. That's what I thought you said, but I wasn't quite clear. My legalese is not as good.

I would request unanimous consent to allow the committee counsel to join us in perhaps responding to a few of the issues that have been raised, and I would recognize the gentlelady from Florida, if she has some questions at this time of this panel.

Mrs. MEEK. I just wanted to commend the panel for clarifying this, even though, like all lawyers, each one had a different opinion, but I definitely got quite a bit out of the presentation.

Mr. GUTKNECHT. So did I, but I am not certain which side is correct.

The gentlelady's opinion is noted. I would turn then to Mr. Ehrlich.

Mr. EHRLICH. Mr. Harrison, with respect to equal protection analysis, it seems to me—and I am sorry I came in late and I have another hearing to get to, but Mr. Cole and many of the proponents of this proposition seem to premise at least part of their argument on a view that I think is flawed.

In listening to your comments, I am sure you agree that Federal law and regulations have been promulgated to interpret the extent to which contractors can use Federal funds in their lobbying activities already exists, and that is to be distinguished from Federal grantees under present definitions of law and the regulations that have been promulgated to interpret that law. Is that your point?

And the fact is—I understood your bottom line to be that Congress obviously already has created and there does exist a body of law with respect to contractor lobbying.

Mr. HARRISON. Absolutely.

Mr. EHRLICH. And the fact that now we are finally getting around to the second half of the equation, which is grantee lobbying, does not contravene equal protection. Is that——

Mr. HARRISON. That's absolutely correct, and what the courts will recognize is that Federal contracts and Federal grants present different problems, and naturally Congress needs to adjust the nuances of what it does in those two different areas where it is pursuing the same goal. It is pursuing the goal of insuring that Federal funds aren't used to support private political activity.

Contractors, who are basically generally profitmaking enterprises, grantees, who are often nonprofitmaking enterprises, that is one of the many differences between the contract world and the grant world.

The important thing is that the courts recognize that there are those differences, recognize that Congress is the expert in getting done what it wants to get done, and give it substantial leeway. They certainly aren't going to require that the two regimes be identical, in particular because there is no reason to believe that Congress is trying to distinguish between grants and contracts in order to suppress some kind of political speech. That is not what is going

on. That is what would worry the courts. No reason to believe that at all.

Mr. EHRLICH. Obviously we do, because this entire body of law, these statutes and regulations, have come about to interpret permissible activities by contractors. In fact, we have already done that.

Mr. HARRISON. Congress has done a lot about that.

Mr. EHRLICH. We have a stack that high, as you know.

Thank you very much.

Mr. GUTKNECHT. I would ask a question particularly of Mr. Cole.

You indicated that some of the things that you had heard today—and you haven't heard all the testimony that this subcommittee has heard about examples—you indicated that you believe that they were already illegal. What advice would you have for people on this side of the desk to try and get some enforcement of the current laws?

Mr. COLE. Well, I think that it is perfectly appropriate, with respect to Government contractors and Government grants, to say that a grant is to be used for the purposes for which it is given. A contract is to be used for the purposes for which it is given, and we will require strict reporting to ensure that that is, in fact, done; that is, that the Federal money is used only for the purposes for which it was allocated.

Now, that is already the law with respect to contractors. It is also already the law with respect to grantees. If Congress' judgment is that it is working better with respect to contractors than with respect to grantees, then maybe you might borrow some of the rules that apply with respect to contractors and apply them to grantees.

What you can't do—and this is the constitutional prohibition—you can't say, because we think grantees are misusing Federal money and we are not enforcing the current laws which prohibit that use, you can't turn around and say grantees cannot use their private money to engage in political advocacy.

As I said, political advocacy receives the highest protection under the first amendment. Congress could not restrict the freedom of Government contractors to engage in political advocacy. It is Grumman's first amendment right to spend however many thousands of dollars it costs to buy these Washington Post ads and try to sell the B–2 bomber to Congress. That's their right. That's their first amendment right. You can't restrict that. You also can't restrict it for grantees.

But when you restrict it for grantees and don't restrict it for contractors, then you have created an additional problem, which is an equal protection problem, and I have not suggested that Congress has to treat grantees and contractors identically, but it does have to follow the same principle with respect to each, which is that it cannot control their private expenditures on political speech. Again, that is what receives the highest protection under the first amendment.

It can impose reasonable restrictions on Federal funds and on federally funded projects, but it cannot, the Supreme Court said, restrict the grant recipient or the contract recipient's speech on its own time.

So I would say, enforce, look at how the contract regulations are working. If you think those are working better, look at adopting those. Enforce the law. The fact that a law is not being enforced is not justification for restricting first amendment freedoms.

Mr. GUTKNECHT. Well, I would just say, Mr. Cole—and we have—I don't know if we have the exhibit here, and since you were the one who brought the Grumman ad to our attention, we are quite aware that many of the private contractors are doing some lobbying for their particular cause right now. But we have currently on the books a stack of laws and rules about that deep that relate to what private contractors can and cannot do, and it is not the intention, I don't think—and I shouldn't speak—I am not one of the original cosponsors of this act, but I think the entire amendment is 12½ pages long and requires filling out a 1-page report.

I don't think that Georgetown University or the National Cancer Association really wants to have to deal with the same level of regulation, and I don't think it is the intent—again, I shouldn't speak for the authors, but I don't think it's the intent of this subcommittee, or at least my intention, that they have to comply with all the rules and regulations we have for private contractors. I hope that is not what you are advocating.

Mr. COLE. It may not be the intent. As I say, I don't know what all the rules are with respect to Government contractors.

What I am saying is that one principle has to guide any regulation of Government contracts or Government grants, and that is that Congress cannot restrict an entity's freedom to speak on public issues simply because that entity receives Federal dollars. It can restrict the use of the Federal dollars, but it can't restrict the use of private moneys which are beyond the scope of the federally funded program. And as to the one page, there is no way that one page is going to work under this bill.

As I said, in order for Georgetown to report on this, it is going to have to monitor the political activities of every one of the thousands of people to whom it disburses funds, and for every one of those persons who spends more than 15 percent of their expenditures on political advocacy, Georgetown is going to have to count that as its political advocacy and report it to Congress.

In fact, there is a domino effect to this because the definition is circular. I am an employee of Georgetown, right? So I get—I would have to determine whether I am spending——

Mr. GUTKNECHT. Mr. Cole, if I could interrupt you, I think House counsel can clarify this, because there is going to be a manager's amendment which I think will deal with your specific concern about individuals.

Mr. COLE. No, I don't think it will, for this reason. The amendment—and I have seen the amendment. The amendment would not require me as a recipient of a grant, as an individual recipient of a grant, if I get a Fulbright fellowship, I would not be covered by these restrictions.

However, as someone who gets funds from an entity, Georgetown, which gets Federal dollars, I would have to restrict my political advocacies to 15 percent of my expenditures. If I engage in political advocacy over the 15 percent threshold, then the fact that

Georgetown is disbursing funds to me constitutes political advocacy which has to be reported.

Mr. GUTKNECHT. What would be an appropriate percentage? If you are spending 75 percent of your time on political advocacy, do you think that is OK? Don't you think there should be some restriction?

Mr. COLE. No. I think——

Mr. GUTKNECHT. So you think taxpayers should subsidize you, if you want to spend 100 percent of your time up here on the Hill advocating political purposes, you believe that that is perfectly acceptable?

Mr. COLE. No, no, I don't believe——

Mr. GUTKNECHT. What is the percentage?

Mr. COLE. What I believe is——

Mr. GUTKNECHT. No. Answer the question. What is the percentage? You say that 15 percent is too restrictive.

Mr. COLE. Yes. The first amendment——

Mr. GUTKNECHT. What is the correct percentage?

Mr. COLE. The first amendment guarantees me the right to spend my private money, my private money, 100 percent of my private money on political advocacy.

Mr. GUTKNECHT. Absolutely. Absolutely. Except you cannot contribute more than $1,000 to a congressional campaign.

Mr. COLE. That's right, but I can come up here and speak and write op-eds and I can take out big advertisements in the Washington Post and I can give money to referendum campaigns. That is political speech. I can engage in that 100 percent. I can engage in that as long as I am doing it with private funds.

Mr. GUTKNECHT. If you were a congressional staffer, how much could you contribute to a congressional campaign?

Mr. COLE. If I am a congressional staffer, I am covered by the Hatch Act and those restrictions which are designed——

Mr. GUTKNECHT. Those are constitutional?

Mr. COLE. Those are designed to ensure that there is not corruption and Congresspeople don't encourage their staff people to be engaging in political advocacy——

Mr. GUTKNECHT. But the nub of your argument is, even if you get 100 percent of your salary, that you ought to be able to spend 100 percent of your time up here on Capitol Hill advocating political——

Mr. COLE. Yes. If it is private money, Congress has nothing to say about it.

Mr. GUTKNECHT. The issue is not private money. The issue is public money.

Mr. COLE. No, it isn't.

Here's the problem. Under this bill, Georgetown gets $10,000 to do a research proposal on artificial intelligence. Now, I have nothing to do with Georgetown's artificial intelligence program. I teach constitutional law. Georgetown pays me to teach constitutional law with private money. I get wholly private money. I have no Federal input whatsoever into my income, all right?

I pay tax dollars so I have Federal output, but I get no input from the Federal Government whatsoever for my income. Nonetheless, this bill would require Georgetown to monitor my political ac-

tivities to determine whether I am spending more than 15 percent on political advocacy. If I am, then Georgetown has to count that as its political advocacy with its private money that it is paying me, has to report that to the Government and it counts toward its 5-percent limit.

Now, for me to determine whether I'm spending more than 15 percent on political advocacy, I in turn, because the definition of "political advocacy" includes disbursement of cash to any person who spends more than 15 percent of their private money on political advocacy, I in turn have to decide whether my grocery store where I buy milk spends more than 15 percent on political advocacy, whether the magazines that I subscribe to spend more than 15 percent on political advocacy, because if they do, then my disbursing funds to them counts as political advocacy, which is then attributed to Georgetown.

So what you are requiring is essentially monitoring of every financial transaction that has any relationship whatsoever to any entity that is receiving any amount of Federal funds, even where the financial transaction is totally private money.

This is the biggest regulatory bill I have seen this year from Congress. It is regulating the political speech of millions of U.S. citizens.

Mr. FLANIGAN. Mr. Chairman, I recognize this is a little free flowing here, but if I could just say, that would be a wonderful example if it were true, but that is not what the bill says, at least according to my reading.

The section of the bill which I think—I have seen so many different versions of this, I am not sure where we are, but at least the specific limitation that I think Professor Cole is referring to limits the use of money—funds from any grant. So in Professor Cole's example, if Georgetown University is receiving money for an artificial speech center and also paying his salary, that doesn't work. It has to be the money used to pay his salary.

Mr. COLE. If I could just respond to that just to clarify for the record. Mr. Flanigan is pointing to the wrong provision. The provision I am referring to is 1(c)1(d) and this is referred to in my testimony. The definition of "political advocacy" includes allocating, disbursing, or contributing any funds to any individual, entity, or organization whose expenditures for political advocacy for the previous Federal fiscal year exceeded 15 percent of its total expenditures for the Federal fiscal year.

So the definition of "political advocacy" includes the disbursement of private funds to private entities who are engaging in more than 15 percent political advocacy with their wholly private funds.

So what you are doing is, down the line, restricting the freedoms of millions of U.S. citizens, and at the same time you are requiring that this political advocacy be reported to Congress, which I believe violates the right to engage in anonymous speech.

Mr. MCINTOSH [presiding]. Mr. Gutknecht, could I ask Mr. Flanigan and Mr. Harrison to comment on Mr. Cole's constitutional analysis of that provision, of that situation.

First of all, Mr. Harrison, welcome. I didn't get a chance to welcome you earlier. We were colleagues at the Justice Department, and now he has gone on to a higher calling, educating our young

people about constitutional law. What is your opinion of Mr. Cole's analysis of whether that is constitutionally suspect?

Mr. HARRISON. Well, the solution, as is drawn to the Internal Revenue Code with most of these difficulties, is to keep the political and the grant-receiving entities separate from one another.

A lot of 501(c)(3) organizations right now have 501(c)(4) affiliates that engage in political activity. I expect that what organizations like Georgetown University, if they are concerned about this sort of thing, are going to do is create separate organizations and they will control them but they will keep the funds separate, from separate organizations to engage in their grant activities and their political activities so as to make sure that the dollars are really kept separate from one another.

When Georgetown's political activities are hidden off organizationally—not organizationally but financially from anything that it's doing, it's receiving Federal subsidies, I think the vast bulk of these problems are going to go away.

It is always possible that some bizarre collection of events will create a difficulty, and the bill I think is designed to obviate that problem if it arises, but there are going to be very few of them, I think, you know, once the organizations involved separate their activities and, in particular, separate their political activities and their grant activities.

So keep the——

Mr. MCINTOSH. Let me go to another line of analysis with you. My alma mater, the University of Chicago, had a limitation on its faculty from engaging in outside consulting and therefore limited their ability to litigate, spend a certain percentage of their time doing that. Do they infringe upon their first amendment rights by putting that type of limitation on their faculty?

Mr. HARRISON. The University of Chicago, of course, is a private organization. Perhaps a better one would be my employer, the University of Virginia, which is subject to constitutional limitations and does have restrictions along those lines, and they are designed—and they are about sort of what you do during the week and not what you do during the weekend, but they do entail some incidental restrictions on what you do during the week, and they are there in order to make sure, A, that the university isn't paying for what it shouldn't be paying for, and, B, that you are really performing your job at all times.

One of the points not to lose track of here is that various kinds of incidental restrictions—it is not the law that anything that involves any effect on what people can do with their own money is unconstitutional; that is not the law. *Rust* v. *Sullivan,* the matching funds show that. The Hatch Act demonstrates that.

The old version of the Hatch Act forbade public employees from engaging in certain partisan political activity on their own time.

The real question in situations like this is, what is Congress attempting to pursue? What goal is Congress attempting to pursue? Is it attempting to pursue the legitimate goal of controlling the use of Federal funds? And the answer here is yes. And how extensive is any impact that that may have on private activities? And the answer here is that the impact is quite slight. Is there some? Perhaps there is.

Is there some from the Internal Revenue Code as it now stands? Of course there is. It is a little more complicated to set things up so as to be in compliance, but there isn't an absolute principle that there can't be any effects on what people do with their own time and in their own way. I think that is a false lead. I think that will just confuse us.

Mr. MCINTOSH. Let me ask you this, Mr. Harrison. There have been several proposals on the Hill dealing with campaign financing, and generally those that advocate taxpayer financing of campaigns do so with the limitation that the candidates can only spend a certain amount of private money. Some of them say you can't spend any private money. Some of them say you can only spend a certain amount of private money in your own campaign. Are those more or less intrusive of first amendment rights than the provisions of this bill?

Mr. HARRISON. Clearly—they are clearly more so. Let me say two things about proposals like that.

First, if there is a general principle that restrictions on the use of Federal funds may never entail any restrictions on the use of private funds, then they are clearly unconstitutional. That is not a hard question.

Mr. MCINTOSH. And therefore *Buckley* v. *Valeo* was incorrectly decided, if you have that broad principle that you can never limit the use——

Mr. HARRISON. To the extent that you read *Buckley* as approving that arrangement in the Presidential comments—*Buckley* is a little dicey on that question, but I think this is worth pursuing, because even if you don't think that there is an absolute principle, that sort of an effect on private funds is forbidden—and, as I say, the court cases suggest that there isn't a principle like that; something else is going on—it seems to me that the proposed restrictions on campaign expenditures, the idea, if you take the Federal matching funds, you have to agree to spend only so much of your money, that is an idea that has been floating around for several years in House and Senate races.

The great difference between that and this proposal and, say, what was going on in *Roster,* some of these other cases, is that on the campaign finance side, the whole purpose of the measure is to limit what people do with their own money. That is what Congress is trying to accomplish.

That, I think, is an impermissible purpose, but that is not to say that there can't be any incidental effects on what people do with their own money when Congress is pursuing some other purpose. That is one of the things that *Rust* stands for.

In *Rust,* Congress is saying, we want to subsidize one kind of program, we don't want to subsidize another kind of program. The Court had previously said that is perfectly fine, those distinctions can be drawn.

What can Congress do in order to make that it subsidizes only the kinds of programs it wants to subsidize? It turns out, one of the things it can do is say, when you participate in one of these programs, your own money has to be subject to these restrictions, and pursuing a permissible end with an acceptable kind of limitation on what people do with their own funds.

Mr. EHRLICH. Mr. Chairman, if the chairman would yield.

Mr. MCINTOSH. Yes, Mr. Ehrlich.

Mr. EHRLICH. Mr. Harrison, let me just follow up with your last observation. I found it very interesting, and I just read your statement pretty quickly here. Is your last point that, with respect to the analogy to campaign financing—we have that system in Maryland by the way; we already have that. If you take the Federal funds, you are absolutely subject to an objective limitation with respect to your private funds in a gubernatorial race.

Was your purpose that—and obviously that is a wholesale limitation on private behavior, but where the legislative body—in that case, the Maryland legislature; in this case Congress—has—the Court said where the legislative body has another legitimate purpose in the scheme—in that case being, I guess, the cost, the extraordinary cost of campaigns and trying to control the cost of campaigns, that being a legitimate overriding purpose—is that your point?

Mr. HARRISON. Well, no, it's not, and let me try to clarify this, because sort of part of what I am doing in using this as an illustration—I mean, I am expressing my own view on a much mooted question on which different people have different views.

It seems to me that—sort of—especially under *Buckley* v. *Valeo* and principles that the Court has developed since *Buckley,* the arrangement under which the condition of receipt of Federal funds is a limitation on what you can do, what you can do with your own money, I think that is unconstitutional.

That, as I say, is a question on which people disagree. The contrary argument is no; the goal that is being pursued there is sufficiently overriding.

Mr. EHRLICH. The goal being what I articulated; correct?

Mr. HARRISON. Yes, absolutely.

The point here is that the problems that arise in the campaign finance context don't arise in this context. This is much less troublesome because there is no question—you know, what I would say, the problem with the campaign finance limitation is that the purpose is to reduce private political spending, and I would say that is an impermissible purpose.

You can debate whether that is an impermissible purpose or not, but the purpose of this legislation is not to reduce private political advocacy. The purpose—and the Court looks at both purpose and effect, but the heart of it, I think, is purpose. The purpose here is to make sure that the Federal funds are spent only in the way Congress wants them to be spent, and, again, one of the things *Rust* teaches is that those limitations can have certain effects, and, you know, they are not great, but they are there, on how private dollars are spent.

I think the important thing is to look at the purpose and to contrast with campaign finances. That purpose is dicey; this purpose is clearly permissible.

Mr. EHRLICH. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Ehrlich.

Professor Cole, let me ask you a series of questions which, don't feel you need to go into at great length. A yes or no answer would be satisfactory, although if you want to amplify it, feel free to.

Do you agree with the holding in *Regan* v. *Taxpayers Association* that upheld the 501(c)(3) limitations on lobbying activity?

Mr. COLE. I am not sure whether it is relevant whether I agree with it. I think it is the law of the land. I mean I think it is the law of the land. I think it is quite distinguishable from what you are doing here, but I think it is the law of the land.

Mr. MCINTOSH. And do you think the holding was correct?

Mr. COLE. I think that it is the law of the land. I think that there are some problems with it, but I think that to the extent that one reads *Regan*—and I'm sorry, I don't know a law professor who could give you a yes or no answer, but to the extent that you read *Regan* to say——

Mr. MCINTOSH. Worse than lawyers.

Mr. COLE. Right, they are.

To the extent that you read *Regan* to say that the Government can choose not to subsidize lobbying activities, which is what the Supreme Court said, we read 501(c)(3) as simply a choice by Congress not to subsidize lobbying activities.

The reason we read that to be the purpose of 501(c)(3) is because 501(c)(4) exists and entity separation is specifically allowed, and what entity separation does, when combined with 501(c)(4), is allow any entity which receives the tax deductions under 501(c)(3) but wants to engage in lobbying, allows them to engage in unlimited lobbying with their private expenditures through the 501(c)(4) regime.

So what they said was, as long as Congress sets up a program by which an entity is unrestricted in its freedom to spend its own money on lobbying, it is permissible for Congress to set up a 501(c)(3) program which conditions a deduction, a subsidy, on an agreement not to lobby.

Mr. MCINTOSH. Let me check with the other panelists. Is it your interpretation that the *Regan* case requires them to be unrestricted? It seems to me that 501(c)(3)'s do have restrictions on their own money.

Mr. COLE. 501(c)(3)'s do, but 501(c)(3)'s have a choice of creating an affiliate of 501(c)(4) which is unrestricted in its freedom to spend private, nonsubsidized moneys on lobbying. And that is critical, and the difference with respect to this bill is that this bill provides for no opportunity for such separation.

Mr. MCINTOSH. It is my understanding that they are also willing to uphold the provision with respect to entities that don't have a (c)(4).

Mr. COLE. The reason is because any entity has the choice to set up a (c)(4) and that allows the entity to freely spend its private money on political advocacy.

Under this bill—let's take Georgetown again. If Georgetown could prove that every cent of that $10,000 grant for artificial intelligence research was spent on artificial intelligence, it would still have to restrict 95 percent of its whole private money. Now, that is not the way 501(c)——

Mr. MCINTOSH. Is Georgetown a 501(c)(3)?

Mr. COLE. Georgetown I think is an educational institution. I am not sure what its tax status is vis-a-vis 501(c)(3) and 501(c)(4). There is a tax person here. We could get the answer to that.

Mr. HARRISON. It has probably got multiple entities. I think UVA does.

Mr. MCINTOSH. So assuming the fund went straight to Georgetown University, they would have similar limitations under their Tax Code.

Mr. COLE. As a condition on the Federal subsidy which comes with tax deductibility under 501(c)(3), you are not allowed to engage in substantial lobbying, but the Supreme Court upheld that because they said, given the existence of 501(c)(4), given the existence of Georgetown's ability to essentially separate off all private moneys that it wants to spend on lobbying in a 501(c)(4) and spend them without restriction on lobbying, then what we construe 501(c)(3) to be is simply a choice not to subsidize lobbying.

Now, Congress can make that choice. That's what *Regan* stands for. But Congress has already made that choice. It already has laws, as we have heard earlier today, that specifically say, we choose not to subsidize lobbying.

Under this bill, even if an entity can prove that not 1 penny of Federal dollars has gone to lobbying, it still has to restrict 95 percent of its private money to nonlobbying, nonpolitical advocacy cases.

Mr. MCINTOSH. Which is the case of 501(c)(3)'s.

Let me move on to a case where they actually did restrict private money, and that was in *Rust* v. *Sullivan.* Do you agree with the holding in *Rust* v. *Sullivan?*

Mr. COLE. I do, and I would like to read what I think is the most important passage in *Rust* v. *Sullivan.* It distinguishes what it upheld in *Rust,* which was a restriction on title X family planning programs and the money spent in the title X family planning program, and it said:

> In contrast, our unconstitutional condition cases involve situations in which the Government has placed a condition on the recipient of the subsidy rather than on a particular program or service, thus effectively prohibiting the recipient from engaging in the protected conduct outside the scope of the federally-funded program.

That sentence is about the best description of this bill that I can imagine. This bill places a condition on grant recipients, not on the grant, not on the program that is funded, but on the recipient, thus effectively prohibiting the recipient from engaging in protected conduct, first amendment protected conduct, outside the scope of the federally funded program.

So I agree with *Rust,* and I believe *Rust* stands for the proposition that this bill is unconstitutional.

Mr. MCINTOSH. Under *Rust,* you read the restrictions on political campaigns who receive Federal dollars to be prohibited or allowed?

Mr. COLE. I think *Rust* could be read to support the notion that they would not be permitted. I think the question would be with respect—and that question has not been addressed—whether or not voluntary restrictions are constitutional. It is a much-mooted point, but I think the question really would be, it is clearly a restriction on private speech and it is a condition of receiving a Federal grant.

The question is, is the purpose in equalizing resources between candidates for election sufficiently compelling to justify the restriction on private financing? Obviously you can't serve the purpose

without restricting private financing. So the question would be, is that a legitimate purpose? Some people believe it is. Some people believe it isn't.

The Supreme Court in *Buckley* suggested that it was not, but the voluntary restriction in *Buckley* was not challenged and so the Court didn't address that question. So I think *Rust* doesn't really tell us whether that is constitutional or unconstitutional. What it does tell us is that first amendment restrictions would have to be—first amendment scrutiny would have to be applied to that program.

Mr. MCINTOSH. Well, let me say categorically, the purpose of this statute—there are several that are very important here. One is to limit the effect of taxpayer subsidies for lobbying activities, which, the evidence that has come before this subcommittee, indicates is indeed happening in spite of current law.

The other is, not unlike the intent of the former Hatch Act, that we have found at least two instances where agencies have used the fact that they are making grants to private sector entities to encourage them, and in one case, against the entity's first response that we don't do that, to engage in lobbying activities, and that there is a high degree of undue influence going from the agencies to these grant recipients and that, in the same way, the Hatch Act prohibited the individual from exercising their political rights in order to shield them from that undue influence, this act will put the prohibition on the grant recipients and then, I think, have a very beneficial effect that the agencies won't be channeling their activities toward lobbying.

So there is clear evidence that there are these problems there, and the purpose of this provision is ultimately to effect those purposes. Ultimately, in my view, people do have a choice. They can always choose to not be a grant recipient and fund their activities in the private sector through a separate entity from one that receives Federal money.

Mr. COLE. Well, you can say that about any unconstitutional condition program. You can say it about the *FCC* v. *League of Women Voters* case where public television stations, if they received Federal grants under the Communications Act, had to agree not to engage in editorializing with their private money.

You could say, well, they have the choice. They could have not taken the Federal grants and engaged in editorializing, which is very similar to political advocacy, and therefore there is no problem. The Supreme Court disagreed.

The Supreme Court said that because the restriction in the Communications Act limited the public television station's ability to editorialize with its private funds, it was unconstitutional, and in fact, the Government argued in that case exactly what has been suggested here. That is, entity separation might solve the problem. The public television station could sort of create a separate fund-receiving entity and get that Federal grant and then engage in editorializing with its separate entity.

The Supreme Court rejected that argument because the statute did not provide explicitly for entity separation, nor does this statute, unlike 501(c)(3) and 501(c)(4) which explicitly does.

Mr. MCINTOSH. I am not familiar with that case, although counsel informs me that, in fact, they indicated if an affiliate could engage in the speech, that would be fine.

Mr. Flanigan or Mr. Harrison, could you comment on this line of reasoning?

Mr. FLANIGAN. Just briefly.

I think that particularly the *Rust* decision, since it is the Court's most recent pronouncement on this issue, has to be read very carefully.

The language that Professor Cole quoted indeed is in the opinion, but you need to go on and read the whole of it. Otherwise it doesn't make sense, it is read out of context. There the Court went on to discuss the *FCC* v. *League of Women Voters* case, noting specifically the language from that case. Indeed, this is a quote from the *Rust* opinion. We expressly recognized in *FCC* v. *League of Women Voters,* however, that were Congress to permit the recipient stations to "establish affiliate organizations which could then use the station's facilities to editorialize with non-Federal funds, such a statutory mechanism would plainly be valid."

I guess I confess, I have not read this legislation as prohibiting an institution from establishing an affiliate which could use non-Federal funds to engage in political advocacy, however, that is defined in the statute. I guess I am a bit puzzled as to why Professor Cole believes that that is the case in this statute.

Mr. MCINTOSH. That is my understanding of the legislative language as well.

Professor Harrison.

Mr. HARRISON. Let me just add that I think that an awful lot, perhaps the bulk, of grantees on their 501(c)(3)'s already have a 501(c)(4). They have that much entity separation. It may well be that for safety's sake they will now set up another entity to get Federal grant money and they will then have to be careful about where the Federal grant money goes from that entity, in particular, make sure that it doesn't go to the 501(c)(4).

But the combination of—you know, this bill, as I understand it, requires a combination of financial separation and entity separation. Both of those have been approved by the Court. It is being required in pursuit of a goal Congress is clearly permitted to pursue.

Yes, I want to say again, as a law professor who tries to invent interesting hypotheticals, yes, you can imagine situations in which there may be constitutional difficulties, but first, for an entity that is trying to comply, the way to compliance in the vast bulk of cases is marked quite clearly; and, second, to make again the point I made before, the provision just saying that Federal funds can't be used to lobby, all by itself, can create a problem for an entity that doesn't have entity separation. It has its legal personality and its money all in one big pot. It can easily find itself falling afoul just of that initial requirement, the constitutionality of which seems to be unquestioned.

So if that were all there were, I think—you know, people must turn square corners when they deal with the Government—I think you would see a lot of financial and entity separation without regard to the other requirements in the amendment.

Mr. McINTOSH. Thank you very much, all of you, for your testimony today.

Mr. Gutknecht received unanimous consent, or the counsel, to ask some questions.

Before I turn to counsel, let me ask unanimous consent to enter into the record two letters. One is from Prof. Lillian Bavier at the University of Virginia Law School in which she endorses the reasoning and conclusions in a letter from our witness, Mr. Timothy Flanigan, indicating that it is their opinion that this legislation does survive constitutional scrutiny and does not violate the first amendment.

Mr. FLANIGAN. Mr. Chairman, that is a higher grade than she gave me in my property class as a first-year law student.

Mr. McINTOSH. It is heartening to know we improve with time, isn't it, Mr. Flanigan? Seeing no objection, both letters will be entered into the record.

Let me turn now to our counsel for the subcommittee, Mr. Todd Gaziano.

Mr. GAZIANO. Thank you, Mr. Chairman.

The last series of questions or comments has almost, I think, cleared up an important point that I would like to just have the record reflect. It seems that Professor Cole's reading of this statute and a large part of his constitutional analysis is based on his belief that the legislation does not—that actually prohibits entity separation.

I would submit that the legislation implicitly assumes entity separation because it attempts to limit cross-subsidization of entities, and I want to ask Mr. Flanigan and Mr. Harrison—and, Mr. Flanigan, I think you have already addressed this, to use Professor Cole's hypothetical about Georgetown University, is there anything in this legislation that would prohibit Georgetown University from setting up a 501(c)(4)?

Mr. FLANIGAN. Not to my understanding.

Mr. GAZIANO. Or some other affiliate?

Mr. FLANIGAN. No.

Mr. GAZIANO. To engage in as much political activity as it deemed properly?

Mr. FLANIGAN. As long as it complied with the requirements concerning cross-funding, no.

Mr. GAZIANO. Now, do the provisions which limit cross-funding imply that the intent of Congress is to prohibit entity separation or to recognize entity separation?

Mr. FLANIGAN. I would say that from that I derive that Congress, if this were enacted, recognized entity separation.

Mr. GAZIANO. Mr. Harrison, do you read the legislation to prohibit or to recognize entity separation?

Mr. HARRISON. I think I know what my line is here. I think it clearly contemplates it, and sort of in the grant sector—I am starting again to take the example of the universities, and I don't know about Georgetown. I know that Virginia is already a maze of entities, and in part to comply with the Internal Revenue Code and with various Federal requirements and with various requirements by the State of Virginia. It may be that Virginia would not even have to generate any—you know, we have thrown Occam's razor

away a long time ago, I guess—generate any additional entities. It might just be able to use the ones it already has.

But such a thing is quite common in this area. Yes, of course.

Mr. GAZIANO. Professor Cole, I would like, on this line of questioning, to clarify a possible distinction between the Supreme Court's reasoning, recognizing entity separation creation in *Rust* and its language in the *League of Women Voters* case.

In the earlier case, it seems that only one entity receives—there is an underlying law that only one entity is allowed to broadcast, is that one which has a broadcast license. So in that particular situation, in that situation only, it seems to me that Congress might have needed to affirmatively allow entity separation, and that is what Justice Brandeis was getting to when he said, if an entity—an affiliate could editorialize, then this would be a permissible statute, whereas in the *Rust* case, under the title X program—and this is what I would like you to confirm, the later case—there was nothing in the title X program which expressly authorized entities to create separate affiliates, and yet the Supreme Court understood that the title X program allowed that and then upheld the regulation.

Is that a possible way to harmonize those cases?

Mr. COLE. No, it isn't, unfortunately.

There was nothing that prohibited entity separation in the Communications Act, and in *Rust* the title X regulations specifically acknowledged the possibility of separation and specifically stated that the restrictions only applied to the federally funded project.

This bill, first of all, does not allow entity separation on its face. That is one problem. The second problem is, if you had entity separation, the entire purpose of the bill would be undermined.

Take the second clause in the bill, the clause that says that any entity that has spent more than 5 percent of its private expenditures on political advocacy is ineligible to apply for a Federal grant. Well, if all that entities have to do is create a separate Federal grant affiliate and apply with the Federal grant affiliate, then that provision is totally meaningless because it will not apply to any entity. So it is a totally meaningless provision.

Similarly, the provisions that restrict the spending of totally private moneys outside the scope of the Federal program, those would have no meaning whatsoever if there was the possibility of entity separation.

The third problem is that the point of entity separation—the reason entity separation was critical in the *Regan* v. *Taxation Without Representation* case was because it allowed the entity who received the subsidy for 501(c)(3) purposes to engage in unlimited 501(c)(4) lobbying, so that the purpose of the separate entity proposal was to restrict only the federally subsidized activity and not to restrict nonfederally subsidized activity, and the Court has suggested that where entity separation requirements are more burdensome than that, where they impose an undue burden on the entity which is receiving the grant, it is an unconstitutional condition.

Look at what this bill would do. Under this bill, if I am an entity that spends 20 percent of my private expenditures on political advocacy and I apply for a grant and I create a separate Federal affiliate in order to apply for that grant, and Congress says, OK, you

can get that grant because it is a separate affiliate, and it has never spent any money because it is just created, and therefore there is no problem with the section 2 which has been read out of the statute, so I get the money from my Federal affiliate.

My Federal affiliate can't disburse any funds to me at all, cannot have any—essentially cannot engage in any business transactions with me under the provisions with respect to barring——

Mr. GAZIANO. But you can disburse funds to them and share equipment with them, can you not?

Mr. COLE. Yes, I could.

Mr. GAZIANO. So you can share funds. You can share office space. You can use the same building. You can have the same board of directors.

Mr. COLE. I think there would be serious problems for the following reason. That entity cannot disburse any—let's say I'm an existing entity. I create a Federal affiliate. It's in room three of a four-room office. Room three is going to pay its share of the rent. Room three is going to pay its share of the telephone bill. Room three is going to—and it's going to make sure that the problems that Professor Harrison was suggesting were not problems. Room three is going to pay its share of the copying, all of that. That can't be done, because room three can't disburse any funds to me.

Mr. GAZIANO. But the political entity can disburse funds to you.

Mr. COLE. Right, but the Federal grantee cannot disburse any funds to me, so the Federal grantee's first amendment rights are directly restricted.

Mr. GAZIANO. I have a followup to Professor Harrison, two questions that Professor Cole's comments come to mind.

First of all, has the Supreme Court ever required a clear statement that entities' separation is allowed? Is that the way you read the *League of Women Voters* case and *Rust*?

And, second, I'd like you to comment on the undue burden point. It was Professor Cole's testimony to the chairman that the affiliate must be totally unrestricted in its ability to engage in political activity for that to survive constitutional scrutiny. I wonder if you agree with that statement.

Mr. HARRISON. On the first point, no, I know of no principle that requires a clear statement.

I think one of the things that was going on in *League of Women Voters* is that at a late stage in the litigation, after *Regan* v. *Taxation With Representation* came down, the Government added—it had a variety of arguments based on the unique nature of broadcasting, Red Lion and so forth. The Government added its *Taxation With Representation* argument, and the Court disposes of that argument at the end of the opinion.

I think—and I don't want to read the case too strongly, because it's authority for a number of propositions, but I think a part of what is going on in the Court's description of—you know, there is no provision to have an affiliate that engages in broadcasting. I think one of the things that the Court is doing is saying this isn't a requirement of entity separation. It's not—it's not really—very little Federal money was involved there.

It's not aimed at making sure that the Federal moneys doesn't go where Congress doesn't want it to go. It's aimed at limiting

what they do with their own funds. And as I say, this is my theory of this area. I think that is not the only inquiry but a fundamental inquiry: What is the purpose? What is Congress getting at?

The arrangement under the Communications Act indicated that what Congress was getting at was controlling what was done with their own funds and not—that was an indicator. The fact that there was no provision for an affiliate to editorialize was an indicator, I think. As I say, this is part of what's going on of what Congress was trying to accomplish.

On the second question, this is just to—I've got this idea and I think it's a good one—sort of by way of the extent of what's required of financial separation of affiliated entities—you know, what we're talking about are affiliated entities. They are going to have the same management, the same ultimate constituents, but they are not supposed to have a financial representation or a financial relationship going from the grantee to the political entity. The other direction is fine.

Once you get done making sure that they really are not picking on any of the overhead, that they are really, really complying with subsection A, you may as well put them across the street. All of the advantages of joint management are still there. The advantages of the same constituency are still there. The same people, ultimately, are operating the two different organizations, but their financial relationship has to be sufficiently separate, that they can't enjoy certain economies.

I don't think that's objectionable. I think it flows from the notion of not having Federal funds subsidize the lobbying, the lobbying operations, and I don't think it's a shocking burden.

Mr. MCINTOSH. Let me thank the panel. Let me also state for the record that it's my view that when I start having overlapping boards and personnel, you do have a problem of entity separation, and I appreciate the point being made.

Mr. HARRISON. I didn't mean to speak for the chairman.

Mr. MCINTOSH. And I still think that we are quite fine. Because you can set up what is, in fact, a separate entity and have them be the advocacy group, especially if it is a membership organization and from the one that receives the Federal grant money.

I appreciate all of you coming today. Obviously, I don't think we have changed anybody's mind on the panel; but you have, in fact, illuminated the arguments for us on the constitutional question.

And particularly to Mr. Harrison, who traveled from out of town, I appreciate you coming here and all of you for participating. Thank you.

Let me ask unanimous consent that the record be held open—there may be some questions in writing that we will refer to each of you in the next 10 days.

Seeing no objection, the record will be held open.

If we could turn now to our third and final panel, this panel represents two individuals who are engaged in charitable activity.

Our first witness will be Colonel Williams, Charles Williams, who is the executive director of Maryland Homeless Veterans, Inc. And Colonel Williams is retired from the Army. I appreciate you coming here and presenting your views with us today.

Before we start let me, again, swear in both of you.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Please let the record show that both witnesses answered in the affirmative.

Colonel Williams, thank you for coming, and please share with us your testimony.

STATEMENT OF COL. CHARLES WILLIAMS (U.S. ARMY RET.)

Colonel WILLIAMS. Mr. Chairman, members of the subcommittee, I'm Chuck Williams, U.S. Army, 30 years, 5 months, 28 days of active service. I'm a disabled veteran. I am also the executive director of the Maryland Homeless Veterans, Inc.

Maryland Homeless Veterans is a 2-year-old nonprofit organization dedicated to providing homeless veterans and other veterans in need with a comprehensive program to help them become vital, productive, taxpaying citizens in the community.

Maryland Homeless Veterans operates a militarily structured facility where homeless veterans are able to receive an array of services. These services include day, emergency, and transitional housing; counseling and housing placement; substance abuse counseling; job training placement; medical, dental, and optical care.

Now, you might ask yourself what type of veteran would be homeless or what type of veteran would be subject to abuse of alcohol and drugs. But let me tell you a typical example of the people that we have in our shelters.

We have a young man who before his 18th birthday was wounded several times. He was a tunnel rat in Vietnam. He has problems. He has mental problems, and one of the ways that he finds solution to that is in alcohol.

We have a young individual whose job, before his 18th birthday, was assembling body parts in body bags that were sent back to the States, and he's fractured.

Many of these young men we send off to war before they are able to vote, before they are able to buy a drink; we give them weapons of mass destruction and tell them to go defend our country. Some of them can't handle it, so they end up on the trash heap of humanity.

Our job is to rescue these people, and it's our country's job to help us in this effort, because these young men have given a full measure of their body and soul to the defense of this country while many of us who sit back at home are busy getting ahead.

Maryland Veterans goes out, and they rescue these people. Maryland Homeless Veterans also serves as an advocate, promoting the interests of over 1,700 homeless veterans in the city of Baltimore and over 3,700 veterans in the State of Maryland.

It is estimated that as many as one-third of all homeless men and women are veterans. As many as 250,000 homeless veterans now roam our Nation's streets. As an advocate, we speak out for the interests of the homeless veterans before State legislatures and local levels. We also participate in coalition with other homeless services organizations in an effort to increase public and Government support to meet the needs of the homeless.

Maryland Homeless Veterans is very concerned about the proposal to limit advocacy by nonprofits to receive Federal funds. The

proposal is wrong and should be amended for several reasons. Here are a few:

First, and the greatest concern, is the impact of the advocacy proposal may well be that homeless veterans in Maryland will be silent. In that silence, homeless veterans certainly will suffer more, and those of us who are trying to help them will be weakened in our efforts to assist them.

Second, you must understand that it is private funds that support our advocacy for veterans affairs. Maryland Homeless Veterans is funded by a combination of Federal, State and local government support and by private individual, corporation foundations' contributions.

We very well understand that we already are prohibited from using Federal funds to underwrite our advocacy activities. We are scrupulous in our effort to comply with what are already an extensive and complicated set of Federal regulations and rules. We see no legitimate reason why our receipt of Federal funds to deliver service to veterans in the State of Maryland should prevent us from using our privately raised funds to speak out for these veterans.

Third, the advocacy prohibitions is misguided because it ignores the important contribution that Maryland Homeless Veterans and other nonprofits make to the policy dialog. Here you can hear first hand a person's problem and can understand it. Each year we send busloads of our people to the local or the State legislature to explain certain action and to help them understand their plight.

I am a relative newcomer in nonprofit work because most of my service has been in the military—30 years, 5 months. But in that short time—I've come to appreciate the important role that nonprofit plays both as service providers and advocates.

Maryland Homeless Veterans was, and many other nonprofits are, established when members of the community come together to try to address a community need. Often it is the need that otherwise wouldn't get attention. Maryland Homeless Veterans and other nonprofits work on the front line in partnership with the government in delivering responsible service that would otherwise be the sole responsibility of the Government.

As part of that partnership, oftentime Government is providing the funds, we are providing the services. As partners with the government in the delivery of public program and service, we have a duty to speak out. Maryland Homeless Veterans and other nonprofits learn a lot about conditions in our neighborhoods, our cities, and our States. We learn about the problems and about the solutions that work and those that don't. Our advocacy is a natural and appropriate effort to take what we have learned and put it to use to strengthen our Nation.

In closing, sir, I would like to thank you for the opportunity to share our views with the subcommittee. Homeless veterans are likely to face greater challenges in the years ahead as scarce resources strain an already overburdened service delivery system.

I urge you not to tie our hands behind our back and prevent us from speaking out about what we think is a need and is right. The quality of our democracy and of our Government won't suffer from

too many people speaking out for what it believes, but it will suffer if we are silent.

Thank you.

Mr. McINTOSH. Thank you very much, Colonel Williams.

[The prepared statement of Colonel Williams follows:]

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Colonel, U.S. Army (Ret.)

TESTIMONY OF

CHARLES WILLIAMS
COLONEL, U.S. ARMY (RET.)
EXECUTIVE DIRECTOR
MARYLAND HOMELESS VETERANS, INC.

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
GOVERNMENT REFORM AND OVERSIGHT COMMITTEE
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS

AUGUST 2, 1995

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MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE, MY NAME IS COLONEL CHARLES WILLIAMS, US ARMY (RETIRED) AND I AM THE EXECUTIVE DIRECTOR OF MARYLAND HOMELESS VETERANS, INC.

MARYLAND HOMELESS VETERANS IS A TWO YEAR OLD NONPROFIT ORGANIZATION DEDICATED TO PROVIDING HOMELESS VETERANS, AND OTHER VETERANS IN NEED, WITH A COMPREHENSIVE PROGRAM TO HELP THEM BECOME VIABLE, PRODUCTIVE, AND TAX-PAYING CITIZENS IN THE COMMUNITY. MARYLAND HOMELESS VETERANS OPERATES A MILITARILY STRUCTURED FACILITY WHERE HOMELESS VETERANS ARE ABLE TO RECEIVE AN ARRAY OF SERVICES, INCLUDING:

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MARYLAND HOMELESS VETERANS ALSO SERVES AS AN ADVOCATE, PROMOTING THE INTERESTS OF THE OVER 1,100 HOMELESS VETERANS IN THE CITY OF BALTIMORE AND THE OVER 3,600 HOMELESS VETERANS IN THE STATE OF MARYLAND. IT IS ESTIMATED THAT AS MANY AS ONE-THIRD (1/3) OF ALL HOMELESS MEN AND WOMEN ARE VETERANS -- AS MANY AS 250,000 HOMELESS VETERANS NATIONWIDE. AS AN ADVOCATE, WE SPEAK OUT FOR THE INTERESTS OF HOMELESS VETERANS BEFORE THE STATE LEGISLATURE AND AT THE LOCAL LEVEL. WE ALSO PARTICIPATE IN COALITIONS WITH OTHER HOMELESS SERVICE ORGANIZATIONS IN AN EFFORT TO INCREASE PUBLIC AND GOVERNMENT SUPPORT TO MEET THE NEEDS OF THE HOMELESS.

MARYLAND HOMELESS VETERANS IS VERY CONCERNED ABOUT THE PROPOSAL TO LIMIT ADVOCACY BY NONPROFITS WHICH RECEIVE FEDERAL FUNDS. THE PROPOSAL IS WRONG AND SHOULD BE ABANDONED FOR SEVERAL REASONS.

FIRST, AND OF GREATEST CONCERN, THE IMPACT OF THE ADVOCACY PROPOSAL MAY VERY WELL BE THAT HOMELESS VETERANS IN MARYLAND WILL BE SILENCED. IN THAT SILENCE VETERANS CERTAINLY WILL SUFFER MORE AND THOSE OF US WHO ARE TRYING TO HELP THEM WILL BE WEAKENED IN OUR EFFORTS.

SECOND, YOU SHOULD UNDERSTAND, THAT IT IS PRIVATELY RAISED MONEY THAT GOES TO SUPPORT OUR ADVOCACY FOR VETERANS. MARYLAND HOMELESS VETERANS IS FUNDED BY A COMBINATION OF FEDERAL, STATE AND LOCAL GOVERNMENT SUPPORT AND BY PRIVATE INDIVIDUAL, CORPORATE AND FOUNDATION CONTRIBUTIONS. WE VERY WELL UNDERSTAND THAT WE ALREADY ARE PROHIBITED FROM USING FEDERAL FUNDS TO UNDERWRITE OUR ADVOCACY ACTIVITY. WE ARE

SCRUPULOUS IN OUR EFFORTS TO COMPLY WITH WHAT ARE ALREADY AN EXTENSIVE AND COMPLICATED SET OF FEDERAL AND STATE RULES AND REGULATIONS. WE SEE NO LEGITIMATE REASON WHY OUR RECEIPT OF FEDERAL FUNDS TO DELIVER SERVICES TO VETERANS IN THE STATE OF MARYLAND SHOULD PREVENT US FROM USING OUR PRIVATE FUNDS TO SPEAK OUT FOR THOSE VETERANS.

THIRD, THE ADVOCACY PROHIBITION IS MISGUIDED BECAUSE IT IGNORES THE IMPORTANT CONTRIBUTION THAT MARYLAND HOMELESS VETERANS, AND OTHER NONPROFITS, MAKE TO THE POLICY DIALOGUE. I AM A RELATIVE NEWCOMER TO WORK IN THE NONPROFIT SECTOR, HAVING SPENT THE MAJORITY OF MY CAREER IN THE UNITED STATES ARMY. BUT IN THAT SHORT TIME I HAVE COME TO APPRECIATE THE IMPORTANT ROLE NONPROFITS PLAY BOTH AS SERVICE PROVIDERS AND AS ADVOCATES. MARYLAND HOMELESS VETERANS WAS, AND MANY OTHER NONPROFITS ARE, ESTABLISHED WHEN MEMBERS OF A COMMUNITY COME TOGETHER TO TRY TO ADDRESS A COMMUNITY NEED. OFTEN IT IS A NEED THAT OTHERWISE WOULDN'T GET ANY ATTENTION.

MARYLAND HOMELESS VETERANS, AND OTHER NONPROFITS, WORK ON THE FRONT LINES IN PARTNERSHIP WITH GOVERNMENT, DELIVERING PROGRAMS AND SERVICES WHICH WOULD OTHERWISE BE THE RESPONSIBILITY OF GOVERNMENT. AS PART OF THAT PARTNERSHIP, OFTEN TIMES GOVERNMENT IS PROVIDING FUNDING FOR THE SERVICES.

AS PARTNERS WITH GOVERNMENT IN THE DELIVERY OF PUBLIC PROGRAMS AND SERVICES, WE HAVE A DUTY TO SPEAK OUT! MARYLAND HOMELESS VETERANS AND OTHER NONPROFITS LEARN A LOT ABOUT CONDITIONS IN OUR NEIGHBORHOODS, OUR CITIES, AND OUR STATES. WE LEARN ABOUT THE PROBLEMS AND ABOUT THE SOLUTIONS THAT WORK, AND THOSE THAT DON'T. OUR ADVOCACY IS A NATURAL AND APPROPRIATE EFFORT TO TAKE WHAT WE LEARN AND TO PUT IT TO USE TO STRENGTHEN AND IMPROVE THE COMMUNITIES IN WHICH WE LIVE.

IN CLOSING, I WOULD LIKE TO THANK YOU FOR THIS OPPORTUNITY TO SHARE OUR VIEWS WITH THE SUBCOMMITTEE. HOMELESS VETERANS ARE LIKELY TO FACE GREATER CHALLENGES IN THE YEARS AHEAD AS SCARCE RESOURCES STRAIN AN ALREADY OVERBURDENED SERVICE DELIVERY SYSTEM. I URGE YOU NOT TO TIE OUR HANDS BEHIND OUR BACK AND PREVENT US FROM SPEAKING OUT ABOUT WHAT WE THINK IS NEEDED AND IS RIGHT. THE QUALITY OF OUR DEMOCRACY AND OF OUR GOVERNMENT WON'T SUFFER FROM TOO MANY PEOPLE SPEAKING OUT. IT WILL SUFFER IF THE INTERESTS OF OUR HOMELESS VETERANS, AND OTHER CHALLENGED AND CHALLENGING POPULATIONS, ARE NOT HEARD.

THANK YOU AGAIN.

Mr. McINTOSH. Our next witness is Ms. Melinda Sidak, who is a colleague of mine from the Reagan administration and a friend. I appreciate you coming here and representing the views of the Independent Women's Forum [IWF].

Ms. Sidak.

STATEMENT OF MELINDA SIDAK

Ms. SIDAK. Thank you, Mr. Chairman. In view of the time, I'll just summarize my written statement.

My name is Melinda Sidak, and I'm testifying today on behalf of the Independent Women's Forum. The IWF is a nonprofit, nonpartisan group of independent women who believe in freedom achieved through limited government and individual responsibility. We neither seek nor accept funding from any governmental source, Federal, State, or local.

While in principle we don't object to competitive government contracting to perform basic governmental services for limited purposes and subject to appropriate restrictions, as a philosophical matter we oppose large-scale taxpayer support of nongovernmental organizations.

We are particularly concerned about the funding of two kinds of organizations. The first kind of organization is public policy research and educational organizations like IWF. We believe such funding is mutually corrupting. First, it compels citizens to support the advancement of views that they may not agree with, that indeed may be antithetical to views that they hold, deeply held positions. Second, Government departments tend to dispense money to grant recipients that favor the Government's own view of particular matters. These groups are most likely to favor that department's activities and favor the expansion of Government in the programs that they service. These organizations, in turn, are unlikely to advocate views opposed by the Government entity that is the dispenser of the grants.

We also believe that Congress should eliminate funding for public policy advocacy and lobbying groups. Again, compelling citizens to support points of view they disagree with is antithetical to first amendment interest and concern about free expression. It also removes money from taxpayers that they might otherwise choose to spend on advocating points of view with which they do agree.

There are many examples that were cited at the first hearing on this legislation. I will just mention one of my favorite examples, the American Bar Association, which received last year almost $20 million worth of grant funding. The ABA, as we all know, exists to advance the viewpoint of lawyers—and not all lawyers. Many lawyers don't belong to the ABA. I don't belong to the ABA because it takes policy positions on many controversial issues that I disagree with. For taxpayers to fund the organizations and especially their lobbying activities constitutes really a Government endorsement of those activities.

I'll close. There has been a lot of talk about the University of Virginia today. I also am a graduate of the University of Virginia, so I think it's appropriate to close with a quote from Thomas Jefferson, who said that, "To compel a man to furnish funds for the propagation of ideas he disbelieves and abhors is sinful and tyrannical."

Thank you.

Mr. MCINTOSH. Thank you very much, Ms. Sidak. The quote by President Jefferson is one of the ones we started these hearings out with several weeks ago.

Ms. SIDAK. I'm not surprised.

Mr. MCINTOSH. Thank you for raising that.

[The prepared statement of Ms. Sidak follows:]

BEFORE THE

HOUSE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,

NATIONAL RESOURCES AND REGULATORY AFFAIRS

2 AUGUST 1995

TESTIMONY OF MELINDA SIDAK

ON BEHALF OF THE

INDEPENDENT WOMEN'S FORUM

My name is Melinda Sidak, and I am testifying today on behalf of the Independent Women's Forum, of which I am an active member. The IWF is a nonprofit, nonpartisan group of independent women who believe in freedom achieved through limited government and individual responsibility. We appreciate the opportunity to speak to this Subcommittee today on the subject of federal funding of nongovernmental organizations.

The IWF believes that nongovernmental organizations should not receive tax funding. The IWF neither seeks nor accepts funding from any government source – federal, state or local. We publish a newsletter and a quarterly magazine. We have just published a media directory of women experts on a broad range of policy issues. IWF articles and opinions are frequently published by others, and our representatives appear often on radio and television. Everything we do is done without a single penny of government money. Our support comes from individuals and private organizations.

The primary reason that nongovernmental organizations should not receive federal funding is that nongovernmental organizations are associations of private citizens who are motivated to join together by their mutual, private interests. As such, these organizations should be supported only by those who freely choose to support them. Citizens who do not wish to support private organizations are now compelled to do so through the mechanism of taxation.

Although nongovernmental organizations may represent the interests of significant numbers of citizens, private organizations have no obligation to represent or serve all citizens – and no citizen should be compelled to support a private organization against his will.

Especially undesirable is federal funding for two particular kinds of nongovernmental organizations. First are public policy research and education organizations like IWF. Such organizations should not receive federal funding, because their views embody particular approaches to governance that are not likely to be the views of all taxpayers. Not only does government funding of private organizations coerce citizens to support the advancement of views they may not hold; such funding also influences the organizations to advance the views of the granting government entity. Since government departments or agencies are unlikely to advocate their own restriction, privatization or closure, the private organizations they select for federal funding tend strongly to support the expansion of government control of the private sector. Thus, the federal funding of some private organizations provides those favored with an unfair advantage over other private organizations which, like IWF, support limited government.

Federal funding should also be eliminated entirely for public policy advocacy and lobbying groups. While private citizens can surely organize themselves to lobby, their purpose is to advocate particular government measures, which, if adopted, become the law of the land. To federally fund private organizations of select groups of citizens is to endorse the particular advocacy agendas of these groups – as if they represent all citizens and as if their agendas were in the public interest. The public funding of advocacy and lobbying groups has all the disadvantages of the public funding of policy research and education organizations. It is simply a worse case, since the purpose of advocacy and lobbying groups is to directly influence legislation.

To cite just one example among hundreds, from the 1993-1994 fiscal year, the American Bar Association (ABA) and the American Bar Association Foundation received $19.9 million in federal funds, under the auspices of the Department of Health and Human Services alone. This information is of public record. As an association of lawyers, and whether through public education or advocacy efforts or otherwise, the ABA has a natural interest in promoting more – not less – law. For its members, activities will increase their opportunities for employment. The ABA is also well known for its judicial selection advocacy activities, designed to foster the appointment of federal judges who favor judges' enactment of law by decree, rather than the Congressional enactment of law prescribed by the Constitution.

As groups of private citizens, certainly the ABA's supporters are protected under the First Amendment and can advocate whatever policies and legislation they determine to be within their interests. However, federal funding constitutes government endorsement of their organizations' policy positions and advocacy agendas – at least by those government entities from which they receive funds.

Citizens who are opposed to the policies, practices and legislation promoted by federally funded organizations are coerced into indirect support via taxation. These citizens might well prefer to have their tax dollars returned to them so that they can use those dollars to support organizations which hold other views on either some or all issues. Whatever one's position on the merits of the American Bar Association's views, or those of its affiliated Foundation, there is no merit in providing nongovernmental organizations a license to steal, in effect, from those who do not support their views.

The federal funding of nongovernmental organizations has a chilling effect upon the American tradition of voluntarism, a hallmark of this country since its founding. Since government funding favors some groups over others – choosing exactly which nongovernmental organizations all citizens are compelled to support – private citizens have fewer resources to oppose the government's choices. They may have less motivation as well. When the U.S. government says to taxpayers, "You will support these groups who hold these views, and we will force you to do it," one does not exactly feel that the First Amendment to the Constitution is being upheld. The quality and tenor of public debate can only be improved if government funding of private organizations is eliminated entirely. People who want to educate, advocate and lobby should be free to do so – without government funds or favoritism.

Mr. MCINTOSH. I have a couple of questions for both of the witnesses.

Colonel Williams, first of all, let me thank you for your work in trying to alleviate the plight of homeless veterans. And all of us want to support the men and women who have served this country in the armed services, and I appreciate you dedicating your time and efforts on behalf of their plight and in terms of solving their problems so that they can become full-standing members of our society and are not subject to conditions that all of us would find intolerable. I also want to commend you on your own service to the country in the U.S. Army.

Let me ask you, at the beginning of the hearing today, I read into the record a statement that we had worked out with the Disabled Veterans of America, and they were concerned particularly that services that they provide, not advocacy activity but services, would be defined as activities that they would have to give up if they received the Federal grants, and we clarified the record that that was not the case. And I was wondering if that changed your view at all of this law or whether it was indeed the advocacy activities that were important to you.

Colonel WILLIAMS. I heard it for the first time when I came in.

Mr. MCINTOSH. It was a news statement.

Colonel WILLIAMS. It did change some of my views. Yes, it did.

Mr. MCINTOSH. Thank you. I appreciate that.

The other question I was going to ask you, approximately what portion of the funds for your organization, the Maryland Homeless Veterans, would you estimate you use for the advocacy activities and what portion would you use for services, maybe finding housing or other direct services to the veterans?

Colonel WILLIAMS. We have a 5-year funding, and on an average we get about $800,000 a year for the operation from HUD. Over the past 2 years that the program has been in existence, we have raised about $57,000 through private funds; and according to what I understand the advocacy program to be, over the 2 years we could have only spent $2,800 on such programs.

And a lot of times our people are called, especially in Annapolis, to testify or to appear before committees; and we would not like to see that happen because our program is different in that we are connected with five or six VA medical centers who have addiction programs by which they funnel people in to us.

Our area is structured. We meet the individual where he is. If he needs a high school education, we put him in a GED program. If he needs educational programs, we put him in those programs.

For an example, we opened our doors on December 7 with 20 people we wanted to train as cadre. Now we have a total of about 90 people inhouse. Of that 90, 26 of them are enrolled in some sort of higher education programs. We have two who are physician assistants, two who are accountants.

And these people are not training, sir, to work at McDonald's, which qualifies them to be homeless again. If you look, as an example, at a population of about 100 veterans, you will find 98 percent of them have a high school education, 35 percent of them have some college. These people are different from the average homeless

people because they are trainable. Some of them leave the Army with great skills.

To serve a population of about 100 people, we have 1 cook. We draw the other cooks from the population. We draw our maintenance people from the population. We draw our security people from the population. We draw our medical people from the population because they have the training.

So far we have sent some of the people into permanent jobs. For an example, Health and Human Services hired two of our people at the GS–7 level. The Post Office has hired one of them. The VA medical centers have hired some of them. These people need a chance, and all we are providing for them is a hand up as opposed to a handout to get their lives straight again.

Mr. MCINTOSH. So you spend the bulk of your efforts on maintaining that facility and providing services.

It sounds like you also encourage people to help themselves in terms of working at the facility.

Colonel WILLIAMS. Oh, yes. That's a part of it.

It's a regimented service. They have a time to get up. They are assigned duties just as if they were in the military. Those people who are not quite ready for this type of regimen are excused or put in other programs. The people that stay there are the people who want to improve themselves.

We have united many of these people with their families.

I would invite anyone to come and look at the program. We have over 98 square feet of living space. We have job-finding systems. We have benefits counseling. The VA medical center sends over all sorts of people who help us to make these people well. So under one roof we provide a comprehensive recovery program for these people, and it is working.

Mr. MCINTOSH. Well, Colonel Williams, my staff likes to keep my spare time in Indiana, but I will take you up sometime and come out and visit your facility when I'm working here, because it sounds like you are doing a great job.

Let me point out one thing in the statute, just to alleviate fears that you might have and, really, a lot of other charitable organizations like yourself that concentrate primarily on delivering services and are advocates, kind of incidentally or not the primary focus. And that is we tried to carve out a safe harbor, if you will, or an ability for groups to give their expertise in the political process.

One, testifying about information that you know of at local council hearings or even before Federal officials, isn't deemed to be advocacy activity. It is more giving information. But, 2, we said up to 5 percent of the funds that the entity spends could be used on good old-fashioned lobbying. And that, for a lot of organizations, was enough of a safe harbor that they felt comfortable with the restrictions. Because their real goal—and that's my purpose in this bill is to ask people to ask themselves: What is my real goal? Is it to be a social services group that helps people or is it to be more of an advocacy group? And then if they choose the latter, to ask them not to receive the Federal funding.

But it sounds to me like you would fall under the 5-percent threshold with your organization and not have a problem with this with us on that.

Colonel WILLIAMS. Because we are new and a lot of donor corporations require 2, 3 years' worth of financial statements and annual reports, we are not there yet. Our funds that we raise are basically, through the veterans organizations, and right now they are meager. We are just beginning to ramp up with the bigger organizations like DAV, American Legion. One day we'll be there, but we're not there yet, sir.

Mr. MCINTOSH. Let me take you up on your offer to come out sometime, because I would like to see your facility. It sounds like the type of thing that I personally want to encourage people in the private sector to engage in.

Colonel WILLIAMS. Yes. And I might answer that the private sector is helping us tremendously.

For an example, I've got a quarter of a million dollar kitchen in which we have only put about $34,000 in it because NationsBank has graciously bought our executive dining facilities, and they have given us the equipment.

And a lot of our beds and sheets and things that come from the Air Force, the Navy because, No. 1, I've still got friends back there; and, No. 2, as they closed down, they find useful—find us as a useful recipient of that equipment.

Mr. MCINTOSH. Well, thank you again for coming.

Ms. Sidak, let me ask you, you stated in your statement that your group didn't receive any Federal funds.

Ms. SIDAK. That's correct.

Mr. MCINTOSH. Is it, in your experience, that oftentimes groups who choose not to receive grants but are in the educational area, as I understand your group is, have a difficult time having their voice heard because other groups that might be funded by different agencies really have a financial advantage?

Ms. SIDAK. Well, they have a financial advantage, but they also have something of an insider's advantage, and this goes back to the corrupting influence of Government money that I mentioned earlier.

If a government agency has been dispensing grants and working very closely with a particular organization, when the time comes for reauthorization of that agency's bill, for example, they are likely to suggest—the agency is likely to suggest that these people testify to let them have information about what's going on and that—we're excluded. We would be people who would be excluded from that sort of process.

Mr. MCINTOSH. So they wouldn't encourage that you speak up about those issues because they don't have any leverage.

Ms. SIDAK. We wouldn't have the same access, the same insider information. The agency probably would have a contrary interest in bringing groups such as ourselves to the attention of a congressional committee, for example. We also lack the financial resources. We're spread pretty thin as it is.

Mr. MCINTOSH. What is your response to an argument that people have made to me that groups that do receive these grants oftentimes have greater expertise or somehow better knowledge and therefore are better able to advocate the point of view for the beneficiaries?

Ms. SIDAK. Well, that's a tough question, because it's partly correct. But it's all part of the symbiosis between Government and large swathes of the nonprofit sector, and we take a more extreme position than your very moderate measure, Mr. Chairman, in favor of defunding a lot of this.

It's not any disrespect. In fact, it's great admiration for the charitable nonprofit sector who perform social services.

Transforming the nonprofit sector into what amounts to an invisible arm of Government is corrupting to the spirit of voluntarism and charitableness. Ultimately it undermines those organizations in the entire nonprofit sector. There is a problem with having Government and the private sector too enmeshed in one another.

Mr. MCINTOSH. One of the witnesses in the hearing on Friday, in fact, gave a very real, concrete example of this. It was Mrs. Huffington. And she and her husband had donated his congressional salary for 2 years, which is about a quarter of a million, all told, to a private charitable group in their home of Santa Barbara that was intended to benefit underprivileged children.

And she said during the 2 years when they were in Congress, it operated pretty well. They got things up and running. And then, after Mr. Huffington had left office, the board that they had created—and they worked very hard to make it a bipartisan, nonideological board—decided that rather than provide those kind of services for children, they wanted to switch the purpose of the group into an advocacy group, and they were abandoning, in fact, the activities that were providing social services.

And this troubled Mrs. Huffington so much that she felt they needed to disband the organization because it had strayed from its original purpose. And it seemed to me a very moving example of how the Federal moneys and the desire to participate in the policy debate can distract some very good organizations from helping in their communities.

Ms. SIDAK. Well, and it also suggests there's an opportunity for individuals who would like to have a platform for advocacy to try to bootstrap up through starting some kind of an organization of this type, receiving Federal funding and then turning instead to advocacy. And, I think, that's been a problem with some groups.

One group that I'm sure you've heard about, and has been frequently discussed in the press, is the National Council of Senior Citizens. It would not exist but for Federal grants. They are receiving something like 96 percent of their funding through Federal grants, and yet they are engaged in very open political partisanship, endorsing candidates for office and so forth, and that is of concern.

Mr. MCINTOSH. I thank both of you for participating in today's hearing.

Again, I would ask unanimous consent that the record be kept open for 10 days if there are additional questions from other Members who weren't able to stay for the whole hearing.

I do appreciate you both coming, particularly Colonel Williams traveling from out of town to be here. Thank you.

This subcommittee is adjourned.

[Whereupon, at 5:04 p.m., the subcommittee was adjourned.]

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