national RIGHT TO LIFE committee, inc.

512 10th Street, NW Washington, DC 20004-1401
(202) 626-8800 FAX: (202) 737-9189 Website: www.nrlc.org

May 1, 2007

RE: "lobbying reform" and Meehan "grassroots lobbying" curbs

Dear Member of Congress:

For many weeks, the House Democratic leadership has been writing an omnibus "lobbying reform" bill. This has been occurring outside of the regular committee system, behind closed doors, in a process that is strikingly "non-transparent." Nevertheless, according to today's *Congress Daily*, "Democratic leaders have indicated they want to have the bill on the floor as soon as next week."

The National Right to Life Committee (NRLC) does not oppose any provision of the lengthy "lobbying reform" bill (S. 1) that passed the Senate on January 18, because during floor consideration, the Senate voted to remove a provision that would have established regulation of so-called "grassroots lobbying." However, according to various published reports, certain special-interest groups are still pushing hard for inclusion of a "grassroots lobbying" provision in the House bill. If such a provision is not included in the leadership's base bill, various sources indicate that it is likely to be offered as an amendment by Congressman Marty Meehan, at the behest of the same special-interest groups.

Although the final language of this proposal is not yet available to us, the anticipated provision/amendment has been described in considerable detail by some of the special-interest groups that are promoting it. We will refer to it here as the "Meehan proposal" for convenience. There may be continued modification of the language on some fine points, but those modifications will not affect what we say here.

NRLC is strongly opposed to the Meehan proposal, and any vote that occurs on such a proposal will be included in the NRLC scorecard of key roll calls for the 110th Congress. If such a proposal nevertheless becomes embedded in the broader "lobbying reform" bill, NRLC expects to oppose the broader bill as well.

NRLC's opposition to regulation of "grassroots lobbying" is shared by many other organizations, as was conveyed in a letter signed by 18 groups issued some weeks ago. (See http://www.nrlc.org/FreeSpeech/MultiGroupLetterToProtectGRL.pdf)

The current legislative situation was described in an article in *CQ Today* (April 23), which reported, "Democratic House aides say they hope to finish the lobbying bill by the end of May. There are three areas of disagreement in drafting the legislation [the first being:] Regulating grass-roots lobbying. Democrats have been pushing to require disclosure from grass-roots groups that encourage voters to call Congress about issues . . . Lobbyists and Democratic aides involved in drafting the bill say the grass-roots provision is likely to end up in the House legislation but

may not survive a conference with the Senate, which stripped such regulations out of the bill (S. 1) that passed in that chamber Jan. 18. . . . the American Civil Liberties Union also has expressed opposition."

It appears, then, that Members may be forced to vote on a contentious "grassroots lobbying" proposal, even though the Democratic leadership is fully cognizant that such a provision is unlikely to survive in conference with the Senate, which already voted down a similar proposal on January 18.

It is always possible, of course, that the conference committee will deadlock on the grassroots lobbying issue. It was one of the issues that locked up the lobbying reform conference in the 109th Congress. It is also possible that the grassroots lobbying provision will survive conference and thereby jeopardize the conference report in the Senate. In 1994, the legislation to create the current Lobbying Disclosure Act was defeated in the Senate when proponents failed to muster the votes required for cloture -- a result encouraged by a left-right coalition that objected to the inclusion of language to regulate "grassroots lobbying." [1]

Mr. Meehan himself will be gone before the conference committee completes its work -- indeed, most likely, gone before the conference committee is ever named. He starts his new job as chancellor of the University of Massachusetts Lowell on July 1.

Perhaps, rather than proposing to regulate activity that seeks merely to persuade citizens to speak out on policy issues, Mr. Meehan might consider whether to attempt "reform" of the current policies exempting public universities from the rules that limit the amounts that can be spent on gifts and travel expenses connected with lobbying members of Congress. [2] [3]

NRLC believes that efforts to motivate citizens to express themselves to those who govern are protected by the First Amendment, as exercises of the right to petition and the right to free speech. Of course, it is necessary for any organization to spend money to communicate with the public, especially if the group represents a viewpoint disfavored by the institutional news media.

The Meehan proposal and its variants cannot be squared with the past decisions on the First Amendment by the U.S. Supreme Court. For example, in *United States v. Rumely*, the Supreme Court narrowly interpreted a congressional resolution so as to authorize a committee to investigate only "direct" lobbying activities, and affirmed a court of appeals ruling that included this statement: "It is said that indirect lobbying by the pressure of public opinion on the Congress is an evil and a danger. That is not an evil; it is a good, the healthy essence of the democratic process."

Those who argue that "disclosure" does not constitute a "restriction" are ill-informed or disingenuous. It is indeed a restriction when citizens who devote themselves to a cause in which

they believe are told they risk ruinous fines, or even criminal penalties, if they fail to properly report to the government the details of their efforts to motivate fellow citizens to communicate with their elected representatives.

For these reasons, NRLC will regard any proposal to regulate "grassroots lobbying" as a scorecard issue. Thank you for your consideration of our concerns on this issue.

Sincerely,

Douglas Johnson
Legislative Director

Susan T. Muskett, J.D.
Congressional Liaison

(202) 626-8820

Additional information at: http://www.nrlc.org/FreeSpeech/index.html

[1] The *CQ Almanac* for 1994 noted:

> One or both chambers passed lobbying bills in 1967, 1976 and 1978, but each time Congress failed to agree on how much disclosure to require of whom -- mainly whether to require registrants to disclose so-called grassroots activities aimed at drumming up public support and the names of lobbying groups' big contributors. Both issues emerged again in 1994 and helped kill the lobbying bill yet another time . . . The conference agreement appeared headed for easy passage until Republicans began raising objections about the bill's effect on grass-roots lobbying. . . . opposition intensified as interest groups as diverse as the American Civil Liberties Union, the Humane Society of the United States and the National Right to Life Committee came out against the bill on the grounds that the disclosure requirements could prove burdensome and deter efforts to lobby on legislation. (pages 37, 41, 42)

[2] From "Universities get free pass on new House ethics rules; Can bankroll lawmakers' trips," by Fredreka Schouten, *USA Today*, March 8, 2007:

> New House ethics rules that restrict lobbyist-funded travel exempt trips paid for by colleges and universities, a powerful lobbying force in Washington. Colleges, universities and other higher-education groups spent at least $75 million on federal lobbying efforts in 2005, and more than $900,000 on travel for lawmakers since 2000, according to a USA Today analysis of travel and lobbying reports compiled by non-partisan data-tracking firms. Universities, which spent more on lobbying than hospitals and nursing homes in 2005, seek help on issues such as federal student aid, immigration restrictions for foreign students and special grants.

[3] The new rules exempt public universities, which are considered government agencies, from the rule banning gifts to members of Congress. From "Loophole in gift ban allows government-funded freebies," by Ken Dilanian, *USA Today*, March 15, 2007:

> When Democrats took control of Congress in January, they passed a sweeping set of ethics rules, including a ban on gifts that prohibits lobbyists from buying a lawmaker as much as a hamburger. But the gift ban left in place a little-noticed loophole: It doesn't apply to government agencies and public institutions. That exemption, which dates back more than a decade, leads to a stark disparity when it comes to public and private universities, which compete fiercely for federal money. While private universities are banned from giving gifts, public universities can offer members of Congress free tickets to some of the country's most sought-after sporting events. That includes the upcoming NCAA men's basketball tournament, in which 43 of the 65 teams represent public schools. Nor do those gifts have to be disclosed, according to the rules.

[4] A year later, in 1954, the Supreme Court thwarted congressional efforts to regulate grassroots communications, by narrowly construing the 1946 Federal Regulation of Lobbying Act to apply only to paid lobbyists who lobby through "direct" communications with members of Congress. The 1946 Act attempted to regulate efforts "to influence, directly or *indirectly*, the passage or defeat of any legislation by the Congress of the United States."(emphasis added). Yet, in *U.S. v. Harriss*, 347 U.S. 612 (1954), the U.S. Supreme Court rejected the inclusion of indirect communications, and citing *Rumely*, limited the 1946 Act to direct lobbying – what the Court referred to as "lobbying in its commonly accepted sense," specifically "direct communication with members of Congress on pending or proposed federal legislation." As a result, "grassroots lobbying" was excluded from the Act's coverage. (See Report Prepared for the Senate Subcommittee on Intergovernmental Relations of the Committee on Governmental Affairs by the Congressional Research Service, S. Prt. 99-161, 99th Cong., 2d Sess. 24, 45-46 (1986)).