

OPPOSE EFFORTS TO REGULATE GRASSROOTS “LOBBYING” H.R. 2093

Dear Representative:

The undersigned organizations urge you to reject H.R. 2093 offered by Mr. Meehan and Mr. Shays to regulate paid attempts to encourage citizens to contact their elected representatives. This bill may be proposed as an amendment to the lobbying reform bill when the House considers that bill. The Senate wisely rejected such an effort, and we urge you to do likewise. In a representative democracy, citizens not only have the inviolable right but also should be encouraged to contact their elected representatives. Erecting reporting barriers, particularly when coupled with penalties for failure to report, raises the stakes for inadvertent compliance failure and discourages such communication.

H.R. 2093 still suffers from the fundamental problem that it regulates speech among citizens discussing public policy issues. H.R. 2093 would require a report to be filed about ANY group that hires a consultant to put out a message to the public. The group that hires the consultant need not spend over \$100,000 per quarter – instead, if the consultant receives a total of \$100,000 combined from all of its clients, it has to file a report as a “lobbying firm” and report on the activities of *all* of its clients, even those that spend under \$100,000. Even assuming a \$100,000 threshold for reporting, a single advertisement or mailing can easily cost more than that. The bill, therefore, does NOT target only the kind of behavior allegedly engaged in by Jack Abramoff.

H.R. 2093 also sweeps too broadly. For example, a webmaster may, under the bill, have to report as a “lobbying firm.” Oprah Winfrey has a web site urging people to contact their representative and urge support for a bill for Darfur. (see http://www.oprah.com/tows/slide/200610/20061018/slide_20061018_284_109.jhtml) If she hired a webmaster to design and set up the web site, and the webmaster received over \$100,000 in a quarter from all of her clients, it appears the webmaster has now been transformed into a “lobbying firm.”

H.R. 2093 is also disturbing because it refers to someone contacting his or her representative as “lobbying,” which would probably come as a shock to most constituents. Most would consider this action as “democracy” rather than “lobbying.” The term “lobbying” has a different connotation, and is regulated because of the possibility of corrupting influence. By equating constituent contact as “lobbying,” the bill opens the possibility of future regulation and reporting of citizens who contact their elected representatives.

Placing any reporting requirements on efforts to communicate with the general public and thereby “stimulate grassroots activity” would seriously undermine the basic premise of our system of government. The rights of the grassroots, who are “citizen-critics of government,” encompass the separate and distinct political freedoms of petitioning, speech, the press (publishing), assembly and even the free exercise of religion. All are highly prized and protected under the First Amendment for all citizens. Indeed, not only

would the legislation violate all five individual First Amendment rights stated above, but would harm the very essence and purpose of the First Amendment – the right of the people to express ideas among themselves, and to collectively express their will to their elected representatives.

Imposing any reporting requirements would chill these rights, particularly for smaller and unpopular organizations, but regardless of size, citizen groups are entitled to freely speak to the public on policy concerns. Coupling these reporting requirements with penalties for compliance failure makes it even more likely that organizations of all sizes will forego this activity rather than risk sanctions for noncompliance. Additionally, groups that are disfavored are less likely to wish to be identified in a public report as funding efforts on a specific policy position for fear of reprisal by both the government and citizens in the majority.

Proponents of regulation argue that something needs to be done to regulate so-called “Astroturf” lobbying. We do not necessarily agree that such communications need to be regulated, and we have yet to see an adequate definition of “Astroturf lobbying” that does not infringe on what *everyone* agrees is entirely legitimate and fully protected activity. Neither the size nor form of an organization nor that of its efforts to inform or motivate citizens make its public communications dangerous in a democracy. The First Amendment protects the right of citizens on their own or collectively through their associations to express their will or discontent to Congress. Required reporting of the members, their agents or even funders behind such efforts eliminates or reduces no real threat, but instead creates a barrier to the free and open expression of ideas that is the hallmark of a democracy.

The burden of proof that some harm is being targeted, rather than core political speech, lies with the proponents of the grassroots legislation. There is no factual record to sustain the assertion that these burdens on fundamental rights are warranted or that paid attempts to encourage citizens to contact their elected representatives need be regulated. These efforts wrongly assume that constituents who contact their representatives are not doing so “voluntarily” if someone with a viewpoint on a public policy issue has first contacted them. In fact, *how* the individual learned of the issue that motivated him to contact his representative is irrelevant. The *action* taken by that individual in making contact is based on the individual’s own belief in the importance of the matter.

A provision regulating grassroots “lobbying” would not be based upon a record demonstrating illegal or unethical conduct. To the contrary, proposals thus far cover a vast range of legitimate, constitutionally protected activities by individuals and groups that merely seek to inform their fellow citizens and encourage them to make their voices heard on important public issues. Given the impact on fundamental constitutional rights, the House should not use this opportunity to suppress the people’s voices and their right to voice their opinions to their elected representatives. We therefore urge you to reject any efforts to regulate paid efforts to encourage citizens to contact their elected representatives.

Sincerely,

Abraham Lincoln Foundation
American Center for Law and Justice
American Civil Liberties Union
American Family Association
American Family Association of Indiana
American Family Association of Michigan
American Family Association of Pennsylvania
American Values
Americans for Limited Government
Americans for Tax Reform
Center for Individual Freedom
Coalition for Marriage and Family
Concerned Women of America
DownsizeDC.org, Inc.
Eagle Forum
Family Leader Network
Family Research Council
Florida Family Action
Focus on the Family Action
Free Market Foundation
Free Speech Coalition, Inc.
GrassrootsFreedom.com
Gun Owners of America, Inc.
Home School Legal Defense Association
Let Freedom Ring, Inc.
Mark Weinberg, Esq.
National Religious Broadcasters
National Rifle Association
National Right to Life Committee
National Taxpayers Union
Point of View Radio
Public Advocate of the United States, Inc.
RenewAmerica
The American Conservative Union
Traditional Values Coalition
TREA Senior Citizens League, Inc.
U.S. Term Limits