H.R. 3078, FEDERAL AGENCY ANTI-LOBBYING ACT

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

H.R. 3078

TO AMEND TITLE 31, UNITED STATES CODE, TO PROHIBIT THE USE OF APPROPRIATED FUNDS BY FEDERAL AGENCIES FOR LOBBYING ACTIVITIES

MAY 15, 1996

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H.R. 3078, FEDERAL AGENCY ANTI-LOBBYING ACT

WEDNESDAY, MAY 15, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in room 2154, Rayburn House Office Building, Hon. William F. Clinger, Jr. (chairman of the committee) presiding.

Present: Representatives Clinger, Hastert, Morella, Shays, Schiff, Ros-Lehtinen, McHugh, Horn, Mica, Davis, McIntosh, Fox, Gutknecht, Souder, Shadegg, Bass, Sanford, Ehrlich, Collins of Illinois, Waxman, Slaughter, Condit, Peterson, Thurman, Maloney, Barrett, and Cummings.

Staff present: James Clarke, staff director; Judy Blanchard, deputy staff director; Kevin Sabo, general counsel; Jonathan Yates, counsel; Judith McCoy, chief clerk; Edmund Amorosi, director of communications; Teresa Austin, assistant clerk; Cissy Mittleman, staff assistant; Kim Cummings, special assistant; David Schooler, minority chief counsel; Bruce Gwinn, minority senior policy analyst; Liza Mientus, Cheryl Phelps, Kimberly Williams, Denise Wilson, minority professional staff; Eddie Arnold, public affairs officer; and Jean Gosa, minority staff assistant.

Mr. CLINGER. The Committee on Government Reform and Oversight will come to order. I am very pleased to welcome my colleagues, as well as our distinguished witnesses, this morning to discuss the need for and to solicit comments on new legislation to clarify what Federal employees can and cannot do with regards to lobbying the taxpayer dollars.

We will hear from a representative of a trade association who received unsolicited lobbying materials from the Government, from senior administration officials, legal experts from CRS and GAO and the National Taxpayers Union.

What many will tell us today is that the current law is deficient, for many reasons, including the fact that the executive branch serves as its own watchdog, which is somewhat like the fox guarding the chicken coop.

Since enactment of the law in 1919, it has been subject to numerous and conflicting interpretations by the executive branch. The wording of the law is quite broad and would likely cover most of the activities that are of concern, such as many of those being discussed today.

However, over the last 75 years, the interpretation of the law has become so narrow that it effectively allows Federal employees to do

or say just about anything with regards to influence-peddling on pending legislation. During the last 75 years, despite findings of wrongdoing, no one has ever been indicted or prosecuted under the statute which is on the books.

Today, we will see numerous examples of why this law is not working as it perhaps was intended—everything from one agency's mass political mailing, costing about $33,000, to over 300 senior bureaucrats working on a strategy to defeat the so-called Contract with America legislation.

It's happening across the board in almost every Federal agency. Most Americans would likely be shocked to learn that their hard-earned tax dollars are being used to fund these types of activities.

H.R. 3078 attempts to address many of the problems with the existing law by creating a civil statute that would prohibit Federal agency employees from using appropriated funds to foster public support or opposition to pending congressional legislation.

The intent is to eliminate and even protect the GS–12 type career employee from preparing lobbying materials or being forced to lobby grassroots organizations. However, by current law, Federal agencies would be able to continue to communicate directly with Congress. There's no attempt here to muzzle direct contact with Congress. I would like to emphasize that this legislation only applies to Federal employees in their official capacity.

The bottom line is that Federal employees should be administering programs passed by Congress, not campaigning with taxpayer dollars on behalf of their own special agency interests.

This legislation is not partisan, as it would apply permanently, no matter what administration is in place. There have been examples in previous administrations that I think clearly would have been precluded by this legislation.

This legislation falls into the category of good Government reform to ensure that precious taxpayer dollars are not misused. We hear complaints from agencies about funding shortages, but when we see these types of expenditures, one questions how much more fat we can cut from the Federal budget.

I am the first to admit that this is a very difficult area in which to legislate. One of the purposes of today's hearing is not only to establish the need for this reform legislation, but also to seek comment and find ways on how we can improve the legislation.

I want to close by simply saying that, in the course of the last few months, we have received numerous calls from Federal employees who are angry or uncomfortable in preparing these materials or are forced to work with outside interest groups. Yet none of them felt that they could come forward to testify because of the enormous fear of losing their jobs or concern about other forms of retribution.

I did receive a statement from one of these employees to submit for the record, and I would like to quote from it. He wrote as follows. "As civil servants, we are disgusted and helpless. As professional communicators, we are frustrated. As both Democrats and Republicans, we are outraged. As taxpayers, all we demand is justice."

H. R. 3078

To amend title 31, United States Code, to prohibit the use of appropriated funds by Federal agencies for lobbying activities.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1996

Mr. CLINGER (for himself, Mr. TAUZIN, Mr. GILMAN, Mr. SHUSTER, Mr. YOUNG of Alaska, Mr. GOODLING, Mr. LIVINGSTON, Mr. STUMP, Mr. HANSEN, Mr. ROBERTS, Mr. WOLF, Mr. BURTON of Indiana, Mrs. VUCANOVICH, Mr. BARTON of Texas, Mr. MYERS of Indiana, Mr. BUNNING of Kentucky, Mr. HASTERT, Mr. HEFLEY, Mr. SHAYS, Mr. SMITH of Texas, Mr. PARKER, Mr. CUNNINGHAM, Mr. EWING, Mr. ZELIFF, Mr. BACHUS, Mr. CALVERT, Mr. HOEKSTRA, Mr. HORN, Mr. HUTCHINSON, Mr. LAZIO of New York, Mr. MICA, Mr. SMITH of Michigan, Mr. TALENT, Mr. BASS, Mr. COOLEY of Oregon, Mr. DAVIS, Mr. EHRLICH, Mr. FOX of Pennsylvania, Mr. GUTKNECHT, Mr. HAYWORTH, Mr. HOSTETTLER, Mr. LATOURETTE, Mr. MCINTOSH, Mr. SCARBOROUGH, Mr. SHADEGG, Mrs. SEASTRAND, Mr. SOUDER, Mr. STOCKMAN, Mr. TIAHRT, Mr. HOBSON, Mr. BLILEY, and Mr. NETHERCUTT) introduced the following bill; which was referred to the Committee on Government Reform and Oversight

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A BILL

To amend title 31, United States Code, to prohibit the use of appropriated funds by Federal agencies for lobbying activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Agency Anti-Lobbying Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) Federal agency employees have used appropriated funds to foster public support and opposition to legislation pending before the Congress;

(2) there are conflicting interpretations of the existing anti-lobbying restrictions; and

(3) the use of appropriated funds derived from tax revenues paid to the Treasury by all Americans to preferentially support or oppose pending legislation is inappropriate and improper.

(b) PURPOSE.—The purpose of this Act is to establish a civil prohibition on the expenditure of appropriated funds by Federal agencies for lobbying purposes and to make clear that such funds may not be used in any manner or in any amount, however small, to organize efforts to affect the outcome of congressional action by appealing directly or indirectly for public support.

SEC. 3. PROHIBITION ON USE OF APPROPRIATED FUNDS FOR LOBBYING BY FEDERAL AGENCIES.

(a) IN GENERAL.—Subchapter III of chapter 13 of title 31, United States Code, is amended by adding at the end the following new section:

"§ 1354. Prohibition on lobbying by Federal agencies

"(a) PROHIBITION.—Except as provided in subsection (b), until or unless such activity has been specifically authorized by an Act of Congress and notwithstanding any other provision of law, no funds made available to any Federal agency by appropriation shall be used by such agency for any activity (including the preparation, publication, distribution, or use of any kit, pamphlet, booklet, public presentation, news release, radio, television, or film presentation, video, or other written or oral statement) that is intended to promote public support or opposition to any legislative proposal (including the confirmation of the nomination of a public official or the ratification of a treaty) on which congressional action is not complete.

"(b) EXCEPTIONS.—

"(1) PRESIDENT AND VICE PRESIDENT.—Subsection (a) shall not apply to the President or Vice President.

"(2) CONGRESSIONAL COMMUNICATIONS.—Subsection (a) shall not be construed to prevent any officer or employee of a Federal agency from—

"(A) communicating directly to a Member of Congress (or to any staff of a Member or committee of Congress) a request for legislation or appropriations that such officer or employee deems necessary for the efficient conduct of the public business; or

"(B) responding to a request for information or technical assistance made by a Member of Congress (or by any staff of a Member or committee of Congress).

"(3) PUBLIC COMMUNICATIONS ON VIEWS OF PRESIDENT.—Subsection (a) shall not be construed to prevent any Federal agency official whose appointment is confirmed by the Senate, any official in the Executive Office of the President directly appointed by the President or Vice President, or the head of any Federal agency described in subsection (d)(2), from communicating with the American public, through radio, television, or other public communication media, on the views of the President for or against any pending legislative proposal. The preceding sentence shall not permit any such official to delegate to another person the authority to make communications subject to the exemption provided by such sentence.

"(c) COMPTROLLER GENERAL.—

"(1) ASSISTANCE OF INSPECTOR GENERAL.—In exercising the authority provided in section 712, as applied to this section, the Comptroller General may obtain, without reimbursement from the Comptroller General, the assistance of the Inspector General within whose Federal agency activity prohibited by subsection (a) of this section is under review.

"(2) EVALUATION.—One year after the date of the enactment of this section, the Comptroller General shall report to the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate on the implementation of this section.

"(3) ANNUAL REPORT.—The Comptroller General shall, in the annual report under section 719(a), include summaries of investigations undertaken by the Comptroller General with respect to subsection (a).

"(d) DEFINITION.—For purposes of this section, the term 'Federal agency' means—

"(1) any executive agency, within the meaning of section 105 of title 5; and

"(2) any private corporation created by a law of the United States for which the Congress appropriates funds.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 13 of title 31, United States Code, is amended by inserting after the item relating to section 1353 the following new item:

"1354. Prohibition on lobbying by Federal agencies.".

(c) APPLICABILITY.—The amendments made by this section shall apply to the use of funds after the date of the enactment of this Act, including funds appropriated or received on or before such date.

I am now pleased to yield to the gentlelady from Illinois, the ranking member of the committee, Mrs. Collins.

Mrs. COLLINS of Illinois. Thank you, Mr. Chairman.

Last week, the Republican Members of this committee had a big sign posted over on their side of the aisle which said, "The public's right to know." Well, that noble statement may have served their purposes last week. It certainly no longer does. This week's hearing is, instead, all about keeping the public in the dark.

Isn't it interesting that Republicans, who are so fond of reminding us that the Government belongs to the people, propose in the bill we are considering today to prohibit—I repeat, to prohibit—Federal agencies from talking to anyone except Congress?

Why do we want to prevent the people's Government from speaking to the people? Well, the Federal Agency Anti-Lobbying Act, H.R. 3078, strictly prohibits—and I quote—"the preparation, publication, distribution, or use of any kit, pamphlet, booklet, public presentation, news release, radio, television, or film presentation, video, or other written or oral statement that is intended to pro-

mote public support or opposition to any legislative proposal on which congressional action is not complete."

Now, this bill is designed to do one thing, and that is to keep information away from the public about what this Republican Congress has tried to do. Just 2 days ago, the Supreme Court issued an opinion that warns us against this kind of policy, and I quote. "The first amendment directs us to be especially skeptical of regulations that seek to keep people in the dark about what the Government perceives to be their own good."

The unfortunate fact is that many of my Republican colleagues are a little thin-skinned. They don't like criticism. Faced with it, their reaction too often is to try to silence it. This first became evident during the consideration of the Republicans' Contract with America legislative agenda.

Congressman McIntosh and others attacked the Environmental Protection Agency for having the nerve to disseminate information on how the Republicans' regulatory reform initiatives would gut enforcement of safe drinking water and clean air regulation in our country.

They also did not like it when the Department of Agriculture informed the public about Republican efforts to kill the new meat inspection rule or when the Department of Health and Human Services revealed Republican plans for stopping regulations that would ensure that women in this country get safe and accurate mammograms.

Now, the Republican majority in Congress soon found out that, while they may not think getting rid of the deadly E. Coli bacteria and eliminating equally deadly parasites in the drinking water are really national priorities, the people do.

But rather than admit that the public simply does not like their proposals, they have chosen, in effect, to shoot the messenger. Extremist Members of the Republican Congress are trying literally to stifle the administration in a desperate attempt to save their unpopular and failed policy.

I am struck now how different the approach that they have taken is from the approach taken by another Republican, former President Reagan. Mr. Chairman, President Reagan took his case directly to the people, rather than to the Congress, and he did not do this alone.

He had his whole administration out convincing the people of the correctness of his policies, and, ultimately, they persuaded a Democratic House and a Republican Senate to support his early initiatives. I sincerely doubt that President Reagan, the great communicator, would have wanted his administration restricted to communicating with Congress.

While I was not a fan of very many of President Reagan's policies, I firmly believe that he and every President not only have the right, but the duty, to make his case directly to the people.

So what are my Republican colleagues so scared of? Do they really think by putting a gag rule on the agencies they can somehow keep the cuts they want to make in Medicare and Medicaid a secret?

Do they really think that people won't find out that their plan for balancing the budget cuts health care, cuts education, cuts envi-

ronmental regulation, cuts nutritional programs, and cuts assistance to the sick and disabled?

Do they really think people won't notice that, while they are cutting all these programs for senior citizens, children, the disabled, and the middle class, they try at the same time to give a $245 billion tax cut to the wealthiest Americans? There isn't a gag rule in the world strong enough to keep these Republican budget proposals a secret.

Mr. Chairman, this bill is simply too extreme a remedy to deal with what is, at worst, a very isolated problem. I agree that agencies should not be involved in grassroots lobbying, but we have a law on the books against that. Maybe it needs some fine tuning, but it does not need the radical overhaul this bill would give it.

Under this bill, an agency's public affairs office could not even put a statement giving the administration's position on pending legislation. Why is it so wrong to use taxpayers' money to put out the administration's position on legislation, but not wrong to use taxpayers' money—like Chairman McIntosh recently did—advocating the defeat of legislation to raise the minimum wage?

Mr. Chairman, we don't need this radical approach to this problem. What we need is for this Republican Congress to start listening to what the people really want. They want a Government that cares for its elderly, its sick and disabled, and that does not rob our young people of the educational opportunities they deserve and the future demands.

I must also object to the procedures being used for this hearing. I was informed late yesterday afternoon, less than 24 hours before this hearing began, that a witness would be testifying anonymously, not just to the public, but to the committee, itself. Now, I have never heard of such a thing. No one I have talked to since being informed of it has heard of this procedure.

Now, I had my staff call the parliamentarians, and they informed us that they had never heard a case like this. I am at a total loss to understand why it's necessary for this witness to testify without identifying himself or herself by name, at least for the members of the committee.

He is, I understand, employed by a trade association—Mr. X. It is not like trade associations don't take positions all the time that are different from positions the administration takes.

It is a patently absurd notion that, because he alleges EPA made a mistake, EPA would retaliate against the entire industry his association represents. Furthermore, I have read his statement, and I personally don't see anything in it at all that should represent a serious problem for EPA.

Mr. Chairman, at the beginning of this Congress, you made a point of insisting that all witnesses who testified before the committee be sworn to tell the truth, the whole truth, and nothing but the truth. What possible legal effect could an oath you administer to this witness have if no one can ask his name or other questions that relate to his employment or possible biases against the administration?

Every day, we have congressional witnesses who take positions against the administration and do so publicly. Today's hearing is nothing more than a publicity stunt that's designed to suggest that

witnesses will suffer retaliation for speaking ill of the administration. We set a terrible precedent if our open hearings become a setting for anonymous tipsters.

Rule 12 of our committee rules provides that the chairman is to be notified well in advance of the hearing as to the names of the witnesses that will appear. Mr. Chairman, have you been given the name of the witness, as rule 12 requires?

Mr. CLINGER. The rule does not require that I be given the name of the witness. The rule does require that, for subcommittee hearings, that that would be the case, but this is a full committee hearing, and the rule specifically is silent on that. It does not speak to the requirement that the witnesses names be made known.

Mrs. COLLINS of Illinois. Well, I differ with you in your interpretation of that, Mr. Chairman, and will look into it further. But again, I see no need for this witness to testify in this manner. I believe it's nothing but theatrics.

However, if that is what you insist on doing, I would suggest that an executive session meeting would protect the witness' identity from the executive branch while ensuring the committee's right to ask questions, and we'll probably ask that you do that later on today, Mr. Chairman.

Mr. CLINGER. I thank the gentlelady for her opening statement, and I'm going to defer any additional opening statements. I would ask members, if they would be so inclined, to insert them in the record, or if they would use their first round of questioning to make those opening statement.

[The prepared statements of Hon. Constance A. Morella and Hon. Christopher Shays follows:]

PREPARED STATEMENT OF HON. CONSTANCE A. MORELLA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, I want to thank you for holding this hearing today on H.R. 3078, the Federal Agency Anti-Lobbying Act. This hearing serves a dual purpose; it is both an oversight hearing and provides a forum to hear from witnesses about H.R. 3078. It is clear that oversight is necessary. I am concerned about employee check stubs from a Department Secretary urging opposition to the House budget plan. I am concerned that federal employees and contractors feel pressure to support or oppose pending legislation. I am especially concerned that taxpayer dollars are being spent inappropriately.

I want to ensure, however, that H.R. 3078 would remedy these problems without creating a host of any new problems. I support the intent of this legislation, but I want to ensure that we would not limit the First Amendment rights of federal employees or limit the ability of federal agencies to communicate with the Congress. I look forward to today's panels of witnesses, and I hope they shed light on both the problems they have encountered and possible solutions.

PREPARED STATEMENT OF HON. CHRISTOPHER SHAYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

This hearing provides an important opportunity to discuss the need for more effective and enforceable restrictions on lobbying activities by executive branch employees. Over the years, through Republican and Democratic administrations alike, it has become increasingly apparent that the current criminal prohibition, and the inconsistent application of civil restrictions in appropriations bills, are simply not preventing the use of appropriated funds for inappropriate lobbying activities by federal agencies.

In the course of our oversight of the Department of Housing and Urban Development (HUD), the Human Resources Subcommittee discovered that federal funds were routinely authorized for use in activities HUD knew, or should have known, to contain prohibited advocacy for or against pending legislation. Scarce program

dollars are being diverted to maintain political lobbying networks to support administration initiatives, and to oppose other pending legislation.

In one notable instance, a HUD employee detailed to provide Spanish translation services at a HUD funded public housing tenants' conference in Puerto Rico felt compelled to stop translating because the meeting had become so blatantly partisan.

Obviously, a clearer line needs to be drawn between federal agencies' providing information to the public and express advocacy of grass roots activity for or against pending legislation. This bill would clarify that distinction and deter abusive practices such as those we found at HUD.

But any deterrent tool is only as effective as the will of the administration to use it. At HUD, employees were provided fairly clear guidance on the appropriate agency role in providing information at the public housing conference. They just failed to follow it.

More disconcerting is evidence that some agencies are interpreting any restrictions on their lobbying activities so narrowly as to render them entirely ineffective. A 1994 analysis of the current lobbying ban by the Department of Labor (DoL) differs significantly in both content and tone from a similar 1989 memorandum.

Nothing in the intervening years occurred to justify the reinterpretation. Yet on July 25, 1994, the Solicitor of the Department of Labor re-issued a memorandum entitled "Restrictions on Lobbying" which characterizes the current criminal law as "rather narrow" and limits its application to extensive grass roots "lobbying by DoL employees of persons and entities who are not part of the federal government." According to the memo, this literal reading of the law would still permit "a limited distribution of persuasive material designed to highlight the merits of the Administration's position."

That is not right. Agency employees should be so completely focused on effective administration of programs and customer service that even limited distribution of persuasive materials should be out of the question.

Finally, the limitations on direct and indirect lobbying contained in this bill would not in any way impinge on the legitimate and necessary public information mission of federal agencies. The legal distinction between express advocacy and factual description is well established. Federal agencies should be able to maintain a clear distinction between advocacy of grass roots lobbying of Congress and information on federal laws and programs.

Mr. CLINGER. Because of the time constraints on our first witness this morning, I want to go directly to the testimony and welcome our first witnesses, and, specifically, Senator Stevens, who is the distinguished chairman of the Governmental Affairs Committee in the Senate and who has been a champion and a leader in this effort to ensure that taxpayers' dollars are not used inappropriately to generate grassroots lobbying efforts.

Senator, we're delighted to have you with us and look forward to your testimony.

STATEMENTS OF HON. TED STEVENS, U.S. SENATOR FROM THE STATE OF ALASKA; AND HON. W.J. (BILLY) TAUZIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Senator STEVENS. Well, thank you very much, Chairman Clinger, and I do appreciate the courtesy of other members. I do have a meeting of my committee at 10.

I'm pleased to be here to testify on your Federal Agency Anti-Lobbying Act. I believe it's an important step in curbing abuse of Federal power and waste of money, two of the main goals of this Congress. For the information of the members of the committee, I have sponsored a Senate version of your bill, and I hope we, too, will move on it soon.

This bill goes after the most blatant examples of improper Federal lobbying, where Federal agencies are producing and spreading propaganda and encouraging others to lobby on their behalf. Tax-

payers who come from all walks of life and all ends of the political spectrum should not be forced to finance lobbying activities on behalf of causes they oppose or know nothing about.

I received a letter recently from a constituent that highlights the need for this legislation. This constituent described a recent lecture on an Alaska Ferry, hosted by a uniformed Forest Service employee.

The employee discussed the dispute over logging in the Tongass National Forest and then turned the platform over to an environmentalist, who, according to my constituent, expounded on the evils of logging for almost an hour and referred to loggers as "timber barons." It's outrageous for the Forest Service, through its uniformed officers, to promote such a political agenda.

As chairman of the Senate Governmental Affairs Committee, I've heard many complaints about such abuses in this administration. According to several news accounts, the Secretary of Energy has hired a media consultant to produce a list of friendly and hostile reporters at a cost to the taxpayers of $46,500.

The Washington Post recently reported complaints that the EPA planned its Earth Day activities to coincide with a Democratic National Committee media buy in a congressional district of vulnerable Republican freshmen.

The Secretary of Labor created a 1–800 toll-free number for people to call and record their messages for him to take to Congress, views on pending minimum wage legislation. The Secretary of Labor has issued a press release that criticized Republican budget cuts and called on unemployed young people to contact Republican Congressmen for employment.

The Labor Department staff has circulated a memo proposing lobbying activities to create a national appetite for the minimum wage, and proposing Labor Department coordination of the lobbying activities of outside groups.

And according to numerous reports—and I think this to be the most difficult thing to understand of all of these—the Veterans Affairs Secretary has repeatedly enclosed political and lobbying information in Veterans Administration paychecks.

These activities are a waste of money, and they're wrong. They are unfair to the Americans who might disagree with the political agenda behind those who are using these tactics and to the career Federal employees who are just trying to do an honest day's work for our Nation.

The use of appropriated funds for lobbying activities is, as you said, already illegal under title 18 of the United States Code. Unfortunately, that law—which has been on the books since 1919—has really, as you said, never been enforced. Your bill, in my opinion, Chairman Clinger, will allow for civil enforcement, will allow taxpayers to protect all of us from this unfair and unreasonable burden.

Now, for the committee's record, I would like to offer a series of items which really demonstrate all of the facts that I've just mentioned to the committee. They are proof of what is going on in the use of Federal funds to lobby Congress on issues which are very controversial.

These are not responses to Congress for information. They are not transmitting an administration's point of view on legislation. They are encouraging lobbying and spending taxpayers' dollars to do what lobbying firms all over the city do. I think it's wrong, and your bill should be passed. I'm really delighted to be able to be here with you and look forward to working with you on this legislation.

Mr. CLINGER. Thank you. Without objection, that will be made part of the record.

[The prepared statement of Hon. Ted Stevens follows:]

PREPARED STATEMENT OF HON. TED STEVENS, A SENATOR FROM THE STATE OF ALASKA

The Federal Agency Anti-Lobbying Act is an important step in curbing abuse of federal power and waste of federal money—two of the main goals of this Congress. I have sponsored the Senate version of this bill, and I hope we can move on it soon.

This bill goes after the most blatant examples of improper federal lobbying, where federal agencies are producing and spreading propaganda, and encouraging others to lobby on their behalf.

Taxpayers, who come from all walks of life and all ends of the political spectrum, should not be forced to finance lobbying activities on behalf of causes they oppose, or know nothing about.

I received a letter recently from a constituent that highlights the need for this legislation. This constituent describes a recent lecture on an Alaska ferry hosted by a uniformed Forest Service employee.

The employee discussed the dispute over logging in the Tongass National Forest, and then turned the platform over to an environmentalist who, according to my constituent, "expounded on the evils of logging for almost an hour," and referred to loggers as "timber barons." It is outrageous for the Forest Service, through its uniformed officers, to be promoting a political agenda.

As Chairman of the Senate Governmental Affairs Committee, I have heard many complaints about such abuses in this administration:

- According to several news accounts, the Secretary of Energy has hired a media consultant to produce lists of friendly and hostile reporters, at a cost to the taxpayers of $46,500;
- the Washington Post recently reported complaints that the EPA planned its Earth Day activities to coincide with DNC media buys in the Congressional districts of vulnerable Republican freshmen;
- the Secretary of Labor created a 1–800 toll-free number for people to call and record their messages for him to take to Congress views on pending minimum wage legislation;
- the Secretary of Labor has issued a press release that criticized Republican budget cuts and called on unemployed young people to contact Republican Congressmen for employment;
- Labor Department staff has circulated a memo proposing lobbying activities to create a "national appetite" for the minimum wage, and proposing Labor Department coordination of the lobbying activities of outside groups; and
- according to numerous reports, the Veteran's Affairs Secretary has repeatedly enclosed political and lobbying information with VA paychecks.

These activities are a waste of money. They are also unfair—to the Americans who might disagree with the political agenda behind them, and to the career federal employees who are just trying to do an honest day's work for our country.

The use of appropriated funds for lobbying activities is already illegal, under Title 18 of the U.S. Code. Unfortunately that law, which has been on the books since 1919, has never really been enforced.

Your bill, Chairman Clinger, will allow for civil enforcement, and will allow taxpayers to protect us from this unfair, and unreasonable, burden.

Thank you, Mr. Chairman.

Mr. CLINGER. I know, Senator, that you must leave shortly, but does any member have any questions for the Senator?

Senator STEVENS. I will be pleased to stay for questions, if you have any.

Mr. TAUZIN. Can I ask him one?

Mr. STEVENS. Except for Billy. [Laughter.]

Mr. CLINGER. If there are no questions, then, Senator, I want to thank you very much for coming over this morning and for your very helpful testimony.

Mr. STEVENS. Thank you. Thank you for your courtesy.

Mr. CLINGER. We'll look forward to working with you on this legislation. I am now pleased to recognize our friend and colleague, the gentleman from Louisiana, Mr. Tauzin, who has also been very active in this effort. Billy.

Mr. TAUZIN. Thank you, Mr. Chairman. First, let me say I'm not the secret witness, so I'm not wearing a bag on my head. Let me also disavow a couple of notions. This is not a partisan bill. The problem we speak to in this bill occurred in Republican administrations, and it is certainly occurring in this one, as it has occurred in past Democratic and Republican administrations.

Second, it's not a desperate attempt to do anything, nor is it an extreme bill. It goes literally to the heart of the workings of our democracy. It goes to the heart of the whole system of representative Government in America.

Let me suggest that if you believe that our only job as legislators is to come to Washington and create new programs that will hire new bureaucrats and create new agencies of the Federal Government, then you probably want to vote against this bill.

If you believe that our role here in Washington is never to look at an old program to see if it's working and to change it if it's not working or repeal it if it is simply useless, if you believe that that is not our role, then you also ought to vote against this bill and dismiss it.

If you believe that unelected—not President Reagan, not my dear friend, Cardiss Collins, who is elected by her constituents in her district—if you believe that unelected Federal bureaucrats ought to be lobbying the public for or against any proposal, liberal or conservative, Democrat or Republican, if you believe that they ought to be able to use taxpayer dollars to influence the public either for or against legislation that you, as elected members, come here to discuss for and on behalf of your constituents, then you should also dismiss this bill, and you should not vote for it.

But if you believe that the structure of our representative Government requires elected representatives to come to Washington with the messages and instructions of those who elected them and to debate those suggestions and changes here in Washington without taxpayer dollars being used without the wishes nor the will of those constituents to influence that debate, then you should very interested in this legislation.

This legislation doesn't muzzle the President. Neither does it muzzle his executive agencies in discussing how programs work, discussing with Congress why they think a program deserves to be continue or why a new program is good or bad. It does not muzzle any of that communication between the executive and legislative branches.

It simply says that the practice of using taxpayer dollars to resist change in the status quo, to influence public opinion against or for a proposal here before Congress, should be verboten.

It ought not occur in a free society where elected representatives and elected executives should be carrying on the business of their

Government, that when bureaucrats come between the people and their elected representatives to influence the outcome of a policy debate, something is wrong.

We're supposed to be a Government of, by, and for the people, not of, by, and for the Government and its bureaucrats. It is that simple. When taxpayer dollars are used by bureaucrats to muddle that equation, things go wrong in our country.

Now, look. Let me say it again. If you believe that, having come here to Washington and created a program, that it ought to be self-perpetuating, that it ought to create a constituency for itself, and it ought to be able to spend taxpayer dollars to maintain itself in perpetuity whether or not it's working well, then vote against this legislation, because that's the status quo in America. That's what happens.

Whether you're liberal or conservative, when you create a program here in Washington and it has the capacity to use its budgeted dollars to maintain itself without change, to create, in effect, the protection for the status quo—whatever that status quo is—when you create that program and it has that capacity, it makes it all the more difficult for the people's will to express itself in our legislature to make those changes.

And so programs go on indefinitely, almost in perpetuity, without ever suffering a real critical analysis, a real review, a real chance to have them changed and made more effective for the good of our people. It is that simple.

If you believe that we can continue to create all kinds of agencies and programs that have the power to sustain themselves by using taxpayer dollars to do it without ever changing, without ever being subjected to a real objective analysis here in this body, then vote against this bill.

In short, this bill is designed to protect the intimate and very sacred relationship between the voters of America, their elected representatives, their elected executive, in the free exchange and objective debate over policy changes that affect their lives now and into the future. It is that important.

It is not about a particular Republican proposal or a Democrat proposal. It is not about a liberal plan or a conservative plan. It is about the structure and nature of our Government and its intricate relationship with our people.

Our people ought to have nothing standing in between them and the policymakers here in Washington, and when Federal bureaucrats get in between us to muddy the waters and make it more difficult for us to have that objective and free debate, then something is wrong. Taxpayer dollars ought not be used in that way. That is what this bill seeks to stop.

If you believe, as I believe, that we were sent over to Washington with a rather sacred mission to change this place—and I believe we all come here to change it in some way. Some believe in one direction or another, but we all come here to make a difference.

If you believe you came here with a message, instructions from your voters, you ought never have a Federal bureaucrat stand between you and getting that message clearly debated here in the Congress. That's what wrong with the status quo. That's what this bill seeks to change.

I hope you'll join us in trying to make, indeed, a better bill as we debate this bill in the process through this house and eventually, hopefully, into law.

Thank you, Mr. Chairman.

Mr. CLINGER. Thank you, Mr. Tauzin, for your excellent testimony. You will recall that this is not the first time we've visited this matter. In fact, this bill, or this proposal, was considered on the floor of the House within the last few months as a possible amendment to the Lobby Reform bill, which has been enacted into law.

You will recall, also, at that time it did have bipartisan support. There was a recognition that this addressed a legitimate problem. It was not a partisan problem. I recall Mr. Barney Frank, on the Judiciary Committee, indicating that he felt that this was a legitimate proposal and a worthy proposal.

The only problem was that there was a real concern that any amendment to that reform bill was going to jeopardize passage of the bill, and, therefore, all amendments were resisted and defeated, but not on substance. Rather, they were defeated because of the procedural threat that the whole bill might go down because it would have to go to a conference of the Senate.

So I just wanted to make the point—and you spoke at that time very eloquently, as you did this morning, on the merits of the proposal.

Do you see anything in this proposed legislation that would preclude or prevent the President or any members of his Cabinet from taking the case directly to the American people in arguing for or against proposals of the Congress? Is there anything here that blocks that vital link of communication between the elected President and his representatives and the American people?

Mr. TAUZIN. First of all, let me say that you're exactly correct. We in fact had a dialog with Mr. Barney Frank on the floor of the House in which we tried to make it very clear in that dialog that this was not a partisan issue at all.

We were very careful in that dialog to mention instances of abuse during the Reagan years, during the Bush years, of Federal agencies improperly using Federal dollars to lobby efforts here in the Congress. I hope we can keep it a nonpartisan bill and keep it in nonpartisan tones.

To answer your question, Mr. Chairman, there are specific provisions in the bill that make it clear that Federal officials can continue to communicate directly with Members of Congress and staffs concerning legislation, technical assistance.

More importantly, the President and Vice President are totally exempt from the bill. They're elected officials of the Executive Office. In addition, a head of any Federal agency, any Senate-confirmed appointee or official in the Executive Office of the President can communicate directly with the American public on the views of the administration.

There's no attempt to stifle the President from expressing his views, even using his Federal agency heads to do that. What we're talking about is the improper use of Federal dollars in the lobbying effort to oppose or support any particular legislation, and that's all this bill is aimed at curbing.

Mr. CLINGER. And it's really just focused on the production of materials—propaganda, if you will—flyers, brochures, printed material and other types of material.

Mr. TAUZIN. Yes, and we've given some examples in our first news conference, examples where employee check stubs contain messages urging opposition to a particular proposal on the House floor, where one department sent hundreds of letters to individuals opposing a particular House proposal with reference to selling oil in the strategic petroleum reserve, a pretty important public policy debate.

One department sent out hundreds of letters and newsletters to organizations with a clearly partisan message in it to defeat a plan on the House floor.

Another had organized outside lobby groups to oppose a provision on the House floor that eventually became law. It was supported by a huge bipartisan majority—the Unfunded Mandates bill—and yet one of our agencies was out there lobbying against it. The President supported it, even.

The Members on both sides of the aisle voted in overwhelming numbers for that bill. It was one of the first bills to become law in this Congress. And yet one of our agencies was out there organizing lobby groups in opposition to it—I'm sure, perhaps, not even communicating with the President.

There was a letter that was sent from one of the commissioners in one of the important commissions in our Government, literally, again, lobbying specifically on a specific proposal to merge a couple of agencies.

It's that that we talk about here. It's the notion of Government using Government money to perpetuate itself into existence forever without ever being changed, because, literally, Congress is unable to make those changes when the taxpayer dollars are being used to muddy the waters of the debate.

Mr. CLINGER. Thank you. Does the gentleman from California or any Member on the minority side have any questions?

Mr. WAXMAN. Yes, Mr. Chairman. I know Mr. Tauzin has got a busy day. He's probably going to talk to a lot of people, advancing issues that he strongly supports, so I wouldn't want to detain him.

Mr. TAUZIN. Thank you, Mr. Waxman.

Mrs. MALONEY. I would like to really quote a comment that was in the publication, Tax Notes, that Representative Kennedy made. I would like to quote directly from his statement.

"I am afraid to say that the Clinger bill is a poorly drafted proposal which will have an exceptionally broad impact. For example, under the Clinger amendment, agency press officers would not be allowed to answer inquiries from the press regarding the agency's position on legislative proposals. Do we really want that?"

My question is, does this bill, do you believe, infringe in any way on the legislative branch of Government and our ability to work with the executive branch to freely manage and carry out the responsibilities under the Constitution?

I would like to put in the record a letter from the American Bar Association where they say that, in their opinion, better laws are written when there's an open exchange of views among Govern-

ment decisionmakers—and, in this case, we're talking about tax policy.

Mr. CLINGER. Without objection, that will be made part of the record.

[The information referred to follows:]

AMERICAN BAR ASSOCIATION,
SECTION OF TAXATION,
Washington, DC, April 24, 1996.

Hon. BILL ARCHER,
Chairman,
Committee on Ways and Means,
House of Representatives,
1236 Longworth House Office Building,
Washington, DC.

Re: Federal Agency Anti-Lobbying Act

DEAR MR. CHAIRMAN: I am writing on behalf of the Section of Taxation of the American Bar Association to express concern over the potential adverse impact of H.R. 3078, the Federal Agency Anti-Lobbying Act, on the formation of tax policy. These views are presented on behalf of the Tax Section. They have not been approved by the House of Delegates or the Board of Governors of the ABA and should not be construed as representing the position of the ABA unless clearly stated.[1]

H.R. 3078 denies appropriations for any federal agency activity "that is intended to promote public support or opposition to any legislative proposal . . . on which congressional action is not complete." There are limited exceptions for communications to Congress, public communication of the views of the President by the most senior administration officials, and activities specifically authorized by law.

In each session of Congress, scores of tax bills are introduced, and tax changes are part of every budget proposal. Treasury and IRS officials should make it part of their jobs to communicate regularly with the public on tax legislation. As practicing tax attorneys, we need to hear the views of government officials so that we can better understand the intended effect of proposed tax changes, assess their likelihood of enactment, advise our clients, and provide our views on how a law would work in practice.

In our experience, better tax laws are written when there is an open exchange of views among government decisionmakers and tax practitioners. The Section of Taxation provides extensive technical commentary on legislative proposals, and sponsors legal education sessions where government officials discuss a variety of tax policy issues. We are deeply concerned that enactment of H.R. 3078 would lead government officials to discuss tax policy only among themselves, without enlightenment concerning the practical implications of their proposals.

We urge you to oppose any proposal that would inhibit government officials from discussing tax legislation freely with members of the public.

Sincerely,

N. JEROLD COHEN.

Mrs. MALONEY. Thanks. And your comments, then.

Mr. TAUZIN. I thank the gentlelady. Let me point out, No. 1, that no, there is no attempt to stifle the interchange of information nor the discussion of policy issues between the executive and legislative branch. In fact, the bill specifically protects those communications.

The language, by the way, is very similar to language we've already passed. The language is in the Interior Appropriations bill every year, and it's also in the recent Labor-HHS Appropriations bill. It's language we've dealt with before.

It simply extends that language to all the Federal agencies, so it's not extreme language. It's not very different from language we've already passed. It does not stifle communications between the legislative and executive branch.

[1]The ABA Judicial Administration Division took no part in the drafting, consideration or adoption of any formal position on this matter.

I agree with the Bar Association that the free exchange and debate of ideas is the goal of this legislation. Our attempt is to make sure that that occurs without Federal dollars muddying the water.

Mrs. MALONEY. Their letter is in opposition. They feel that it may infringe.

Mr. TAUZIN. I understand. I think they need to go back and see that we've already passed language like that in two statutes since 1978.

Mr. CLINGER. The gentleman from Minnesota, Mr. Gutknecht.

Mr. GUTKNECHT. Mr. Chairman, I want to thank you for having this hearing, and I especially want to thank Congressman Tauzin, because I think he has been an advocate of changes in this regard ever since I came to Congress and back when he was a Member of the other party.

You mentioned—and I would like to get specifics—about the Unfunded Mandates. You alluded to one of the agencies. Can you give us some specifics on that, Congressman?

Mr. TAUZIN. Well, the agency involved was EPA. The agency literally sent out e-mail encouraging and discussing environmental groups' efforts to lobby strategies to defeat the Unfunded Mandates bill.

The Unfunded Mandates bill was one of three bills that the lobby organizations here in Washington targeted as an unholy trinity of bills. EPA actively assisted those lobby organizations in organizing opposition to them, and the Unfunded Mandates bill, as you know, was approved overwhelmingly by Democrats and Republicans and by the President of the United States when he signed it into law.

Mr. GUTKNECHT. So, essentially, the EPA was one.

Mr. TAUZIN. Yes, sir.

Mr. GUTKNECHT. Because we've got some other documents. Hopefully, in this hearing or subsequent, I would like to talk about some of the things that have been going on. I would also like to remind you, Mr. Tauzin, and other Members of something.

This debate goes back a long ways. When we got into this issue earlier on Congressman McIntosh's subcommittee, it was brought to our attention that, as early as 1780, a gentleman by the name of Thomas Jefferson said—and I quote—"To compel a man to furnish funds for the propagation of ideas that he disbelieves and abhors is sinful and tyrannical." That's what Thomas Jefferson said over 200 years ago.

So this debate has been going on for a long time, and, frankly, I think it is time for the Congress to begin to do what we can, if not to eliminate this, to at least make it more difficult for these agencies to be out there propagating ideas that many of us disbelieve and abhor, and especially doing it with taxpayers' money.

Now, I disagree with some of my colleagues on the other side who say that this will be a constitutional nightmare, and it will be difficult for them to even respond to inquiries from the general public or to put out news releases. I don't think that's the point.

I think when they're absolutely out there collecting lists—and we're going to talk about the lists that some of these people have put together when they're doing polling—when they're doing other things that are clearly political, you don't have to be a Fulbright scholar to understand that that really steps over the line.

At some point, if we really believe in the concept of we, the people, then we, the people have got to re-establish who works for whom around here. More and more, it looks like the people are working for the agencies. So I appreciate the work that you're doing. I hope that we can pass this bill, and I would hope that the President would sign it.

Mr. TAUZIN. You raise a good point. I mean this is not about us, it's about people back home who go through elections to try to elect a new legislative body to debate an idea that they believe in or that they want to sponsor or support for proposition to change the way Government works in their lives in some fashion.

What happens when their elected representatives get here? They find the very agencies that represent the status quo—whatever it is—it may be a conservative agency or a liberal agency—they find that agency spending the very same taxpayer dollars, those constituent dollars that are being earned out there through the hard sweat and toil of the folks who elected you to come up here and advance that idea. They find their dollars being spent without their permission to fight the very idea they sent you up here to promote.

You know, I wasn't around when Jefferson made that statement. I think Senator Stevens was. [Laughter.]

And whoever is here with him, tell him I said that. The bottom line is that he was correct. There is something wrong about using taxpayer dollars in that way to defeat the very taxpayer wishes who sent people up here to make changes in the way Washington operates. It's Washington defending itself against the people. That's what's wrong with the current law, and that's why we ought to change it.

Mr. GUTKNECHT. Let me just add, Mr. Chairman, one other point, because I think, unfortunately, this is now being framed as a debate between the right and the left. This really isn't a debate between right and left, it's between right and wrong.

I don't think you have to be on one side of a political issue or the other to realize that it is wrong for agencies to collect lists, to do polling, to keep friends lists and to actively solicit support for particular political positions or to attack positions. We can share that later.

Some of the arguments that have been made by some of the agencies, some of the "fact sheets" that they put out, which I don't think any objective observer would call facts at all. So this is not a debate between right and left. It is a debate between right and wrong.

A lot of things that have been happening under Republican administrations, under Democratic administrations, have just flat been wrong, and I think they need to be stopped, and I think the more the American people understand what has been happening, the more they're going to say it's time for us to take some action. Thank you very much.

Mr. CLINGER. Does any other member have any questions of the gentleman from Louisiana?

Mr. CUMMINGS. Mr. Chairman.

Mr. CLINGER. Yes, sir. The gentleman from Maryland.

Mr. CUMMINGS. Mr. Tauzin, what are the penalties under this statute? I've looked at it, and I've looked at the present law.

Mr. TAUZIN. I need a copy of this. Will somebody give it to me?

Mr. CUMMINGS. I take it this is not criminal. Is that right?

Mr. TAUZIN. That's correct. I don't believe we have a criminal provision.

Mr. CUMMINGS. Is there a penalty?

Mr. CLINGER. I'm sorry, what is being referred to?

Mr. TAUZIN. The question is the penalty provision of the statute. I don't have it in front of me.

Mr. CUMMINGS. We're discussing a piece of legislation, and I assume we're trying to prevent something. I've been practicing for 20 years, and usually, when we're trying to prevent something, there's some kind of penalty. I'm just trying to figure out what it is.

Mr. CLINGER. Under this proposal?

Mr. CUMMINGS. Under this proposal.

Mr. CLINGER. Under this proposal, it basically gives the Comptroller General the power to require repayment of any costs that may have been incurred as a result of activity that would be considered inappropriate under this legislation.

In other words, it is a civil penalty. It has no criminal content, as the title XVIII provision is a criminal statute, but as has been indicated, even though it has been on the books since 1919, nobody has ever been prosecuted under that piece of legislation.

Mr. CUMMINGS. And who would repay that money?

Mr. CLINGER. It would go to the perpetrator, or the agency would be required to repay that as a result of using the money inappropriately. It actually would probably come back up here.

Mr. CUMMINGS. Let me make sure I'm clear on what you just said. Somebody spends some money on one of these pamphlets or whatever, and then they're found to have done this wrongful thing.

Mr. TAUZIN. Violated the law.

Mr. CUMMINGS. And then they have to pay the money back out of their pockets or out of the Government funds?

Mr. CLINGER. No individual would be required to. It would be the agency that had put out, or who had promoted or paid for production of, material which would not be permissible under this statute.

Mr. CUMMINGS. So we got a double whack here.

Mr. CLINGER. It would be reducing the funds available for other purposes from that agency.

Mr. CUMMINGS. So, in other words, the agency pays out, and then they pay back what they've already paid out. Is that right?

Mr. CLINGER. I'm sorry?

Mr. CUMMINGS. I guess what I'm confused about is I assumed that we were trying to do here was to find a way—apparently, the criminal penalties aren't working, or they're disregarded, because maybe they're too stiff or whatever, and I've seen a lot of that in State law.

And so then you come up with another penalty to try to get to the problem. I guess my question is, are we really getting to our objective when an agency merely, then, just pays back what it just paid out? It means no individual is being held responsible, it's the agency.

Mr. CLINGER. But the taxpayer is benefited by virtue of the fact that the money has to be paid back in, and the money cannot be used for other purposes.

Mr. CUMMINGS. But the fact still remains that the money is still taxpayers' money that's being paid back. I guess that's where my confusion comes from. That's all I have to say. I was just kind of confused. I thought we were trying to get to something, and I'm wondering whether we are going to reach the objective through this kind of penalty. That's all.

Mr. TAUZIN. If the gentleman would yield.

Mr. CUMMINGS. Certainly.

Mr. TAUZIN. You put your finger on the problem; however, we end up writing a penalty sanction. The problem is the current penalty does have only criminal sanctions.

Mr. CUMMINGS. Right.

Mr. TAUZIN. We're not out to put public officials, elected or appointed, in jail over this business. We're simply trying to say that "Look, if you inappropriately use Federal funds, there ought to be a mechanism that makes sure that there is a cost to you for doing so. And if you're an agency that is misusing Federal funds, you ought to suffer some penalty as a result." The penalty is a loss of those funds in your budget.

Maybe there's a better way to do that, and we would invite your discussion on that, but the criminal sanction of putting people in jail simply hasn't worked.

Mr. CUMMINGS. And I understand that. I guess all I'm wondering is whether this is an exercise in futility. That's what I'm getting at. If I spend some money, and then you tell me to pay back the money I just spent, that's one thing.

But if I'm getting that money from the Government—I spent the Government money, and then I'm going to pay back the Government's money—I just don't know. I have a problem with whether that is getting to the end result. I understand the chairman's objective and the sponsors' objective.

Mr. TAUZIN. If the gentleman would yield.

Mr. CLINGER. Will the gentleman yield to me?

Mr. CUMMINGS. Of course.

Mr. CLINGER. There is another dimension to this, and that is the fact that, right now, there really is nobody minding the store. There's nobody monitoring in any way what goes on in any of the agencies.

What this bill will do is designate an agency that would be responsible for trying to monitor whether there in fact is inappropriate activity going on—perhaps the GAO—so that what you have in this—you know, regardless of the penalty, you do have higher visibility, a greater sensitivity, I think, by virtue of the GAO's involvement, to people thinking a little carefully about what they're going to be paying for in the way of grassroots lobbying.

Mr. TAUZIN. Can I give you a real example?

Mr. CUMMINGS. Certainly.

Mr. TAUZIN. A real example involved the proposed sale of strategic petroleum reserve oil. Now, I don't know how you feel about that, but I have grave and serious concerns about the effort to dip into that reserve every time we either want money or for other purposes.

It's supposed to be the rainy day fund if we ever have another curtailment of oil and an embargo or something against our coun-

try, and we're more dependent than ever now. So it's a pretty serious debate.

The agency of our Government made a proposal to sell some of that oil, because they wanted some extra money in their budget to do a project. They had a Weeks Island failure going on. They wanted to pay for repairing that failure by selling some of their oil. A number of us thought that was a dumb idea.

They ought not be selling the oil for that. They ought to use other funds in their budget to make that repair. So we made a case on the floor of the House. We were met with a barrage of lobbying effort by the agency against our amendment to stop them selling that oil for that purpose.

I think they violated the law. What are we going to do? We're not going to put Hazel in jail. Hazel is a dear personal friend of mine. Nobody wants to put her or her people in jail over this. But that factor should have been examined by someone.

This bill says the GAO can look at it, and it can say, "Wait a minute. You overstepped the line here. You got involved in muddying the debate to promote your idea when this should have been an idea debated freely by the elected representatives of the people here in the Congress."

The bill would add that element of someone watching them without this extreme penalty of having to put someone in jail over the issue.

Mr. CLINGER. If there are no further questions for the gentleman from Louisiana, Mr. Tauzin, we thank you very much for your appearance this morning and for your very helpful contribution to the debate.

Our second witness this morning is a representative from a trade association who, at his request, has requested to testify anonymously. And I would ask him at this point to rise and raise his right hand to be sworn.

Mr. WAXMAN. Mr. Chairman, before you do that, may I inquire of you of this procedure? Because it's something that none of us have ever seen before. There is a rule 12 that says you have to be informed, and presumably the ranking member would be informed, of the name of this witness. And I understand you don't know the name of the witness, is that your claim?

Mr. CLINGER. I do not know the name of the witness.

Mr. WAXMAN. And how is this—Mr. Chairman, this is really wonderful. This is a new low. How do we know this person? Who knows this person? How do we know he has any credibility in his testimony? The staff must know, right?

Mr. CLINGER. The staff does know, yes.

Mr. WAXMAN. The staff knows. And our staff hasn't been informed. What if we wanted a secret witness? What would be the process for our getting a secret witness to testify?

Mr. CLINGER. You could request it, obviously. I mean, I think that in this case, we did not request or indicate whether the witness would testify anonymously or not. It was at his request. It was primarily because of his concern, as I understand it, that his testimony might bring down upon his head the wrath or retribution of people. And it might adversely affect the members of the trade

association which he represents. And he did not want to put in jeopardy those people.

I think you'll find that his testimony is not inflammatory. I think it's fairly innocuous testimony. But he was concerned that there would be recriminations if in fact he were to testify openly. I would say that this is not an unprecedented action. It was certainly not something that we orchestrated for purposes of high theater.

Mr. WAXMAN. No, not high theater.

Mr. CLINGER. Or low theater, for that matter.

Mr. WAXMAN. Mr. Chairman, there is a process to have an executive session for witnesses that are concerned about a public hearing, what they have to say. Did you consider that?

Mr. CLINGER. There is a process for having an executive session. However, not for this purpose. I think the executive sessions are normally called when it's called into play issues of national security or highly sensitive material. I don't think that that would be the case in this instance.

This instance was really at the accommodation of the witness, who really requested that he be allowed to testify anonymously.

Mr. BARRETT. Mr. Chairman, a couple of followup questions, if I may? I understand that this gentleman is a lobbyist, is that correct?

Mr. CLINGER. He works for a trade association.

Mr. BARRETT. So we can presume—well, maybe I'll ask that question if he gets mine. But it strikes me as somewhat odd that a lobbyist who may or may not have interests that are opposed, for example, to the administration, obviously has a vested interest, a serious vested interest in what we're doing here.

Mr. CLINGER. You will certainly have the opportunity to explore what, if any, the vested interest may be. He's not going to be immune from questioning.

Mr. BARRETT. Again, I guess I would follow up on Mr. Waxman's question in terms of—as far as I know, I'm a new Member here, a relatively new Member. If we wanted to have a secret witness, what would be the procedure again that we would follow?

Mr. CLINGER. I would be receptive to requests for witnesses. We've always done that.

Mr. BARRETT. And if we believe that this gentleman is perjuring himself, what would be our process for seeking some sort of redress to that?

Mr. CLINGER. The redress that you would have to seek any witness who is being charged with perjury. He's going to be sworn.

Mr. BARRETT. So then would we have perjury proceedings brought against every Mr. X in the country? How would we know who this gentleman is? Seriously, it's a serious question.

Mr. CLINGER. If you want to move to go into executive session, I would entertain that motion, although I think it is an inappropriate one, given the fact that we do not have here a question of national security or the other kinds of issues where this is raised. And this is not an unprecedented action. There have been other examples in this House where we have had anonymous witnesses, I believe, in Energy and Commerce and other committees.

So I think this is not unprecedented. This is not being done at my request. It's done at the witness' request.

Mr. WAXMAN. Mr. Chairman, if you want to have this process, I'm not going to move to go into executive session, although I think it makes a lot of sense to do that. This is a very bizarre process.

Last week, we had the committee vote official counsel to the President in contempt without giving him a chance to be heard. Now, we have a man attacking the Environmental Protection Agency, smearing them, and we have no way to know who he is or the credibility of what he has to say. We just have to take it at face value. I just think this is bizarre.

But if the chairman wants to have a circus, I think this is a new low, and I think it's a disgraceful way to conduct our business. But that's the chairman's prerogative. And we'll look forward to hearing from Mr. Hooded. But I do want to know whether he is the author of Primary Colors. [Laughter.]

Mr. HASTERT. Mr. Chairman.

Mr. CLINGER. The gentleman from Illinois.

Mr. HASTERT. Mr. Chairman, I just want to say that I've served on this committee for 10 years. During that time, I've served as minority member to the majority. We had worked very closely together. I remember Congressman Bonior a number of times with especially in the area of the IRS and situations with a certain couple of companies in California, we had anonymous or hooded witnesses. This is not something new. I don't think it's a circus, unless some people want to make a circus out of it. And I think it's very important and we need to move forward with it.

Mr. CLINGER. I thank the gentleman. The witness is standing. If you would raise your hand and repeat after me.

[Witness sworn.]

Mr. CLINGER. Let the record indicate that the witness answered in the affirmative. We're delighted to welcome you, sir, to the hearing. And we looked forward to your testimony.

STATEMENT OF MR. X

Mr. X. Thank you, Mr. Chairman. I regret that it is necessary for me to appear before you anonymously today. But I do represent an industry composed mostly of small businesses. If one or more of the agencies involved here were to retaliate against our organization, they could be devastated by regulations which Federal agencies such as the EPA have the authority to impose.

I might add, also, to the gentleman from California that I am not the author of Primary Colors or I wouldn't need to still have the job that I do. One of the other reasons that I've asked to appear anonymously is that my own organization does not know I'm appearing, because I believe they would think that too risky for me to do so.

I come here today as a representative of a trade association and as a taxpayer, simply to describe to you the materials which were sent to me in my capacity as director of Government relations for my association. I believe that the content of these materials, their distribution lists and the timing of their transmission, all show clearly that the purpose of the Government officials who sent them was to lobby against specific legislation pending in the Congress.

The materials I received have been made available to you for your review. Keep in mind that our organization has only sporadic

contact with the EPA and had not in any way requested any information on any pending legislation. We had only limited contact in the past year with the EPA. We had never been asked to be placed on a mailing list. And we were not working with the agency on any ongoing project.

On February 17, I received the first fax, which was three pages from the EPA Public Liaison Division. And that piece was entitled, Facts About the Contract with America's Provisions on Risk Assessment and Regulatory Reform. It was followed by two pages of arguments directly against H.R. 9.

We received five more faxes, which are described. And I believe, they have been distributed to you. And the last fax came on March 20, a nine-page fax consisting of a press release dated March 16 from the Office of the Vice President, entitled, The President Announces First Government-wide Regulatory Reforms. It also contained the full text of remarks by the President at a print shop in Virginia.

When an association receives lobbying materials from an agency that directly regulates the businesses of the association's members, there is an implicit suggestion that supporting the administration on agency position will result in more favorable treatment. There is also certainly the suggestion by sending this material to people who do lobby, that those people lobby on behalf of that position.

Out of EPA's faxes, we receive two faxes from the Denver office of the Department of Energy, only one of which I can locate for this hearing. The faxes were addressed, dear friends, and contained a whole series of daily programs which might be reduced or eliminated if the, quote, drastic budget cuts proposed by Congress were carried out. And a cover page encouraged us to share this information with your customers.

As one who has been involved in Government relations, Government affairs for many years, I was angered by these materials which used tax money to lobby against legislation which might well have been beneficial to my membership.

As a taxpayer, I was outraged that my tax dollars were being used to distribute blatantly political materials. I am one of those working Americans the President refers to. I go to work every day. I pay my mortgage and my bills, and I pay taxes. It enrages me that my tax dollars are being used to oppose legislation which I and my organization may favor and it might be positive for our industry.

In the third fax that I brought, you may note that Administrator Browner is quoted as saying that the American people don't want their tax dollars used to pay polluters.

I feel certain that they also don't want their tax money spent to lobby the Congress. I have no objection to the administration making its views known to the Congress. And I have no objection to agencies answering inquiries or speaking to the press. But I do have objection to direct lobbying of legislation that was done, as in the case of these faxes.

It is especially upsetting to me that this Federal agency lobbying is happening at the very same time that the laws have been modified to eliminate any deduction for lobbying expenses for business. For those of us in the trade association community, what this

means is that we must calculate how much money we spend each year on lobbying activities and report that back to our members and tell them that they may not deduct that portion of their dues used for lobbying.

The result is that while businesses must pay more tax in order to engage in lobbying, the Government itself is using some of those tax dollars to lobby against the very positions that the business might favor. It is truly ironic to me that under current Federal tax law, businesses must pay taxes on their expenses for lobbying while at the same time, Federal agencies can use those tax dollars to lobby against their position.

I would be most happy to answer any questions you have. I would say that I would also be pleased to meet in executive session or whatever way I can to assure those that I have no reason to ask for this anonymity other than to protect my own association and the interests that they have.

Thank you.

[The prepared statement of Mr. X follows:]

PREPARED STATEMENT OF MR. X

Mr. Chairman and Members of the Committee:

I regret that it is necessary for me to appear before you anonymously today, but I represent an industry composed mostly of small businesses. If one or more agencies were to retaliate against our organization, or our members, they could easily be devastated by regulations which Federal agencies, such as the EPA, have the authority to impose.

I come here today both as a representative of a trade association and as a taxpayer, to describe to you the materials which were sent to me, in my capacity as Director of Government Relations, by the U.S. Environmental Protection Agency and by the Department of Energy, in the spring of 1995, during the time the Congress was considering various proposals contained in the "Contract with America." I believe that the content of these materials, their distribution list, and the timing of their transmission all show clearly that the purpose of the government officials who sent them was to lobby the public to oppose specific legislation pending in the Congress.

The materials I received have been made available to you for your review. Let me first discuss the materials from the EPA. Keep in mind that we have only sporadic contact with the EPA, and had not, in any way, requested any information on any pending legislation. Prior to this barrage of faxes—six in about one month's time—we had last contacted the agency in May or June of 1994, for a brief meeting concerning a proposed new regulation, and had subsequently filed some brief written comments on that proposed rule. We had never asked to be placed on any mailing list, and we were not working with the agency on any ongoing project.

On February 17, I received the first fax, three pages from the EPA Public Liaison Division, listing 39 trade association recipients on the cover page. The title of the remainder of the piece was "Facts About the Contract with America Provisions on Risk Assessment and Regulatory Reform." That was followed by two pages of arguments that HR 9 would roll back protection, increase costs, and delay rulemaking. It contains assertions that the Clinton Administration has "improved science at EPA," that "President Clinton is reinventing government," and that the EPA was dedicated to "cost-effective environmental policies."

Next came a fax from the EPA Public Liaison containing part of a speech by President Clinton, asking regulators to report by June 1 (1995) on how to reduce the regulatory burden on the American people. Next was a short fax, sent to the same list as the first one, containing only a two paragraph press release blasting the Private Property Protection Act, HR 925. Interestingly, the last line was "The American people want their tax dollars used to protect public health and the environment—not to pay polluters." The next fax, on March 8, was sent to 46 trade association executives, and contained a copy of Administrator Browner's statement to the Senate Committee on Governmental Affairs on the same day the fax was sent. On March 10, the EPA sent a press release stating Administrator Browner's "disappointment" in the action of the Senate Government Affairs Committee in approving a 13 month moratorium on new regulations. The last fax I received from the

EPA came on March 20, a nine page fax consisting of a press release dated March 16 from the office of the Vice President, titled "President Announces First Governmentwide Regulatory Reforms." It also contained the full text of remarks by the President at a print shop in Arlington Virginia on March 16, wherein he claims he and the vice president are reducing regulations and making progress in "reinventing government."

When an association receives lobbying materials from an agency that directly regulates the businesses of its members, there is an implicit suggestion that supporting the Administration and agency position will result in more favorable treatment.

Following the EPA fax barrage, we received two faxes from the Denver office of the Department of Energy, only one of which I could locate for this hearing. The fax was addressed "Dear Friends" and listed a whole series of DOE programs which might be reduced or eliminated if the "drastic budget cuts proposed by Congress" were carried out. The cover page encouraged us to "share this information with your customers."

As one involved in government affairs for many years, I was angered by all of these materials, which used tax money to lobby against legislation which might well have been beneficial to my membership, and which we generally supported. As a taxpayer, I was outraged that my tax dollars were being used to distribute blatantly political materials. I am one of those "working Americans" the President often refers to—I go to work every day, I pay my mortgage and other bills, and I pay taxes. It enrages me that my tax dollars are being used to oppose legislation I may favor, and that would be good for my industry. While Administrator Browner is quoted as saying in one of her faxes that the American people don't want their tax dollars used to pay polluters, I am pretty sure that they also don't want their tax money spent to lobby the Congress.

I have no objection to the Administration making its views known to the Congress, and I have no objection to agencies answering inquiries. It seems clear to me however, that if these agencies have sufficient time and resources to put together lists of trade association representatives, prepare pages of briefing papers, and fax thousands of pages of materials out on pending legislation, with the clear intention of lobbying the Congress, then they have too much time and money on their hands.

It is especially galling when federal agency lobbying is happening at the very same time that Congress is removing any deduction for lobbying expenses for businesses. Under the lobbying reform legislation which took effect last year, trade associations now must report to each of their members that part of their dues payment is non-deductible, because we lobby the Congress. The result: while business must pay more tax in order to engage in lobbying, the government is using some of those tax dollars to lobby on behalf of bigger government, more regulation, and higher taxes.

Is it not ironic that under current federal tax law businesses must pay taxes on their expenses for communications with Congress, while at the same time Federal agencies can use those tax dollars to lobby against the business position?

I will be pleased to answer any questions you may have.

Mr. CLINGER. Thank you, sir. We'll now proceed under the 5-minute rule, and I would recognize myself for the first round of questions. We have gone ahead, sir, and shared the materials that you received from the agency with members of the committee. I would ask unanimous consent to put them in the record at this point.

[The information referred to follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Exhibit 1

FACSIMILE TRANSMISSION

PLEASE DELIVER TO THE FOLLOWING:

JIM EGENRIEDER - AGRICULTURAL RETAILERS ASSOCIATION
WARREN STICKLE - CHEMICAL PRODUCERS & DISTRIBUTORS ASSOCIATION
JOHN DIFAZIO - CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION
NANCY CHAPMAN - NANCY CHAPMAN & ASSOCIATES
ROBERT JOHNSON - NATIONA RURAL WATER ASSOCIATION
TOM DELANDY - PROFESSIONAL LAWN CARE ASSOCIATION
MARY LEGATSKY - SYTHETIC & ORGANIC CHEMICAL MANUFACTURERS ASSN.
ANNE GIESECKE - AMERICAN BAKERS ASSOCIATION
ELIZABETH FAGA - AMERICAN CORN MILLERS FEDERATION
ROBERT GARFIELD - AMERICAN FROZEN FOOD INSTITUTE
TERRY CLASSEN - CORN REFINERS ASSOCIATIN
AMY LOY - FOOD MARKETING INSTITUTE
JOANNA KILLE - GROCERY MANUFACTURERS OF AMERICA
MIKE REDMAN - NATIONAL SOFT DRINK ASSOCIATION
CHRISTINE BLANK - ORGANIC FOOD BUSINESS NEWS
KATHERINE DIMATTEO - ORGANIC FOODS PRODUCTION ASSOCIATION
ALLEN ROSENFELD - PUBLIC VOICE FOR FOOD POLICY
BILL BERMAN - AMERICAN AUTOMOBILE ASSOCIATION
DAVE PRECHT - BASS ANGLERS SPORTSMENS SOCIETY
SCOTT SUTHERLAND - DUCKS UNLIMITED
MARK LESLIE - GOLF COURSE NEWS
PAT JONES - GOLF COURSE SUPERINTENDENTS ASSOCIATION OF AMERICA
LIBBY FAYAD - NATIONAL PARKS & CONSERVATION ASSOCIATION
DAVID KARMOL - NATIONAL SPA & SWIMMING POOL INSTITUTE
DAVID SECUNDA - OUTDOOR RECREATION COALTION OF AMERICA
KIMBERLY ERUSHA - UNITED STATES GOLF ASSOCIATION
MARK MASLYN - AMERICAN FARM BUREAU FEDERATION
DEBORAH ATWOOD - AMERICAN MEAT INSTITUTE
LAURIE WALTER - NATIONAL ASSOCIATION OF FARMER COOPERATIVES
GREG RUHLE - NATIONAL CATTLEMENS ASSOCIATION
KEITH HERD - NATIONAL CORN GROWERS ASSOCAITI N
PAULETTE ZAKRZESKI - NATIONAL COTTON COUNCIL
LARRY MITCHELL - NATIONAL FARMERS UNION
ROY MARTIN - NATIONAL FISHERIES INSTITUTE
KIM CUTCHINS - NATIONAL PEANUT COUNCIL
RICHARD PASCO - NATIONAL PORK PRODUCERS COUNCIL
MARGIE CARRIGER - NATIONAL WHEAT GROWERS ASSOCIATION.
JOHN AGUIRRE - UNITED FRESH FRUIT & VEGETABLE ASSOCIATION
RANDI PAKS THOMAS - UNITED STATES TUNA FOUNDATION

FROM: MIKE SCOTT
US EPA - PUBLIC LIAISON DIVISION
(202) 260-5982

2 PAGE(S) TO FOLLOW

IF YOU HAVE ANY PROBLEMS WITH THIS TRANMISSION, CALL (202) 260-4454

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FACTS ABOUT THE CONTRACT WITH AMERICA PROVISIONS ON RISK ASSESSMENT AND REGULATORY REFORM

H.R. 9, a new legislative proposal currently under consideration by the U.S. House of Representatives, purports to reform the regulatory process by applying sound science and risk assessment to environmental decisions so that we make most efficient use of our nation's resources for public health protection. No one could disagree with those goals, but this bill would not accomplish those goals. In fact, H.R. 9 would block the protections that Americans demand and deserve -- from safe toys to clean air, land, and water -- by complicating the very thing it claims it will reform: the federal regulatory process.

APPLYING SOUND SCIENCE TO ENVIRONMENTAL DECISIONS

The supporters of this legislation say it will apply sound science to environmental decisions. In reality, the bill relies on complex economic calculations in determining who can receive public health protections, and how much protection they can receive.

- ***Fine print will roll back protection:*** The fine print of the bill shows that it will effectively repeal 25 years of rules that provide our nation's public health protections. It mandates a cost/benefit balancing test, coupled with a petition process to roll back existing rules under the Clean Water Act, the Safe Drinking Water Act, the Superfund law, and the Clean Air Act, and many more.

- ***Supersedes existing laws:*** This cost/benefit test would supersede standards in all other laws in two ways. For existing law, it sets up a petition process through which anyone can present new data to force a rollback of the existing standards. In prospective decisions, a cost/benefit analysis and a certification of that analysis are required. But even then, no new rule to protect public health can be made without substantial evidence on the record -- and if any one piece of that conflicts with existing law, the existing law is superseded.

  If these provisions of the bill recently marked up by the House were already in effect, EPA could not have banned lead from gasoline, cancer-causing benzene from our drinking water, or dangerous pesticides like DDT -- actions that are among the most important public health protections of our time.

- ***Peer review:*** Instead of using impartial, scientific peer review -- as EPA does now -- this bill would add reviews by additional "expert" panels, and would allow the reviewers to include individuals or companies affected by the outcome. That's hardly impartial, and flies in the face of sound science.

- ***Spending more, not less:*** H.R. 9 would force all federal agencies to spend more taxpayer dollars on extensive analyses, no matter how significant or insignificant the issue. It flies in the face of advice from the National Academy of Science, which says that the level of assessment should be related to the magnitude of the problem.

- *Putting science in the courts:* Even though the law currently provides well-accepted rights that allow citizens to challenge public health decisions in court, H.R. 9 would add new rights so that scientific decisions could be challenged in court further, leaving environmental protections open to more lawsuits and judicial reviews. That goes against the best thinking in scientific principles and ethics and unnecessarily delays public health protection.

The National Academy of Sciences recognizes EPA as a world leader in risk assessment -- we've done thousands of them in the past 20 years. The Clinton Administration has improved science at EPA, increasing our use of impartial peer review, providing research grants to the best scientists in the U.S., and focusing on the nation's greatest public health problems.

SIMPLIFYING THE REGULATORY PROCESS

The supporters of this legislation say it will bring relief -- lower costs, less paperwork, less bureaucracy -- by simplifying the regulatory process, particularly for those affected directly by regulations. But many provisions of the bill would create a convoluted maze that would prevent Federal agencies from protecting public health, putting our actions through an intricate bureaucratic system that would add red tape and delay progress.

- *Doubles federal staff:* At a time when President Clinton is reinventing government so it can work better and cost less, H.R. 9 would, at a minimum, require EPA to double the number of Federal personnel needed to do this work -- for little benefit.

- *Adds red tape and delays:* The bill would add many new steps to the existing review and analysis process, with many options throughout for judicial review -- options that will result in a full employment act for lawyers, and will delay by months and years much-needed public health protections in all Federal agencies.

- *Stalls de-regulation:* The proposed moratorium on regulatory action would actually be counterproductive, instead of simplifying the system. It would not only delay public health protection, but would stall de-regulatory actions.

The Clinton Administration has already put in motion many significant initiatives to reinvent regulation, including the President's Executive Order on regulatory review, the National Performance Review, and EPA's Common Sense Initiative. EPA Administrator Carol M. Browner wants to work with Congress to find common sense, cost effective environmental policies that work for real people in real communities.

At a time when we're moving away from a one-size-fits-all approach in environmental protection, we don't think the American people want another rigid, bureaucratic system locked into place. As a result of H.R. 9, our efforts would be replaced by a system that is more convoluted, more expensive, more time-consuming -- and less protective of public health and the environment.

United States
Environmental Protection
Agency

Communications, Education,
And Public Affairs
(1703)

EPA **Environmental News**

FOR RELEASE: FRIDAY, MARCH 3, 1995

STATEMENT OF CAROL M. BROWNER
ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY
HOUSE PASSAGE OF THE
PRIVATE PROPERTY PROTECTION ACT, H.R. 925
MARCH 3, 1995

H.R. 925 would require the federal government to compensate landowners if the operation of the Clean Water Act or the Endangered Species Act results in a reduction of property values of 10 percent. Also, if the reduction in value of the property is 50 percent or greater, the strictures of H.R. 925 require that the U.S. government buy the property at the request of the landowner.

This legislation is another back-door effort to dismantle public health protection. It would force the government to pay polluters not to pollute. It would sweep away years of constitutional law and hamstring EPA's efforts to carry out the environmental laws of this nation. The American people want their tax dollars used to protect public health and the environment -- not to pay polluters.

R-39 # # #

FACSIMILE REQUEST

PLEASE DELIVER TO THE FOLLOWING:

Mark Maslyn - American Farm Bureau Federation
Deborah Atwood - American Meat Institute
Laura Phelps - American Mushroom Institute
Krysta Harden - American Soybean Association
Maureen McClavick - International Apple Institute
Laurie Walter - National Association of Farmer Cooperatives
Greg Ruhle - National Cattlemens Association
Keith Herd - National Corn Growers Association
Paulette Zakrzeski - National Cotton Council
Larry Mitchell - National Farmers Union
Roy Martin - National Fisheries Institute
Kendall Keith - National Grain & Feed Association
Kim Cutchins - National Peanut Council
Margie Carriger - National Wheat Growers Association
Keith Argow - National Woodland Owners Association
John Aguirre - United Fresh Fruit and Vegetable Association
Randi Parks Thomas - United States Tuna Foundation
Jim Egenrieder - Agricultural Retailers Association
Kathy Ream - American Chemical Society
Thomas Gilding - American Crop Protection Association
Warren Stickle - Chemical Producers and Distributors Association
Philip Klein - Chemical Specialties Manufacturers Association
Nancy Chapman - Nancy Chapman & Associates
Tom Delaney - Professional Lawn Care Association
Mary Legatsky - Synthetic and Organic Chemical Manufacturers
Anne Giesecke - American Bakers Association
Robert Garfield - American Frozen Food Institute
Jack Cooper - Food Industry Environmental Network
Amy Loy - Food Marketing Institute
Joanne Kille - Grocery Manufacturers of America
Robert Reeves - Institute of Shortening & Edible Oils
James Anderson - National Center For Food & Agricultural Policy
Rick Jarman - National Food Processors Association (NFPA)
Mike Redman - National Soft Drink Association
Christine Blank - Organic Food Business News
Katherine DiMatteo - Organic Foods Production Association; N.A.
Allen Rosenfeld - Public Voice for Food Policy
Bill Berman - American Automobile Association
Dave Precht - Bass Anglers Sportsmans Society
Scott Sutherland - Ducks Unlimited
Mark Leslie - Golf Course News
Pat Jones - Golf Course Superintendents Association of America
Libby Fayad - National Parks & Conservation Association
David Karmol - National Spa and Swimming Pool Institute
David Secunda - Outdoor Recreation Coalition of America
Kimberly Erusha - United States Golf Association

FROM: MIKE SCOTT
IF THERE IS ANY PROBLEM WITH THIS TRANSMISSION, PLEASE CALL (202)260-4454.

United States
Environmental Protection
Agency

Communications, Education,
And Public Affairs
(1703)

EPA Environmental News

FOR RELEASE: THURSDAY, MARCH 9, 1995

Statement of Carol M. Browner
Administrator, U.S. Environmental Protection Agency
Senate Government Affairs Committee
Approval of Regulatory Moratorium
March 9, 1995

I am disappointed that the Senate Government Affairs Committee today approved a 13-month moratorium on regulations and rejected amendments, including one that would have protected the public from contaminants in drinking water.

The people of this country want common-sense reform. They do not want a freeze on public health protection. This legislation would seriously hinder our efforts to protect the American people.

R-46

# # #

FACSIMILE REQUEST

PLEASE DELIVER TO THE FOLLOWING:

Mark Maslyn - American Farm Bureau Federation
Deborah Atwood - American Meat Institute
Laura Phelps - American Mushroom Institute
Krysta Harden - American Soybean Association
Maureen McClavick - International Apple Institute
Laurie Walter - National Association of Farmer Cooperatives
Greg Ruhle - National Cattlemens Association
Keith Herd - National Corn Growers Association
Paulette Zakrzeski - National Cotton Council
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Jim Egenrieder - Agricultural Retailers Association
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David Secunda - Outdoor Recreation Coalition of America
Kimberly Erusha - United States Golf Association

FROM: MIKE SCOTT
IF THERE IS ANY PROBLEM WITH THIS TRANSMISSION, PLEASE CALL (202)260-4454.

Carol M. Browner
Administrator, U.S. Environmental Protection Agency
Senate Committee on Governmental Affairs
Risk Assessment, Cost-Benefit Analysis, and Regulatory Reform
March 8, 1995

Mr. Chairman and Members of the Committee, I welcome the opportunity to appear before you today. I commend you on the series of hearings you have held on these very important issues. These are issues that are important to each and every person in this country and deserve to be fully and publicly debated. I look forward to working with you so that together we can provide the American people with the public health and environmental protections they deserve in a common sense, cost effective manner. It is the job of government to protect the environment we all share -- the air, the water, the land.

The Clinton Administration and this Committee are in agreement that we must reform our regulatory system. The issue before us today is how best to achieve that reform. How best to build an environmental regulatory system that will meet the needs of the American people today -- and carry our country forward into the next century.

As you know, I have on many occasions voiced my very strong opposition to the House bill on risk assessment, cost-benefit analysis and regulatory reform. The Clinton Administration believes this bill would undermine virtually all of the public health protections that the American people depend upon. We are concerned that Sen. Dole's bill, too, would deprive the American people of vital health protections. We need to reform the process by which we secure strong public health and environmental protections. But I fear that at a time when we are moving away from the one-size-fits-all approaches of the past, we are in danger of merely substituting another cumbersome, overly rigid system.

Let me be clear: risk assessment, cost-benefit analysis, and peer review are among the most important tools we have to protect the public. But the issue is how to best use these tools in making the very difficult decisions necessary to overcome the challenges we face -- the increase in asthma, the increase in breast cancer, continued contamination of our rivers, lakes and streams.

We have an opportunity to design a system of strong public health and environmental protections that recognizes the strengths and overcomes the weaknesses of the current process -- to find solutions that work for real people in real communities. We worked with the Congress last year on risk legislation and we came very close before the clock ran out. Recently I have had very productive discussions with Senator Johnston and his staff.

and S. 291, the bill that you, Mr. Chairman, have brought before this committee, represents a responsible starting point that will help move us toward a common-sense process of arriving at strong public health and environmental protections.

Let me briefly describe the elements that the Clinton Administration believes must be part of legislation on these issues in order to accomplish our shared goal of making the process work as it should. And let me also mention the elements that the Clinton Administration would nor find acceptable.

Risk assessment and cost-benefit analysis: Both risk assessment and cost-benefit analysis are tools that have been in use at EPA for some time. We have conducted thousands of risk assessments over the past two decades. And under President Clinton's Executive Order, cost-benefit analysis is a key part of our regulatory process. The Clinton Administration is absolutely committed to the continued use of these tools. We support efforts to continually strengthen our science. But what we cannot support are measures that would set decisions in stone, that would freeze science, that would restrict the advancement of knowledge. We cannot afford to freeze the futures of our children.

Scientific peer review must be independent, fair, and effective. It must be above reproach. We must absolutely guard against incorporating conflicts of interest into the peer review process. Nor can we base important public health protections solely on mathematical calculations when lives are at stake.

Judicial review: Today, all final regulatory actions at EPA are subject to judicial review. But the courts do not belong in every step of the regulatory process. We must not impose judicial overview on what is properly a scientific process. To allow judicial review of scientific issues flies in the face of what this Administration and the scientific community can support. Such measures do not belong in a reasoned scientific approach.

Regulatory reform: President Clinton has called on federal agencies to conduct a thorough, comprehensive review of our regulations, to ensure that all regulations are based on common sense and cost-effectiveness, and to find innovative alternatives to regulation wherever possible. But this Administration does not favor a petition process that would open any existing regulation at any time for re-analysis and re-review. Such a process would increase red tape and hamper our efforts to protect the public -- and surely none of us want legislation to do that.

I recognize that there is a sense in Congress that we need to do more in the area of reviewing our regulations. I stand ready to craft with you a sensible mechanism that will meet the

July 18,1995

Dear Friends:

We are forwarding information to you because of concerns about the programs that will be effected if the Department of Energy suffers the drastic budget cuts proposed by Congress. The impact will be especially felt on the energy efficiency and renewable energy programs and the industries that these programs support. America's status as an international leader in efficiency and renewable energy technology will be threatened and the eventual economic impact could be devastating.

Because of the numerous requests we have had for information about the programs that will be effected by the budget cuts, we are sending you a fact sheet that shows which programs will most likely be terminated. Please share this information with your customers.

The Staff
Denver Regional Support Office

June 14, 199

Impact of House Science Subcommittee Mark Up
On Energy Efficiency and Renewable Energy (EERE) Programs

The following is a summary of the impacts of the House Science Subcommittee's (Rohrabacher) June 8, 1995 mark up on Energy Conservation Research and Development programs and Energy Supply Research and Development programs under the Energy & the Environment Subcommittee's jurisdiction:

- The total Solar and Renewable Energy appropriation would be $203.6 million, **a 52% cut from the FY 1995 appropriation** and a 56% cut from the President's FY 1996 request.

- The total Energy Conservation Research and Development appropriation would be $205.8 million, **a 60% cut from the FY 1995 appropriation** and a 69% cut from the President's FY 1996 request. The Science Committee's mark up does not include grants.

- These 52% - 69% cuts in technology R&D and deployment programs are even more devastating when one considers that the Subcommittee's mark up fails to account for close out costs for terminated programs. Conservative estimates for close out costs include $177 million for DOE programs and an additional $45 million for the National Renewable Energy Laboratory. Subtracting these $222 million in close out costs from the Subcommittee's $409.4 million mark up **leaves only $188.4 million to fund all EERE programs, an 80% cut from the FY 1995 appropriation and an 83% cut from the President's FY 1996 request.**

- These draconian cuts would produce a record-low Federal investment in energy efficiency and renewable energy R&D programs ($188.4 million) at a time of record-high oil imports (more than $50 billion or more than 50% of oil consumed in the U.S.)

- These cuts would force the Office of Energy Efficiency and Renewable Energy to reduce its portfolio from 100 key program activities to approximately 10-12 program activities in all six sectors. **A detailed list of programs which will be terminated by the science subcommittee's mark up appears on the attached page.**

- The Subcommittee mark up would cost the American economy these benefits by the year 2000:
  - 240,000 jobs
  - $17 billion in energy cost savings
  - 35 million metric tons of carbon equivalent air pollution

Energy Efficiency and Renewable Energy Programs Eliminated by the June 8, 1995 House Science Subcommittee Mark Up

Energy Supply R&D Programs

Solar Buildings Technology Research
Solar International Programs, including CORECT - Committee on Renewable Energy Commerce & Trade
Solar Technology Transfer Programs including Commercialization Ventures and Tribal Grants
Solar Program Support
Solar Resource Assessment
Hydropower Energy Research
In-House Energy Management program (saves $$millions in energy costs at federal facilities)
Wind Energy Systems (80% cuts combined with program closeout costs will terminate all Wind program activities)
Information and Communication Program (supplies consumers and businesses with news and publications on energy efficiency and renewable energy products and technologies)
Regional Biomass Energy Programs

Energy Conservation R&D Programs

Industries of the Future
Advanced Turbine System Program
NICE[3]
Climate Wise
Energy Analysis and Diagnostic Centers
Partnership for a New Generation Vehicle
Alternative Fuel Vehicle Development and Demonstration Program
Advanced Transportation Materials Technology
Heavy Duty Vehicle Program
Electric Vehicle Program
Hybrid Vehicle Program
Light Duty Engine Program
Rebuild America Residential Program
Building Standards and Guidelines
Lighting and Appliance Standards
Energy Partnerships for Affordable Homes

Lighting Research (including Sulphur Lamp)
Technology Introduction Partnerships for Equipment & Appliances
Windows and Glazing Research
Oil Heat Research
Indoor Air Quality Research
Insulation and Roofing Research
Refrigeration Research to Replace CFCs
Home Energy Rating Systems Research
Integrated Resource Planning
Inventions and Innovation Program
International Market Development including COEECT - Committee on Energy
Efficiency Commerce & Trade
Municipal Energy Management
Federal Energy Management Efficiency Fund
Federal Energy Management Program - Technical Assistance
Federal Energy Management Program - Planning, Reporting and Evaluation

Mr. CLINGER. Your association was obviously just one of many that were listed on the front sheet, the facsimile transmission sheet that preceded these materials. I've got some questions about the materials themselves, but let me first of all ask you, do you still work for the trade association that you indicated you were employed by at the time you received this material?

Mr. X. Yes, sir. And that's one of the reasons I'm appearing anonymously. I want to be able to continue to work there tomorrow.

Mr. CLINGER. How long have you worked for the particular trade association?

Mr. X. I've worked for this association for a little over 5 years.

Mr. CLINGER. Can you give us a little indication of your background and so forth?

Mr. X. I'd be happy to, sir. I'm an attorney. When I graduated from law school, I spent some time as an assistant prosecutor. I was a member of the State legislature for two terms in one of our States. I came to Washington. I worked on a committee here on Capitol Hill for a short time. And I've worked for two trade associations for a little over 10 years in the private sector here in Washington.

Mr. CLINGER. Now, the documents that you have brought with you and which are entered in the record here today, when was the first instance when you received documents from any agency with regard to the pending legislation?

Mr. X. Well, we received the first one on February 17. And as I recall, I believe it was a Friday. And I had been at a conference outside of the office. And when I returned, this fax was in my inbox. And if you may recall, this was during that very hectic period, the first couple of months of this Congress, when the Congress was considering various aspects of the Contract with America. And this piece was identified and is titled, Facts about the Contract With America Provisions on Risk Assessment and Regulatory Reform.

And, quite frankly, we as an association believe there was a need for reforming the regulatory process. Many of our small businesses had been severely impacted by regulations which were one size fits all. And I was surprised to see this. And, quite frankly, I was upset, because this is not a fact sheet, this is a lobbying piece. It goes through the positions of the administration on these issues and it was intended to lobby us clearly.

Mr. CLINGER. Did you in any way solicit the material? Were you contacted verbally by EPA?

Mr. X. No, sir. I had not had any contact with the agency since the summer before, the summer of 1994 on a completely unrelated issue.

Mr. CLINGER. Were you in any meetings with any officials of EPA that would have had under discussion items in the Contract with America?

Mr. X. No, sir.

Mr. CLINGER. Did you have any regulations in which your association was interested that were pending before EPA at the time?

Mr. X. There were several regulations pending during this—well, for a long period of time, there was one that went back as far as 1991. There was one pending regulation that had been first pro-

posed in early 1994. The EPA—there are a number of regulations almost at any given time that would affect our membership.

Mr. CLINGER. Have you received materials such as those included in this package that you submitted this morning from any other agency, besides EPA or DOE?

Mr. X. Not that I'm aware of, sir, no.

Mr. CLINGER. You said you've been representing trade associations for about 10 years. Have you seen this pattern over that entire period of 10 years?

Mr. X. Mr. Chairman, I must say this is the first time I have seen materials like this that are—I would classify as clearly lobbying materials. And that's why I was upset about it at the time.

Mr. CLINGER. Were you asked to do anything with the material? In other words, were you requested to contact your members or to contact Members of Congress? In other words, what were you expected to do with the material, the information that you had been given?

Mr. X. Well, the materials from the EPA did not make any direct requests. They certainly convey the position of the agency and what the agency believes ought to happen to the legislation.

Mr. CLINGER. Thank you. Now, I recognize the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you for identifying me, Mr. Chairman. I wish you hadn't. Mr. X, I have a copy of the information that was faxed to you. And this was a statement, a dissemination of the information of the administration's point of view on legislation. Do you think there's anything improper about an administration disseminating information of their position?

Mr. X. I don't think there is anything improper, except that there is a law that bans lobbying. And it is in fact lobbying.

Mr. WAXMAN. Do you feel—excuse me. I don't want to interrupt you.

Mr. X. If I were to send that material to my members, I would have to record the cost of that and list it as a lobbying expense.

Mr. WAXMAN. There is a distinction between lobbying and disseminating information. You would maintain that the information you received over the fax was lobbying, rather than disseminating information. Is that correct?

Mr. X. I'm using the same standard that the tax code uses in terms of what we would have to record as lobbying.

Mr. WAXMAN. Just answer yes or no. You consider it lobbying?

Mr. X. Yes, sir.

Mr. WAXMAN. Do you think that's in violation of existing law?

Mr. X. Yes, sir, I do.

Mr. WAXMAN. I see. You are testifying here anonymously. I'd like to know—you indicate in your written statement that you feel intimidated because you got this fax. Have you been physically threatened in any way?

Mr. X. No, sir.

Mr. WAXMAN. Has anybody in your family been threatened?

Mr. X. No, sir.

Mr. WAXMAN. Are you under the witness protection program anywhere?

Mr. X. No, sir. I think I've explained why we have concerns. The agencies can very subtly affect our businesses.

Mr. WAXMAN. Excuse me, Mr. X, Mr. Anonymous, this is my time to ask you questions. And I only have a limited time, so I'd like you to respond to my questions. I'm going to ask that a certain document be thrown into your cage so you could look at it. If somebody would please do that.

This document I'm going to characterize while it's coming to you is a press statement issued under the name of the stationery of the Vice President's office. It attacks a bill by Senator Bryan from Nevada that would set CAFE standards for automobiles. And it urges people receiving this information to speak out against it.

Do you think that a document like this is improper and illegal?

Mr. X. Well, sir, it depends on who it was sent to. If it was sent to the press——

Mr. WAXMAN. This was sent to industry groups. Well, let's assume it's sent to industry groups.

Mr. X. Well, if it's sent at their own request, again, that's proper. If it's sent to solicit the people who——

Mr. WAXMAN. Why is it any different, if it's taxpayers' dollars that are being spent, whether anybody requested they get this information or not?

Mr. CLINGER. I don't think we have a copy of the document that has been presented to the witness. If we could get a copy of it.

Mr. WAXMAN. Do you see a distinction between whether it was solicited as opposed to whether it was sent involuntarily?

Mr. X. I think there is a distinction, yes, sir.

Mr. WAXMAN. I see. Now, I want to ask you this. Do you think that if there is an organization like the National Counsel of Senior Citizens that have taken a strong stand against the Medicare provisions of the House and then they are subpoenaed to come in with all of their documents, all of their records, all of their activities, by a subcommittee of this committee, do you think that's intimidation?

Mr. X. Well, I wouldn't be present.

Mr. WAXMAN. Do you think that a subcommittee of this committee held 14 field hearings all in the districts of freshmen Republicans, that that's a use of taxpayer funds for political purposes?

Mr. X. Sir, I can't—I didn't hear that question very clearly.

Mr. WAXMAN. There are 14 field hearings. Eleven of the 14 are in the districts of freshmen Republicans. Just giving you that information alone on issues, on the Contract with America, does that sound like abuse of taxpayer funds?

Mr. X. Well, the Congress has engaged in political activities for a long time, sir.

Mr. WAXMAN. So have administrations, haven't they?

Mr. X. Yes, sir.

Mr. WAXMAN. Well, I just want to repeat the operative paragraph which requires you to be anonymous. "When an association receives lobbying materials from an agency that directly regulates the business of its members, there is an implicit suggestion that supporting the administration and agency positions will result in more favorable treatment."

So you felt threatened implicitly because you received these documents, is that your testimony?

Mr. X. I believe that the material, that sending material to us suggested that we ought to take the administration position if we wanted favorable position, yes.

Mr. WAXMAN. I see. Nobody said that to you. That's your feeling about it?

Mr. X. Yes, sir.

Mr. WAXMAN. Do you see a distinction between Congress and the administration—well, my time is expired. I want to thank you for your presentation. I'd like to do it some day in person. And I'd like to ask unanimous consent, Mr. Chairman, that the documents that I presented to him be made part of the record as well as a letter that I sent to the Honorable Abner Mikva, the counsel to the President, on this issue, and his response, as well, about the legal precedents on this very question.

Mr. CLINGER. Without objection, so ordered.

[The information referred to follows:]

COUNCIL ON COMPETITIVENESS FACT SHEET ON: CORPORATE AVERAGE FUEL ECONOMY (CAFE)—(APRIL 22, 1991)

"My goal is to make travel safer, more efficient, and less expensive for the American consumer."

—George Bush

"It is difficult to imagine what the Bryan bill was designed to remedy. What S. 279 will give us is more of what we want less of—highway fatalities and serious injures—and less of what we want more of—fuel savings and competitiveness."

—Dan Quayle

THE BRYAN BILL (S. 279)—A DEADLY EXERCISE IN FUTILITY

The Bryan Bill would mandate unrealistic and costly increases in Corporate Average Fuel Economy (CAFE) standards that harm U.S. competitiveness. It would: decrease highway safety, impose high costs on car buyers, fail to address the transportation sector's near total reliance on oil, and harm U.S. competitiveness. If it were presented for the President's signature, his Senior Advisers, including Transportation Secretary Skinner and Energy Secretary Watkins, would recommend that he veto S. 279.

S. 279 WOULD DECREASE HIGHWAY SAFETY

- Increasing CAFE standards to levels beyond those currently attainable through improved technology means that cars must be downsized substantially.
- Downsizing Causes Traffic Deaths. Studies of passenger car crashes by the National Highway Traffic Safety Administration (NHTSA) conclude that the 1970s and early 1980s downsizing of cars results in increases of about 2,000 deaths and 20,000 serious injuries each year.
- Other Studies Confirm a Negative Relationship Between Vehicle Size and Safety. During the past 12 years, studies by the Office of Technology Assessment of the United States Congress, the National Safety Council, the Brookings Institution, the Insurance Institute for Highway Safety, and General Motors Research Laboratories all agreed that reductions in size and weight pose a safety threat.
- S. 979 Would Cause Additional Traffic Fatalities. Preliminary NHTSA estimates indicate that the weight reductions needed to meet S. 279's requirements could result in an additional 900 to 1,700 deaths and 9,000 to 17,000 serious injuries each year.
- All States could expect to see increased passenger highway fatalities each year if S. 279 were enacted. For example:

Arizona—13–25 deaths; California—91–171 deaths; Florida—57–108 deaths; Kentucky—17–33 deaths; Louisiana—15–29 deaths; Massachusetts—14–26 deaths; Michigan—38–72 deaths; Mississippi—16–30 deaths; Missouri—22–41 deaths; Montana—2–4 deaths; Nebraska—6–11 deaths; New York—44–82 deaths; Nevada—6–11 deaths; and Pennsylvania—43–80 deaths.

S. 279 WOULD DISPLACE LESS OIL AT A HIGHER COST THAN INITIATIVES IN THE CLEAN AIR ACT AND THE NATIONAL ENERGY STRATEGY

- S. 279 is estimated to save about 1 million barrels per day in 2010. The alternative fuels provisions of the Clean Air Act and the National Energy Strategy combined are estimated to save 2.2 million barrels per day by 2010.
- It would cost more than $90 per barrel of oil (in today's dollars) for the marginal increase required by the second phase of the Bryan bill. This does not compare favorably with the cost of other actions the Administration is taking that reduce oil consumption through the Clean Air Act and the National Energy Strategy.
- For example, under Administration Clean Air Act estimates of the cost of reformulated gasoline, which is primarily intended to reduce emissions of hydrocarbons, carbon monoxide, and nitrogen oxides, the cost of oil displaced ranges between $29.40 and $54.40 per barrel.
- Other Clean Air Act initiatives, such as the allowance trading program for sulfur dioxide emissions, will displace petroleum at low cost while contributing to environmental quality.
- Vehicle and infrastructure costs for the alternative fuels programs in the National Energy Strategy analysis are estimated to cost about $12 (present value) per barrel of oil displaced through 2020. (This assumes alternative fuels are cost competitive with gasoline. If alternative fuels are not cost competitive, and therefore used less widely, oil displacement would be lower, and cost per barrel of oil displaced would be higher.)
- Even a program that compelled the use of alternative fuels having a significant cost disadvantage would displace petroleum far more cheaply than S. 279. For example, if the alternative fuel equivalent of gasoline engendered a $.50 per gallon cost penalty, a pessimistic projection, a methanol use mandate would displace oil at a cost of $33 per barrel (fixed cost of $12 per barrel plus fuel penalty cost of $21 per barrel).
- National Energy Strategy proposals outside the transportation sector, such as the removal of regulatory barriers to the approval of new natural gas pipelines, will displace petroleum at a very low cost.

S. 279 TAKES AWAY AMERICAN FAMILIES' CHOICE OF SAFER FAMILY VEHICLES

- S. 279 greatly restricts individual or family choices. Parents who choose a minivan or station wagon for safety reasons or to accommodate the space needed for children are penalized by CAFE.
- Most family minivans and station wagons are substantially heavier (over 450 lbs) than the average vehicle. To meet higher CAFE standards, these vehicles will be made smaller or priced so they are unaffordable for many families. S. 279 could well eliminate the large station wagon entirely.

S. 279 WOULD HARM U.S. COMPETITIVENESS

- S. 279 would most likely hurt the market sectors in which the U.S. predominates—inexpensive large vehicles. Currently, U.S. companies account for about 90 percent of mid- and full-size cars and 97 percent of standard-size light trucks.
- U.S. auto manufacturing job losses could be substantial, depending upon the extent to which U.S. sales are affected.

EXPECTED INCREASES IN ANNUAL HIGHWAY FATALITIES DUE TO THE BRYAN BILL (S. 279) [1]

State	Additional deaths per year
Alabama	23–43
Alaska	1–3
Arizona	13–25
Arkansas	12–22
California	91–171
Colorado	10–18
Connecticut	8–15
Delaware	3–5
Florida	57–108
Georgia	32–61
Hawaii	3–5
Idaho	4–8
Illinois	38–72
Indiana	22–42

EXPECTED INCREASES IN ANNUAL HIGHWAY FATALITIES DUE TO THE BRYAN BILL (S. 279) [1]—Continued

State	Additional deaths per year
Iowa	11–20
Kansas	9–17
Kentucky	17–33
Louisiana	15–29
Maine	4–8
Maryland	15–27
Massachusetts	14–26
Michigan	38–72
Minnesota	13–25
Mississippi	16–30
Missouri	22–41
Montana	2–4
Nebraska	6–11
Nevada	6–11
New Hampshire	4–8
New Jersey	18–34
New Mexico	8–14
New York	44–82
North Carolina	32–60
Ohio	40–75
Oklahoma	12–23
Oregon	12–22
Pennsylvania	43–80
Rhode Island	2–4
South Carolina	20–39
South Dakota	3–6
Tennessee	23–44
Texas	56–106
Utah	6–11
Vermont	3–5
Virginia	21–40
Washington	15–29
West Virginia	11–20
Wisconsin	19–36
Wyoming	2–3
Washington, DC	1–2
TOTAL	900–1,700

[1] Excludes effects on light trucks and minivans which could be substantial but have not been estimated.

COMMITTEE ON
GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC, March 2, 1995.

Hon. CAROL M. BROWNER,
Environmental Protection Agency,
401 M Street, SW.,
Washington, DC.

Re: Possible Violation of Anti-Lobbying Laws

DEAR ADMINISTRATOR BROWNER: Recently, I received a copy of the attached EPA document titled "FACTS ABOUT THE CONTRACT WITH AMERICA PROVISIONS ON RISK ASSESSMENT AND REGULATORY REFORM" (EPA fact sheet). We have learned from EPA employees in the Office of Public Affairs and the Office of Congressional and Legislative Affairs that this fact sheet was sent to over 150 non-governmental organizations, almost all of which are special interest groups or industries that EPA regulates.

As Chairman of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, I am deeply concerned that the distribution of the EPA fact sheet may be in violation of federal laws, including the criminal provisions of the Anti-Lobbying Act, 18 U.S.C. § 1913. It seems plain that this document was designed to influence the legislative consideration of H.R. 9 in precisely the manner

prohibited by the Act. Section 1913 of the United States Criminal Code provides that:

> 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 any 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. . . .

Violation of this section is punishable by removal from office or employment, a fine, and up to one year imprisonment. Although section 1913 permits direct communications from agency officials to Members of Congress made "through proper official channels," the EPA fact sheet does not fall within this narrow exception.

Over the course of the past few days, the Subcommittee staff has been in contact with EPA employees to try to determine the extent of the problem. Initially, my staff was informed that, except for public speeches that were sent "mostly" in response to individual requests, the EPA fact sheet was the only document sent to the press or other non-governmental organizations. I now know that this is not true. Indeed, at the same time the EPA was supposedly conducting an investigation of its distribution of the EPA fact sheet, it also was distributing an EPA Environmental News Press Release dated February 28, 1995 (EPA press release).

In addition, we recently received a copy of an EPA press release concerning H.R. 9[1] dated February 9, 1995 and one concerning H.R. 450 dated February 24, 1995. We also received copies of several purported "speeches," letters, and other EPA documents opposing these and other pending bills. We were told that most of these documents were sent to the same list of outside organizations that received the EPA fact sheet. It simply is not plausible that over 150 special interest organizations simultaneously requested copies of these "speeches" and other documents, nor would that be a defense to violation of the anti-lobbying laws.

Press releases are not excluded from the coverage of the anti-lobbying laws merely because they contain the title "Statement of Carol M. Browner." Moreover, the exception in the anti-lobbying laws for direct communication with Members of Congress "through proper official channels" cannot be used as an excuse to circumvent the plain meaning of the law and mass produce copies of "official" letters. Based on the content of the EPA fact sheet and the EPA press release, the means and timing of their mass distribution, and other EPA actions, it appears that the EPA effort was carefully calculated to have the maximum impact on the legislative debate. The same appears true for many of the other documents that were delivered to us late yesterday.

Thus, I am even more concerned about the possible, continued violation of the anti-lobbying laws by EPA and about the ability of career EPA employees to provide my staff with complete information in response to my informal requests. Because of these concerns, I would like you to answer in writing the requests for information in the attached addendum. Please answer the first four requests for information within seven days. Please answer the remaining requests within 30 days.

The possible violation of the federal criminal laws by officers and employees in the executive branch is a serious matter. It should be clear that actions by EPA or other executive agencies that appear to violate the anti-lobbying laws will be investigated by the Subcommittee and/or the General Accounting Office, and where appropriate, referred to the Attorney General for criminal investigation.

Sincerely,

DAVID M. MCINTOSH,
Chairman,
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs.

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[1] Although the House of Representatives actually considered and engrossed H.R. 1022 in lieu of title III of H.R. 9, references in this letter and the attached addendum to H.R. 9 include references to H.R. 1022 and substitute bills for other provisions of H.R. 9.

THE ANTI-LOBBYING ACT

Congressional oversight of agency lobbying is common. Countless times during the past 30 years Congress has begun inquiries into the executive branch's compliance with the Anti-Lobbying Act and similar laws that restrict the use of appropriated funds for grass roots lobbying, publicity, and propaganda activities. Many of these inquiries were later referred to the General Accounting Office (GAO), which conducted its own investigation into whether any federal laws were violated. The GAO's authoritative treatise on appropriations law describes dozens of reported GAO rulings on alleged violations of the Anti-Lobbying Act and similar laws. Indeed, several of the Anti-Lobbying Act inquiries were serious enough that they were referred to the Attorney General for a criminal investigation.

The text of the Anti-Lobbying Act. The Act permits direct communications by agency officials to Members of Congress made "through proper official channels." Section 1913 of the United States Criminal Code provides further that:

> 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 any 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 . . . .
>
> Whoever, being an officer or employee of the United States or any department or agency thereof, violates or attempts to violate this section, shall be fined nor more than $500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

The dual purposes of the Act. One purpose of the Act is to prevent agency officials from squandering public money in attempts to increase their budgets or protect their jobs. In a free society, the Act serves an even more important purpose of preventing executive branch agencies from using tax dollars to disseminate propaganda and "reeducate" the public about pending legislation.

What the Anti-Lobbying Act permits and prohibits. The Department of Justice's Office of Legal Counsel (OLC) and the GAO draw a distinction between direct and indirect lobbying efforts. OLC and GAO have interpreted the Act to permit several types of direct communications by agency officials to Members of Congress made "through proper official channels." However, the Act prohibits the use of any appropriated funds for indirect lobbying efforts "designed to influence in any manner a Member of Congress" on pending legislation. Moreover, there is a distinction that EPA

Exhibit 3

intentionally blurs between public speeches intended to inform the American people about most issues, which the Act permits, and speeches or press releases which condemn pending legislation and are intended to incite the listener or recipient to pressure Members of Congress about the legislation. That is why the Subcommittee is disturbed by the EPA claims that grass roots lobbying against pending legislation (what Administrator Browner characterizes as "[k]eeping the American people informed and educated") "is an essential part of EPA's duties." The EPA is a creature of Congress and the Administrator's sole duty is to execute the law – all of the law – including the law against grass roots lobbying designed to thwart the will of the people.

Public officials should not attempt to evade the law. Despite the express terms of the Act that "[n]o ...money" may be used in any attempt to influence a Member of Congress "in any manner" on pending legislation, EPA asserts that the Act prohibits almost no indirect lobbying activity. For support, EPA relies on the fact that no one yet has been prosecuted for violating the Act, and that its acts were normal and customary. We simply cannot accept at face value EPA's claim that its lobbying activity was typical; our experience and the initial evidence suggests otherwise. More importantly, the American people demand a higher respect for the law from government officials than merely remaining unindicted. The criminal law is not a game. Public officials should not attempt to skirt the line or avoid the law through creative interpretation.

EPA admits that attempted "grass roots lobbying" is a crime. Even EPA admits that grass roots lobbying is prohibited by the Act in its March 13 letter. EPA relies heavily on a 1989 OLC opinion in its argument that no one at EPA could possibly have violated the law. But the 1989 OLC opinion defines "grass roots lobbying" as "communications by executive officials directed to members of the public at large, or particular segments of the general public, intended to persuade them in turn to communicate with their elected representatives on some issue of concern to the Executive." 13 Op. O.L.C. 361, 365 (1989) (Preliminary Print) (emphasis added). This OLC opinion refutes the notion that only grass roots lobbying directed at the general public violates the statute. The opinion also refutes EPA's suggestion that the law only prohibits explicit requests to third parties to contact Members of Congress. **Indeed, no respected authority supports that suggestion, and the language of the Act is to the contrary. Thus, any communication designed to persuade a particular segment of the general public to communicate with their elected representatives is prohibited.**

The facts the Subcommittee knew prior to our first written request for information: (1) EPA officials used taxpayer funds to create non-public advocacy material strongly condemning pending regulatory reform legislation; (2) an objective reader would interpret these documents as a call to action, or in the words of one newspaper, "a call to arms;" (3) EPA used taxpayer funds to fax these documents to more than 150 grass roots lobbying organizations and industry groups that are active in lobbying Members of Congress on these legislative proposals; (4) most of the documents, including the strongest advocacy pieces, were not solicited; (5) the mass-faxing of these

documents was carefully timed to coincide with important votes in the House of Representatives; and (6) such action was consistent with a pattern of other EPA contacts with grass roots lobbying organizations to defeat the reform legislation.

The admitted facts appear to constitute a violation of the Act. The concerted EPA actions appear to fit the definition of prohibited grass roots lobbying precisely. There may be even more direct evidence of intent, but the prima facie case is strong that some EPA officials may have violated the criminal law. The Subcommittee has a duty to find out if that is the case, and if so, how widespread the problem might be.

New evidence. The Subcommittee recently has obtained additional evidence which suggests that the EPA lobbying activity may be unprecedented in its scope and design. Part of this evidence is in the few documents EPA has produced, including troubling memoranda on EPA's "outreach activities on H.R. 9." Other evidence has come from third parties. In short, there is further evidence that EPA's lobbying activity was not normal agency conduct as claimed. Administrator Browner states that she has "personally emphasized . . . [the] imperative" that public officials "comply fully with both the letter and spirit of the [Anti-Lobbying] Act," and "have provided for training of [her] staff on these issues on repeated occasions." If that is true, then any violation of the letter or spirit of the Act by EPA officials was not accidental.

More Unanswered Questions. EPA's assurances that it was not attempting to influence the legislative debate in its communications with outside lobbying organizations and industry groups begs the question of what it was trying to do.

1. Why did EPA create the lobbying materials?
2. Why did EPA send the advocacy material out when it did?
3. Did EPA think its advocacy material would be ignored by the grass roots lobbying organizations?
4. Why did EPA send out its advocacy material if it thought it would be ignored?
5. Did EPA think that its advocacy material would help the lobbying groups lobby more effectively?
6. Why did EPA want to make its views on pending legislation known to industry groups that it regulates?
7. Was EPA sending implied threats to industry groups that they better support (or at least not oppose) EPA's lobbying efforts?

Other arguments by EPA about the Anti-Lobbying Act. The following responds to other erroneous arguments by EPA that no one could possibly have violated the Act:

1. The Subcommittee rejects the notion that the Act does not prohibit any lobbying activity as long as agency officials do not spend "significant" amounts of money on such activities. The legislative history EPA cites for this proposition does not support

such an interpretation. More to the point, the express terms of the Act could not be more clear on this matter. The Act begins: "[n]o part of the money appropriated by any enactment of Congress shall ...be used ...." If Congress wanted to ensure that no money would be spent on indirect lobbying activity, how could it have been more clear? As an aside, however, we wonder what amount of money EPA considers "significant." We also would like to know if this amount of money was spent on prohibited lobbying activity. In fact, this was one of the questions we posed that EPA refused to answer. (Request 7.) If EPA continues to withhold this information, GAO can conduct its own investigation into the amount of appropriated money that was spent by EPA officials on prohibited lobbying activities.

2. EPA is wrong that the Subcommittee is not entitled to information about meetings, conversations, and memoranda between EPA officials on (1) their plans to encourage outside parties to lobby Members of Congress, and (2) their plans to send advocacy material to outside lobbying organizations. The Anti-Lobbying Act is an intent crime, and such information is highly relevant to the officials' intent.

3. EPA's reasons for engaging in questionable activity are not excuses under the law or justifications for refusing the Subcommittee relevant information. EPA claims (1) that it "conducted its ...outreach in the face of sweeping pending legislation," and (2) that it "did not have the opportunity to testify on significant portions of the 'Contract with America' legislation." The Act permits many types of direct communications with Members of Congress, which EPA engaged in up until the day the House passed the regulatory reform legislation. There are no other exceptions for (1) sweeping legislation or (2) neglecting to testify.

4. Officials who imply that our investigation was "undertaken lightly or for political purposes" do not know the facts. These same officials concluded at the onset of our investigation (more than a week before EPA provided us with any response) that no wrongdoing could possibly have occurred in mass-faxing the EPA advocacy documents to over 150 grass roots organizations and industry groups on the eve of important votes in the House. That leads us to think that they reached their conclusion without troubling to learn the facts. The Subcommittee has been extremely careful in its investigation and has attempted to obtain information through informal requests. Only when that effort failed did the Subcommittee pursue other means to obtain the information. The Subcommittee intends to uncover the facts before it comes to any firm conclusion.

Administrator Browner's disrespect for the law. In her public statements and in letters to the Subcommittee, Administrator Browner has shown a shocking disrespect for the anti-lobbying laws, which she asserts prohibit almost nothing. The Subcommittee also is troubled by intemperate statements that the Administrator is "going to keep on doing what [she has] been doing." Such statements do not instill confidence that EPA takes the Subcommittee's investigation seriously, and it provokes suspicion in the minds of citizens who have no choice but to conform their conduct to the law.

Mr. CLINGER. The Chair now recognizes the gentleman from New Mexico, Mr. Schiff, for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman. Mr. Chairman, I'd like to begin with two observations. One is I'm looking at the packet of materials that the witness has distributed as received by his association. And one of those is a letter, apparently it's signed by the staff of the Denver regional support office of the Department of Energy, apparently.

And it begins with, "We are forwarding information to you because of concerns about the programs that will be effected." And "effected" is spelled with an E instead of an A. Now, if I'm remembering high school English correctly, it's misspelled. And I want to observe that I'm trying to help save the Department of Energy, but when they combine apparently a misuse of their role as an agency with an incompetent way of doing it, it makes it very difficult to defend them, unless my own spelling is wrong here.

Second of all, I want to make a distinction on the issue of lobbying, the issue of being political in general terms. Although the witness talks in terms of taxpayers' dollars being used for politics, the fact of the matter is I would make a somewhat different distinction. I would distinguish an elected public official, such as the President of the United States, the Vice President of the United States, or Members of Congress to be able to take positions on various legislation and to, in fact, lobby, and Government agencies and departments doing the same thing.

And I think that's the real issue here before us today. That is, that the Environmental Protection Agency, the Department of Energy, the Veterans Department, those agencies are not obligated, every single person who works there, to support the Clinton political agenda. They're not obligated to oppose it. They are there to run their agency as representatives of the taxpayers. And they have no position, in my judgment, being involved in the political fray.

I think that's what those of us who run for office, some of us win and some of us lose, but I think that is properly our role. And I think that to mix the two is to confuse the issues. I think the Vice President of the United States has every right to use his or her office, although it's supported by taxpayers' funds, to take positions on legislation.

I think that agencies like the Environmental Protection Agency have no business lobbying against for or against something called the Contract with America. I think we ought to stay with that distinction.

With that, Mr. Witness, I'd like to ask you a question based upon where you left off with the gentleman from California. And I want to say, he says he hopes he meets you in person. I think we are meeting you in person right now. I think you're here with us.

I just want to ask: Was there anything else that you received that was in any way overt or anything else that led you to believe that cooperating with these agencies would get you favorable treatment and not cooperating would get you unfavorable treatment? In other words, was it the sending of the faxes themselves or was it anything else that anyone ever said or did?

Mr. X. Well, I think mostly, sir, it's experience as a lobbyist, knowing how the agencies work.

Mr. SCHIFF. Well, could you then explain that a little further, please?

Mr. X. Well, simply that there is a—if you work with the agency and if you help them, they'll help you. That sort of attitude.

Mr. SCHIFF. Was that your impression with respect to the document received by fax, also? You help them, they'll help you?

Mr. X. That's the impression I had, sir.

Mr. SCHIFF. Would the contrary be true? If you don't help them, they might not help you?

Mr. X. I had that concern.

Mr. SCHIFF. Mr. Chairman, I have no further questions of the witness, and I yield back to you.

Mr. CLINGER. I thank the gentleman for yielding back. The Chair now recognizes the gentleman from Wisconsin, Mr. Barrett, for 5 minutes.

Mr. BARRETT. Thank you, Mr. Chairman. Mr. Witness, is that your real voice?

Mr. X. No, it's not.

Mr. BARRETT. I just was checking on it. Have you contributed or made any campaign contributions to anybody on this committee?

Mr. X. I can't see the committee at this point. I don't think so.

Mr. BARRETT. Have you made any campaign contributions to any Members of Congress this session?

Mr. X. I don't believe so. I haven't had enough money this year, frankly.

Mr. BARRETT. How about your trade association, the trade association that you've worked with?

Mr. X. We don't have a PAC, sir.

Mr. BARRETT. So you have made no—have you been involved in any political campaigns?

Mr. X. I have in the past, yes.

Mr. BARRETT. For Republicans or for Democrats?

Mr. X. For Republicans.

Mr. BARRETT. How recently?

Mr. X. As recently as 1995.

Mr. BARRETT. I assume that you know who the members of the Government Reform and Oversight Committee are. Have you been involved in any of the campaigns of any members of the Government Reform and Oversight Committee?

Mr. X. Not other than perhaps attending a campaign event.

Mr. BARRETT. Who would that be for?

Mr. X. It was for Mr. Davis.

Mr. BARRETT. Mr. Davis. Thank you.

Mr. DAVIS. I don't recognize the gentleman, I would just say. But he's happy to attend as many events, as you are, Mr. Barrett and anybody else.

Mr. BARRETT. Mr. Davis, you were certainly quick to jump on that one here. You seem a little defensive about this fine supporter of yours. I hope you're not as defensive about all of your supporters.

Mr. DAVIS. Listen, they probably live in Northern Virginia.

Mr. BARRETT. I'll retain my time, if I could. Were you approached by someone on the committee for your testimony?

Mr. X. Sir, I sent these materials to several committees at the time I received them.

Mr. BARRETT. And what was the response that you got back from the staff on this committee?

Mr. X. I believe I received a call a month or so ago asking if I would be willing to testify.

Mr. BARRETT. Who was that call from?

Mr. X. Who was the call from?

Mr. BARRETT. Yes.

Mr. X. From Ms. Blanchard.

Mr. BARRETT. Did she suggest that you testify before the committee?

Mr. X. She asked whether I would be willing to testify.

Mr. BARRETT. What was your response?

Mr. X. I said I would only if there could be some assurance that I or basically my association would not be harmed by that testimony.

Mr. BARRETT. And what was her response to that?

Mr. X. She said she would look into whether that was possible.

Mr. BARRETT. Did she say that she had been in contact with any of the committee members as to the appropriateness of having you appear anonymously?

Mr. X. Not at that time. She did call me back subsequent to that first conversation and explained to me what could be done to protect my identity and that of my organization.

Mr. BARRETT. Who else knows your identity on the committee? I assume that the chairman said he doesn't. Do any other members know your identity?

Mr. X. I don't know. I've been told by Ms. Blanchard that she's the only one. I trust that that's correct.

Mr. BARRETT. Turning for the documents you've submitted, several of the documents were releases and they were statements of Carol Browner. Now, explain to me again why you object to the Administrator of the U.S. Environmental Protection Agency, a political appointee of the President, why you object to her taking a political position.

Mr. X. Well, let me be clear. I don't object to the Administrator of the EPA taking a political position. What I object to is the use of my tax dollars to send those communications unsolicited to me as a trade association executive for the purpose of lobbying the Congress.

Mr. BARRETT. Have you received unsolicited any positions from Republican Members of Congress or the leadership in Congress on political positions?

Mr. X. Not that I can recall, sir.

Mr. BARRETT. You've never received any unsolicited information from Republican Members of Congress on positions?

Mr. X. As I say, not that I—I get a lot of faxes. I get a lot of faxes from other trade organizations, from lobbying groups, from coalitions. I may have at one point or another gotten something from a Congressman's office, but I can't recall.

Mr. BARRETT. Would you feel that would be inappropriate? For example, a newsletter, would you think a newsletter would be inappropriate?

Mr. X. Yes, I think that Congress has its own rules and regulations as to what——

Mr. BARRETT. I'm not asking that. I understand that. I understand that. I'm asking whether you think—obviously you feel it's inappropriate for the executive agency to do that, but not inappropriate for the legislative agency to do that.

Mr. X. I think what I have said, sir, is that you have a Federal law that says it is illegal for Federal agencies to do this. I'm not sure I know exactly what the Federal law is that applies to Congress. They should follow the law.

Mr. BARRETT. One last question, if I could, since I lost about 30 seconds to Mr. Davis. Did you report this to the police, since you felt it was illegal?

Mr. X. No, sir.

Mr. BARRETT. Thank you.

Mr. CLINGER. The gentleman's time has expired and the Chair now recognizes the gentleman from Maryland, Mr. Ehrlich.

Mr. EHRLICH. Mr. Chairman, I have a point of inquiry before my time begins, with respect to Mr. Waxman's statement. My question to you, to the Chair, is have you refused any requests from a Democratic member of this committee for a field hearing?

Mr. CLINGER. I have not.

Mr. EHRLICH. Thank you. Sir, with respect to the last line of questioning, just let me ask a followup. Were you a lobbyist under the Bush administration? During the term of the Bush administration, were you a lobbyist?

Mr. X. That was part of my duties at two of the associations that I worked for, yes.

Mr. EHRLICH. I think the bottom line to that line of questioning is, did you receive similar materials as you've testified about here today from President Bush's EPA? And if you did, would you have a similar reaction to what you've expressed in front of this subcommittee here today?

Mr. X. Yes, sir, I think I would.

Mr. EHRLICH. Well, the first part of the question is, did you receive——

Mr. X. No, I did not that I recall receive anything like this from the Bush administration, no.

Mr. EHRLICH. Thank you, sir. With regards to the genesis of your appearance here today, I take it that you received this material and on your own action, you contacted, you said, this committee, correct, sir? And a number of other committees?

Mr. X. At the time I received these materials, I sent them to several committees which I thought might have an interest in lobbying being done by Federal agencies.

Mr. EHRLICH. Why did you do that?

Mr. X. Because I thought it should be brought to light. I thought the public ought to know what its tax dollars were being spent for.

Mr. EHRLICH. So how did your colleagues, your professional colleagues, in general terms react to this particular instance or similar instances in the past? Is it your testimony here today that

many of your colleagues share your view, or are you a Lone Ranger out there? You're the only one who interprets this sort of lobbying term as briefing the law?

Mr. X. Well, I don't purport to speak for the entire lobbying community, certainly.

Mr. EHRLICH. I understand that.

Mr. X. But I would just say that having been a lobbyist for some time, I know lobbying when I see it, and this is it.

Mr. EHRLICH. How many small businesses does your association represent?

Mr. X. About 5,000.

Mr. EHRLICH. That's a lot of small businesses. Is it safe to say that you fear reprisals if you would appear in front of this committee and give your name and your true identity?

Mr. X. Sir, I am concerned that given some of the current pending regulatory proposals, it would be very easy for the agency to very subtly take retaliatory action against our industry. It would be very easy.

Mr. EHRLICH. Sir, define the term "subtle." What would constitute "subtle retaliatory actions," in your view?

Mr. X. Well, to simply keep in place a proposal that, perhaps, the docket might not indicate ought to be kept into the final rule, something that would have an impact specifically on our industry.

Mr. EHRLICH. OK.

Mr. X. And there would be no way to show that that was in retaliation.

Mr. EHRLICH. And certainly, to the extent you even utilize that word, you would risk further retaliation, correct?

Mr. X. I'm not sure what that question was.

Mr. EHRLICH. If you would complain about this sort of activity, you would risk further retaliation in the future? Is that your view?

Mr. X. That is my concern, yes, sir.

Mr. EHRLICH. Sir, what changes do you think are needed in current law? Let's get to the substance for a second, as my time runs out here. What do you think of the proposed legislation, and what is your professional opinion of the need for regulatory changes which impact the 5,000 businesses that pay you to represent their interests here on the Hill?

Mr. X. Well, I guess I support this legislation. It does seem to me that what I received here and what some others have received is lobbying and ought to be prosecuted as a crime.

But since that isn't happening, and maybe some of the minority members of the committee will encourage that, since they don't seem to support the legislation, something needs to be done.

It simply angers me that tax dollars are used for lobbying in contravention of the law.

Mr. EHRLICH. Well, sir, the only reason I asked the question is it seems your credibility is being put at issue simply because you happen to agree in the philosophical sense with some of the regulatory changes presently being pushed by the majority here, and I was just asking you to really explore that line of questioning.

Do you think that puts your credibility at issue, sir?

Mr. X. That I happen to support the majority's position or the Contract with America, that that puts my credibility in question? I don't think it should.

Mr. EHRLICH. Certainly, your presence at Mr. Davis' fundraiser does not. He's a good friend of mine. So thank you very much.

Mr. CLINGER. The gentleman's time has expired. The other gentleman from Maryland, Mr. Cummings, is recognized for 5 minutes.

Mr. CUMMINGS. Mr. Witness, let me ask you something. I've been looking at these documents, and I note that one of them is dated March 9, 1995.

You've provided us with some testimony concerning your fears. As a matter of fact, the reason why you're behind the screen right now, I take it, is connected with fear, based upon what you've said.

Did you disagree with the content of some of these faxes? In other words, you said there was a lobbying effort, and I'm just wondering what was your response to that lobbying effort?

I know you didn't like the fact that you were being lobbied, but did you disagree with the content?

Mr. X. Yes, sir, I did.

Mr. CUMMINGS. And tell us what, if anything, you did as a result of getting these documents? What did you do?

Mr. X. I didn't do anything other than really to collect them and send them up here so they might come to light.

Mr. CUMMINGS. So you didn't take any action consistent with those documents, the content of those documents, did you? You didn't do that, did you?

Mr. X. Well, I didn't lobby as the agency wanted me to lobby, no.

Mr. CUMMINGS. Now, this has been since March 9, one of these documents. You talked extensively about your fear of retaliation. Has your industry or have you felt any retaliation from not taking any action?

Mr. X. Not that I can specifically attribute, no.

Mr. CUMMINGS. Now, let me ask you this: Trade associations, I mean, I've only been here a few days, but I've gotten all kinds of stuff from trade associations opposing the administration's views.

I haven't checked carefully to see whether the letters match up to the document that you presented us, but that's not unusual for trade associations to take a view against the President of the United States or the policies that the President is putting forth, is it? That's not unusual, is it?

Mr. X. No. We are specifically here to represent the views of our members, and I would point out that we can no longer take a tax deduction. The money we spend on lobbying is not tax deductible to our member organizations.

Mr. CUMMINGS. But the fact is, is that you regularly—I take it you said you're a lobbyist. You used to be a legislator at the State. Part of your job, I take it, was to put out the view of the association that you represent, and in many instances, that view would be contrary to that of the President of the United States. Is that correct? Is that accurate?

Mr. X. It has been several times during this administration, yes.

Mr. CUMMINGS. Now, was it known by others that you were taking these views? In other words, could that word, not for that word to be effective, that is, the fact that you're going against the Presi-

dent's policies, I take it in order for that to be effective somebody had to know about it in the administration; is that correct?

Mr. X. Yes, sir.

Mr. CUMMINGS. And they did know about it, didn't they?

Mr. X. Yes, sir.

Mr. CUMMINGS. And did you receive any kind of retaliatory actions? Did anything happen to you?

Mr. X. Not that I can discern.

Mr. CUMMINGS. Now, you made some statements a little bit earlier that I found very, very interesting, and I want to hook them up with what you just testified to.

You said that one of your concerns is if you didn't go along with the agencies of the Federal Government that you might run into some problems. I don't want to put words in your mouth, but that's what you said, wasn't it?

Mr. X. No. What I said was that when an association receives materials, there is an implicit suggestion that sorting the agency position will result in more favorable treatment.

Mr. CUMMINGS. And what is your view with regard to taking a position opposite to the President's or the agencies' views?

Mr. X. Well, I guess the converse would be true, that the implicit suggestion is that you would have less favorable treatment.

Mr. CUMMINGS. But have you found that to be true? Have you found that to be true since, say, March 9? Have you found that to be true at all, you personally?

Mr. X. If I may answer, I can't specifically point to a specific instance, but I can tell you that it concerns me that we have several pending rulemakings, and we haven't heard yet on some of those.

Mr. CUMMINGS. One last question. If Ms. Browner had sent you a letter and faxed it to you giving the position of her agency, would you be sitting here today—personal note, three or four pages, handwritten, same information—would you be here today?

Mr. X. Well, I think I knew if she had sent it out to 40 or 50 other trade associations unsolicited using tax dollars, I might be sitting here today, yes.

Mr. CUMMINGS. You understand that according to my reading of the law, this legislation, that would not be a violation. Do you understand that?

Mr. X. I'm not sure.

Mr. CLINGER. The gentleman's time has expired. The gentleman from Pennsylvania, Mr. Fox.

Mr. FOX. Thank you, Mr. Chairman. I thank the witness for attending. I wanted to first, if I can, Mr. Chairman, to take the documents that have been presented to us as exhibit 1 and ask consent to put them in the record so it will be before each of us, that came from the witness.

Mr. CLINGER. I'm sorry?

Mr. FOX. I want to put these in the record.

Mr. CLINGER. They have already been made a part of the record.

Mr. FOX. I wasn't sure of that. OK. How long did you work for this trade association, sir?

Mr. X. A little over 5 years.

Mr. FOX. And when was the first time you received the documents on the pending legislation?

Mr. X. I'm sorry. What was the question again?

Mr. FOX. Exhibit 1 as information regarding environmental legislation. When was the first time that you received documents on that legislation?

Mr. X. The first time I received documents was on February 17.

Mr. FOX. And did, in any way, you solicit this material?

Mr. X. No, sir.

Mr. FOX. Did EPA contact you verbally?

Mr. X. No, they did not. I received the fax with my name on this title page.

Mr. FOX. Were you in meetings in which the agency expressed its opposition to the Contract with America?

Mr. X. No, sir.

Mr. FOX. Did you have regulations pending before EPA at that time?

Mr. X. We always have regulations pending before EPA.

Mr. FOX. Have you received materials such as those from any other Federal agencies other than EPA or Department of Energy?

Mr. X. Not that I'm aware of, no, sir.

Mr. FOX. What were your perceptions when you received the materials?

Mr. X. I was, frankly, angry at seeing my tax dollars used for lobbying purposes.

Mr. FOX. Would you make any changes to the legislation other than what you've seen today or what you've heard about today?

Mr. X. Was the question would I make any changes to the legislation?

Mr. FOX. Yes.

Mr. X. I'm not sure I've reviewed in that much detail, but certainly I think there should be some penalty on the individuals involved in the lobbying activity.

Mr. FOX. So you think there should be a separation between those who are elected to office and work on legislation and those in bureaucracies who carry out the regulations?

Mr. X. Certainly, yes.

Mr. FOX. I have no further questions, Mr. Chairman. I yield back.

Mr. CLINGER. I thank the gentleman. The Chair now recognizes the gentleman from New Hampshire, Mr. Bass.

Mr. BASS. Thank you very much, Mr. Chairman. At this time I'd like to yield to my colleague, Mr. McIntosh.

Mr. CLINGER. The gentleman from Indiana is recognized.

Mr. MCINTOSH. Thank you very much, Mr. Bass. Mr. X, a couple of different questions for you. You indicated that it was your opinion that the documents you received from EPA indicated an intent to organize a lobbying effort.

I wanted to ask you about some particular facets of that and see if they were important in that judgment. The list of recipients of the various documents, did that in any way signal to you that a group of people was being compiled to organize a lobbying effort?

Mr. X. I would say that the list of recipients is very similar to the kind of list that a coalition or a group would put together in forming a lobbying coalition.

Mr. MCINTOSH. And Mr. X, traditionally, the group of individuals to form a lobbying coalition, are they coordinated by a Government agency or by one of the outside private sector members of that coalition?

Mr. X. Well, they shouldn't be coordinated by a Government agency. I think that's the point here. They are usually coordinated by a trade association or by a specifically organized group of associations.

Mr. MCINTOSH. And the actual items that were sent included press releases, statements, a memo from one of the regions at EPA.

There was some discussion earlier about a press release from a former Vice President, and you had indicated that the actual items themselves could be legal and permissible under the statute, but when they are combined in this type of package, did that change your impression about an intent to organize a lobbying effort?

Mr. X. Yes, sir. In other words, I don't have a problem with an agency sending a press release to the press. I think there is a difference between sending a press release to the press and sending copies of your press statements to a group of trade associations that you regulate on a daily basis.

Mr. MCINTOSH. And when you received these documents, did you have the impression that they were intended to create a grassroots lobbying effort, and were there any particular items in there that led to that impression?

Mr. X. I believe they were intended to generate grassroot support. I make that conclusion simply based on the list of groups that it was sent to.

Mr. MCINTOSH. And Mr. X, looking at the memo from the Denver Regional Support Office, the last sentence that says, "Please share this information with your customers," did that create an impression that there was a directive being sent out by the agency to enlist those customers in this lobbying effort?

Mr. X. Yes. I took that as a direct request to lobby.

Mr. MCINTOSH. Was there ever any time an indication that those customers or other members of your association were to contact Members of Congress?

Mr. X. Well, let me put it this way: If I were to send this material or similar material to my membership, it would clearly be with the intention that they contact Members of Congress.

And I simply make that assumption about this material as it was sent to me.

Mr. MCINTOSH. You had mentioned, Mr. X, that there was an implication that your industry group and other industry groups listed might receive more favorable treatment by the agency if they cooperated in this lobbying effort.

Was that with regard to contracts or grants or regulations?

Mr. X. I believe that's simply an implicit suggestion. I meant it in terms of rulemakings.

Mr. CLINGER. The gentleman's time has expired, but I will recognize him on his own time, since he was dealing with Mr. Bass' time.

Mr. MCINTOSH. Thank you, Mr. Clinger. The customers who are listed in the Denver Regional Support Office memo, might they expect to receive a grant from EPA or the Department of Energy for

alternative research or development of products in the alternative energy industry?

Mr. X. Frankly, I'm not exactly sure what they meant by "customers." I read it as meaning our membership.

Mr. MCINTOSH. OK. Let me ask you a couple other questions. One, was there any indication that the White House or any personnel working at the White House were involved in this lobbying effort?

Mr. X. I didn't have any indication of that, no, other than, perhaps, the piece that is from the Vice President's office and included a speech by the President, which might indicate some White House involvement.

Mr. MCINTOSH. Unbeknownst to you, there are documents created at the agency that indicate there was an agency-wide effort to coordinate this lobbying.

The question I wanted to ask you is, in your position as an outside individual who works with a trade association, if a law were enacted that prohibited your lobbying on certain activities where there may be a conflict of interest because of receiving a Federal grant, would that have allowed you any measure of protection when the agency came to you and asked or implicitly suggested that you lobby on behalf of their initiatives, much like the Hatch Act protects Federal employees from supervisors who may come and ask them to be engaged in political activities?

Mr. X. I'm sorry, sir. I really am not sure I understand that question.

Mr. MCINTOSH. Let me try again. If you were an outside individual who receives a Federal grant and the agency sent this type of information to you implying that they would like your assistance in a legislative effort, would a law prohibiting your lobbying in an area that is a conflict of interest because you received that grant have given you some measure of freedom to not engage in that lobbying activity?

Mr. X. Yes. I think, if I were receiving grants, obviously, there would be even more coercion involved, and I think a ban on lobbying by an individual or an association that received grants would make sense because then there wouldn't be any reason for the agency to ask.

Mr. MCINTOSH. Let me ask you a different set of questions. You had mentioned that the IRS guidelines with respect to lobbying materials for which there are no deduction in your members' dues, could you detail some of the guidelines or factors that you have to assess whether material being sent to your members is for lobbying or not, for informational purposes?

Mr. X. Well, basically, the IRS rules are pretty comprehensive in that anything that deals with current, pending legislation, even if you label it as information, if you send it to your membership, that's considered lobbying.

If I have contact with any Member of Congress, that is considered lobbying. I have to take the amount of time I spend doing that and attribute it to lobbying, and then we must at the end of the year tell our membership what percentage of their dues was used for lobbying activity.

So if I send a mailing to my members, or if I send a fax release that deals with current legislation, just like the items that I brought here that the EPA sent out, I would have to list the costs of preparing these documents, faxing them, mailing them, reproducing them.

I would have to include that in the cost of our lobbying, and it would be nondeductible to our members.

Mr. MCINTOSH. So under the IRS guidelines, these type of documents, because they would be sent to your members with the intent that they may contact a Member of Congress, would be considered lobbying materials that would not be deductible?

Mr. X. That's correct.

Mr. MCINTOSH. Thank you, Mr. X. I have no further questions at this time.

Mr. CLINGER. I thank the gentleman. I'm hopeful that we can release this witness before we go to vote. There is a series of votes coming. The gentleman from Florida I think has one comment.

Mr. MICA. Thank you, Mr. Chairman.

Mr. CLINGER. I was not aware that the gentlelady from Florida was present, and I would yield to her.

Mrs. THURMAN. Mr. Chairman, I was not here for the testimony. However, if I could yield my time to either Mr. Waxman or to Mr. Barrett or equally, I would be glad to do that to give them an opportunity. So I would yield some time to Mr. Waxman.

Mr. WAXMAN. Thank you. And I will try to be concise. Mr. Witness, did your trade association take a public position on H.R. 9?

Mr. X. I don't believe so, no.

Mr. WAXMAN. Did you personally have a public position, take a public position on H.R. 9?

Mr. X. A public position, no.

Mr. WAXMAN. OK. Has your trade association taken any public positions against the administration's views on any issue?

Mr. X. On any issue? Yes. We opposed the veto of the product liability legislation quite actively, by the President. There are probably one or two others over the last year. That's the most recent.

Mr. WAXMAN. Did you fear that in taking that position publicly that there may be some retaliation against you in rulemaking or in any other way?

Mr. X. That's always possible, but we felt that the rewards of having a product liability bill would outweigh any possible risk.

In this case, there is, obviously, no benefit at all to our association by me testifying today. The risk reward is all on the risk side.

Mr. WAXMAN. You made a distinction between soliciting information from executive branch agency or the President's administration as opposed to unsolicited information coming to you.

I'd like to know if you feel that if this press release had been solicited by you that it would be appropriate use of taxpayers' dollars?

Mr. X. Well, it would certainly be a different situation. If we had specifically asked what the EPA's position was on H.R. 9, I don't think there is anything illegal about them responding to an inquiry.

I think there is a difference between responding to a request or an inquiry and faxing by broadcast fax materials to a bunch of trade associations.

Mr. WAXMAN. I thank you very much. I'm going to yield my time to Mr. Barrett.

Mr. BARRETT. The essence of your concern seems to be that you felt somewhat coerced by this or that this was an attempted coercion; is that correct?

Mr. X. No. I think my basic objection is the use of my tax dollars to lobby for positions that I don't support.

Mr. BARRETT. Did your group actively lobby in favor of the provision that would deny your group the ability to deduct its lobbying expenses?

Mr. X. I don't know that we were actively involved. We are members of the American Society of Association Executives, and I know they took a strong position on that.

Mr. BARRETT. Philosophically, do you believe that you should be able to deduct those expenses?

Mr. X. Well, first of all, it's not us. It's our membership.

Mr. BARRETT. You personally.

Mr. X. Pardon me?

Mr. BARRETT. Personally, do you feel that way?

Mr. X. Do I think they ought to be able to deduct the expenses for lobbying the Congress?

Mr. BARRETT. Yes.

Mr. X. I think that communications like that should be part of the association activities and should be a deductible expense as part of the association's work, yes.

Mr. BARRETT. So even if there are millions of Americans who disagree with you, you should get a tax subsidy to lobby?

Mr. X. Pardon me?

Mr. BARRETT. Even though millions of Americans may disagree with your position, you believe that you should get a tax deduction to lobby?

Mr. X. Well, the Congress has determined what the law is, and we follow it, sir.

Mr. BARRETT. OK. Thank you.

Mr. CLINGER. The gentleman yields back the balance of his time. I am going to recognize Mr. Mica for a brief statement and announce before I do that we will recess until about 10 minutes after the last vote.

There are a series of votes in progress, and we'll recess for those votes, and we'll reconvene 10 minutes after the last vote. The gentleman from Florida.

Mr. MICA. Thank you, Mr. Chairman. I don't have any questions of the witness, just an observation. It becomes increasingly clear the more and more we look at the activities of some of these agencies, particularly EPA, when you participate in this hearing process and view the legislative process from my perspective, you see little bits and pieces.

This witness has brought another piece to a big puzzle that shows that this is a very highly sophisticated, publicly financed and orchestrated conspiracy on the part of the administration, par-

ticularly EPA, to use taxpayer funds in what I consider a very offensive fashion.

Having worked on some of these issues, now I see more and more of how they use incredible public resources, dozens and dozens of employees, millions of dollars to help defeat some of the legislation that I proposed.

And I take great offense at it. The more I see of it the more I am offended by the actions of particularly this agency, not to mention the others we're going to look at. Thank you, and I yield back.

Mr. WAXMAN. Will the gentleman yield to me?

Mr. MICA. I will not.

Mr. CLINGER. The gentleman yields back the balance of his time. I want to thank the witness for his appearance, shrouded though it was, here today and really appreciate your testimony and your response to the questions. Thank you again for your coming here today, and this committee will stand in recess until 10 minutes after the last vote.

[Recess.]

Mr. CLINGER. The Committee on Government Reform and Oversight will resume its sitting. I'm pleased to welcome the members of panel 3 to the committee.

They consist of Mr. J. Davitt McAteer, Acting Solicitor General for the Department of Labor; Mr. Robert Nordhaus, general counsel for the Department of Energy; Ms. Mary Lou Keener, general counsel of the Department of Veterans Affairs; the Hon. Joseph B. Dial, Commodity Futures Trading Commissioner; Mr. Jonathan Cannon, general counsel for the Environmental Protection Agency.

Lady and gentlemen, we're delighted to have you here. We look forward to your testimony. We have a practice in this committee of swearing all witnesses. If you have no objection, I would ask you to rise and raise your right hand.

[Witnesses sworn.]

Mr. CLINGER. Let the record show that all of the witnesses answered in the affirmative, and we're ready to go. Who would like to lead off?

STATEMENTS OF JONATHAN CANNON, GENERAL COUNSEL, U.S. ENVIRONMENTAL PROTECTION AGENCY; JOSEPH B. DIAL, COMMISSIONER, COMMODITY FUTURES TRADING COMMISSION; ROBERT NORDHAUS, GENERAL COUNSEL, DEPARTMENT OF ENERGY; MARY LOU KEENER, GENERAL COUNSEL, DEPARTMENT OF VETERANS AFFAIRS; AND J. DAVITT McATEER, ACTING SOLICITOR GENERAL, DEPARTMENT OF LABOR

Mr. CANNON. Mr. Chairman, my name is Jon Cannon. I'm general counsel of EPA, and if it's agreeable to you, I would like to proceed.

Mr. CLINGER. Mr. Cannon, you are recognized.

Mr. CANNON. Thank you.

Mr. CLINGER. Your entire testimony will be submitted as part of the record, and you can summarize as you choose.

Mr. CANNON. I will try to summarize briefly. I want to thank you and the committee for the opportunity to appear here this morning on important issues regarding how and under what circumstances

the executive branch of the Government may communicate and share its views on pending legislation with the American public.

I feel, in light of what has happened this morning, that I must at the outset add my concerns to those that have already been expressed in connection with the witness that previously appeared here, and I'm talking really as much about form as substance.

We had a person brought before us anonymously as if some kind of crime had been committed and as if there were some serious risk of retaliation.

In fact, and I listened carefully to his testimony and read his statement, even taking what he said at face value, there is no indication, in my view, that any law has been broken, certainly not the Anti-Lobbying Act under existing Department of Justice guidelines interpreting that act.

And also, I see absolutely no basis on which anyone could seriously believe that retaliation of the sort mentioned was a real possibility here.

I'd like to take a look more carefully at what actually occurred with Mr. X, because I think it's instructive to the broader debate that we're engaged in here.

He did receive some materials from EPA, and although we have just recently received those materials, they appear to be materials that refer to the agency's position on pending legislation and also providing some information on regulatory reform efforts that are being undertaken within the administration.

He was not singled out as the recipient of these materials. Other people, not just businesses, but environmental groups and other nongovernment organizations and the press, received these same materials.

The lists that governed the sending out of these materials were lists that had been compiled, for the most part, in a prior administration and were lists that were understood to include people who were interested or who might be interested in the agency's programs.

The information sent out was designed to advise people on those lists of the agency's views on important matters. In his testimony, he doesn't assert that the documents themselves in any specific way urged him to contact the Hill or to do anything else.

And he does not assert—in fact, he says nobody from EPA contacted him about these documents or asked him to do anything. Certainly, no one contacted him and suggested there might be retribution if he didn't behave in a certain way.

Nothing bad happened here. No law was broken. What Mr. X has shown is an agency that was taking steps to make its views known to the public, to those who might be interested or have an interest in the agency's views on legislation and on its reinvention efforts.

This is the kind of thing that should be happening in a democratic process. The President has a constitutional responsibility to communicate freely with citizens of this country, including on matters relating to legislation.

As an agency in the executive branch, EPA has the responsibility to carry out this same kind of communication with respect to issues that fall within its jurisdiction.

Open communication with the public is essential to the agency's efforts to reinvent itself and to carry out its core responsibilities under its statutes.

Not everybody has to agree with what we say. I will tell you every day we're talking to people who disagree with what we say. That is part and parcel of the process that we support and the activities that we carry out.

We expect debate. We welcome debate. And I will tell you we've gotten responses from folks who received some of those materials who said, "We don't agree with your position."

Nobody was intimidated or prevented from stepping forward, at least nobody to our knowledge except, perhaps, Mr. X.

This is an open, robust process that we invite with this kind of communication. We think that's the way the process should work. We believe that the democratic process can only be strengthened by a robust exchange of views, including the views of executive agencies like ours that have responsibilities and expertise relevant to the issues at hand, as we clearly do in this case.

It is from this vantage point that I must raise some concerns about the pending bill, H.R. 3078.

Others will go into constitutional issues regarding the bill. I will not. I think those have also been addressed in a letter from the Justice Department to you.

But I'm concerned, basically, with the manner in which the bill would limit both those who can speak for an agency on matters relating to proposed legislation and on constraints on the methods but which even those who are authorized to speak may communicate to the public about these important issues.

And I'm concerned finally and more broadly that the broad prohibition in the bill will have a chilling effect on activities that really have nothing to do, at least primarily, with pending legislation but which may, in some way or other, be said to affect pending legislation.

I would simply point out briefly by way of illustrating the impact of some of these restrictions or constraints on an agency like EPA that where the bill limits communications with the public on matters relating to proposed legislation to Senate confirmed appointees it, essentially, ignores the pivotal role that staff play in communications, including preparation of speeches, answering routine questions from the public, from reporters, from stakeholders, providing public information on agency policies to a wide array of stakeholders and also of research and educational functions.

EPA has a total of 13 Senate confirmed appointees. The notion that they could adequately carry out all these communication functions to the extent that any of them impacted or had any relation to proposed legislation is not realistic.

We also have concerns about limiting communications to radio, television or other public communication media, since a lot of the work we do is work with stakeholders in meetings, and candid conversations about issues pending at the day are very important to those relationships and to the success of those communications.

I think there are other examples which I've given in my written testimony, and I see my time is up, which I would commend to the committee's attention.

In closing, Mr. Chairman, I think EPA, in its actions, has attempted to assess the potential impact of proposed legislation on its programs, to communicate with the public, a broad range of the public, and with Congress about the impact of these changes.

We think these efforts are legitimate, that they're lawful and that they're necessary to a healthy and well-informed legislative process, and they should not be constrained in the manner that's proposed in the proposed legislation. Thank you very much.

[The prepared statement of Mr. Cannon follows:]

PREPARED STATEMENT OF JONATHAN CANNON, GENERAL COUNSEL, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and Members of the Committee, I am Jonathan Cannon, General Counsel of the Environmental Protection Agency. Thank you for the opportunity to appear before you to discuss the important question of how and under what circumstances federal agencies may engage the public concerning legislation pending before the Congress.

As the Department of Justice has stated, it is the constitutional responsibility of the President "to communicate freely with the citizens of the United States, including on matters that relate to legislative affairs." (Recent letter from Assistant Attorney General for Legislative Affairs Andrew Fois to Chairman Clinger). EPA is an Executive Branch agency, and the President properly relies on the Administrator and other officials of the Agency to carry out this responsibility to communicate with citizens with respect to public health environmental issues. In addition to this constitutional responsibility, many of our statutory authorities encourage public education and communication, and the Agency receives an enormous number of requests for information from interested citizens to which the Agency is duty-bound to respond.

Open communications with the public are also essential to this Administration's efforts to reinvent government and to carry out effectively our core responsibilities. To ensure adequate stakeholder involvement in Agency processes and programs, we have developed vital, ongoing relationships with the major stakeholders in the work of the Agency—our implementation partners in state and local government, the regulated community, and nongovernmental organizations interested in the work of the Agency. We have found that communication with our stakeholders and with the public at large provides valuable feedback to the Agency, substantially improves the quality of the Agency's judgments, serves to illuminate areas where consensus is possible, and helps inform the public on the important environmental and public health questions of the day.

At the same time, at EPA, we have long recognized the legal constraints on our interaction with the public under the Anti-Lobbying Act. In keeping with the guidance from the Justice Department during the last administration, as updated by the Department's guidance last Spring, we have issued guidance and counseled Agency employees that substantial campaigns expressly calling upon members of the public to lobby members of Congress are prohibited by the Anti-Lobbying Act. To my knowledge, our Agency has not engaged in any conduct that would constitute a violation of the Anti-Lobbying Act.

This does not mean that we have been silent when it has come to important environmental legislation. To the contrary, we have seen it as imperative to respond to the public's legitimate interest in EPA's positions regarding pending legislation. While we have not been in the business of telling people to take their concerns to Congress, we have provided information and our Agency's perspective on the potential impact of legislative proposals on environmental and public health protections. We believe that the democratic process can only benefit from a robust exchange of views, including the views of Executive agencies, such as ours, that have responsibilities and experience relevant to the issues.

It is from this vantage point that I must raise some concerns with respect to your pending bill, H.R. 3078. I will not repeat the constitutional concerns that others appearing before the Committee will be raising today. At bottom, I am concerned that by limiting who can speak for the Agency and by constraining the methods of acceptable communication, H.R. 3078 would unnecessarily and inappropriately inhibit the Agency's ability to engage and inform the public about environmental and public health protection. Moreover, I am concerned that, given the vaguely worded prohibition in the bill, its operation will be over broad, serving to discourage important communications with the public which have very little to do with disputes over leg-

islation between the Executive and Legislative branches of government. Let me share with you a few examples that illustrate our concerns.

- By limiting communications with the public on matters relating to proposed legislation to Senate-confirmed appointees and not allowing further delegation, the bill ignores the pivotal role that subordinate officials have in the communications area, including preparation of speeches to public audiences and stakeholder groups; answering routine questions for information from reporters, citizens, and stakeholders; and providing printed or electronic public information on Agency policies, actions, research and other educational information. Moreover, we are not certain what line the bill is drawing even with respect to staff support of "excepted activity" by Senate confirmed appointees. For example, is the Administrator entitled to staff support in developing a press release which states the Administration's view?
- By limiting communications to "radio, television, or other public communication media," the bill effectively cuts off our ability to respond to individual inquiries from the general public and stakeholders regarding the Administration's views on pending legislation. For example, if a Senate-confirmed appointee is asked at one of the Agency's "All States" meetings with state environmental officials for the Administration's views regarding a piece of pending legislation, H.R. 3078 might be read to prohibit a response. Similarly, citizens seeking basic information on environmental and public health protections might not be able to receive answers to their questions.
- There are numerous communications with the public which occur independent of the legislative process which may have the practical effect of promoting public support or opposition to proposed legislation. We are concerned that the bill would discourage such communications.
- Thus, for example, in the Superfund area, where, under EPA's Community Relations Program, the Agency holds public meetings and otherwise disseminates information concerning the progress of cleanup to citizens living in the vicinity of a Superfund site, it seems appropriate that the Agency alert a community regarding a legislative development that could affect the timing of the cleanup that concerns that community. The Agency's purpose is to be candid with the community regarding a matter of utmost interest to them—when cleanup will occur. Yet, sharing such information with the community might result in someone calling his or her member of Congress, thereby possibly implicating H.R. 3078.
- For the same reason, the bill may discourage or inhibit the sharing of necessary information with our co-regulators in state and local government. Information regarding federal legislative developments is nearly as important to state and local programs (which tend to track federal program requirements) as it is to the Agency. Accordingly, the Agency should not be inhibited in sharing information of this kind with state and local officials through newsletters, meetings, and other communications. Because state and local officials may use this information in communications with members of Congress, H.R. 3078 may discourage this kind of important exchange.
- The bill may also affect the development of administrative solutions to environmental and public health problems which are amenable to such solutions but are also the subject of Congressional attention. For example, in response to a national debate over environmental auditing, which included the potential for federal legislation, EPA recently revised its policies to provide additional incentives for regulated entities to conduct voluntary environmental audits. EPA's policy options were discussed with the public through a process that included broad stakeholder involvement. Despite the desirability of the Agency's proceeding to address areas of concern with the tools available to them, EPA might well have been discouraged by H.R. 3078 from engaging in the stakeholder and public comment processes associated with revising its auditing policy, because the administrative reform effectively diminished the need for federal legislation that had been proposed.
- Similarly, EPA's Common Sense Initiative (CSI) and Project XL are two key Administration initiatives designed to promote common sense reinvention of environmental regulation. Projects within these programs may well raise issues under consideration in pending legislation, and stakeholders frequently raise the prospect of legislative solutions as an alternative to working with the Agency on administrative solutions to perceived problems. EPA's administrative efforts clearly benefit from stakeholder dialogue on the full range of issues presented, including whether or not legislation is a desirable alternative. Nonetheless, H.R. 3078 could inhibit the Agency's dialogue with interested parties simply because legislation might be pending that raises similar issues.
- EPA release of a purely scientific document or new public health or environmental data at a time when legislation is contemplated regarding the same subject could incidentally impact the legislative debate and thus arguably be prohibited

under H.R. 3078, despite the fact that the information in question should better inform the legislative action.

In conclusion, Mr. Chairman, EPA has responsibly attempted to assess the potential impact of proposed legislative changes that could affect the Agency's ability to carry out its mission, and to communicate with the public and the Congress about the impact of these changes. Efforts of this kind are legitimate, even necessary, to a healthy and well-informed legislative process, and should not be constrained as we believe they would be by the bill presently before the Committee.

Mr. Chairman, this concludes my formal testimony. I would be pleased to answer any questions.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. WILLIAM F. CLINGER, JR. TO JONATHAN Z. CANNON

EPA CONTRACT WITH AMERICA WORKING GROUP

Question 1. How many career employees total were involved in this effort? How many non-career employees were involved in this effort? Please list the total number of staff by title, office, grade level and status. Please include not only staff that were part of the Contract with America Working Group but also those staff that prepared materials for the Working Group.

Answer. With respect to the request for a list of staff who worked on the Contract with America Working Group or prepared materials for the Working Group, we have included in the enclosed list all personnel who have been identified as having worked on H.R. 9, "Job Creation and Wage Enhancement Act of 1995," and related Contract with America legislation. Because this legislation contained provisions with profound implications for a broad range of EPA programs, this was an effort of considerable scope. In the time permitted, it was not possible to ascertain the precise nature of the involvement of each person listed; thus, many of those listed may have participated in ways other than preparing materials for the Working Group. Based on our review, it appears that a total of 268 employees were involved to some degree or another in this effort. Of those, 225 were career employees, 42 were non-career and 1 was a Senior Environmental Enrollee. Their listing includes title, office, grade level and status.

Question 2. What was the overall expense that was involved in staffing the EPA Contract with America Working Group?

Answer. Based on our review, we estimate that approximately $400,000 in salary expenses was spent in connection with this work, a refinement of the $300,000 estimate that I gave at the hearing. Again, this estimate goes well beyond the work of the Contract Working Group itself and includes all EPA work on H.R. 9 and related Contract with America legislation. We were unable in the time provided to ascertain how much of this amount was associated specifically with the Contract Working Group. We do know that "outreach efforts" (i.e., communication of Agency views to external audiences) constituted only a very small proportion of the total amount; the lion's share of the resources was devoted to the analysis of this far-reaching legislation and the development of informed administration views regarding the legislation.

Question 3. Please provide copies of products listed on the January 26, 1995 memorandum.

Answer. With respect to the request for products listed in the January 26, 1995 memorandum, although the listing in the memorandum is somewhat imprecise, we have included documents which we believe correspond to numbers 1, 2, 3, 4, 7, 8 and 9. These documents were included in the approximately 40,000 pages of documents previously produced to the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs. With respect to document 6, we have identified a letter from Carol Browner to Speaker Gingrich dated February 15, 1995 that reflects taking examples and, thus, may be related to this work. With respect to documents 5 and 10 listed in the January 26, 1995, memorandum, we were unable to locate these particular documents, but we believe that any documents fitting these descriptions, to the extent that they exist, would have been included within the documents which were produced to the Subcommittee. We note in this regard that it is unclear from the memorandum whether these documents were in fact ever created. Additionally, if created, they may have been given a different label, or taken a different form, making it difficult to establish a precise "match" with the references in the memorandum.

MASTER LIST OF UNOFFICIAL HOUSE MODERATES

Question 1. Who was responsible for preparing these lists? Please identify preparers by name, office, title, grade, career or non-career.

Answer. The "Master List of Unofficial House Moderates" (Documents #00024984–0002488) and "House Moderates Listed by Region" (Documents #00024981–00024983) were prepared by Thomas Farmer, Congressional Liaison Specialist in the EPA Office of Congressional and Legislative Affairs. He is included in the enclosed list of EPA employees. These documents were neither prepared nor provided by outside organizations. They were used internally to educate EPA officials about the positions of moderate Members on H.R. 9 and other environmental issues.

Question 2. Were any of these documents prepared or provided by outside organizations?

Answer. "Environmental Votes: Democrats" (Documents #00030889–00030891) was prepared by Skip Styles, minority legislative director of the House Science, Space and Technology Committee, and provided to us by minority staff of the House Science, Space, and Technology Committee. The minority legislative director informs us that Ranking Minority Member George Brown used the list to determine member contacts.

Question 3. What were these lists used for?

Answer. We have not been able to determine who was responsible for preparing the lists found in Documents #0016487–0016492. While we have not been able to find anyone who has a recollection of how these lists came into the Agency's possession, we believe these lists may have been provided unsolicited to the Agency by an outside party. Our inquiry has not revealed any evidence that these documents were used by the Agency.

EPA–PTA COOPERATIVE AGREEMENT

Question 1. Administrator Browner has advised Congress that one EPA employee was "reprimanded" in connection with a memorandum the employee wrote concerning the EPA–PTA agreement. Please provide the Committee with a copy of any and all personnel actions and/or letters of reprimand issued by EPA to the employee in question.

Answer. With regard to the question concerning the EPA/PTA cooperative agreement, we are providing the only available documentation that is responsive to this request (memorandum dated March 21, 1996). This document is the same document that, in redacted form, was discussed with Congressman Mica at the hearing. Please be advised that this document contains potentially sensitive personal information which may be protected by the Privacy Act. Accordingly, we would appreciate your discretion in handling this information.

Question 2. In your testimony you stated that the PTA was capable of carrying out the objectives of the agreement. However, documents provided to the Committee demonstrate that as a condition of receiving the grant the PTA was obligated to identify to the EPA all of the environmental resolutions it had passed. Please provide the Committee with an explanation of why this occurred.

Answer. Concerning your second question on this topic, the PTA was not required, under the terms of the cooperative agreement, to identify to the EPA all of the environmental resolutions it had passed. In the course of developing cooperative agreements, information is typically provided by the applicant on the applicant's areas of interest and expertise. This enables the Agency to evaluate the merits of entering into the cooperative agreement and to tailor the agreement to ensure its success. In this case, the PTA chose to provide a list of past resolutions as a means of identifying areas of common interest and expertise. My understanding is that EPA did not request this particular form of documentation from the PTA.

Question 3. Please provide the Committee with a written explanation of why one justification for approval of a non-political environmental education program was identified by EPA as the fact that it would "please state and national child advocates."

Answer. You also asked me to provide the Committee with a written explanation of why one of the stated justifications for approval of the PTA cooperative agreement was the fact that it would "please state and national child advocates." The PTA describes itself as an organization of child advocates. Therefore, the language in the Agreement justification cited by the Committee was intended as a reference to the PTA itself, rather than as a reference to outside groups with which the PTA might work.

Question 4. Please identify all EPA staffers who have participated in EPA's PTA working group, including their name, title, office and grade level and identify the

percentage of time, on an annualized basis, which they spent working on the EPA–PTA agreement since January 1, 1995.

Answer. You will find enclosed a list of EPA staffers who participated in EPA's PTA working group. Please note that it is unlikely that any of these participants devote more than 5% of their time on the Cooperative Agreement, with the exception of the Project Manager, Chris Bayham, who devotes 25% of his time on the EPA/PTA Cooperative Agreement.

E–MAIL ON UNFUNDED MANDATES

Question 1. Would you advise your clients at the Agency that there are any legal questions relating to this document and the anti-lobbying laws?

Answer. My understanding is that the electronic mail (e-mail) message in question was not distributed outside the Agency, and that the author did not receive any response. As I stated in my testimony of May 15, the message records discussions between an Agency employee and environmental groups who appear to be seeking information on the Agency's position or activities relating to certain legislation. In my view, this mail message does not run afoul of the Anti-Lobbying Act.

[Note.—The attached list of personnel can be found in the committee files.]

Mr. CLINGER. Thank you, Mr. Cannon. Commissioner Dial. I would like to indicate to the entire panel all of your statements will be entered in the full record, and if you can summarize, why, we would be grateful, but you may proceed as you choose.

Mr. DIAL. I shall do so, sir. Thank you very much. I thank the committee for permitting me to substitute for our Acting Chairman, John E. Tull, Jr., who was previously scheduled to testify this morning before the Senate Agriculture Committee, one of the Commission's authorizing committees.

This committee has requested the Commodity Futures Trading Commission to testify on H.R. 3078, the Federal Agency Anti-Lobbying Act.

Like many other Federal agencies, the Commission has not promulgated its own separate anti-lobbying regulations, but instead has looked to the guidelines prepared by the Department of Justice Office of Legal Counsel on 18 U.S.C. Section 1913 for guidance in this area.

The Commission also understands that several appropriations acts passed by this and prior Congresses contain prohibitions on the use of appropriated funds for lobbying purposes which are similar to those imposed by section 1913.

In view of the serious constitutional issues raised by the Department of Justice with respect to H.R. 3078, the Commission is unable to support passage of the bill.

Moreover, H.R. 3078 also raises policy concerns for the Commission. As an independent agency led by a five-person bipartisan commission, we believe that the exception found in subsection (b)(3) for Presidential appointees confirmed by the Senate is too narrow.

This exception would only allow these appointees to communicate with the American public through radio, television, or public communication media, on the views of the President for or against any pending legislative proposal.

The Commission believes that appointees should be allowed to express their views on legislative proposals within their area of responsibility using any form of communication media, and even where the President has not taken a position on a bill.

It is particularly important for all members of bipartisan commissions across the Federal Government to be able to speak publicly about the important issues before their agencies.

The narrow exception in H.R. 3078 would prohibit Presidential appointees serving on commissions that were not appointed by the current President or who are asked to comment on issues for which the current President, has not yet publicly announced a position, prohibit them from commenting on matters within their own areas of responsibility.

This would hinder independent regulatory agencies like the Commission, whose policies are developed by appointees from different political parties.

Also, the many complex technical issues with which we deal and which primarily affect our regulatees may not routinely be the subject of Presidential pronouncements.

For example, sir, several years ago there were pending before the House and Senate differing versions of bills reauthorizing appropriations for the Commission and making substantive amendments to its organic statute, the Commodity Exchange Act.

CFTC Commissioners should be free to use Government resources to prepare a speech for delivery to an industry trade association expressing their views, or the agency's views, on the relatively merits of differing bills of this type.

The Commission also has a concern with respect to the "intent" standard of the prohibition. Arguably, an employee who furnishes copies of an agency's otherwise permissible views on legislation to the public might fall within the prohibition.

For example, it should not be deemed a violation if, pursuant to a Freedom of Information Act request or other form of request, an agency employee provides copies of a chairman's testimony given at a congressional hearing summarizing the agency's views on pending legislation.

I thank you, sir, for the opportunity to testify today. I would be pleased to answer any questions you or members of the committee may have.

[The prepared statement of Mr. Dial follows:]

PREPARED STATEMENT OF JOSEPH B. DIAL, COMMISSIONER, COMMODITY FUTURES TRADING COMMISSION

Mr. Chairman and Members of the Committee:

Good Morning. I thank the Committee for permitting me to substitute for our acting chairman, John E. Tull, Jr., who was previously scheduled to testify this morning before the Senate Agriculture Committee, one of the Commission's authorizing Committees. This Committee has requested the Commodity Futures Trading Commission ("Commission" or "CFTC") to testify on H.R. 3078, the "Federal Agency Anti-Lobbying Act." H.R. 3078 would establish a civil prohibition on the use of appropriated funds by federal agencies for lobbying purposes. The bill is designed to assure that these funds are not used to organize efforts to affect the outcome of Congressional action. Under the bill, virtually any communication by a federal agency intended to promote public support for, or opposition to, pending legislation would be prohibited.

There are exceptions to the prohibition in H.R. 3078. The President and the Vice President would be exempt from the bill's prohibition. In addition, the bill is not intended to prohibit federal employees from communicating with members of Congress or their staffs in order to request legislation or appropriations or to respond to a request for information or technical assistance made by members or their staff. Nor would the bill prohibit Presidential appointees confirmed by the Senate from communicating with the public on the views of the President for or against any

pending legislation. However, these appointees would not be permitted to delegate to others, such as career civil servants, the authority to make communications to the public intended to influence legislation.

The bill also provides that, in exercising his authority to investigate the use of appropriated funds, the Comptroller General would be authorized to enlist the assistance of the Inspector General at the agency undergoing review. In addition, the Comptroller would report to Congress in one year on the implementation of the bill and annually to summarize the investigations he has undertaken with respect to the bill's prohibition.

Like many other federal agencies, the Commission has not promulgated its own separate anti-lobbying regulations but instead has looked to the guidelines prepared by the Department of Justice's Office of Legal Counsel on 18 U.S.C. § 1913 ("Section 1913"), the criminal restriction on the use of public funds for lobbying, for guidance in this area. The Commission also understands that several appropriations acts passed by this and prior Congresses contain prohibitions on the use of appropriated funds for lobbying purposes which are similar to those imposed by Section 1913.

In view of the serious constitutional issues raised by the Department of Justice with respect to H.R. 3078, the Commission is unable to support passage of the bill. Moreover, H.R. 3078 also raises policy concerns for the Commission. As an independent agency led by a five-person, bipartisan commission, we believe that the exception found in subsection (b)(3) for Presidential appointees confirmed by the Senate is too narrow. This exception would only allow these appointees ". . . [to] communicat[e] with the American public, through radio, television, or other public communication media, on the views of the President for or against any pending legislative proposal."

The Commission believes that appointees should be allowed to express their views on legislative proposals within their area of responsibility using any form of communication media, and even where the President has not taken a position on a bill. It is particularly important for all members of bipartisan commissions across the Federal Government to be able to speak publicly about the important issues before their agencies. The narrow exception in H.R. 3078 would prohibit Presidential appointees serving on commissions who were not appointed by the current President, or who are asked to comment on issues for which the current President has not yet publicly announced a position, from commenting on matters within their own area of responsibility. This would hinder independent regulatory agencies like the Commission whose policies are developed by appointees from different political parties. Also, the many complex technical issues with which we deal, and which primarily affect our regulatees, may not routinely be the subject of Presidential pronouncements.

For example, several years ago, there were pending before the House and Senate differing versions of bills reauthorizing appropriations for the Commission and making substantive amendments to its organic statute, the Commodity Exchange Act. CFTC Commissioners should be free to use government resources to prepare a speech for delivery to an industry trade association expressing their views, or the agency's views, on the relative merits of differing bills of this type.

The Commission also has a concern with respect to the "intent" standard of the prohibition. Arguably, an employee who furnishes copies of an agency's otherwise permissible views on legislation to the public might fall within the prohibition. For example, it should not be deemed a violation if, pursuant to a Freedom of Information Act request or other form of request, an agency employee provides copies of a Chairman's testimony given at a Congressional hearing summarizing the agency's views on pending legislation.

Thank you for the opportunity to testify today. I would be pleased to answer any questions you may have.

Mr. CLINGER. Thank you, Commissioner Dial. Now we'll hear from Ms. Keener.

Ms. KEENER. Mr. Chairman, if possible, I'd like to yield to Mr. Nordhaus prior to my testimony. Is that acceptable?

Mr. CLINGER. That's fine. Mr. Nordhaus, the Chair recognizes you.

Mr. NORDHAUS. Mr. Chairman, members of the committee, I'm Robert Nordhaus, general counsel of the Department of Energy. In my testimony, I'd like to address some of the issues that H.R. 3078 raises, three issues in particular.

First, is it constitutional? Second, is it sound policy? Third, is it workable? On the first point, the question of the constitutionality of the proposal, I attached to my written testimony the Department of Justice's letter expressing views on the bill.

We are guided by and very much concur with the Justice Department's views. Let me give you what we believe are the particular concerns here.

First, although the proposal, by its terms, does not apply to communications by the President and the Vice President, it constrains the ability of every other official in the executive branch to communicate to the public the administration's view on pending legislation.

Under the statute as proposed, Presidential appointees can communicate only the President's views and only through media.

Agencies' views that have not been articulated directly by the President presumably cannot be presented, and even the views of the President cannot be presented directly to the public.

A further and I think more serious concern, and it's one that Mr. Cannon has expressed, is that if the employee is not a Presidential appointee, the views of the President on legislation cannot be expressed at all.

In the Department of Justice's view, this is a very serious constraint on the President's ability to communicate executive branch views on legislation through subordinates of the President, and it raises, in their view, quite serious constitutional questions.

It also raises some significant policy questions. The Findings section of the statute states that, "The use of appropriated funds derived from tax revenues paid to the Treasury by all Americans to preferentially support or oppose pending legislation is inappropriate and improper."

As I noted, the bill goes on to cutoff virtually all executive branch communications to the public on pending legislation, but it leaves Members of Congress and their staffs free to continue taxpayer-funded communications to the public.

It's certainly my view, and I think my colleagues share this, that robust public debate on public issues is important, it's something that Members of Congress should engage in, and we think it's something that executive branch employees and Presidential appointees should engage in also.

We think what ought to go on is a debate and not a monolog. For these reasons, we think that our system and the quality of public debate would be significantly impaired if H.R. 3078 were enacted.

Finally, I'd like to get to a couple of concerns about workability just in the context of our own department. We were involved in—our major work is energy, environmental cleanup, not security, nonproliferation.

These issues are important, controversial, and almost all of them are the subject of some pending legislation somewhere in the House or Senate.

Almost everything we say in our Department could directly or indirectly promote public support or opposition to pending legislation.

I think from a practical point of view, what we do in the Department to try to keep the public informed on, for instance, health and safety issues with respect to the cleanup of our former nuclear

weapons facilities will feedback into legislative debate on our budget, on our authorization bills, on our obligations to comply with environmental law.

Almost everything we say is relevant to issues that are being debated in the House and Senate. The bill, in it present form, would make it very difficult for us to undertake our day-to-day work in keeping the public informed as to what we're doing without having questions immediately raised as to whether a particular communication was intended to influence legislation.

I think for that reason that the committee needs to take a careful look at the sweep of this legislation and whether agencies can feasibly carry out their functions, keep the public informed of what they're doing, and still stay within the law.

Mr. Chairman, I'd like to add just one thing. Mr. X, in his testimony before the committee, mentioned a communication from the Department of Energy's Denver Regional Support Office.

I would like just briefly to say that, first, we fully concur with Mr. Schiff's concerns with the spelling of the word—it should have been "affected" and was spelled "effected."

However, we do not believe that the communication is inconsistent with existing law. It appears to be fully within the guidelines that Assistant Attorney General Barr spelled out in his 1989 memorandum. Thank you, Mr. Chairman.

[The prepared statement of Mr. Nordhaus follows:]

PREPARED STATEMENT OF ROBERT NORDHAUS, GENERAL COUNSEL, DEPARTMENT OF ENERGY

Mr. Chairman and members of the Committee, thank you for the opportunity to provide the perspective of the Department of Energy on appropriate communications with the Congress and the public regarding matters implicated in pending legislation. Besides describing the current restrictions applicable to such communications, I also will discuss the Department's internal guidance on so-called lobbying restrictions and its views on H.R. 3078, the Federal Agency Anti-Lobbying Act, currently pending before this Committee.

Under the various statutes authorizing the Department of Energy and its predecessors, this agency has numerous information dissemination responsibilities. For example, section 3.b. of the Atomic Energy Act describes as one of the purposes of that Act to provide for "a program for the dissemination of unclassified scientific and technical information." Section 103(7) of the Energy Reorganization Act requires that information on "all energy conservation technologies and energy sources [be disseminated] through the use of mass communications," and section 102(5)(D) lists as a statutory purpose of the Department of Energy Organization Act the dissemination of "information resulting from [the Department's] programs, including disseminating information on the commercial feasibility and use of energy from fossil, nuclear, solar, geothermal, and other energy technologies." Further, under Secretary O'Leary's leadership, the Department's Strategic Plan has placed renewed emphasis on communication with those who have an interest in the Department's business. This emphasis has led to an increase in the amount and detail of information provided to the American public with respect to the Department's programs—past, current and planned. In carrying out this work, however, we are mindful of the possibility that lobbying issues may be raised when the Department's ongoing programs are affected by pending legislative proposals.

There already are in place statutory restrictions on communications by Federal employees with the public and the Congress. The government-wide provisions of the so-called Anti-Lobbying Act, 18 U.S.C. § 1913, make criminal, and require removal from office as a result of, certain types of lobbying activities. The Office of General Counsel is responsible for providing legal advice on the Anti-Lobbying Act, and relies on the Department of Justice "Guidelines on 18 U.S.C. § 1913" as forming the basis of the executive branch's long-standing interpretation of the provisions. These guidelines were circulated to the Department's Secretarial Officers approximately one year ago as a follow-on to a briefing this office provided to senior management,

and as a reminder of the need to remain aware of this issue. My office recently provided the Committee a copy of this reminder memorandum, including the Justice Guidelines that were attached to the memorandum. Based on these Guidelines, it is our understanding that the Anti-Lobbying Act in its present form prohibits government employees from "engag[ing] in substantial 'grassroots' lobbying campaigns of telegrams, letters, and other private forms of communication expressly asking recipients to contact Congress in support of or opposition to legislation."

Separate and distinct restrictions apply to appropriations provided to the Department of Energy and which are used to fund contracts or financial assistance. First, there are government-wide provisions such as the so-called Byrd amendment's restrictions on funds provided under a contract, grant, loan or cooperative agreement (31 U.S.C. § 1352) and the Federal Acquisition Streamlining Act (FASA) provisions relating to allowability of costs (41 U.S.C. § 256). The Byrd amendment prohibits the use of funds to pay any person for influencing specified officials (including Congressional members and staff) with respect to certain specified actions. The FASA provision specifically makes unallowable, under contracts in excess of $500,000, costs incurred by government contractors to influence, directly or indirectly, legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State. FASA also requires the Federal Acquisition Regulation to clarify the cost principles applicable to the cost of actions to influence executive branch action on regulatory and contract matters.

In addition to these government-wide provisions, the Committee should be aware that certain of the Department's activities are subject to additional specific restrictions. For example, the Department has operated since 1985 under a unique statutory provision (42 U.S.C. § 7256a) that makes expressly unallowable contractor costs "incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature." This provision applies to contracts of an amount greater than $100,000 entered into by the Secretary of Energy and obligating funds appropriated for the Department's national security programs. To implement this provision, the Department of Energy Acquisition Regulations include a "Legislative Lobbying Cost Prohibition" that applies to management and operating contracts with both profit-making and non-profit contractors. DEAR 970.5204–17. On December 12, 1995 the Department completed a rulemaking process to revise this clause to provide more clear direction on when and under what circumstances management and operating contractors will be reimbursed for costs of providing information or expert advice to Congress. The Department's Lobbying Cost Prohibition goes beyond FASA and the Byrd amendment as it applies even to costs incurred to influence the introduction of legislation (before it is pending) and places administrative controls on all costs of contractor contact with Congress.

The Department of Energy receives funding from two separate appropriations, and both have in recent years included restrictions directed toward certain lobbying-type activities. Certain recent Interior and Related Agencies Appropriations have included a provision known as a "publicity and propaganda" clause, which forbids using Interior appropriations for "any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete." Finally, the Energy and Water Development Appropriations Acts have placed restrictions on funds provided in recent years for use by the state of Nevada in its oversight of the Department's Civilian Radioactive Waste program. These restrictions have included a lobbying component based on the prohibition found at 18 U.S.C. § 1913.

All in all, there presently exists a substantial statutory and regulatory framework governing the activities of Federal employees and Federal funds recipients. H.R. 3078, the Federal Agency Anti-Lobbying Act, would add a significant overlay to the current restrictions. Because this bill by its terms is intended to police even "indirect" appeals for public support, its potential interpretation raises serious legal, policy, and practical issues. While this Department defers to the Department of Justice with respect to the constitutional questions raised by such a proposal (see attached May 14, 1996, letter from Andrew Fois, Assistant Attorney General), I believe that this bill presents very significant issues of constitutional law and policy. I would also like to mention some practical impediments the bill would seem to impose on this Department's work. First, the bill would appear to require that high-level appointee communication with the American public on pending legislation be limited to expressions of the "views of the President" and be done only through "public communication media." Not all views of the President on pending legislation are communicated by mass media, and not all communications by officials of any Administration on pending legislation mechanistically depict the personal "views of the President"—who can and must conduct much of the business of his office through subordinates.

Moreover, H.R. 3078 could be interpreted to prohibit a written agency response directed to a single citizen who has requested the Department's position on a matter integrally affecting its ongoing energy programs and which is also the subject of pending legislation. While the exception provided in the proposal to allow "responding to a request for information or technical assistance" may be helpful to the Congress, the Department could be forced to decline to provide similar information to a State governor, or the head of a local environmental organization. In a similar vein, the legislation could affect the Department's process for complying with the National Environmental Policy Act, under which we currently hold public meetings to exchange information as a part of the process of developing environmental impact statements. H.R. 3078's restrictions on oral statements means that even responses to public inquiries in such a forum would need to be carefully constricted to avoid any appearance that the Department is inappropriately taking a position on pending legislation. It is difficult to believe that any constituent would support as good public policy a measure that has the effect of precluding the Department from making information available on important public issues such as radioactive waste disposal and environmental cleanup programs.

As another example, my testimony earlier addressed the statutory requirement that the Department disseminate information on the commercial feasibility of energy technologies. One way the Department has done this in the past is through hands-on displays at the Forrestal building of solar-powered, electric, or natural gas vehicles. Suppose such a demonstration is coincidentally scheduled the day before the Science Committee intends to mark up authorizing legislation that will determine budget levels for renewable energy R&D. Despite the complete absence of any purpose of influencing legislation, someone might argue that the agency has intended to promote public support of or opposition to the Science Committee's legislative action by disseminating information whose continued availability would be dependent on the legislation under consideration.

Because H.R. 3078 explicitly applies to "the nomination of a public official," the appropriateness of gathering together information to "support" an appointment or even preparing a press release that simply announces a new appointment could be called into question. While it is difficult to argue that such activities do not indirectly "support" the legislative proposal at issue, it is also difficult to understand how they are inappropriate.

Finally, as the Committee knows, the fact that legislation has been introduced on a particular matter does not guarantee that congressional action will ever be complete. If enacted, H.R. 3078 would allow a single Member of Congress to control public debate over an issue by introducing legislation on the subject every two years, and thus limiting the Administration's ability to speak freely on the issues implicated, regardless of whether congressional action is at all likely to occur. A more difficult concern is posed by the possibility that employees of the Department and its management and operating contractors might be considered members of the "public" for purposes of the bill's prohibition. Given the length and complexity of the congressional authorization and appropriation process, at any point in time most, if not all, of the Department's activities may be the subject of or affected by pending legislation. Could the Department issue an instruction to a contractor to begin cleanup of hazardous materials when legislation is pending that would revise cleanup standards or would decrease funds available for such activities? If communications with employees and contractors are constrained in the manner proposed by H.R. 3078, prudency would require legal review of all written documents and oral instruction issued to Federal and contractor employees alike, to ensure there is no inadvertent "intent" exhibited. Indeed, such an undertaking could paralyze the substantive work of the agency while driving up the costs of its operations.

While these interpretations may seem unlikely, from the Department's perspective they represent real issues of concern. Nor are they far-fetched scenarios. One last real life example is apparent from the FY 1997 Budget Resolution recently approved by the House Budget Committee which would, *inter alia*, phase out the Department's fossil energy and energy conservation R&D programs. This week also marks the American Tour de Sol, jointly sponsored by the Department, the Northeast Sustainable Energy Association, and others. Tour de Sol is the nation's top electric vehicle road competition, and is scheduled to finish in front of the U.S. Capitol on Friday (May 17, 1996). Enactment of H.R. 3078 would call into question not only any statements made by the Department about energy conservation R&D in the context of their use in Tour de Sol, but would raise questions about the Department spending any funds on the race itself, since it might be argued that the Tour de Sol indirectly encourages public support for energy conservation R&D. Every time the Department opens its institutional mouth to announce a basic research breakthrough, provide information on an environmental issue, or tout the benefits of a

renewable energy technology whose development has been aided by the Department, this agency could be faulted for acting on an intent to promote public support of continued funding for the Department's activities or otherwise influence legislation.

In summary, the Department believes current statutory and regulatory restrictions affecting the Department, its employees, contractors, and grantees are more than adequate to prevent inappropriate activities without unduly restricting the dissemination of information required by statute and integral to the Department's efforts to open up Government to the public. Therefore, we do not believe that H.R. 3078 is necessary, and in fact we think it would operate as a "Gag Rule" on the executive branch, improperly hampering our ability to disseminate information related to the Department's programs.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, May 14, 1996.

Hon. WILLIAM F. CLINGER, Jr.,
Chairman,
Committee on Government Reform and Oversight,
House of Representatives,
Washington, DC.

DEAR MR. CHAIRMAN: This presents the views of the Department on H.R. 3078, the "Federal Agency Anti-Lobbying Act."

H.R. 3078 would forbid any federal agency from using appropriated funds "for any activity (including the preparation, publication, distribution, or use of any kit, pamphlet, booklet, public presentation, news release, radio, television, or film presentation, video, or other written or oral statement) that is intended to promote public support or opposition to any legislative proposal (including the confirmation of the nomination of a public official or the ratification of a treaty) on which congressional action is not complete." Proposed 31 U.S.C. § 1354(a). According to the bill, the intent is to reach every expenditure, "however small." § 2(b).

There would be some exemptions. First, the President and Vice President would not be subject to the prohibitions. Proposed 31 U.S.C. § 1354(b)(1). Second, officers and employees could send Congress requests for legislation and could respond to congressional inquiries. *Id.* § 1354(b)(2). Third, Senate confirmed officials, officials in the Executive Office of the President appointed by the President or Vice President, and agency heads would be exempted, but only when communicating the views of the President through "radio, television, or other public communication media." *Id.* § 1354(b)(3).

H.R. 3078 raises serious questions about the limits the Constitution places on Congress's ability to use its fiscal powers to interfere with the legitimate functioning of the Executive Branch. The bill attempts to use legislative authority over appropriations to exert legislative control over the Executive's performance of its customary and constitutional roles in the formulation of public policy in two distinct ways: (1) by directing which officials within the Executive Branch may speak on its behalf, and (2) by directing the mode of presentation of Executive Branch views.[1]

We think it axiomatic that the ability of members of Congress to communicate with the public cannot be seriously hampered. The very structure of the representative form of government established by the Constitution requires such communication. But similar considerations apply with respect to the President. We observed several years ago that

> [T]he President, of course, "is a representative of the people, just as the members of the Senate and of the House are." *Myers* v. *United States,* 272 U.S. 52, 123 (1927). Indeed, "on some subjects . . . the President, elected by all the people, is rather more representative of them all than are the members of either body of the Legislature, whose constituencies are local and not country wide." *Id.* Because of his unique position as the only elected official with a truly "national perspective," *INS* v. *Chadha,* 462 U.S. 919, 948 (1983), it is necessary to the independent power of the executive branch

[1] Read literally, the bill would require executive officials other than the President and the Vice President to ascribe the views they expressed directly to the President, and would limit them to "public communication media." Given the thousands of measures introduced in each session of Congress, every Administration necessarily develops many positions without the President's personal attention. Furthermore, the restriction against officials' making the President's position known except through "radio, television, or other public communication media," an agency of the Executive Branch and asked about the Administration's views on a pending bill, H.R. 3078 could make it unlawful to answer.

that the President be able to engage in a dialogue with the citizens of the United States.

Memorandum to John R. Bolton, Assistant Attorney General, Office of Legislative Affairs, from Charles J. Cooper, Assistant Attorney General, Office of Legal Counsel, Re: Applicability of 18 U.S.C. 1913 to Contracts between United States Attorneys and Members of Congress in Support of Pending Legislation (October 27, 1987), at 4 n.8. The President thus has a constitutional responsibilty "to communicate freely with the citizens of the United States, including on matters that relate to legislative affairs." Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts, 13 Op. O.L.C. 361, 367 (1989) (opinion of Assistant Attorney General William P. Barr) ("Barr Opinion"). By dictating the individual speakers, the media of communication, and the very label to be attached to executive communications on pending legislative action, Congress would materially impede the President's dialogue with his constitutionally ordained national constituency.

In an attempt to justify these restrictions, H.R. 3078 states that "the use of appropriated funds derived from tax revenues paid to the Treasury by all Americans to preferentially support or opose pending legislation is inappropriate and improper." § 2(a)(3). But members of Congress use tax revenues "to preferentially support or oppose pending legislation" whenever they employ government resources, such as those of their offices or franking privileges, to enlist public support for their positions. There is nothing the least "inappropriate and improper" about this. However, because Congress does use tax revenues for this purpose and the Executive Branch and Congress are bound to have differences on many pieces of proposed legislation, H.R. 3078 would create a permanent "preference" for congressional positions as compared to those of the Executive Branch.

The bill's restrictions on the personnel whom the President may employ in publicizing Executive Branch views are an independent source of constitutional difficulties. It is a long established principle that "[t]o discharge [his] responsibilities effectively, the President must be permitted to employ the services of his political aides, appointees and other officials." Barr Opinion at 368 n.12. Because it imposes severe limitations on the President's authority to act through subordinates, H.R. 3078 "necessarily undermines the President's ability to fulfill his constitutional responsibilities." *Id.*

The Constitution embodies the founders' "profound conviction . . . that the powers conferred to on Congress were the powers to be most carefully circumscribed" and the founders' recognition of the particular "propensity" of the legislative branch "to invade the rights of the Executive." *INS* v. *Chadha,* 462 U.S. 919, 947 (1983) (quoting The Federalist No. 73 (A. Hamilton)). A line of the Supreme Court's separation of powers decisions "focuses on the extent to which [a statute] prevents the Executive Branch from accomplishing its constitutionally assigned function," and (if there is such a disruption of "the proper balance between the coordinate branches") "whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress." *Nixon* v. *Administrator of General Services,* 433 U.S. 425, 443 (1977). Because H.R. 3078 would prevent the Executive Branch from carrying out its constitutionally assigned functions and does not rest on an overriding need to promote legitimate objectives, its validity under the Constitution is questionable.

Thank you for the opportunity to comment on this matter. If we may be of additional assistance in connection with this or any other matter, please do not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

Mr. CLINGER. Thank you, Mr. Nordhaus. I guess that's really one of the issues before us. Is that too narrow, or does it need to be tightened? And I think that's what we're considering here today. Ms. Keener, do you want to go now?

Ms. KEENER. Yes, sir.

Mr. CLINGER. You're recognized for 5 minutes or as long as it takes.

Ms. KEENER. Mr. Chairman, members of the committee, thank you so much for this opportunity to be here today to join in this discussion of H.R. 3078.

Initially, Mr. Chairman, I would like to state that I concur with the testimony of my colleagues and join with them in all of the concerns that they have voiced regarding this proposed legislation.

This afternoon, I would like to focus my remarks on the following: First, I'd like to talk about how we perceive that H.R. 3078, if enacted, would affect the Department of Veterans Affairs and the barriers that it would impose to our fulfilling our responsibility to maintain free and open communications with the veterans community.

And second, I'd like to respond to your specific concerns regarding Secretary Brown's efforts to communicate with VA employees about issues of significant professional and personal concern to them and the department.

When Secretary Brown was confirmed, he promised the veterans of this country that he would be their advocate, that he would be the Secretary for Veterans Affairs and not merely the Secretary of Veterans Affairs.

Secretary Brown has set a standard of free and open communication with organizations and individuals regarding countless issues concerning veterans and VA programs.

At the same time he, as all of us in the department, recognize that there are limits. The Secretary and all of us clearly recognize and honor the legal limitations imposed by the Anti-Lobbying Act.

We have all consistently acted within guidelines provided by the Department of Justice, and in June 1995, Secretary Brown issued guidance to all VA employees explaining to them the limitations of the act and expressing the importance of compliance.

It is imperative that we at the VA continue to have free and open exchange with all of our constituents to ensure that the needs and concerns of our veterans and the American public are heard and that their interests are understood and protected.

To do this, we must be able to communicate freely with veterans, with their families, with veterans service organizations, with medical and other professional schools affiliated with our medical centers across the country, with housing and home-loan industry groups that are affected by our loan guarantee program, with universities and schools where veterans use their VA education benefits.

H.R. 3078 would have a chilling effect on our ability to do this, on our ability to communicate with these groups and to ensure that VA programs address their needs and are implemented effectively and efficiently.

For example, if passed, H.R. 3078 could bar VA officials from writing letters or making phone calls in response to veterans inquiries regarding the possible effects of pending legislation.

All communications would have to be through what is referred to in the bill as "public communications media." It could limit discussions with veterans groups regarding any subject if a Member of Congress has introduced legislation on a related matter.

It could limit VA's ability to discuss with veterans and others our plans to implement legislation which is currently being considered by Congress.

It could prevent the Secretary from airing views on matters of limited public interest which are vital to some small groups of veterans and, consequently, are not disseminated by public media.

Enactment of this bill would not be good for Government, and it certainly would not be good for veterans.

Finally, Mr. Chairman, since VA is listed No. 1 on your list of reasons to support H.R. 3078, I'd like to briefly address Secretary Brown's August 29, 1995, message to VA employees on their earning and leave statement.

In keeping with our commitment to a free exchange of information, Secretary Brown has communicated with VA employees daily by e-mail since February 28, 1994, and through messages printed on their biweekly earning and leave statements since August 31, 1993. This comprises all of those messages that have been sent out to employees by the Secretary.

In August 1995, the earning and leave statements sent to all VA employees contained a message concerning congressional budget proposals for the VA.

At that time both employees and veterans were aware that Congress had proposed cuts in the VA budget. Rumors were running rampant throughout all of our facilities across the country as well as in central office.

In response to employees' questions and concerns, the Secretary's message provided employees with the administration position regarding the proposed budget, and it informed employees of the potential impact of cuts contained in the proposed House budget plan.

It has been suggested that this message somehow violated the Anti-Lobbying Act. This is clearly not the case. The message did not urge employees to oppose that plan, nor did it suggest that they contact any elected representatives.

Veterans and other VA constituents have a right to and they certainly expect honest and open communications with the department.

These rights and expectations would be seriously diminished by enactment of this bill. This concludes my testimony, Mr. Chairman, and I will be happy to answer any questions.

[The prepared statement of Ms. Keener follows:]

PREPARED STATEMENT OF MARY LOU KEENER, GENERAL COUNSEL, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the Department's contacts with outside organizations and individuals on Congressional legislation and to present the Department's views on H.R. 3078, the Federal Agency Anti-Lobbying Act.

CURRENT LIMITATIONS ON VA COMMUNICATIONS ON PENDING LEGISLATION

The principal restriction on VA communication with other organizations and individuals about matters pending before Congress is the Anti-Lobbying Act. That Act forbids Federal employees of the executive branch from engaging in certain forms of lobbying.

In 1989 and again in 1995, we received direction from the Department of Justice concerning the interpretation of this law. With respect to VA, the Justice Department advised that the Anti-Lobbying Act does not limit the lobbying activities personally undertaken by the Secretary and other Senate-confirmed officials appointed by the President within their areas of responsibility. In addition, the Justice Department advised that Government employees may not engage in substantial "grassroots" lobbying campaigns of telegrams, letters, and other private forms of commu-

nication expressly asking recipients to contact Members of Congress, in support of or opposition to legislation.

In June 1995, the Secretary sent a message to all VA employees which reminded them to comply with this law. In particular, the message explained the Anti-Lobbying Act prohibition and the penalties for violating the Act ($500 or a year in jail or both, plus removal from Federal employment). The message further stated that the Act does not apply to employees' exercise of their private Constitutional free speech rights while on non-VA time and without using VA resources.

VA COMMUNICATIONS WITH OUTSIDE ORGANIZATIONS AND INDIVIDUALS ON PENDING LEGISLATION

VA communicates openly and freely with a very large segment of the public regarding countless issues affecting veterans and VA programs. The groups and individuals concerned include not only veterans and their families and veterans service organizations. They also include the medical and other schools affiliated with our medical centers, housing and home-loan industry groups that are affected by our loan guaranty program, universities and schools where veterans use their VA education benefits, to name just a few. Our communications with these groups range from the purely informational to discussion of problems and possible solutions. These kinds of discussions are essential to help ensure that VA programs are well-designed and are implemented effectively and efficiently and that the best interests of veterans and their families are protected.

In addition, VA is, by law, responsible for ensuring that all veterans "are provided timely and appropriate assistance to aid and encourage them in applying for and obtaining" VA benefits and services. 38 U.S.C. § 7721(a). VA is also required to keep veterans fully informed about all benefits and services for which they might be eligible. 38 U.S.C. §§ 523, 7722(c). To carry out these responsibilities, VA must consult with and keep veterans informed about our activities and issues of common concern.

Our consultations with others on current issues and our efforts to keep veterans fully informed about programs often touch on budgetary and legislative matters. Indeed, frank and honest discussion of our programs and problem solving often are impossible without touching on such matters. VA thus regularly communicates with a wide range of groups and individuals on matters pending before the Congress. Without this communication, we could not fulfill our responsibilities to our nation's veterans.

As noted above, one of the ways VA communicates with veterans is through veterans organizations such as the American Legion, Veterans of Foreign Wars of the United States, Disabled American Veterans, AmVets, Paralyzed Veterans of America, and others.

In our system of government, individual citizens may express their views on legislation to Government officials. These citizens also have a right to know the views of the Administration on the legislation in question. Under the current Anti-Lobbying Act, any VA employee may convey Administration views to individual citizens.

The Secretary believes he has a responsibility to keep VA employees (many of whom are veterans) informed of issues of interest and concern to them. He communicates with VA employees daily by electronic mail and by messages printed on their biweekly leave and earning statements. Through these messages, the Secretary addresses a wide range of topics of interest to VA employees. These topics include special events, employee and organizational accomplishments, and awards and special recognition. He has also used these messages to inform them on matters of significance to their future and the future of VA.

The Secretary has a responsibility to communicate the position of the Administration on issues of importance to and affecting veterans to Congress, to veterans, to the public, and to VA employees. It is perfectly appropriate for the Secretary to let VA's employees, his subordinates, know his position and the Administration's position on the vital issues affecting their day-to-day professional lives. It would be less than appropriate for him to do otherwise.

VA VIEWS ON H.R. 3078

Before commenting specifically on H.R. 3078, I want to state Secretary Brown's strong opposition to the use of taxpayers' dollars in support of private lobbying efforts. He would consider such a use of appropriated funds improper as well as being illegal under current law. However, for the reasons set forth below and in the letter to the Committee from the Justice Department, VA opposes enactment of H.R. 3078.

Enactment of this bill could have a serious chilling effect on our ability to engage in free and open discussions with veterans organizations, individual veterans, and others regarding the needs of and best ways to serve American's veterans.

The Secretary, the Under Secretaries, and local VA field facility directors have longstanding traditions of regularly meeting with veterans groups to discuss issues of common concern. It is impossible to candidly and constructively discuss problems and their solutions without reference to the impact of legislation currently being debated in Congress. If H.R. 3078 is enacted, VA officials would necessarily be reluctant to describe a legislative proposal because of the likelihood that the description would be viewed as promoting public support or opposition to the legislation.

The Veterans Health Administration is currently engaged in a major effort to convert the VA medical care system into a "managed care" model. This will require significant changes in organization, systems, and facilities. We must be able to consult with all stakeholders including veterans, veterans groups, employees, and contractors. If H.R. 3078 is enacted, the fact that legislation relating to any or all of these issues may be proposed would significantly limit VA's ability to explain and advocate these critical changes.

In sum, if this bill is enacted, we could be limited in our ability to fulfill our obligation to consult with and keep veterans informed about our activities and issues of common concern regarding pending legislation. Limiting communication in this manner would not be good for veterans or Government.

Mr. Chairman, this concludes my formal testimony. I would be pleased to answer any questions.

Mr. CLINGER. Thank you, Ms. Keener. Now I would recognize Mr. McAteer.

Mr. MCATEER. Thank you, Mr. Chairman. I'm Davitt McAteer, Acting Solicitor of Labor. To be last on a panel of five has its advantages and disadvantages. The advantage is that much of what I planned to say has been said by those who went before me, and I endorse that.

The disadvantage is that when you have a written statement it makes that written statement somewhat difficult and cumbersome to work with. So I will try to summarize what remains of my written statement.

Thank you for the opportunity to appear here. You've asked that our testimony address the policies of the Department of Labor on its guidance concerning expenditure of funds on contacts related to pending legislative proposals before Congress, specifically the Anti-Lobbying Act.

In addition to that area, I would also like to speak of the specific Department of Labor document identified in the press release accompanying the introduction of H.R. 3078.

The department has serious concerns about H.R. 3078 because we believe it is overly broad and of questionable constitutionality.

But equally important, we are concerned that it may impair the public's right to know and have a negative effect on the quality of the laws that ultimately emerge from the legislative process.

The constitutional concerns have been addressed previously as well as in a letter that I understand the Department of Justice has sent to you.

Therefore, we will speak to the practical and public policy implications of the bill. First, it would significantly impair the public's right to know about public policy issues, including those which relate to health and safety.

Second, the ultimate quality of legislation produced could well be compromised by these restrictions. The feedback that we receive from members of the public on pending legislation is invaluable to us and I believe invaluable to the Congress as well.

Let me speak to the specific issue; that is, the document that was entitled, "The FAX on Better Jobs and Higher Incomes," because

I think it illustrates the practical application and the importance of this particular issue.

It was part of a series distributed by the Department over a period between early 1994 and early 1995 under the title, "America Job Fax." We have previously provided copies to the committee.

The Department came to develop this newsletter because we received many inquiries about the President's work force initiatives, including the Reemployment Act, the Middle Class Bill of Rights and the minimum wage proposals.

We also knew that there was substantial interest in these subjects. We issued the newsletters on an as-needed basis to discuss the merits of the various proposals, update readers on legislative developments, report on relevant private sector developments and provide excerpts of remarks by the President, the Secretary and business and labor leaders.

We used the facsimile distribution system to get this information into the hands of the interested parties. This kind of public information activity using modern, inexpensive technology I believe should be what Government is about.

But, in fact, I am struck by the fact that the facsimile issue that is much in debate here today, that the use of the fax question, which is a relatively new technology, may be central to this issue.

Second, an examination of these documents demonstrates that they were not intended to and cannot be characterized as encouraging any grassroots lobbying.

There is nothing in any one of these faxes that directly encourages members of the public to contact Members of Congress about the legislation.

Perhaps the most telling information about the faxes is the distribution list for the faxes. As Mr. Cannon has indicated in his testimony before us, there was a list of who received the faxes.

That distribution list was a broad spectrum of individuals, organizations, from Members of Congress on both sides of the aisle to the U.S. Chamber of Commerce, the Business Roundtable as well as trade unions.

The distribution was not nearly tailored as to energize the Department's supporters. It was not tailored to suggest that a coalition be built, but had many individuals and organizations who may well have opposed the initiatives discussed in the faxes.

In conclusion, while the department has serious reservations about H.R. 3078, we believe that there are necessary limits to restrict improper lobbying activities by executive branch officials.

The interpretations in the 1989 OLC opinion by former Assistant Attorney General Barr and the April 1995 Anti-Lobbying Act guidelines issued by OLC Assistant Attorney General Walter Dellinger set forth a proper and workable framework for limiting improper grassroots lobbying activity.

The Department has taken these restrictions very seriously and has, over a period of years, prior to the present administration being in office, conducted frequent training and provided written guidance and counseling concerning these matters. Copies of those training materials as well as these documents are attached to my written statement.

Mr. Chairman, thank you for the opportunity to appear here today and to engage in what I hope is a very constructive discussion on the proper respective roles of the Congress and the executive branch in the legislative process. I believe that the existing framework of the Anti-Lobbying Act, the related appropriations act riders and the OLC opinions protect against abuses.

The changes contemplated by H.R. 3078 could have a profound effect not only on this administration and future administrations but also on the body of knowledge the Congress has in drafting legislation and on the parties and on the rights and interests of members of the public. Thank you, sir.

[The prepared statement of Mr. McAteer follows:]

PREPARED STATEMENT OF J. DAVITT MCATEER, ACTING SOLICITOR GENERAL, DEPARTMENT OF LABOR

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear today to testify on the subject of the Department of Labor's policies and practices concerning communications with members of the public on legislation pending before the Congress. You have asked that my testimony address the Department's policies or guidance concerning expenditure of funds on contacts related to pending legislative proposals before Congress. You have also specifically asked for the Department's position on H.R. 3078, the "Federal Agency Anti-Lobbying Act." In addition to these areas, I would like to speak to the specific Department of Labor document that was identified in the press release accompanying the introduction of H.R. 3078 because I think it is very relevant to this debate.

I welcome this opportunity to discuss the merits of H.R. 3078 because I hope that it will provide the means of having a constructive dialogue on the proper roles of both the Congress and executive branches in the legislative process.

Let me begin by stating that the Department of Labor has very serious concerns about H.R. 3078 because we believe it is overly-broad and of questionable constitutionality. Equally important, we are concerned that it may impair the public's right to know, and—as I will explain—will have a negative effect on the quality of the laws that ultimately emerge from the legislative process.

I will not spend a great degree of time on the constitutional concerns about the proposed legislation, as these are summarized in a letter which I understand the Committee has recently received from the Department of Justice. DOJ, I believe, cogently explains that the bill attempts to use Congress's powers to use legislative authority over appropriations to exert control over the Executive's performance of its customary and constitutional roles in the formulation of public policy in two distinct ways: (1) by directing which officials within the Executive Branch may speak on its behalf, and (2) by directing the mode of presentation of the Executive Branch views.

The President has a very defined and important role in the legislative process that is mandated in the Constitution. He has the responsibility to "from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient . . ." Article II, Section 3 (Clause 1). A 1989 opinion issued early in the Bush Administration by Assistant Attorney General for the Office of Legal Counsel, William P. Barr, explained that this Clause "imposes on the President a responsibility to recommend measures to Congress and constitutes a formal basis for the President's role in influencing the legislative process."

The President also has the responsibility to "take Care that the Laws be faithfully executed." Article II, Section 3. As the Barr opinion correctly explained, "[i]t would be impossible for the President to fulfill this constitutional responsibility if he could not communicate freely with those who make the laws, as well as with those whose actions are governed by them."

The 1989 OLC opinion concluded that an overly-broad reading of the existing Anti-Lobbying Act would interfere or infringe upon these constitutionally-mandated responsibilities. The clear stated purpose of H.R. 3078 is that the existing Anti-Lobbying Act needs to be supplemented by placing restrictions on the President which further limit the manner in which Executive Branch officials may communicate with the public on issues that directly affect them. It does so by outrightly prohibiting certain forms of communication and by limiting the participation of all but the senior officials of the agency in communicating these positions to the public. Mr. Chair-

man, I believe that the constitutional concerns raised about overly-broad restrictions on the Executive Branch's communications concerning legislative matters are just as correct now as they were in 1989 when the OLC opinion was issued.

While consideration of the constitutional questions is very important in discussing the merits of the proposed legislation, equally important are the practical and public policy implications of H.R. 3078. Specifically, if passed, the legislation would have two negative consequences.

First, it would significantly impair the public's right to know about key public policy issues, including those which relate to their safety and health. Second, I believe that the ultimate quality of legislation produced would be compromised by these restrictions. The feedback that we get from members of the public on pending legislation is invaluable to us—and ultimately to the Congress—in fashioning legislation which is carefully written and best addresses the underlying legislative objective and purpose.

I would like to develop these arguments in the context of the document that has been identified in the Chairman's press release as justifying the passage of H.R. 3078. This document was entitled, "The FAX on Better Jobs & Higher Incomes". It was part of a series of issuances distributed by the Department over the period between early 1994 and early 1995 under the title, "America's Job Fax." We have previously provided the complete series of these newsletters to the Committee.

Let me explain how and why the Department came to develop this newsletter series. The Department received many inquiries about the President's workforce initiatives, including the Reemployment Act, the Middle Class Bill of Rights, and minimum wage proposals. We also knew that there was a lot of general interest in these subjects. We issued newsletters on an as-needed basis to discuss the merits of the various proposals, update readers on legislative developments, report on relevant private sector developments, and provide excerpts of remarks by the President, the Secretary, and business and labor leaders. We used facsimile distribution to get this information into the hands of interested parties. This kind of public information activity—using modern, inexpensive technology—should be what government is all about.

If you take a look at these newsletters, the first thing you will notice is that they are hardly glitzy in their appearance. They were developed using fairly basic desktop publishing programs and therefore involved minimal expense. This was not some high-cost public relations effort.

Second, an examination of these documents demonstrates that they were not intended to and cannot be characterized as encouraging any grass-roots lobbying. There is nothing in any of these faxes which directly encourages members of the public to contact members of the Congress about the legislation. This is not a list of "fence-sitters" or opponents to the Department's position that should be targeted for pressure on how to vote. Therefore, we strongly believe that the faxes did not violate the Anti-Lobbying Act or the related rider on the Department's appropriation.

Perhaps the most telling information is the distribution list for the faxes. I have previously made this list available to the Committee. The distribution list includes a broad section of individuals and organizations—from members of Congress on both sides of the aisle, to the U.S. Chamber of Commerce and the Business Roundtable to labor unions. The distribution was not narrowly tailored to energize the Department's supporters. Many of the individuals and organizations on the list may well oppose the initiatives discussed in the faxes.

This widespread distribution of the faxes underscores my point about the public policy consequences of passage of H.R. 3078. As I stated earlier, the President directly—and through Executive branch officials—is charged with playing an important role in the legislative process. He has a right to communicate those views to the public, just as each of you properly communicate your views on current legislation through newsletters to your constituents paid for by appropriated funds. It follows that the public should have the right to know what the President's positions are, and the executive branch agencies are often in the best position to communicate them.

The faxes before the Committee are an example of this form of communication. The legislation described by the faxes will have a profound effect on millions of working Americans served by Department of Labor programs. Interested citizens should have a means of knowing how the Administration, through the Department, feels about these programs and the impact of the proposed legislation.

I would point out that in addition to the programs described in our job faxes, the Department administers many enforcement programs designed to protect the health and safety of American workers. I am very concerned that an overly-broad reading

of the restrictions in H.R. 3078 would deprive the public of information that would alert them to possible changes in those protections.

The importance of fully informing the public about pending legislative proposals ultimately serves the legislative process in a constructive and positive fashion. Again, I would like to use the Department's job faxes as an illustration. As explained, our distribution included those who might support the Department's viewpoints as well as those who might disagree. We rely on interested members of the public to give us feedback on our positions. We use this feedback to refine our proposals and our positions on pending legislation. This process leads us to more constructive interactions with the Congress and—I strongly believe—results in better legislation. I am very concerned that the restrictions in H.R. 3078 will impede these important objectives.

Let me conclude by making a very important point. While the Department of Labor has serious reservations about H.R. 3078, we believe that there are necessary limits to restrict improper lobbying activities by the executive branch officials. The interpretations in the 1989 OLC opinion by former Assistant Attorney General Barr and the April 1995 Anti-Lobbying Act guidelines issued by OLC Assistant Attorney General Walter Dellinger set forth a proper and workable framework for limiting improper grass-roots lobbying activity.

The Department of Labor has taken these restrictions very seriously over a period of many years. We have given widespread distribution to the Barr and Dellinger memoranda to all senior officials of the Department. In addition, two comprehensive guidance memoranda have been issued by Solicitors of Labor in recent times—one in 1989 and another in mid-1994. I have attached both of these memoranda to my statement. You will see that the 1994 memorandum is very specific in identifying prohibited activities in a number of areas. In addition, it cautions employees not to be content with merely staying within the letter of the law. Specifically, it states that "officials and employees should also be aware of the institutional consequences [of violating the law]; a violation of the Act may jeopardize the very Administration positions that are the subject of the improper lobbying activity."

These guidance memoranda are supplemented by very comprehensive training. For the past number of years, the subject of the Anti-Lobbying Act has been a critical part of the ethics training given to all incoming high-level Departmental officials. I am also attaching to my testimony the handout used in our ethics orientation training that contains a section on improper lobbying activities. In addition, my office regularly provides comprehensive training on the Anti-Lobbying Act to the offices and employees of the Department.

Mr. Chairman, let me conclude by thanking you for the opportunity to engage in what I believe is a very constructive discussion on the proper respective roles of the Congress and the executive branch in the legislative process. I think that the existing framework of the Anti-Lobbying Act, the related appropriations act riders, and the OLC opinions protect against abuses. The changes contemplated by H.R. 3078 could have a profound effect not only on this Administration and future Administrations, but on the body of knowledge the Congress has in drafting legislation and upon the rights and interests of members of the public.

This concludes my prepared statement. I would be glad to respond to any questions you or the Members of the Committee may have.

The FAX On Better Jobs & Higher Incomes

U.S. Department of Labor
February 1995, No. 2

Example

"...GOP lawmakers should stop preaching tax breaks for the rich and give some help to poor working stiffs. Increasing the minimum wage now, during an economic expansion, can help increase wage fairness and lift poor families from poverty....The nation needs to narrow the gap between rich and poor. It needs to reward work."

— USA Today editorial, January 18, 1995

The Facts

Real average wages have fallen since 1979 for workers with high-school educations, for both men (down by 19%) and women (down 3%). A male high-school graduate earns less today, in real terms, than he would have earned over two decades ago.

The Better Jobs & Higher Incomes Agenda

- $10,000 Education and Job Training Deduction
- $500 per Child Tax Deduction
- Expanded IRA for Education
- G.I. Bill for American Workers
- Increased Minimum Wage to $5.15 per Hour

Q: Why should we increase the minimum wage?
A: Because...

- **American Workers Need It** — The minimum wage is declining in value and is not giving workers a chance to earn a decent living. The real value of the minimum wage has decreased by 27% since 1979. And since 1991, when the minimum wage was last increased, the price of food has increased by 7.3%, rent by 9.3%, and day care by nearly 20%.
- **It Will Strengthen America's Working Families** — Nearly two-thirds of all minimum wage workers are adults. Since many of these adult workers are trying to raise families, we must increase the minimum wage and give these families a fair shot at earning their way into the middle class. A minimum wage worker brings home only $8,500 for a year of full-time work, not nearly enough to bring a family of four above the poverty level.
- **It Will Make Work Pay** — If we truly believe that gaining skills through work is the pathway to the middle class, we must give workers the incentive to stay on the job and compete in the new American economy. Increasing the minimum wage will put money into the pockets of the workers who need it and will complement other efforts to make work pay, such as welfare reform and the Earned Income Tax Credit (EITC).
- **It's the Right Thing To Do** — Americans who work hard and play by the rules deserve the chance at a decent life and a better future for their children — an increased minimum wage will improve their chances.
- **The American People Know It's the Right Thing To Do** — a December Wall Street Journal-NBC poll found 75% support for raising the minimum wage. In a January Time-CNN poll, 78% favored an increase. This support cuts across the demographic and political spectrum - three out of five Republican men, for instance, support an increase, according to one poll.

About this Newsletter: THE FAX ON BETTER JOBS & HIGHER INCOMES is the heir of America's Job Fax, which was published by the U.S. Department of Labor from February-August, 1994. The purpose of this publication is to provide information on the President's Middle Class Bill of Rights proposal. It will be faxed weekly to individuals and organizations interested in education and training policy.

The FAX On Better Jobs & Higher Incomes

U.S. Department of Labor
February 1995, No. 1

"Fifty years ago, an American President proposed the G.I. Bill of Rights to help returning veterans from World War II go on to college, buy a home, and raise their children. That built this country. Tonight, I want to propose a Middle Class Bill of Rights."

— President Bill Clinton, December 15, 1994

The Facts

In 1994, compensation for private sector workers increased by just 3.1 percent, the lowest annual increase since the Bureau of Labor Statistics (BLS) started to collect this data.

The economy is creating more jobs — and most new jobs are better jobs — but that is not enough. All Americans need a better shot at higher incomes.

What Is The "Middle Class Bill of Rights"?

The President's proposal is the logical next step to the progress made by the Clinton Administration in its first two years: Goals 2000, School-to-Work, expanded Head Start, and reformed student loans. The proposal has four basic components:

#1 **An Education and Job Training Deduction** — all families earning less than $120,000, whether or not they itemize their deductions, will be able to deduct up to $10,000 for education and job training expenses. The tax code will finally provide an incentive for workers to gain the skills they need to compete in the new American economy.

#2 **A $500 Per Child Tax Credit** — families will receive a $500 credit for each child under 13 years of age, giving all families earning less than $75,000 more money in their pockets as they raise their kids.

#3 **An Expanded IRA for Education** — the availability of Individual Retirement Accounts (IRAs) will be expanded to make it easier for American families to save. Americans will be allowed to put $2,000 tax-free into an IRA and withdraw the money, without penalty, to pay for tuition, a new home, medical costs, and retirement.

#4 **A G.I. Bill for America's Workers** — stepped-up investments in labor-market information and performance data on training providers will help workers make the most of their purchasing power. And unemployed and low-income workers, who often can't benefit from tuition tax deductions and expanded IRAs, can get Skill Grants worth up to $2,620 per year, for up to two years, that they can use as they choose for learning new skills.

A complement to the Middle Class Bill of Rights is a **Working Minimum Wage**. Today, a minimum wage worker brings home only $8,500 for a year of full-time work. And since over two-thirds of all minimum wage workers are adults, including many who are trying to raise families, we need to give these families a working wage — a fair shot at earning their way out of poverty into the middle class. After all, the real value of the current minimum wage is 27% lower than it was in 1979.

About this Newsletter: THE FAX ON BETTER JOBS & HIGHER INCOMES is the heir of America's Job Fax, which was published by the U.S. Department of Labor from February-August, 1994. The purpose of this publication is to provide information on the President's Middle Class Bill of Rights proposal. It will be faxed weekly to individuals and organizations interested in education and training policy.

Mr. CLINGER. Thank you, Mr. McAteer, and thank all of the panelists for your testimony this morning. Obviously, we have some disagreements as to the need for the legislation, the need to further tighten the restrictions on promoting grassroots lobbying by administration officials, but that was the purpose of the hearing to make sure that we all know where the various positions are.

I have a couple of notes before we proceed to the 5-minute rule. One is the constitutional question has been raised, and I think that, obviously, is not something that we are going to be able to determine.

But I would point out that we also have received, in addition to the Department of Justice memorandum, memorandums from both the CRS and the GAO, opinions which indicate that it is constitutional because Congress retains the power to tell agencies exactly how appropriated funds can and cannot be used. And that is the language in which this is couched.

In addition, the language which we include here is not unique, nor is it original. It is copied, basically, from very similar language which presently appears in several appropriations riders, both the Department of Interior, and the Department of Health and Human Services.

There has been, apparently, no problem with that. It has, apparently, worked well. I think we'll discuss the merits of the bill later, but I think we need to at least indicate that there is a difference of opinion as to the constitutionality of the measure.

Let me ask a few questions of Mr. Cannon, if I may, having to do with the role, if any, that the EPA played in opposing the Contract with America.

I know that EPA and many members on this side of the panel strenuously opposed most if not all of the items of the Contract with America, and I can understand that.

But I guess the question we're getting at here is what were the activities of the EPA? What kind of activities did you undertake as an agency to resist the proposals in that measure?

Mr. CANNON. Well, I could characterize it generally. Our response to H.R. 9 was first to analyze it and try to understand what its provisions meant with respect to our programs.

And we spent a lot of time internally looking at that and doing analyses that would allow us to make some assessments.

Mr. CLINGER. Were you coordinating those activities with groups or agencies outside of the agency itself?

Mr. CANNON. There may have been discussions with folks in the administration in that part of the process.

Mr. CLINGER. But beyond the administration. With groups or associations?

Mr. CANNON. During that analytical phase?

Mr. CLINGER. During any phase.

Mr. CANNON. Well, I will tell you, and if I may proceed, we did analyses. We developed views about the bill. We did, through various means, communicate our views to the public, and some of those efforts have been discussed already this morning.

The fax sheet was one of those efforts, and that was faxed out to a number of groups, as I've said already, a broad spectrum of groups, including not just industrial groups as represented by Mr.

X but environmental groups and others as well. We had administration officials, including officials of EPA, give speeches in a variety of forums that set forth our views on the legislation.

Mr. CLINGER. Let me try and focus this a little bit. There was, was there not, a so-called Contract with America Working Group within the agency? Was the purpose of that group to, basically, coordinate all of the efforts in mounting the administration's sort of concerns or opposition to H.R. 9?

Mr. CANNON. My understanding is that group served a coordinating function to bring together information and analysis and to assemble it in forms that could be useful both within the agency and communicating outside of the agency.

Mr. CLINGER. Wasn't the purpose of the group, however, to really mount a vigorous opposition to H.R. 9 with the objective of ultimately generating enough to defeat that proposal?

Mr. CANNON. I wouldn't characterize the purpose in that matter. I will say I think part of the purpose of the agency's efforts here was to communicate to a broad range of groups outside the agency the agency's views on H.R. 9 and to inform the public debate in an open and vigorous way with respect to that.

Mr. CLINGER. I have here a number of documents which I'd ask the Clerk to distribute at this point, the first page reading, "Contract with America Meeting of EPA Working Group," dated January 5, 1994, and listing the members of that group and a further memo dated January 26, 1995.

Let me just ask unanimous consent that these documents might be entered at this point in the record.

Mr. WAXMAN. Reserving the right to object just only so far as we can get a copy of it to see.

Mr. CLINGER. I've asked the Clerk, please, to distribute that document.

Mr. WAXMAN. I withdraw my objection.

Mr. CLINGER. I thank the gentleman.

[The information referred to follows:]

CONTRACT WITH AMERICA MEETING OF EPA GROUP, JANUARY 5, 1994

• EPA has decided to be overt about our opposition to the Contract with America and try to get our message out about its impacts on environmental protection

• OCLA and OPPE have decided to convene an Agency-wide group that would be a "quick response team" to:

—Meet once a week to share information and discuss strategy;

—Be "on call" to:

* Develop talking points about the impacts, as specific provisions come up before House or Senate;

* Be able to respond as issues come up as part of the budget process—Congress is likely to use Appropriations as the way to undo many rules and regulations

* Be a conduit to their offices for information, review, etc.

—Ensure that EPA's message about the impacts of this gets out to the Hill, industry groups, editorial writers, other outside groups.

• Andrew Otis of OPPE and Kate Perry of OCLA are coordinating this and have developed a short piece to get out to all of EPA, and after that to others—sympathetic people on the Hill, etc.

This piece is attached, and has been compiled from what they received from the rest of the Agency. Andrew would like comments by CPB Monday, January 9

• OAR has also developed two pieces: (1) A program-by-program discussion of the impacts of the Contract on the Clean Air Act; (2) A positive piece about the Clean Air Act, and its importance for everyone;

• Unfunded Mandates: Hearings today; Sally Katzen of OMB testified in support of the bill before the Senate; however, did not endorse the entire bill; OCLA is cir-

culating the bill for review; is a companion House bill that may or may not supersede the piece in the Contract with America. There are 79 co-sponsors in the Senate to this bill.

• Contract—Which Committee: Understanding is that each Committee in the House has been assigned a piece of the Contract; House Commerce Committee has the risk assessment provision (Hickmott said) and it will be marked-up in mid-February; then they will aggregate the bills and bring it forward as a package.

• Examples of Contract: Office of Water is working with OPPE and OCLA to develop an example of the impacts of the Contract, using Cryptosporidium as an example

• 180-Day Delay on Regulations: Press Conference by several Congressmen, including Tom Delay, asking for a 180-day delay on rules and regulations, retroactive to November 6.

• Next Steps:

—OCLA will get information out to everyone about legislation (as it comes); talking points for every AA; Browner's testimony before the House Science Committee; New York Times editorial; etc.

—Meet every week; next meeting is Thursday, January 12 at 4 pm—probably in the 8th floor conference room

—Coordinated outreach strategy: pull together list of contacts or potential contacts for each AA—as part of developing a strategy for who to reach out to beyond EPA, particularly in the private sector. This list should be sent to Dan Abbasi in OPPE by COB Wednesday, January 11. Fax #260–0275

—Comments on OPPE's piece by COB Monday to Andrew Otis: Phone: 260–1345/ fax: 260–0275.

• Attached is a list of people who attended the meeting.

CONTRACT WORKGROUP

Name	Office	M/Code	Phone	Fax
Bob Hickmott WT–8 FL	OCLA	1301	W:260–5200	260–4372
Kate Perry WT–8 FL	OCLA	1301	W:260–5203	260–4372
Chris Hoff WT–8 FL	OCLA	1303	W:260–5414	260–0516
Ken Woods WT–8 FL	OCLA	1303	W:260–5429	260–0516
Diane Hicks WT–8 FL	OCLA	1303	W:260–5664	260–4372
Avi Garbow WT–1037	OECA	2211	W:260–1579	260–0500
David Gardiner WT–1013	OPPE	2111	W:260–4332	260–0275
Dan Abbasi WT–1013	OPPE	2111	W:260–4332	260–0275
Andrew Otis WT–1013	OPPE	2111	W:260–1345	260–0275
Jane Metcalf WT–919C	ORD	8105	W:260–9205	260–0106
Peter Preuss WT–917B	ORD	8105	W:260–7669	260–0106
Rob Brenner WT–925A	OPAR	6103	W:260–5580	260–9766
David Doniger WT–939B	OAR	6101	W:260–2865	260–5155
Carl Mazza WT–1145	OAR	6101	W:260–1786	260–5155
Beth Craig WT–711	OARM	3302	W:260–8340	260–0084
Jean Nelson WT–537D	OGC	2310	W:260–8040	260–8046
Gary Guzy WT–537	OGC	2310	W:260–8040	260–8046
Bob Perlis 3RD FL	OGC	2333R	W:703–235–5308	703–235–5350
Reid Wilson	PUBLIC LIAISON	1702	W:260–2650	260–0130

CONTRACT WORKGROUP—Continued

Name	Office	M/Code	Phone	Fax
WT–303A				
Joe Vivalo	OROSLR	1501	W:260–0518	260–2159
WT–328				
Paul Guthrie	OROSLR	1502	W:260–4071	260–2159
WT–329				
Chris Prins	OSWER	5103	W:260–4608	260–8929
SE–306				
Parker Brugge	OSWER	5101	W:260–6795	260–3527
SE–360				
Bill Jordan	OPPTS	H7501C	W:703–305–7102	703–305–6244
CM2:1113				
Jim Aidala	OPPTS	7101	W:260–2897	260–1847
ET–637				
Chuck Fox	OW	4101	W:260–5700	260–4711
ET–1033				
Mahesh Podar	OW	4102	W:260–5387	260–0587
ET–1029				
Bob Waylan	OW	4501F	W:260–7166	260–6294
FC–707				
Tudor Davies	OST/OW	4301	W:260–5400	260–5394
ET–811D				
Bill Farland	OHEA	8601	W:260–7317	260–0393
M–3700A				
Hugh Gibson	PPPS	1102	W:260–2717	260–8511
M–2714				
Barbara Cunningham	OPPT	7408	W:260–2249	260–2219
ET–525B				
David Coursen	OGC (DOI)		W:208–5301	219–6780
7452 (DOI)				

OUTREACH CHECKLIST ON CONTRACT DOCUMENTS, JANUARY 26, 1995

LIST OF PRODUCTS

(1) Overview Analysis (Andrew)
(2) Cost Model (Brett)
(3) Detailed Analysis of Title 3/Risk Provisions (Peter)
(4) Decision Flow Chart (Andrew)
(5) Contract Talking Points (Denise/Sylvia)
(6) Non-Wetlands Taking Examples (Kate)
(7) Additional HR 9 Examples (Kate)
(8) Response to George Brown questions (Peter)
(9) Risk Testimony for Next Week (Peter's office)
(10) Amendment language for HR 9 (Sylvia)
NOTE: Are there other products not listed here?

QUESTIONS

(1) Which of the above products should we send to which constituencies?
(2) Should we consolidate some of the above products for general outreach purposes, or for certain constituencies?
(3) Do we need additional products . . .
—with greater clarity for the non-specialist?
—with more detailed examples for the legislative staff?
—with specific amendment language gauged to contend with specific examples?
(4) How should we deliver to each constituency?
—By fax?
—By personal phone call from AA's?
—Breakfast/lunch with AA's?
—Use of political DAA's? Special assistants?
—Delivery of paper with no source?
(5) Should we organize a coordinated AA fan-out across country to deliver message to key districts/media markets 2 weeks from now?

BASIC CONSTITUENCIES

Abbasi/Reid will fill in the list of constituents below, but we welcome all recommendations.

Congress

Products (1) & (3) sent to House Minority Staff for Commerce and Science Committees.

Who else on Hill should receive these or other documents and when?

Do we have a written Hill plan with timing/sequence of communication on contract issues?

Are planned AA meetings with key Senators/Members coordinated to maximize our Contract message?

OMB/other Federal agencies

What sort of help/documentation should we provide to other government (esp. regulatory) agencies?

FDA
OSHA
White House: OMB, DPC, NEC, OSTP, CEA
DOI

Business

AA's list of personal business contacts (need help in procuring?)
Chemical Manufacturers' Association
Chamber of Commerce
Business Roundtable
Small Business Ombudsman's List
Environmental Technology Developers
Environmental Engineering Consultants
Environmental Exporters

Business superfund coalition

Del Perlman, CMA
Dina Vizzacarro, AAMA
Glenn Ruskin, Ciba-Geigy
Jerry Prout, FMC Corp.
Jim Ford, Arco
John Ulrich, Dow
Mark Hopkins, Chevron
Pat Kenworthy, Monsanto
Sue Briggum, WMX
Trudy Bryan, DuPont

Environmental NGO's

Which documents should we give to NGO's?
When?
Should we ask them to fax out to membership?
Gary Bass, OMB Watch
Bill Roberts, EDF
Ken Cook, Env WG
Greg Wetstone, NRDC
Others: Sierra, NWF, PIRG, FOE, Audubon, Clean Water Action, PSR environmental justice groups

Scientists/academics

Preuss/Goldman list sent to Barry Gold, House Minority Commerce
Other hard scientists?
Social scientists/American political studies?

Physicians/medical groups

American Lung Association, etc.
Lynn Goldman list?
Physicians for Social Responsibility
Others?

Economists

Paul Portney
Nobel laureates from Clinton's list?

State/local leaders

Governors
ECOS
Mayors/City Council members

Media/editorial boards

Majors
Trade Press
Inside D.C. pubs, e.g., National Journal
Commentary magazines, e.g., The New Republic
Financial magazines, e.g., Barron's
Thinktank newsletters

EPA allies/partners

CSI partners
Green Lights partners
Climate-wise partners

PCSD members: CEO's (business, NGO's, labor)

Next opportunity to discuss is February 21–22 retreat in Atlanta

Miscellaneous

Terry Davies
Gordon Binder
Others, including lists from AA's

From: Daniel Abbasi (DABBASI)
To: DGARDINE
Date: Monday, January 30, 1995 6:26 pm
Subject: contract outreach

Did you ever succeed in getting a Sylvia/Denise clearance on distributing some subset of the contract w/amer documents? You were going to speak to them Fri when I ran up the documents.

Reid is prepared to get stuff out to enviros as soon as we get the OK. With the risk hearings almost here, we need an answer. Please let me know . . .

From: Daniel Abbasi (DABBASI)
To: DGARDINE
Date: Tuesday, January 17, 1995 5:42 pm
Subject: contract w/amer outreach

I talked today to Parker Brugge (Elliot Laws' spec assistant) today during my round of reminder calls about constituency lists, and he reported some interesting reactions from Elliot. He said Elliot was emphatic that he had not talked with anyone about the contract and would not in the future unless he was told to do so, and specifically whom to talk to. He said he had "too many other important things to do" and Parker said Elliot told him he could quote him on that. I'm not sure I get the hidden meanings here, David. But, anyway, I will continue to work on the other program offices pending clarification from OSWER. I plan to have a good sit-down with Reid very soon. We've had short discussions about how to organize this outreach effort. But I'm now going to kick this effort into high gear. More to come . . .

From: Daniel Abbasi (DABBASI)
To: DGARDINE, AOTIS
Date: Monday, January 9, 1995 11:35 am
Subject: contract w/Amer outreach

Spoke to Reid just now about the issue of getting back to the NGO's with our "examples" on the Contract. This needs to be a meeting with them, NOT a fax-out. Reid thinks one opportunity could be Fred's meeting with the B-team (senior, non-CEO NGO reps) later this week or early next. I encouraged aiming within the week; he'll press this on Fred's schedule. If Fred's not able, we could call a separate session which you'd lead, David. KEY QUESTION FOR AOTIS: when will the new example piece be ready, with comments incorporated AND 12th floor vetting done (Sylvia, Loretta, Peter)?

Second, I asked Reid about business outreach—no game plan is drawn up or underway and I'll get this moving. Reid was open to idea of having you, David, meet with a dozen or so big and small businesses to discuss concerns (ours and theirs)

about the contract. Do you concur? If so, we'll get it set up. Reid also agreed that PCSD allies should be massaged as much as possible at Chattanoooooga.

What do you think about engaging with Chamber or BRT? Too hostile? Too early? The pub/private unfunded mandates issue gives us an opening to empathize with business, but the issue only affects a relatively small part of the bus community. Perhaps we should get some analysis going right away on the public/private ratio of environmental service providers. What do you two think?

BUSINESS CONTACT LIST FOR OUTREACH

Richard Barth, Chairman, President and CEO, Ciba-Geigy Corporation
David G. Buzzelli, VP and Corporate Director, Dow Chemical
Richard A. Clarke, Chairman and CEO, Pacific Gas & Electric
Ernest Davenport, Eastman Chemical, Chairman of CMA
L.D. DeSimone, CEO, 3M
Linda Fisher, Attorney at Law, Latham & Watkin, (former EPA Assistant Administrator for OPPTS)
Samuel C. Johnson, Chairman, S. C. Johnson and Son Inc.
William Ruckelshaus, Chairman and CEO, Browning-Ferris Industries Inc.
Del Perlman, Chemical Manufacturers' Association
Dina Vizzacarro, AMMA (Auto Manufacturers Association)
Glenn Ruskin, Ciba-Geigy
Jerry Prout, FMC Corporation
Jim Ford, ARCO
John Ulrich, Dow Chemical
Mark Hopkins, Chevron
Pat Kenworthy, Monsanto
Sue Briggum, WMX
Trudy Bryan, DuPont

To: Dr. Clarice Gaylord, Director, Office of Environmental Justice

From: Gary S. Guzy, Deputy General Counsel

Re: Agenda for Upcoming NEJAC Meeting

As I recently discussed on the telephone with Bob Knox, I believe that it would be very productive for the National Environmental Justice Advisory Committee to include a discussion of private property rights issues on the agenda for its January meeting and to consider passage of an appropriate resolution.

Private property rights legislation arose during the last Congress and is likely to come up during the next session. Various "takings" proposals could render it very difficult for the federal government—or state or local governments—to apply siting restrictions based upon environmental justice concerns. Some of these proposals would require compensation to property owners for any reduction in the value of their property caused by government action. Furthermore, an amendment was offered during last session's consideration of the EPA Cabinet Elevation Bill in the House of Representatives that would have required your Office to consider private property rights issues among the "civil rights" that it evaluates. A copy of this proposal is attached.

NEJAC member Richard Lazarus is very familiar with these issues. Several other individuals have offered to assist in either shaping the discussion for the NEJAC or by providing a presentation on this subject. These include Pat Williams of the National Wildlife Federation (797–6886) and Nan Aaron of the Alliance for Justice (332–3224). I would appreciate your keeping me apprised of any decision by the NEJAC to discuss these issues. Please feel free to contact me at 260–8040 if I may provide you with any additional information. Thank you for your assistance.

"BREAKING OUR ENVIRONMENTAL CONTRACT WITH AMERICA"

Op-Ed by Jeanne M. Fox

Regional Administrator, U.S. Environmental Protection Agency

"Watch what we do, not what we say," Attorney General John Mitchell once told critics of the Nixon Administration.

So it is, apparently, with the new U.S. House majority's Contract with America, which contains no mention of the environment, but proposes regulatory 'reforms' that threaten to roll back 25 years of progress in protecting public health by cleaning up our air, land and water from the ravages of pollution. One of the Contract's

provisions now before the House, Bill H.R. 9, the so-called Job Creation and Wage Enhancement Act—or, as some who've read the fine print call it, The Full Employment for Lawyers Act—mandates a whole new, budget-busting bureaucratic maze of regulatory review, and opens a Pandora's box of potential legal challenges that, had they been in place 20 years ago, would have seriously delayed or even prevented EPA's bans on leaded gasoline and dangerous pesticides like DDT.

If enacted today, this bill will force us to put a dollar value on the lives of the very young, the sick and the elderly to somehow determine if it's worth protecting them from harmful particles in the air, chemicals in the ground, or contaminants in their drinking water.

Like so many bad ideas, the measures in H.R. 9 were crafted in response to a genuine problem, the burdensome, costly, and inefficient nature of federal regulation. EPA Administrator Carol Browner recognized the problem when she came into office two years ago, and has been working with industry, environmentalists, and state and local governments on a Common Sense Initiative to streamline regulations, reduce costs, and tailor federal standards to different industries.

Many well-meaning supporters of H.R. 9 mistakenly assume it will accelerate Carol Browner's reforms. The Orwellian irony of H.R. 9 is that its proposals will undercut those reforms and deinvent federal regulation by making it even more bureaucratic, costly, and inflexible.

By requiring that virtually all proposed federal rules go through a convoluted, protracted review that allows for constant legal appeals, the Act would effectively delay or derail most public health protection, and would charge the courts with making scientific decisions about health risks. EPA already conducts rigorous risk assessments of potentially dangerous pollutants. Intentionally or not, this law would tie that protective process into knots.

H.R. 9 also creates a huge, new federal entitlement scheme for property owners that could, for example, force taxpayers to pay the owners of a hazardous waste plant not to locate their facility on a dangerous flood plain.

Another of the Contract's legislative proposals, The Regulatory Transition Act, would impose an all-out moratorium on new environmental standards, retroactive to November of last year.

Together, these measures would have a devastating effect on environmental protection in our region.

They would reverse the progress we've made over the last 20 years in cleaning the heavily polluted air over New York and New Jersey.

They would put our drinking water supplies at risk by delaying new rules EPA is developing to combat outbreaks of bacteria-caused disease such as caused an estimated 100 deaths and 400,000 illnesses in the Milwaukee area.

They would slow—or even stop altogether—the cleanup of abandoned toxic waste sites in communities throughout the region even as EPA is working to streamline and speed the Superfund process.

They would wreak havoc on area businesses by delaying construction and operating permits, replacing consistent standards with unpredictable jury verdicts, and tilting the competitive playing field toward polluters.

Finally, these bills would seriously weaken the regional economy. As a national study last year by the Institute for Southern Studies showed, states with the strongest environmental laws, like New York and New Jersey, also have the strongest economies, while those with weak environmental standards rank at the bottom of the economic heap. By undermining our environmental standards, the proposed laws would threaten this region's economic foundation.

Over the last two years, the Clinton administration has dramatically reinvented the way the federal government does business, fulfilling its pledge to the American people to make government leaner, smarter, and more cost effective.

The Contract with America bills that are before the House this week would reverse those gains, adding new layers to the federal bureaucracy, more red tape, more lawsuits, and more government waste. They would pervert science and pervert common sense. Under the banner of reform, they would put at risk the health of our environment, our economy and our people.

These measures need more debate, in the Congress and in the public arena. The issues they address and questions they raise are too grave to be steam-rolled over in an ill-considered rush to meet some arbitrary legislative deadline. We have accomplished much in the past quarter century of environmental protection in our nation, but pollution remains a serious health threat in this country. Two out of five Americans still live in communities where the air is unhealthy to breathe. Ten percent of our children still suffer from lead poisoning. Forty percent of our rivers, lakes and streams are still too polluted for drinking, fishing and swimming.

We need strong environmental laws, based on sound science and good common sense. We need to insure that they are fair, sensible, and cost-effective. But we do not need to turn back the clock on environmental protection.

From: Mary O Popkin (MPOPKIN)
To: RWilson
Date: Wednesday, February 22, 1995 4:13 pm
Subject: AARP
I couldn't connect with Jo Reed of AARP's legislative office when I was there today but I did leave the WH regulatory speech—a good one—for her.
I learned that AARP members have been indicating their high interest in the environment, so much so that one staff member—program-not legislative—has been assigned to devote on third of his time to environmental issues. That person will be getting in touch with me.
I have some background info on AARP is you want to see it.

Mr. CLINGER. Let me just read a couple of excerpts from that, Mr. Cannon, and ask you if you would characterize those as just an information-generating activity.

Mr. CANNON. Excuse me, Mr. Chairman. May I have a copy of the document?

Mr. CLINGER. I think you have the document.

Mr. CANNON. Thank you.

Mr. CLINGER. The lead paragraph there is, "EPA has decided to be overt about our opposition to the Contract with America and try to get our message out about its impacts on environmental protection."

Then, going to the next page, "Examples of Contract: Office of Water is working with OPPE and OCLA to develop an example of the impacts of the contract using Cryptosporidium as an example."

And further down on that page, "Coordinated outreach strategy: pull together lists of contracts or potential contracts for each AA—as part of developing a strategy for who to reach out to beyond EPA, particularly in the private sector. This list should be sent to Dan Abbasi," and so forth.

This sounds to me very much as though there was a very concerted, coordinated and very vigorous effort to involve the private sector or generating information to the private sector.

That sounds very much like grassroots lobbying and would seem to be to be precluded by existing legislation if not by this bill.

Mr. CANNON. Mr. Chairman, if I may respond, on the face of this document, there is discussion about organizing efforts to reach out to various groups that might be interested in H.R. 9 and the agency's views on H.R. 9.

That's exactly what we did, and that's what was discussed this morning. That was part of what we believed to be our responsibility to state our views and to provide information about H.R. 9 and its impact on the agency's programs.

We did that with respect to a broad range of groups, including some groups that we did not expect would agree with us but we felt would be interested in having our views on the subject.

Mr. CLINGER. So you are indicating these materials were used to generate public opposition to the legislation, are you not?

Mr. CANNON. These were used to communicate the agency's views on H.R. 9.

Mr. CLINGER. And so you would say they took a very narrow view, but that was in no sense trying to encourage anybody to

lobby Congress in this matter? It was only an information-gathering——

Mr. CANNON. Correct.

Mr. CLINGER. I find that a little incredulous.

Mr. CANNON. Certainly within the meaning of any lobbying act. None of these materials, at least I am aware of no materials in the vast——

Mr. CLINGER. I'm not charging you with any violation of law. I think what I'm saying is that is why I think there is a need to tighten existing law with regard to this matter. My time has expired, and I would yield to the gentleman from Wisconsin, Mr. Barrett, for 5 minutes.

Mr. BARRETT. Thank you, Mr. Chairman. Ms. Keener, how many veterans are alive today?

Ms. KEENER. Approximately 26 million.

Mr. BARRETT. In your testimony, you said local VA field facility directors regularly meet to discuss pending legislation; is that correct?

Ms. KEENER. Yes, sir. That's correct.

Mr. BARRETT. How would this bill impact their ability to communicate with those 26 million veterans?

Ms. KEENER. Well, let me give you an example. Yesterday, I attended a luncheon with the Secretary and other VA Assistant Secretaries.

This was a luncheon that we attended with members of the Veterans Service Organizations. The Secretary does this on a quarterly basis to meet with them and answer some of their questions.

One question that came up from one of the individuals at the luncheon to the Under Secretary for Health asked him about a particular bill that was pending on eligibility reform that is a majority bill and, in essence, asked him if that was good for veterans, if we could live with that bill or if our bill, the VA bill, the administration bill, would be better for veterans if it would give them what they wanted.

My understanding is that given this proposed bill, the Under Secretary would most likely not have been able to answer that question posed by that VSO representative regarding opposing legislation.

And one of our directors or one of our people out in the field, any of our people who are not Presidential appointees, would certainly not be able to respond to those kinds of questions that veterans or others may pose regarding what kind of legislation may be in the best interest of veterans.

Mr. BARRETT. OK. Thank you. Mr. Cannon, when you indicated that these faxes weren't from the EPA, I have to acknowledge that I agree with you.

If I were to put together a list for lobbying purposes of the usual suspects; in other words, the groups that would be opposed to this type of legislation, the Contract with America, I would be going for environmental groups.

I would be going for citizen groups. I probably would not contact a single one of these groups that have been listed on this fax list.

In fact, I find it somewhat ironic. I see one of the people listed as from the National Rural Water Association, and I know that

they have, for the current water legislation—I'm sure Mr. Waxman can speaker better on this than I. I oppose some things that they supported last session—just as a person from Milwaukee, WI, tell you that I am very happy that the EPA wanted to let the American people know that there were Cryptosporidium problems associated with this legislation.

And I think would be a grave disservice to the citizens of this country if the Environmental Protection Agency were muzzled and was not able to communicate with the people in this country about that serious outbreak that occurred in my home community. So I want to thank you for doing that.

Mr. Dial, just very quickly, my understanding is you're a Republican; is that correct?

Mr. DIAL. That is correct.

Mr. BARRETT. And you were a Republican appointee?

Mr. DIAL. I was appointed by President Bush in 1991.

Mr. BARRETT. And were you directed to bring your testimony here today in opposition or raise the concerns here?

Mr. DIAL. The Commission received a letter. The Acting Chairman of the Commission received a letter that made a request for all of the information that we had available with regard to the communication that I initiated to the members of the Agricultural Advisory Committee to CFTC.

Mr. BARRETT. Thank you. I wish there was someone here from the Department of State or from the Pentagon, because as I read this legislation and I think back 5½ years, I wasn't in Congress at that time, but I can recall sitting, as almost every American did, listening to the representatives of the Department of Defense and the State Department give daily briefings to the American people on what was going on in the Gulf War.

At the same time that those briefings were going on, there was pending in Congress legislation dealing with our role in the Gulf War.

And as I read this legislation, those daily press briefings, which one could certainly argue directly or indirectly were intended to influence how Members of Congress voted, would be prohibited under this legislation so that you could not have the spokespersons for the Pentagon, the spokespersons for the Department of Defense give those daily briefings.

Again, I do not think that we want a situation where the American people are kept in the dark on important matters to them.

So I wanted to raise that. I don't think that is something that has been considered by the authors of this legislation, and I think it's important, as we try to address these issues, to address them in a serious way.

My view of this legislation is I have certainly run into occasions where there is a member of the administration, whether it's on the State level or the Federal level, who has appeared either for or against a piece of legislation.

And I have always viewed it as, sort of like, standardized tests. When I was growing up and I took standardized tests, if I did well on them, I thought they were an excellent indicator of intelligence.

If I did poorly, I thought they were a lousy indicator, and I think both sides of the aisle feel the same way. I am sure there have

been times when President Bush was President when members of his administration were speaking out on pieces of legislation that made Republican Members happy, and the same is true on this side.

So I think that we have to be very careful so that we do not stop the American people from knowing the dangers of things like Cryptosporidium.

I think we have to be careful so that we do not prevent the American people from knowing about what's going on in battles overseas when those briefings are not taking place or not given by the head of an agency.

And I think that this legislation goes far too far in muzzling the American people's right to know. I yield the balance of my time.

Mr. CLINGER. The gentleman yields back the balance of his time. I am now pleased to recognize the gentleman from Minnesota, Mr. Gutknecht, for 5 minutes.

Mr. GUTKNECHT. Thank you, Mr. Chairman. First of all, let me say to my friend from Wisconsin that the problem with Cryptosporidium happened before this 104th Congress came.

I mean, I don't see how in the world that relates to what we're talking about here. What we're really talking about is using taxpayers' dollars to lobby for a particular point.

Mr. BARRETT. Will the gentleman yield briefly? Will the gentleman yield?

Mr. GUTKNECHT. Briefly for a question.

Mr. BARRETT. My point is that in my home community we experienced a disaster, and to somehow not let the rest of the American people know about that or know what the administration's views are so that does not happen again I think it would be a disservice.

And you're right. It did not happen in the 104th Congress, and I'm happy it didn't happen in the 104th Congress. I don't want to see that happen ever again anywhere, and I yield back. You can have your time back.

Mr. GUTKNECHT. But whether this bill passes or not, I think the chance are that it could happen. It might happen, but ultimately, it's local officials who are responsible.

But the issue is about using taxpayers' dollars to advance a particular point of view. Ms. Keener, how long have you been with the Veterans Administration?

Ms. KEENER. Approximately 3 years.

Mr. GUTKNECHT. Three years. You may not be able to answer this question. I suspect, and I don't know, and I'd like to find out have we ever before, has any other commissioner sent out notices in people's pay stubs about political issues pending?

Ms. KEENER. Well, I don't think any administrator or any Secretary ever sent out messages to employees in any means prior to Secretary Brown.

Mr. GUTKNECHT. OK. Thank you. Let me followup another point. My colleague from Wisconsin raised the issue of the Gulf War.

How would you have reacted? You mentioned that veterans have an interest in public policy issues before the Congress, and I would agree that that's true.

But I wonder how you would have reacted or I wonder how my colleagues would have reacted if, for example, the former Secretary

would have put out fax sheets, if you will, to American veterans about why they should support the President's position on the Gulf War.

I mean, I think that would have caused an outrage, and I don't believe that has ever happened before. Now, I will admit that we heard some evidence that this has happened in the past, but the pattern is getting more and more aggressive.

You've got polling being done. You've got lists being made up of friends and enemies of particular positions. You've got focus groups being done at taxpayers' expense.

I mean, it's like every administration seems to outdo the previous one. Frankly, I suspect that even my colleagues on the other side would feel very upset because, again, I would say veterans have a very keen interest—I would agree that they're interested in what's happening here in Washington.

But I think you would resist any attempt by this Congress to force you to mail out, "The FAX about the Contract with America," at least from our perspective.

I mean, it isn't a matter of who is right and who is wrong or who you agree with or who you disagree with. It really is about whether or not the taxpayers' dollars should be used to advance that.

I want to turn briefly to the gentleman from the EPA, because I have here, and I think they have made available to you a copy of a memorandum, a letter and memo that went out called, "A Facts Sheet to Various Chambers of Commerce."

Are you familiar with that letter?

Mr. CANNON. I'm looking through the materials that I have been provided. I don't find that included among them.

Mr. GUTKNECHT. We'll hand it down to you.

Mr. CLINGER. The clerk will provide Mr. Cannon with a copy of the letter.

Mr. GUTKNECHT. But it's my understanding that it went out to every Chamber of Commerce. Is that correct, to the best of your knowledge?

Mr. CANNON. I don't know what the distribution of this was. It appears, on its face, to have been sent by Mike McCabe, who is the Regional Administrator of region 3.

Mr. GUTKNECHT. Was that responding to questions by the Chamber of Commerce? Was that a solicited response?

Mr. CANNON. I'm not familiar with this document or the background, and therefore, it's difficult for me to say from what's in the document whether it was in response to specific inquiries or not.

Mr. GUTKNECHT. Could you find out for this committee? Was it directed? Who prepared the document? Who ordered it to be prepared? Was it solicited, and who at headquarters proved it?

Mr. GUTKNECHT. I mean, could you find out for the committee? And we'll keep the record open for an additional week so that you can prepare?

Mr. CANNON. We can respond to your questions.

[The information referred to follows:]

The document in question, entitled "Budget Fact Sheet," was sent in September 1995 to 128 Chambers of Commerce in Virginia in EPA Region III; and a similar one was sent to 104 members of the Chamber of Commerce in Delaware, also in Region III.

The preparation of the document was directed by Regional Administrator W. Michael McCabe, who is a non-career member of the Senior Executive Service. The other individuals who were involved with preparation of these documents were Elaine Wright, then director of the Office of External Affairs, GS–15; Richard Kampf, then deputy director of the Office of External Affairs, GS–15; Daniel Ryan, state liaison officer, GS–13; Christopher P. Thomas, state liaison officer, GS–13; and Michael Burke, state liaison officer, GS–13.

At the time the document was prepared, Regional Administrator Mike McCabe was receiving numerous inquiries regarding the environmental impacts of House-passed budget cuts. Region III decided, in the interest of efficiently communicating with those who were interested, to prepare the document in order to respond efficiently to numerous inquiries the Region had received regarding the environmental impacts of the House-passed budget cuts.

The document was prepared by Region III, and was not reviewed by EPA Headquarters prior to being sent out.

Mr. GUTKNECHT. But I understand a lot of people were upset when they got this letter. Are you aware of that?

Mr. CANNON. I'm not. I'm assuming that there would be people who received this who would not agree with——

Mr. GUTKNECHT. With your political point of view?

Mr. CANNON. Excuse me?

Mr. GUTKNECHT. With your political point of view? They wouldn't agree with your political point of view?

Mr. CANNON. The views expressed in this letter, yes.

Mr. GUTKNECHT. The views expressed in that letter. Do you think people should be compelled to pay for sending out a memo which advances a political point of view that they don't agree with?

Mr. CANNON. I believe, and I said this in my opening remarks, that part of our job as an executive agency is to communicate freely with the American public on issues relating to our programs, including our views concerning pending legislation where we think they have a substantial effect on our programs.

That's part of our job. I think that's part of what we understand we're in business to do, and therefore I think amounts of money expended in that effort are appropriately spent, yes.

Mr. GUTKNECHT. Do you think it's your responsibility to tell both sides? I mean, these are taxpayers, right? And this is a political debate, I think. Don't they have a right to hear both sides?

Mr. CANNON. I believe we have an obligation to discuss with people openly these issues. I think when we state our views——

Mr. GUTKNECHT. Now, the word "openly" is a pretty important word. When you say "openly," are you talking about both sides? Because there are two political points of view on these issues, aren't there?

Mr. CANNON. There are.

Mr. GUTKNECHT. OK. And if we're going to use the word "openly," are we going to be open? Are we going to tell both sides or just your side?

Mr. CANNON. I think we are entitled to and have a responsibility to communicate our view. I think we also have a responsibility where people respond to that to openly discuss the issues with them.

Mr. GUTKNECHT. But when you send something out on a letter like this and it says, "A Facts Sheet," and the facts are still in dispute, as a matter of fact, I think as of the date of this letter, I don't think anyone could predict exactly what the outcome of this debate

was going to be on environmental policy and what effect it was going to have in the State of Virginia.

I mean, to call that a facts sheet, many of us, at least on this side, would say that's a gross overstatement. Wouldn't you agree?

Mr. CANNON. I'm looking at the document, which I don't recall having seen before, and it appears to me that the document does have a substantial factual content to it.

Mr. CLINGER. The gentleman's time has expired.

Mr. GUTKNECHT. Thank you, Mr. Chairman.

Mr. CLINGER. The Chair now recognizes the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman. I don't understand what objection anybody would have for the Environmental Protection Agency sending out this letter.

I can't see what objection anybody would have with the administration expressing its point of view. I can't see why anybody would object to press releases that indicate Carol Browner's position on an issue being disseminated broadly even to people who may not ask for it.

It seems to me that the administration has a right to express its point of view just as these Republican Congressmen and Democratic Congressmen have a right to express our individual point of view.

I can't believe the gentleman from Minnesota put in his point of view on the Contract with America and then put in the administration's point of view in his taxpayer-subsidized newsletters.

I don't think there is anything wrong with his taking the position that I'm sure he took. In our country, it's better to have views out there, not muzzled, but out there so people can hear what others have to say.

It is not lobbying to express a point of view. It is not lobbying that might express a point of view that might get somebody else ired or worked up and want to do something about it.

That seems to be perfectly legitimate, and I just find this whole hearing very perplexing that a dissemination of information, even if it's a position of an administration, is in some way inappropriate.

If it's inappropriate because it's taxpayers' money, then it's inappropriate for the House of Representatives to be paying for Congressman Stockman's radio ads. I'm sure he's not giving both points of view.

It's inappropriate for the taxpayers to be subsidizing Congressmen's newsletters or our press releases. We can't put our press release on a fax and send it to a long list of people who may want to have it.

In fact, here is a press release that I'll put into the record by a David M. McIntosh. "McIntosh: Best way to help low wage workers is to cut their taxes."

Mr. SHADEGG. Will the gentleman yield?

Mr. WAXMAN. Not at this point. He's expressing his point of view. I may or may not agree with his point of view, but why shouldn't he be able to express his point of view?

This is on official congressional press release stationery. It has his congressional office on it. Who asked me to yield?

Mr. SHADEGG. I did.

Mr. WAXMAN. What's wrong with this?

Mr. SHADEGG. I think I asked you to yield so I could ask you a question. The question I'd like to ask you is do you think it's appropriate that we should appropriate funds for people in America who have used the opposite of each of these agencies; for example, people who believe that the budget for EPA is too large and that, in fact, taxpayers are overfunding some of those programs?

I mean, should we appropriate some money so that citizens can speak out with Government funds and send to chambers of commerce a letter containing their own taxpayer-paid-for fax sheet which——

Mr. WAXMAN. Let me reclaim my time. I see nothing wrong with expressing that point of view and having taxpayers subsidize it any more than I see any problem with taxpayers subsidizing Mr. McIntosh to put out his press statement or for you to put out your newsletter.

I just don't see anything wrong with it. It is not lobbying to disseminate information. I find something really troubling.

This committee had nonprofit groups in here, and we're trying to muzzle them from expressing their point of view, trying to keep the administration from expressing its point of view, and then we're going to make decisions on information that isn't given to us fully.

I do want to ask a question of Mr. Nordhaus because I think he'd be interested in responding to this. Mr. Tauzin testified this morning that DOE proposed to sell oil as part of the President's budget to pay for decommissioning a geologically compromised facility.

And he indicated he had opposed this provision and attempted to have it deleted during the appropriations process. He further indicated that he thought DOE had engaged in illegal lobbying on this issue.

Mr. Nordhaus, are agencies allowed to defend the President's budget before Congress? Was DOE's communication with Congress about the Tauzin amendment made by Senate-confirmed officials under current law? Are Senate-confirmed officials allowed to defend the President's budget to Congress?

And in your view, would Mr. Clinger's legislation have prohibited this contact by DOE?

Mr. NORDHAUS. Let me respond, Mr. Waxman. My understanding of the communication involved was that it was a communication from two Presidential appointees within the Department of Energy to Members of Congress, and it related to the President's position in his budget.

I don't think there is any question that this is permissible under existing law, and as far as I can tell, it is permissible under Mr. Clinger's proposed legislation.

Mr. WAXMAN. I guess I can't understand why anybody wouldn't want to make it permissible? Why would we want to keep the administration from testifying from its point of view what it wants, what it thinks it ought to have in the budget?

Why should we keep a Republican Member from asking questions that are contrary or making a statement that's contrary even though the taxpayers at the same time are subsidizing both people, both sides?

I just find this whole thing quite amazing. I think there may well be constitutional questions, but even if there are not, this policy that is being advanced to keep information that's not lobbying, getting information, sending information, it's just going too far, from my point of view.

I'd be pleased to yield to Mr. Mica. Mr. Mica is not here. I would have liked to have yielded to him just to show that I'm willing to do such a thing.

I'll yield back the balance of my time to you, Mr. Chairman.

Mr. CLINGER. I thank the gentleman for yielding back. I think, obviously, the intent of this legislation is not to prevent or to preclude or make it illegal for the administration to present their point of view on legislation. There is certainly legitimate ways. The President is very effective in getting across his point of view on legislation, and I think that would also commend many of the members of the Cabinet who have done an equally good job.

The purpose of this legislation is not to gag anybody. It is, in fact, however, to say that there should be limits to this.

As the gentleman from Minnesota said, it seems to me, at least, that we push the envelope a little further with each new administration, and it seems to me the reason I drafted the legislation was that we were getting a little far afield when we were actually promoting and putting together working groups to mount a major effort to get the word out to the grassroots.

There may not have been a specific direction to them to contact their Member of Congress, but I think it's disingenuous to say that the purpose was just to let them know.

I think the objective here was to, in fact, make sure that the position was relayed back to Members of Congress to influence how they might vote on that legislation.

I would refer again to some of the documents, Mr. Cannon, that were included in the EPA working group, questions such as this: "Which of the above products should we send to which constituencies? Should we consolidate some of the above products for general outreach purposes or for other constituencies?"

The list of agencies and others to whom the information was to be sent runs the gamut. In fact, I think the gentleman from Wisconsin alluded to the fact that this was sent to agencies that would not necessarily be in favor, but it was sent also to environmental groups to urge them to weigh in on the matter.

It was a very concerted and very orchestrated effort. I just wonder if you have any idea how many career employees were involved in this effort and what the overall expense that might have been involved in generating, in staffing the efforts of the EPA Contract with America Working Group.

Mr. CANNON. Mr. Chairman, I did have those figures, some figures that might be responsive to your question.

Mr. CLINGER. My understanding was that we heard earlier that over 300 senior officials were working on some aspect of opposition to H.R. 9, many of whom would be career—and we're not saying that this was all entirely illegal, but I think the concern I have is that if it wasn't inappropriate behavior, then, perhaps, we need to redefine what is appropriate behavior.

The objective of this legislation is to more narrowly define what would be considered inappropriate.

Mr. CANNON. I don't have the specific figures, Mr. Chairman, and we can provide those. What I would say, though, and I think the 300 figure, if that's accurate, may reflect an issue here.

And that is a lot of this time was spent analyzing the legislation and preparing materials that the agency would need, in any event, to assess its impacts.

I think a very small fraction of that resource, whatever it turns out to be, was engaged in actually sending this material out to folks.

The analysis and the review and deciding whether this is legislation that the agency can support or not is, I think everyone would agree, a fundamental activity that we would have to go through.

We may disagree about the distribution. Our view is that it's also a fundamental activity for us to get our views out in a broad way to the American public.

And I think that's what these materials reflect. As people have commented, this list is by no means selective in terms of the kinds of groups or interests of the groups that are being sent materials.

Mr. CLINGER. The gentleman from Virginia will take the Chair.

Mr. DAVIS [presiding]. I think we've heard some good policy arguments. I think it's constitutional. I think Congress can decide how money is going to be spent, put reasonable restraints on that, but I don't think we want to go too far.

Administrations come and go. Rules will apply to both sides. Let me ask, if I can, Mr. Cannon, I don't know if we've gotten into the Master List Unofficial House Moderates, Document 00024984. Do you have that in front of you? If not, if the staff could find that and make sure you get it.

This list has caused me considerable embarrassment. I would just ask, first of all, do you know who prepared this list?

Mr. CANNON. May I take a moment, Mr. Chairman?

Mr. DAVIS. Sure. Please.

Mr. CANNON. No, sir. I don't.

Mr. DAVIS. That's too bad. This is produced by your agency. You may not be able to answer some of the questions. There are some factual errors on it. Do you know if this was prepared in-house at the EPA or if this was provided by an outside organization who would tend to try to, perhaps, influence EPA decisions, some outside interest group?

Mr. CANNON. This is the first time I have looked at this document.

Mr. DAVIS. All right. See if you can come back and let us know who prepared this.

Mr. CANNON. Right.

Mr. DAVIS. Can you do that?

Mr. CANNON. Yes.

Mr. DAVIS. My concerns are as follows: We have a list of Unofficial House Moderates. Looking down the list, Roscoe Bartlett, Tom Coburn, and I looked for Davis. I mean, I'm on every other list of House moderates. And I was gone. I wasn't there. Rick White. You have a comment here he took Swift's old district.

He didn't take Swift's. That was Metcalf. There are a number of factual errors on here as we go through, which may say something about whoever prepared this list, you know, knowledge of the process and facts.

But you have no idea where this list came from? Do you know what it was used for?

Mr. CANNON. I can't tell you. I mean, I could speculate, but I don't feel it would be useful to you or to the committee.

Mr. DAVIS. I just wish you could find out who prepared it, what it was used for. I think the committee has a right. I think members whose names are here who have got comments about their voting behavior or their other characteristics that are located on here ought to see what someone over at the EPA who is utilizing this thinks of them.

Do you feel this is an appropriate use of taxpayer dollars?

Mr. CANNON. Well, I will say, and this is not in specific reference to this document, since I don't——

Mr. DAVIS. The document is in front of you. It speaks for itself.

Mr. CANNON. I don't have the details of the background or how it was used. Under the Anti-Lobbying Act, which regulates the agency's behavior on lobbying issues, there is nothing, as we understand the Justice Department guidelines, that precludes the agency from directly contacting Members of Congress on legislative issues of concern to the agency.

So whether this list was used or other means were used as a basis for contacting members, that would be perfectly appropriate and lawful.

Mr. DAVIS. Just from seeing this for the first time and then talking to a number of members, they were never contacted by the agency. They were contacted by outside groups.

Whether this was the reason for that or if this was part of a targeting scheme where the administration and EPA shared this information with outside groups to help them target or not I don't know.

Let me ask you, would you feel it would be an appropriate use for the EPA or any Government agency to prepare a list of vulnerable members based on their political vulnerability and then share that, give that to outside groups and say go to it?

Mr. CANNON. If there was an express communication with an outside agency encouraging them to contact Members of Congress, that would create an issue under the Anti-Lobbying Act, yes.

Mr. DAVIS. What do you mean it would create an issue? Do you think it would be appropriate, for example, let's just say with this list, if this were prepared in-house by political liaisons in the know, so to speak, of giving targets and is giving it to outside groups and saying, "Well, here they are. Go after them. Here are the members we think are vulnerable"?

Let's look at some of these designations. This is very interesting in the back. Some of the designations don't just go to members who are voting.

They have the number of League of Conservation voters members in their districts. That's a good way to make public policy, I guess.

The activities, they're either vulnerable to an electorate, persuadable, perhaps on philosophical grounds, purely vulnerable, which I would take to mean politically could be pressured or prodigal friends or Democrats.

Look, the administration has every right to get its point of view across. Actually, they've done a pretty good job of it the last few months, in my judgment, without doing a lot of this.

But even so, I think some comments today make a good case that you have every right to communicate with groups in terms of what's going on in the agencies.

I probably don't feel the same as some of the other members up here on the legislation, but I think this really runs a little far afield.

Mr. CANNON. Well, again, I can't be very helpful to you because I don't know how it was compiled or how it was used.

Mr. DAVIS. But if this information were given to outside groups for lobbying in terms of vulnerable, persuadable, purely vulnerable, do you think that creates some issue and perhaps some illegality under the current statutes?

Mr. CANNON. If this were part of a substantial grassroots lobbying campaign which expressly called on the public to contact Congress, there would certainly be an issue under the Anti-Lobbying Act.

Mr. DAVIS. That's what I want. I just want to make sure we were understanding the law the same way. I think we'll rely on you to try to find out a little more, if you'll get back to us, who prepared it, what it was used for, who put these lists together and why I'm missing. I'm a member of the Tuesday Lunch Bunch. I feel almost dissed.

I got members come up to me saying, "Hey, Davis, Coburn is on the moderate list. You're not on it. What's wrong?"

Mr. CANNON. We could, I guess, consider amending the list to make it more accurate.

Mr. DAVIS. When we find out who prepared it, maybe you could share with them the recent rating from the different agencies, and maybe they'll make revisions as we go through. I would now recognize Mr. Mica, the gentleman from Florida.

Mr. MICA. Thank you, Mr. Chairman. Really, he just become more and more appalled, more shocked, more outraged every time, particularly EPA.

You set the standard for this type of questionable activity, your agency. Sometimes it's the gang that can't shoot straight.

Maybe you're aware a year ago they sent a memo to my office for a meeting and listed my two political opponents as staffers in the previous election. Were you aware of that fiasco?

Mr. CANNON. I have heard about that.

Mr. DAVIS. Sounds like he's hearing about it again today.

Mr. MICA. I mean, that's a gang that can't shoot straight. It just goes on and on and on. Now, I've gotten a hold of some internal memos, when I raised questions about your EPA PTA contract, and that's what I want to question about.

The more I learn the more I'm just absolutely alarmed. I'm going to ask the clerk to distribute these. Here is a copy for the others

in case they don't have them, all of the things I'm going to question about.

Mr. Cannon, I'm sure you're aware of some of the allegations that EPA has improperly given a grant to the National PTA for the purpose of fostering the PTA's opposition to proposed reductions in EPA's budget.

During EPA's appropriation hearing on April 16, Administrator Browner told a VA, HUD and Independent Agency Subcommittee of the Appropriations Committee that EPA had taken administrative action against an employee in connection with the allegations.

She told the chairman of that subcommittee, Mr. Myers, that the employee in question had been reprimanded. Is that your understanding as well?

Mr. CANNON. I cannot affirm or deny that.

Mr. MICA. Well, let me hand you a copy of an internal memorandum that I got. That's No. 1, and I'd like that to be a part of the record, if it could be.

This is a copy of an internal memorandum from Ann Lassiter, which is, apparently, the personnel action Ms. Browner referred to.

In keeping with Administrator Browner's appropriate concern for the privacy of employees in question, I've had the name of the affected employee stricken, though I would be happy to provide it to you, if you wish.

Mr. Chairman, I hope that this can be made a part of the record.

Mr. DAVIS. Without objection.

[The information referred to follows:]

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, March 21, 1996.

MEMORANDUM

Subject: Adherence to Anti-Lobbying Regulations
From: Anne Lassiter, Director
Enforcement Capacity and Outreach Office
To:
Senior Communications Specialist

This memo is in reference to an item you submitted for the January 19, 1996 OECA weekly report. That item led to a charge from Rep. John Mica (R., Florida) that EPA was engaging in improper lobbying. Submitted under the heading "Agency-wide Group Working with the National PTA," your item read as follows:

"Staff from 11 different EPA offices met to discuss the role of the new environmental coordinator hired under an EPA cooperative agreement, funded largely by Office of Radon. The National Parent Teachers Association will be writing an environmental awareness newsletter that will potentially reach millions of PTA members nationwide. The newsletter will include environmental buzz words, terms and definitions, hotlines and news items. *The PTA could become a major alley for the Agency in preventing Congress from slashing our budget, but their voices need to be heard (emphasis added).*"

As you are aware, that last sentence led Rep. Mica to charge in a statement made in the House of Representatives on March 6, 1996, that EPA was using taxpayer funds to "start a campaign against Congress". He apparently reached this conclusion after becoming aware of an article in the January 31, 1996 issue of "EPA Watch," which had referred to an OECA "memo" of January 19, 1996 which allegedly encouraged the national Parent-Teachers Association (PTA) to lobby Congress against EPA budget cuts. The "memo" cited by Rep. Mica was, in fact, the OECA weekly report.

Upon learning of Rep. Mica's comments, you notified Peter Rosenberg, the Associate Office Director, that you believed the item which you authored for the internal OECA weekly report may have been the "memo" the congressman referred to. In subsequent conversations, you have provided additional facts about the nature of

your involvement with the workgroup interacting with the PTA and the significance of your comments in the weekly report.

For the record, I would like to summarize my understanding of the facts you have presented.

Your submission to the OECA weekly dealt with your participation on an EPA workgroup which is helping implement the Office of Radon's Cooperative Agreement with the National Parent Teachers Association. You have stated your understanding that the purpose of the Agreement is to increase awareness and understanding among PTA members of environmental concerns and that you were asked by the Office of Radon to serve on the Agency workgroup implementing the Cooperative Agreement because of your experience in developing the EPA document "The Guide to Environmental Issues," as well as other EPA materials for the public. You also stated that your specific activities for the workgroup consisted of attending once-monthly meetings of the workgroup, providing the PTA Environmental Coordinator with a few copies of the "Guide to Environmental Issues," and sending the PTA, at its request, ideas for Earth Day activities parents can conduct with their children. You also stated that you commented on a draft PTA environmental newsletter to ensure its accuracy, specifically, by editing the definition of "Superfund."

You have stated that at no time has the workgroup ever considered or discussed the use of the PTA as an "ally" to lobby Congress on the Agency's behalf, nor has it ever discussed such a possibility with representatives of the PTA. Rather, you stated that the sentence referring to the PTA as a potential "ally" of the Agency represented your own personal view. Furthermore, you stated that this personal view had not been shared with the workgroup and you have not asked any outside organization to contact members of Congress to express concern about pending issues.

On the basis of these activities and our discussions, I am satisfied that you did not violate any of the provisions of the Anti-Lobbying Act. However, I do want to discuss some "lessons to be learned" from the incident and reiterate the importance of knowing and acting in conformity with the legal restrictions on lobbying.

It is essential that public employees scrupulously avoid even the appearance of engaging in such actions when interacting with external groups. While your subsequent statements to me make it clear that no lobbying of the PTA was contemplated or undertaken, the sentence you included in the weekly report could, and apparently did, lead others to believe that lobbying might have occurred. Such "editorial" statements, which can create the appearance of concerns under the Anti-Lobbying Act, should be avoided.

In order to help you be fully aware of the formal code of conduct for Agency employees regarding proper and improper contacts with groups outside of EPA, I will meet with you to discuss your obligations under the Anti-Lobbying Act. You may also want to consult directly with the appropriate OGC personnel for further information.

Mr. MICA. The only adverse action taken against the employee, as stated in the memo, is some lessons to be learned from the incident and to meet with the employees to discuss legal obligations under the Anti-Lobbying Act.

Does that sound like a reprimand to you?

Mr. CANNON. Mr. Congressman, I have a concern here. I think we are into an arena of talking about possible, it appears, or actual reprimands or other action taken against an employee.

I'm concerned that there are Privacy Act concerns relating to that employee.

Mr. MICA. Well, we haven't mentioned that employee, but does that sound like a reprimand to you? Can you provide the committee with any information, if there has been any reprimand, anything additional put in the employee's personnel record or if that's the extent of it? And you can respond to the committee, if you would. Would you do that?

Mr. CANNON. We will do that consistent with the employee's Privacy Act rights.

Mr. MICA. Yes. Let me, if I may, turn to the substance of the allegations concerning EPA's funding of grants to the EPA.

According to your employee, one of the purposes of the grant was to allow the voices of the PTA members to be heard on EPA budget and other environmental issues.

Mr. Chairman, I'd like to make an internal OECA memorandum part of the record as well.

Mr. DAVIS. Hearing no objection, so ordered.

Mr. MICA. Now, as Ms. Lassiter's memo says, the employee denies that he really meant, he said, what I wrote in the memo. Instead, he now says the memo is just his personal view and that he never discussed the viewpoint with anybody.

This kind of reminds me poor Josh Steiner lying to his diary. I'd ask you if you would take a look at that memorandum and see if that's your interpretation. It's not necessary that you respond. You can respond in writing.

Mr. CANNON. I don't have a copy of the document.

Mr. MICA. She'll give you a copy of that document.

Mr. CANNON. I may have it here. Is this a March 21, 1996, document?

Mr. MICA. Yes. What's interesting, when we asked for some of the documents, I have another document I'd like to provide you with and also get your response.

This is a copy of an e-mail which we obtained, and we've also stricken the employees' names. It does look like they do pay some attention to what I say down there, but this is an interesting memory. Mr. Chairman, I'd like it made part of the record, if I may.

Mr. DAVIS. Without objection, so ordered.

[The information referred to follows:]

From:
To:
Date:
Subject: Important: Please Read ASAP—Reply

Unofficial or not, the allegation that you or any of us is using the Cooperative Agreement with the National Parent Teachers Association to "lobby Congress" is an outrageous and undeserved affrontery to our efforts as responsible Federal professionals to make efficient good use of our education resources on behalf of the American people. In my opinion, such ridiculous and irresponsible accusations border on actionable slander and merit a swift and assertive response. I am genuinely outraged and offended that our intelligent and thoughtful good work is irresponsibly twisted for handy fodder by some self-serving fool in reckless need of a political expedient. It is outrageous and unfair.

3/12/96 10:06 am

Attached is an unofficial house congressional record concerning an article from EPA Watch entitled "Mica expresses outrage at out-of-control EPA". It references our work with PTA. Basically, it suggests that EPA is using PTA to lobby Congress. I'm currently drafting a note to workgroup participants to reinforce the objectives of this cooperative. This cooperative agreement is not to "enlist PTA to battle Congress over budget cuts." To avoid any future misperception, please be careful not to use language that suggests EPA is using PTA to lobby Congress. This will encourage an unnecessary and time-consuming review of the EPA/PTA cooperative agreement and workgroup participant activities. The workplan of the cooperative agreement provides a detailed description of appropriate activities under this agreement. Please refer to your copy of the EPA/PTA cooperative agreement when developing correspondence or when people preparing to discuss cooperative agreement activities.

Mr. MICA. This is dated March 12, 1996, but the Lassiter memo of March 21 directing how this response should come in.

It just starts out, "Attached is unofficial House congressional record concerning an article from EPA Watch entitled, 'Mica Expresses Outrage at Out-of Control EPA.'"

I'll drop down into it. It says, "Please be careful not to use language that suggests EPA is using PTA to lobby Congress."

So they were helping them develop the memo that helped them reinterpret what their original intent is. I think I would like that made a part of the record. I'd also be glad to have you respond in writing to the committee, since my time has expired. Mr. Chairman, I'd like to get back into this, but I see my time has expired.

Mr. DAVIS. Well, to keep things moving, I'm going to have to leave, but I will turn the gavel over to Mr. Mica. I'll turn it over to you, and you can recognize the gentleman from California.

Mr. CANNON. If I may respond to the Congressman just on one point, the grants that we give to the PTA and other organizations have limits in them that preclude any moneys we give to these organizations from being used for lobbying purposes.

And I would expect that to have been a provision in the PTA grant and to be adhered to by the PTA in carrying out the conditions of the grant.

Mr. MICA [presiding]. I appreciate your response. I will recognize Mr. Horn, and then I'll come back to my line of questioning. Mr. Horn, you're recognized for 5 minutes.

Mr. HORN. Thank you very much, Mr. Chairman. Mr. Nordhaus, if I might, I'd like to have a dialog with you.

Let me ask were you in the Department of Energy prior to 1993?

Mr. NORDHAUS. I was general counsel of the Federal Energy Regulatory Commission from 1977 to 1980, and at that time as now FERC was part of the Department of Energy. But aside from that, I've not had any prior service in the Department of Energy.

Mr. HORN. In other words, you weren't there under the Bush administration?

Mr. NORDHAUS. No, sir.

Mr. HORN. OK. Because there was another question I'd like to ask all of you later, anybody, that has seen two administrations working.

You're familiar with the letter of June 12, 1995, that was issued by the Deputy Secretary of Energy, I believe?

Mr. NORDHAUS. Yes, sir, I am.

Mr. HORN. Let me just go through some of those things with you, if I might, for the record. I'm looking at that letter, and I'm just curious why was the letter prepared?

Mr. NORDHAUS. I'd be happy to share with you my understanding from my conversations with former Deputy Secretary White, if that would be helpful.

Then Deputy Secretary White originally undertook to send out a questionnaire to a number of executives and trade associations in the oil and gas industry in order to elicit some information as to whether the department was doing its job and where the department should go from a policy point of view on a number of issues.

When my office reviewed the draft of the letter, we advised him that the questionnaire could not be sent out without clearance by OMB under the Paperwork Reduction Act.

He thereafter decided that he did want the input from the industry, and rather than sending out a questionnaire, modified the letter.

So it was just a general request for their views after he laid out what he thought was important in Department's work and what he was trying to do.

My understanding from talking to Mr. White, and from what I've been able to learn about the circumstances of this, was that the real object of this letter was to get input from the public about the Department's work.

As far as I can tell, it was not aimed at influencing the outcome of the debate, then debate, in the House and Senate.

Mr. HORN. Who prepared the letter?

Mr. NORDHAUS. My understanding is that it was largely Mr. White's work. As far as the letter itself, he did ask staff to prepare the charts and attached materials.

Mr. HORN. Was it his idea, or was it someone else's idea that he should send out this letter?

Mr. NORDHAUS. My understanding, from talking to him and from others, is that it was entirely his idea.

Mr. HORN. Now, as I understand it, this package, as you suggest there, was more than a letter. Can you tell me what was included in that letter?

Mr. NORDHAUS. Well, included with the letter I have the materials that your staff just provided, the committee staff just provided me with some other statistical and other materials, Gulf of Mexico operating rotary rigs weekly average, oil imports from the Persian Gulf, DOE's R&D budget, the natural gas R&D budget, the overall DOE budget and a couple of clips relating to the importance of the DOE research program to the oil and gas industry.

Mr. HORN. I understand from staff that, apparently, the first annual progress report titled, "The Domestic Natural Gas and Oil Initiative," spring 1995 was included also. Is that correct?

Mr. NORDHAUS. What I was working from was your handout, not my copy. Let me take a look at that.

Mr. HORN. Well, I didn't know this either. It was just handed to me, and I'm not sure it was included or not, but staff claims it was included. It's a spring 1995 document.

Mr. NORDHAUS. If you'll give me a second, I'll find it in my material.

Mr. HORN. Mr. Chairman, I'd like for the letter and attachments that I've noted, except for the 80 pages, put in the record at this point so we know what we're talking about.

Mr. CLINGER. Without objection, so ordered.

[The provided material follows:]

THE DEPUTY SECRETARY OF ENERGY,
Washington, DC, June 12, 1995.

Twenty years ago I came to Washington to work to deregulate oil and gas prices. It made no sense to suppress the supply of commodities we dearly needed. After that experience, I worked with energy companies in the private sector for many years. Those years convinced me that the American energy industry had the genius to solve most of our energy problems.

So I wondered whether it made sense to pull up roots in Houston and come to the Department of Energy. In my view, the energy industry had not fared well in government or the markets during the 1980s, and all of us needed to do what we could to create a climate in which the oil and gas industry could thrive in an in-

creasingly competitive marketplace. I write to tell you where we think we are, and to seek your advice.

The bad news. Low oil prices and the natural gas glut in the 1980s drove a lot of good people and much money out of the oil and gas business. Service companies feared they would never get paid. Pipelines pondered bankruptcy. Enrollments in petroleum engineering and geology programs plummeted. In just five years from 1985–1990, imports from the Persian Gulf rose by over 500 percent.

The good news. The days of massive excess deliverability in gas are over, so prices should be strong over the long run. Worldwide demand for oil is booming, with only a fraction of the excess worldwide productive capacity that we had ten years ago. All survivors in the industry have cut their overhead and costs, so as prices rebound earnings should be stronger than ever. Government has gotten out of the price control business, and many of us in government explicitly champion free markets and investment incentives. Environmental practices of the industry have improved dramatically from those of a generation ago.

More good news. The future of the oil and gas industry, like the future of all Americans, was mortgaged during the 1980s when the federal government spent over $3 trillion more than it collected. After the American people sounded the alarm in 1992, President Clinton fought a hard battle to obtain budgets with shrinking deficits, and now the Congressional leadership has also gotten into the deficit reduction act.

At the Department of Energy we have cut our budget by $1 billion a year during our first two years, after it had been increased by an average of about $1 billion a year every year for seven years before we got here in 1993! We will cut the budget by another $14 billion over the next five years, by pushing costs down, cutting employment, and privatizing over $7.1 billion in assets.

The role of the federal government. The U.S. government since World War II has played a significant role in promoting scientific research and development to support the technological base of this nation. Much of this work has occurred within the Department of Energy; its labs have produced 57 Nobel Prize winners. In fact, we have more than doubled the amount we invested with industry in oil and gas R&D in the last two years, while dramatically reducing our overall budget by cutting overhead. We have also worked with the industry to open large new markets for natural gas. I urge you to read the materials enclosed with this letter—they describe vividly the fruits of these efforts.

Reforming laws and regulations. We are helping move legislation through Congress to lower industry costs by reforming the Oil Pollution Act of 1990, allowing reduced royalties on offshore and heavy oil production, and permitting the price of oil produced in Alaska and California to rise to world market levels. With our encouragement and help, the Department of Interior has granted most of the royalty relief requested on stripper wells, and will reform its calculation of payments due on royalties for natural gas to make those liabilities more predictable.

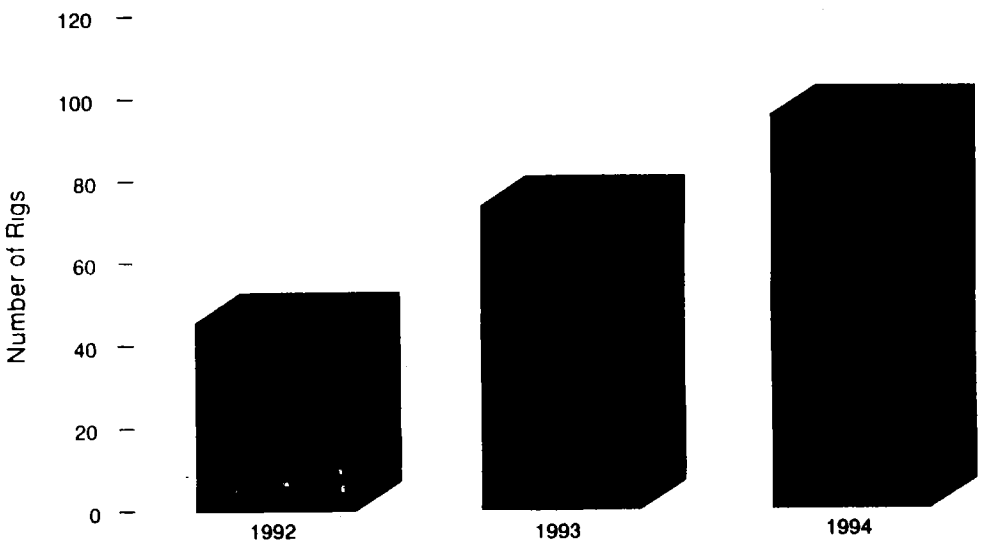
The threat to a balanced energy policy. President Clinton found earlier this year that the current import trend poses a danger to national security, just as President Reagan had seven years ago. Now, however, some in Congress want to eliminate over 80 percent of the federal funding for energy R&D of all types, sell the oil stockpiled in the Strategic Petroleum Reserve in competition with the private sector, and eliminate all tax incentives by labeling them "corporate welfare." We are fighting back.

People most knowledgeable about the energy business should always be our leaders in energy policy. So please take the time to write me and let us know what you think about the direction in which we are heading. And come see me sometime.

Sincerely,

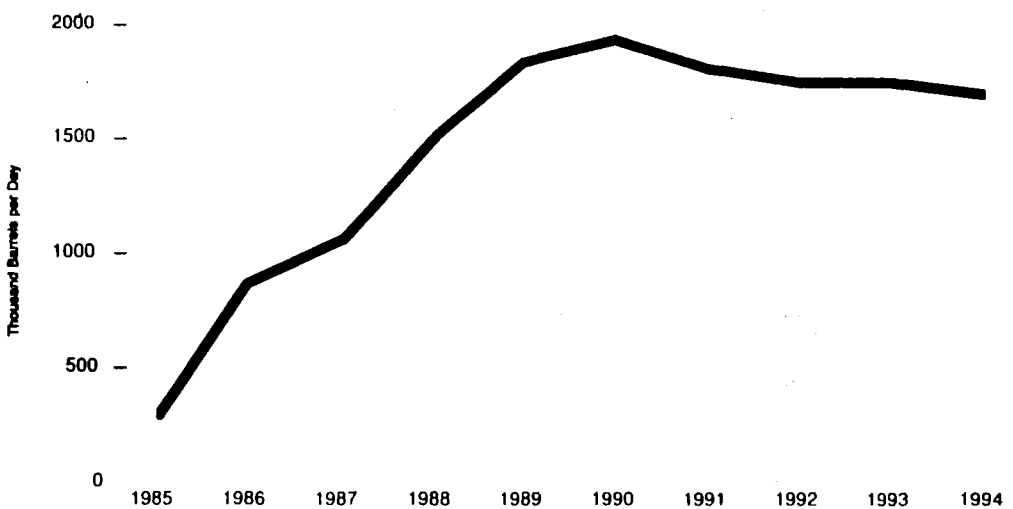
BILL WHITE.

Gulf of Mexico Operating Rotary Rigs, Weekly Average



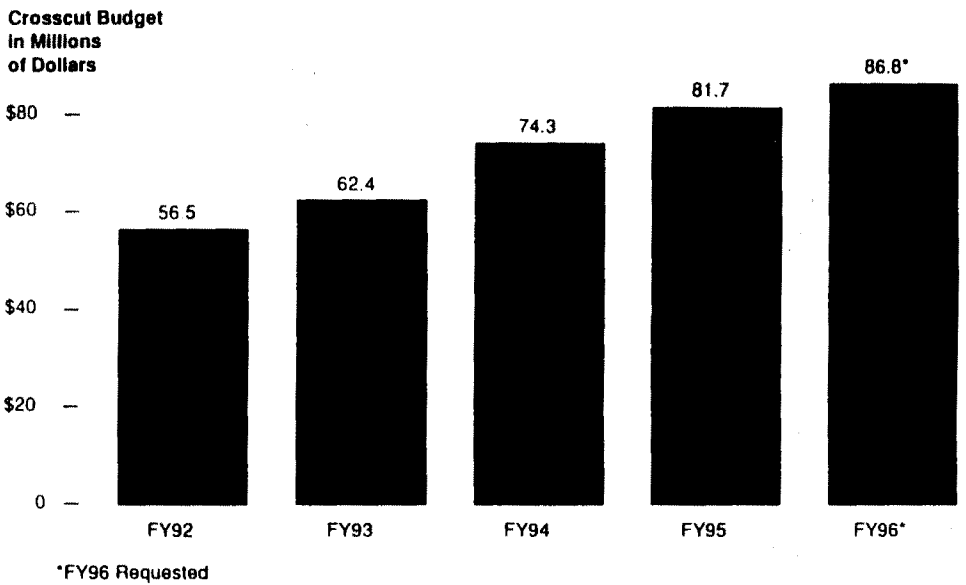
Source: Baker-Hughes

U.S. Oil Imports from the Persian Gulf

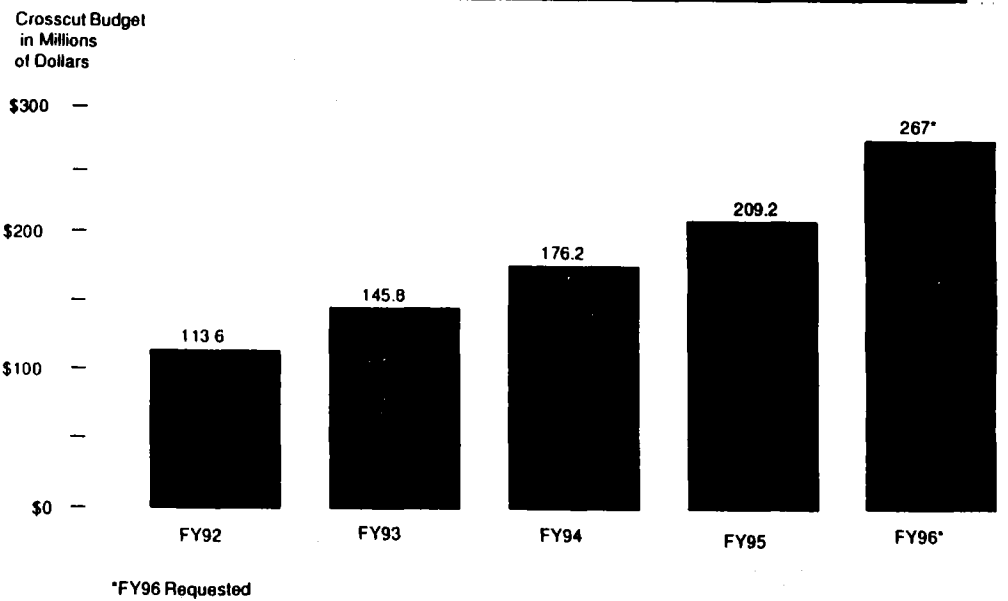


Source: Energy Information Administration, International Petroleum Statistics Report, April 1995.
Countries: Iraq, Kuwait, Qatar, United Arab Emirates, Saudi Arabia, and Iran.

Department of Energy's Petroleum R&D Budget

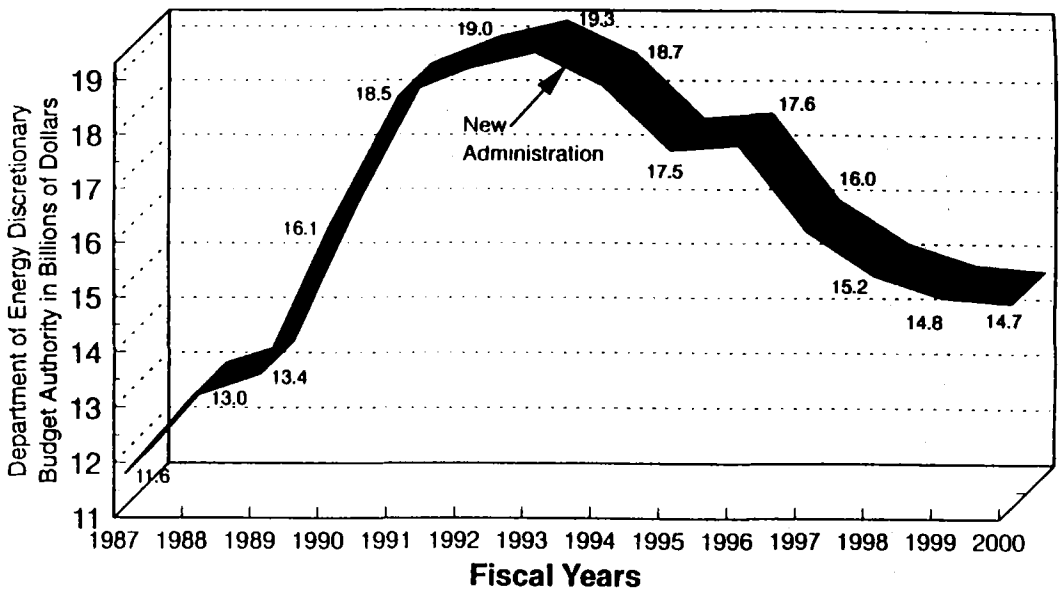


Department of Energy's Natural Gas R&D Budget



*FY96 Requested

Department of Energy
Reducing the Cost to the Taxpayer



Excludes Bonneville Power Administration and Payments to States in all years. Treats Uranium Enrichment receipt consistently across all years. 1987 through 1995 reflect actual appropriations. 1996 shows the 1996 President's proposed amended request to Congress. 1997 through 2000 reflect the outyear estimates associated with the 1996 request.

The Dallas Morning News Monday, May 15, 1995

Oil industry speaks out against federal budget cuts in research

Continued from Page 1D.

$150 million in fiscal 1994. The amount would be cut to $100 million by 2000, which would be followed by the elimination of the Energy Department two years later, department officials said.

"The House bill guts the research and development efforts in fossil energy and energy efficiency," said Deputy Energy Secretary Bill White, a former Texas oilman. "It's very shortsighted to cut back on this type of research when we think it's necessary to do everything possible to protect (the domestic oil and gas) industry."

Mr. Kasich's office and a House Budget Committee spokesman didn't return phone calls.

Energy Department officials don't dispute the need for less spending. They point out that the Clinton administration has cut $2 billion from the $19.5 billion DOE budget inherited from the Bush administration. They also note that President Clinton has pledged to get the Energy Department budget under $15 billion by 2000.

But most of that money is spent to maintain, dismantle or clean up the nation's nuclear weapons stockpile, leaving an ever-shrinking amount for energy research. And that worries some in the industry.

"If you don't do the proper amount of research and development and get it deployed out in the field, then you'll keep seeing declining U.S. production," said Raymond Levey, the associate director for the Bureau of Economic Geology's oil resources program at the University of Texas at Austin, which is involved in Energy Department research.

"How people (in other states) don't see how that's going to ultimately affect them just boggles my mind."

Singled out for praise by Dr. Levey and others is an underground Energy Department program aimed at giving oil and gas producers access to the data and research capabilities of DOE's national laboratories, which were once deeply involved in Cold War weapons development. The Energy Department is putting up $27 million to help fund the program's 31 projects, while the remaining $38 million is being shouldered by the industry.

The program includes some of the industry's biggest names, including Irving-based Exxon Corp., Chevron Corp. and Amoco Corp. The University of Texas and University of Houston are involved, along with such famed federal research facilities as the Los Alamos National Laboratory.

But the biggest potential beneficiaries could be the Oil Patch's smallest players, industry experts and executives said.

Technology plays a preeminent role in the search for oil and natural gas, and often the latest tools and techniques are closely held by the big companies who can afford to fund research and development. If the technology does become available, it's often too expensive for the smallest producers.

An even more alarming trend, industry experts said, is the decline in research and development spending by the cost-conscious major oil companies — a trend that could cause the U.S. industry to lose its place as the leader in the global oil and gas industry, the experts said.

"I'm not a proponent for big government, but there are some critical (DOE) projects" that are helping to improve the efficiency and success of the domestic oil industry, said Dennis Comis, a Houston geologist and computer specialist who has worked for several exploration companies.

Under one ongoing DOE program, college students are putting oil and gas well data on CD-ROMs. This program could put well cross-sections that are invaluable in the search for new oil in the hands of anyone with a computer, for a fraction of current costs, Mr. Comis said. The cost of the $12 million program is being split by the Energy Department and industry.

Another DOE-sponsored program aims to put this well data on the Internet, which would make the information widely available to the nation's smallest producers.

"This definitely is 'not pork,'" said Mr. Comis. "There will be tangible results," such as more discoveries and increased production by independent companies.

"One of the things we're trying to do here is help the small independents," said Mr. Schneider. "They don't have any money for research and development."

To Mr. Schneider and others, it makes good business sense to put the Energy Department's national laboratories to work helping the U.S. oil industry — particularly at a time when foreign oil imports are supplying about 50 percent of the nation's needs. Scrapping these programs is a classic case of being penny-wise and pound-foolish, they contend.

Already, the threat of budget cuts is slowing down programs that have just gotten under way. The long-term impact could be much worse, program supporters said.

"I was probably skeptical of some of these programs in the beginning," said Mr. Schneider. "But I'm a Republican sitting here telling you this Democratic administration is doing some things for the industry that haven't been done in the past. There are some programs we really need to support here."

Mr. NORDHAUS. Our staff shows what was included was the domestic natural gas, the copy of the Department's report on the domestic oil and natural gas initiative plus a summary of it and probably some other materials that were not included in the handout you just gave me.

Mr. HORN. What organizations was the letter sent to, do you know?

Mr. NORDHAUS. I do not have the full list. It was, apparently, sent out to a mailing list that had been developed by the Department of oil and gas executives and trade associations.

I think our response to the committee's question 5 describes in general terms who is on the mailing list, including a number of Members of Congress, Governors, trade associations, and that's about as much detail as I have.

I don't have access to the full mailing list, but it was quite extensive.

Mr. HORN. Do you know how many, roughly?

Mr. NORDHAUS. My understanding is around 13,000.

Mr. HORN. That sounds about right. Here is the list, actually. I look at a ream being 500 pages, so I figure it's over 600.

But at 600 you sent it to, roughly, 14,400, because there is 24 names to a page here, which does include Members of Congress, including myself and my brother, who is a distinguished energy expert. I noticed he was there, too. He never sent me the letter, however, so I'm going to have to talk to him about that.

Mr. CLINGER. The gentleman's time has expired.

Mr. HORN. Can I proceed out of order to go through this?

Mr. CLINGER. I think we need to give Mr. Shays an opportunity to question the witness. I would now recognize the gentleman from Connecticut. We can come back.

Mr. HORN. Maybe we could then combine the answers.

Mr. SHAYS. Thank you. Mr. Chairman, first I'd like to thank you for conducting this hearing and to let you know on principle I am very supportive of what you're attempting to accomplish.

I would like to focus on the two areas where I have basic oversight and particularly the Department of Labor. Mr. McAteer, I would love you to just give me a brief description of the history of appropriations riders and explain what restrictions you have on the agency in preparing materials for the kind of legislation pending before Congress.

Mr. MCATEER. Mr. Shays, we're subject to the appropriation rider that Chairman Clinger mentioned earlier in your absence. And that appropriation rider, I'll have to try to find the language for you, but that appropriation rider limits our actions with regard to legislation pending before Congress and is similar in text to the language of the proposed Clinger bill.

Mr. SHAYS. With that in mind, could you, kind of, help sort out for me the two different memorandums on restrictions on lobbying? And they both have the same title, but one is dated April 11, 1985, and it's The Executive Staff, Jerry Thorn, Acting Solicitor. Do you have that document in front of you?

And then you have another statement from Solicitor of Labor, Thomas Williamson, and it's entitled, "Restrictions on Lobbying," and it's July 25, 1994. Do you have both of those?

Mr. MCATEER. I think so, Congressman.

Mr. SHAYS. One is April 11, 1985, and one is July 25, 1994.

Mr. MCATEER. I have a memorandum from Jerry Thorn——

Mr. SHAYS. You know what, it may be 1989. I'm sorry, it is 1989. It's a faded copy here.

Mr. MCATEER. OK.

Mr. SHAYS. Do you have both of those?

Mr. MCATEER. I do have.

[The information referred to follows:]

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SOLICITOR,
Washington, DC, April 11, 1989.

Memorandum for: The Executive Staff

From: Jerry G. Thorn
Acting Solicitor

Subject: Restrictions on Lobbying

This memorandum discusses the statutory restrictions on lobbying with appropriated funds. Simply stated, the so-called "Anti-Lobbying Act" (18 U.S.C. § 1913) prohibits the use of appropriated funds, directly or indirectly, to pay for "any personal services, advertisement, telegram, telephone, letter, printed or written matter or other device" intended to influence a Member of Congress in acting upon legislation, before or after its introduction. There is also a DOL Appropriation Act rider, which bars the use of appropriated funds for "publicity or propaganda purposes" designed to support or defeat legislation pending before Congress.

Under 18 U.S.C. § 1913, an employee of the Executive Branch, while acting in his or her official capacity, may communicate with a Member of Congress for the purpose of providing information or soliciting that Member's support for the Administration's position on matters before Congress, whether or not such contact is invited and whether or not specific legislation is pending. Thus, the ordinary and traditional interaction between the Executive and Legislative branches is permitted. Likewise, it is not improper for an Executive Branch employee to provide legitimate informational and background material to the public explaining an Administration policy.

Problems arise where employees become involved, directly or indirectly, in efforts to induce or encourage members of the public to lobby Members of Congress on Administration programs or legislation. Unfortunately, the line separating proper and improper conduct is imprecise and the propriety of an activity may well depend on each individual situation. The following comments are intended to provide general guidance for some frequently encountered contacts and activities.

DOL officials may ordinarily speak about the Labor Department's legislative positions in meetings with individuals or groups, at public forums, at news conferences, and during news interviews. But where these appearances become so excessive as to be deemed to be a publicity campaign, the activity might be challenged. Any unusual amount of contact with the private sector by persons who do not ordinarily engage in such activities could be viewed as evidence of prohibited conduct.

In addition, appropriated funds may not be used to produce written, printed or electronic communications for distribution with the intent to induce members of the public to lobby Members of Congress. For example, a mailing to members of the public initiated by DOL personnel, stating the Administration's position and asking the recipients to contact their Senators and Representatives in support of that position must be avoided. Moreover, asking anyone to contact their elected representatives must also be avoided in communications sent in response to inquiries received by the Department of Labor. However, responses to incoming communications may include information which responds to the specific inquiries as well as explanations of the Administration's position on matters of public policy, including proposed legislation.

Massive distribution of unsolicited copies of a public document, such as the reprint of a DOL official's speech or other informational materials, may also raise a question even though the contents are only informational and do not suggest that the recipients contact Members of Congress. Normal unsolicited distribution of press releases, DOL officials' speeches, fact sheets, and other informational materials to persons, based on governmental or organizational position or expression of interest in the subject matter, would not ordinarily create a problem. Each such proposed

distribution must be separately judged based on the purpose and content of the communication and the number and kind of people who will receive the information.

Department of Labor officials may properly have regular contact with non-governmental organizations which have among their purposes lobbying Members of Congress or attempting to influence the general public to lobby the Congress. However, in these dealings, the DOL officials must not or even appear to dominate the group or use the group as an arm of the Executive Branch. In dealing with outside organizations, certain specific advice may be helpful. DOL officials must not assume responsibilities for the operation of an outside organization, and officials must not suggest that an outside organization activate its membership to contact Members of Congress in relation to a legislative proposal.

At the request of an outside organization, DOL officials may provide to it limited copies of DOL documents (such as press releases, letters, reprints of public officials' speeches, and fact sheets) that are otherwise available for public distribution. However, DOL officials must not provide multiple copies of materials to be distributed by an outside organization. It should again be emphasized that such materials must not suggest that recipients contact Members of Congress with respect to particular positions. Any decision to reproduce, publish or distribute such material must be left entirely to the judgement of the outside organization.

Nonpublic information must not be shared with an outside organization. In addition, DOL officials must also avoid gathering information or producing materials specifically for such an organization which cannot properly or would not ordinarily be gathered or produced as part of the DOL officials' regular work. Further, DOL officials must not provide such organizations with lists of or correspondence from persons who favor or oppose particular policy positions or provide assistance to the organization in its fundraising activities.

These legal provisions do not prohibit an on-going dialogue or interaction between the Labor Department and the public in an educational effort to explain Administration positions, but where that conduct develops into a publicity and propaganda campaign designed or intended to pressure citizen groups into contacting congressional representatives, the boundary of propriety has been crossed.

18 U.S.C. § 1913 is a criminal statute and must be taken very seriously. Violations could result in fines of up to $500 or imprisonment up to one year. The General Accounting Office is also authorized to undertake Appropriations Act audits in this area and any disallowed expenditures would have to be borne by the individual supervising the activity that resulted in the unauthorized use of governmental funds.

Because § 1913 and the Appropriations Act rider have not often been interpreted, it is difficult to be more specific in setting forth guidelines. Any difficult factual situation should be brought to the attention of this Office before any action is taken.

U.S. DEPARTMENT OF LABOR,
SOLICITOR OF LABOR,
Washington, DC, July 25, 1994.

Memorandum for: The Executive Staff

From: Thomas S. Williamson, Jr.

Subject: Restrictions on Lobbying

This memorandum discusses the statutory restrictions on lobbying with appropriated funds. Simply stated, the so-called "Anti-Lobbying Act" (18 U.S.C. § 1913) prohibits the use of appropriated funds, directly or indirectly, to pay for "any personal services, advertisement, telegram, telephone, letter, printed or written matter or other device" intended to influence a Member of Congress in acting upon legislation, before or after its introduction. There is also a rider to the DOL Appropriations Act which bars the use of appropriated funds for "publicity or propaganda purposes" designed to support or defeat legislation pending before Congress.

Read literally, this provision would appear to prohibit a wide range of activities engaged in by the Department to build support for legislative initiatives. In fact, the limitation is a rather narrow one aimed principally at "grass-roots" lobbying by DOL employees of persons and entities who are not part of the federal government. Efforts by the Department to inform and educate the public about a pending legislative proposal, and even a limited distribution of persuasive material designed to highlight the merits of the Administration's position, are appropriate Departmental activities and are not prohibited by the law as long as they are not accompanied by pleas to contact Members of Congress to vote for or against the legislation.

While the basic parameters of the law are relatively clear, questions can arise with respect to its application in specific circumstances. The purpose of this memorandum is to discuss some of the frequently encountered situations in which the

Anti-Lobbying Act and appropriations rider come into play. Attached to this memorandum is a list of "do's" and "don'ts" that are designed to summarize this memorandum. It is important that all employees involved in the promotion of the Department's legislative program become familiar with these laws. Failure to comply can have serious consequences. The Anti-Lobbying Act is a criminal statute carrying criminal penalties resulting in fines of up to $500 or imprisonment up to one year. The General Accounting Office is also authorized to undertake Appropriations Act audits in this area and any disallowed expenditures would have to be borne by the individual supervising the activity that resulted in the unauthorized use of government funds. DOL officials and employees should also be aware of the institutional consequences; a violation of the Act may jeopardize the very Administration positions that are the subject of the improper lobbying activity. Employees are strongly encouraged to contact the Office of the Solicitor when questions about the Act arise.

The following are the highlights of the Anti-Lobbying Act and Appropriations Act rider and the situations in which questions about their application most frequently arise.

Direct Lobbying of the Congress. Under the Anti-Lobbying Act, an employee of the Executive Branch, while acting in his or her official capacity, may communicate with a Member of Congress for the purpose of providing information or soliciting that Member's support for the Administration's position on matters before Congress, whether or not such contact is invited and whether or not specific legislation is pending. Thus, the ordinary and traditional interaction between the Executive and Legislative Branches is permitted.

Informational Activities Related to Pending Legislation. DOL officials have a legitimate responsibility to inform the public about pending legislative initiatives and how such initiatives could affect laws and programs administered by the Department. Therefore, DOL officials may ordinarily speak about the Labor Department's legislative positions in meetings with individuals and groups, at news conferences, and during news conferences. However, they must be exceedingly careful not to request that the attendees contact Members of Congress.

Care must be exercised with respect to the distribution of written materials relating to pending legislation because improper use of written materials could violate both the Anti-Lobbying Act and the "publicity or propaganda" appropriation rider. The direct distribution of written materials by the Department on pending legislation which explains its potential impact and sets forth the Administration position is permissible. For example, the Department can provide materials in response to specific requests for information on the Department's position as long as these materials are not accompanied by a statement asking the recipients to contact Congress in support of the Administration position. Similarly, many agencies in the Department have mailing lists for press releases, DOL officials' speeches, fact sheets and other informational materials. These mailing lists are compiled based on governmental or organization position or expression of interest in the subject matter. Distribution of materials setting forth the Department's position on legislative matters through these means will not ordinarily be a problem.

The greatest potential for problems occur, however, when multiple copies of materials setting forth the Administration's legislative position are given to others for their use even though there is no explicit plea for the reader to contact Senators or Representatives. The reason for this caution is that the Department may have no control over the ultimate use of these materials and they may he distributed with an explicit plea to contact Members of Congress. There are two common situations where caution must be used. First, if an official makes a speech discussing the Administration's legislative position, the official may provide copies of the speech to persons attending the speech. However, the official should not bring multiple copies of that speech for distribution to those who did not attend unless there is an assurance that the speech will not be accompanied by a lobbying plea. Similarly, massive distribution of multiple copies of other informational materials (such as press releases, letters, and fact sheets) may raise similar problems due to lack of control over their ultimate use.

Identifying Supporters of DOL Legislative Positions. In planning strategy for legislative initiatives, the Department may want to demonstrate support for Administration initiatives. In some cases, the Department may be asked by Members of Congress or congressional committees to identify supporters. Such activity is appropriate and can be easily structured to conform to the limitations of the Anti-Lobbying Act. The Department may use its resources to locate and identify those individuals and organizations that support its legislative positions. However, any statements of support that are solicited should be provided directly to the Department. The Department may provide the list of supporters and statements they have pro-

vided to interested Members of Congress. The Department, however, must avoid asking these supporters to contact the Congress.

Working With Outside Groups. Department of Labor officials my properly have regular contact with non-governmental organizations which have among their purposes lobbying Members of Congress or attempting to influence the general public to lobby the Congress. However, in these dealings, the DOL officials must not or even appear to dominate the group or use the group as an arm of the Executive Branch. In dealing with outside organizations, certain specific advice may be helpful. DOL officials must not assume responsibilities for the operation of an outside organization, and officials must not suggest that an outside organization activate its membership to contact Members of Congress in relation to a legislative proposal.

As stated above, at the request of an outside organization DOL officials may provide to it limited copies of DOL documents that are otherwise available for public distribution. However, DOL must be very cautious in providing multiple copies of materials for distribution by an outside organization. Any decision to reproduce, publish or distribute such material must be left entirely to the judgment of the outside organization.

Nonpublic information must not be shared with an outside organization. In addition, DOL officials must also avoid gathering information or producing materials specifically for such an organization which cannot properly or would not ordinarily be gathered or produced as part of the DOL officials' regular work.

I recognize that certain aspects of this guidance may be complicated or may not cover every situation you encounter. For these reasons, I strongly encourage you to contact Robert Shapiro, Associate Solicitor for Legislation and Legal Counsel (219–8201), or David Apol, Counsel for Ethics (219–8065) for advice and counseling when questions arise about the Anti-Lobbying Act.

ATTACHMENT

"ANTI-LOBBYING ACT DO'S AND DON'TS"

DOL employees may:

- Contact Members of Congress directly on matters of concern to the Department, including pending legislation.
- Speak about the Labor Department's legislative positions in meetings with individuals or groups, at public forums, at news conferences, and during news interviews.
- Distribute normal press releases, DOL officials' speeches, fact sheets, and other informational materials unless the distribution includes a request or suggestion that the person contact the Congress.
- Have regular contact with non-governmental organizations which may or may not have among their purposes lobbying Members of Congress or attempting to influence the general public to lobby the Congress.
- Provide to non-governmental organizations limited copies of DOL documents (such as press releases, letters, reprints of public officials' speeches, and fact sheets) that are otherwise available for public distribution. Any decision to reproduce, publish or distribute such material must be left entirely to the judgment of the outside organization.

DOL employees may not:

- Produce written or electronic communications for distribution which suggest that members of the public lobby Members of Congress.
- Give a speech asking the recipients to contact their Senators and Representatives in support or opposition to a legislative proposal.
- Assume responsibilities for or direct the operation of an outside organization which is engaged in grass roots lobbying (encouraging people to write to Congress).
- Suggest that an outside organization activate its membership to contact Members of Congress in relation to a legislative proposal.
- Provide multiple copies of materials to be distributed by an outside organization which is engaged in grass roots lobbying.
- Share non-public information with an outside organization engaged in a lobbying campaign.
- Gather information or produce materials specifically for such an organization which cannot properly or would not ordinarily be gathered or produced as part of the DOL official's regular work.

Mr. SHAYS. What was insufficient in terms of the memorandum of 1989? What was lacking there that needed to be revised?

Mr. MCATEER. Congressman, I was not at the Department in 1989, and while I have briefly reviewed these documents, I cannot speak to the difference of the documents. I'm sorry. I can get information to you.

Mr. SHAYS. Well, let me just say that that's a hard one for me to accept because this is a hearing on lobbying, and these are two memorandums that come out of your Department.

Mr. MCATEER. Right.

Mr. SHAYS. So would you tell me what the difference is between what was done in 1994 versus what was done in 1989? That's really the basis for this hearing. I need to know that answer. What is the difference?

Mr. MCATEER. I'm sorry. I can't—I have looked at the documents.

Mr. SHAYS. OK. What is your capacity? Maybe I'm not asking the right person.

Mr. MCATEER. The Acting Solicitor of Labor.

Mr. SHAYS. So this is your area of expertise.

Mr. MCATEER. Right.

Mr. SHAYS. And this is a hearing on lobbying.

Mr. MCATEER. Right.

Mr. SHAYS. And we have a 1994 memorandum that is different than the 1989. And the 1989 seems satisfactory to me. What is not sufficient in the 1989 document, as far as you're concerned?

Mr. MCATEER. Again, I'm sorry. I can't speak to the differences in the two documents. I'll be happy to address——

Mr. SHAYS. We're going to have a vote, and I will come back after the vote. Is that all right, Mr. Chairman? And in the meantime he can look at the two documents and then go over them with me. Is that all right?

Mr. CLINGER. Sure. We have 2 more minutes.

Mr. SHAYS. Well, that is my basic question.

Mr. CLINGER. Commissioner Dial, the letter to industry which has been alluded to in your testimony before opposing the merger of SEC and CFTC does not violate the law because it does not meet the test for being a substantial grassroots lobbying effort under existing interpretation?

Mr. DIAL. Yes, Mr. Chairman.

Mr. CLINGER. However, it does recommend to several private interest groups that they contact specific Members of Congress. That has been our concern all along, that there needs to be some inhibition at least on the ability of executive office or independent agency people to be contacting Members of Congress directly.

Wouldn't you think that this at least would violate the spirit, if not the letter, of the law?

Mr. DIAL. With your permission, sir, may I give you a little background on the circumstances?

Mr. CLINGER. Certainly.

Mr. DIAL. The issue which is covered in the letter, my letter of March 23, is an issue that had been brought before the Agricultural Advisory Committee of the Commodity Futures Trading Commission on two previous occasions; namely, the biannual meetings in 1993, one being in the spring and the other being in the fall.

The purpose of that Advisory Committee is to facilitate and make available open lines of communication between the agricultural organizations in the United States and the CFTC, so that we have an understanding of their responses to the activities and the responsibilities that we fulfill.

Both sides of the issue of the CFTC being merged with another agency, whether it's SEC or, in the instance in the spring of 1993, a suggestion that there be one single financial regulator that would combine a number of agencies, both sides of the issue were presented to the members of the Agricultural Advisory Committee.

It was an issue with which they were well advised, well informed, had a specific interest in. The purpose of my letter was to call to their attention that there was going to be a hearing about the bill that would call for the merger of the SEC and the CFTC.

So, in essence, I was giving them a heads up about this hearing. I gave them some factual information, background with regard to CFTC vis-a-vis Congress' role for the agency in its communications with the agricultural community, and made the comment in my letter that, "I urge you and/or your organization to make your position known to the cosponsors of this bill and to the following," as you have pointed out.

Mr. CLINGER. As I have indicated, I don't think that under the existing law and the interpretation thereof this was an illegal action, but I do think that it highlights the reason why we are proposing legislation which would make that tighter.

I think clearly there is an implication in the letter that members of the advisory group should, in fact, oppose the legislation and write Members of Congress.

Even though that would not rise to the threshold of being an illegal act under the existing criminal statute, I think it is the sort of activity that really we're trying to get at here where we have an implied or specific direction or request to do some grassroots lobbying.

As I understand it, attached to the letter was a copy of two pages of bullet points which, basically, were opposing or pointing out why the merger should have been opposed.

You were presenting your point of view which is a perfectly legitimate point of view. All I'm trying to say is that this is the kind of thing we are trying to get a handle on to say there ought to be some threshold beyond which you should not be permitted to go.

Do you have any appropriations restrictions that you are required to adhere to? There has been reference made to the limitations in some of the appropriations bills, specifically Labor and Interior and Health and Human Services that basically track the language in this bill.

Is there anything comparable to that in the CFTC appropriations?

Mr. DIAL. I'm not aware of whether there is or there is not, sir.

Mr. CLINGER. All right. You don't know of any. I would assume that your counsel would have told you if there was such a limitation.

Mr. DIAL. Well, we didn't discuss that particular subject. I will be happy to respond to your question in writing.

Mr. CLINGER. OK. That would be appreciated. We will recess briefly, and hopefully, we'll be able to conclude this very shortly. I appreciate your patience and your willingness to stay here all this length of time, but I know there are a couple more questions that need to be answered. So we'll recess until somebody gets back here.

[The information referred to follows:]

U.S. COMMODITY FUTURES TRADING COMMISSION,
Washington, DC, May 17, 1996.

Hon. WILLIAM F. CLINGER,
House of Representatives,
Chairman,
Committee on Government Reform and Oversight,
2157 Rayburn House Office Building,
Washington, DC.

DEAR CHAIRMAN CLINGER: At the Committee's May 15, 1996 hearing on H.R. 3078, the "Federal Agency Anti-Lobbying Act," you asked me whether the Commodity Futures Trading Commission was subject to any appropriations bill language imposing limitations on the agency's lobbying activities. I have checked this question with the appropriate Commission staff members and confirmed that the Commission's appropriations legislation does not include any such restrictions.

Sincerely,

JOSEPH B. DIAL,
Commissioner.

[Recess.]

Mr. MICA [presiding]. I will call the committee meeting back to order. We still have additional business before the committee in the form of another panel before we finish this panel, and I will yield myself time and I would like to go back to Mr. Cannon, if I may, with EPA.

Mr. Cannon, as I was completing some of my questions to you about this EPA grant to PTA, I think that you said—I believe you said it was completely unimportant to EPA in making a grant to PTA to know whether it was pro-environment or anti-environment in its political positions.

Is that the case? They didn't consider whether they were pro or anti in awarding the grant? Are you aware of it or——

Mr. CANNON. I'm not aware.

Mr. MICA. Is that the criteria that you use for awarding any of these grants, that you only——

Mr. CANNON. Grants are awarded to carry out objectives of the agency or purposes that are within the purview of the agency by a range of groups for a range of different purposes.

Mr. MICA. Well, then, was it EPA's only goal in educating the parents of school-age children where the PTA stood on environmental issues and otherwise everything else was irrelevant? Was that the case?

Mr. CANNON. Well, I was looking to the documents that I had been provided and I am looking at the——

Mr. MICA. Well, was it the primary purpose of awarding the grant and educating the parents of school-age children where the PTA stood on environmental issues? Is that correct?

Mr. CANNON. Well, I—let me answer your question this way, if I may. I'm looking at the objectives of the partnership as stated in the agreement, and it indicates that the objectives were to strengthen our efforts to assure that children in America are safe from environmental hazards, oppose health threats, to——

Mr. MICA. So basically, again, these were the EPA environmental issues and where it stood. Is that correct?

Mr. CANNON. Yes. Those were the joint objectives.

Mr. MICA. If possible, I would like the clerk to provide you—if you don't—do you have a copy of the grant application? Are you reading from it?

Mr. CANNON. I am reading from a document that is titled, "Proposal for Cooperative Partnership Between the National PTA and the U.S. EPA."

Mr. MICA. OK, the grant application you have.

Mr. CANNON. Right.

Mr. MICA. Could you explain to me then why it's a condition of receiving the grant that the PTA was obliged to file in their grant application a listing of all pro-environmental resolutions it had passed since 1970?

Mr. CANNON. I have before me a document that says—that is titled, "PTA Resolutions and Positions on Environmental Issues."

Mr. MICA. And that was——

Mr. CANNON. I have no—I don't know, and perhaps I'm missing it. I don't have documents before me that explain how this came to be.

Mr. MICA. This is part of the submission, as I understand it. Isn't it true, sir, that the EPA would never have considered giving the PTA a so-called education grant unless it was certain before the grant was given that the PTA was a so-called pro-environmental advocate? Isn't that correct?

Mr. CANNON. My answer has to be, Mr. Chairman, that EPA would give this grant to PTA on determining that PTA was capable of carrying out these joint objectives.

Mr. MICA. Well, if no one at EPA thought this grant was anything other than a public education grant, except that one employee, of course, who thought it was only in his heart and in his memorandum but never in public, let's—let me try another question.

I would like to give you an internal memorandum from one of your other staffers, not the one who wrote the first memo suggesting material for inclusion in the PTA's pamphlet, "Our World." That is their publication, which I, without objection, will also make part of the record. That's the Ficks memo. It's No. 3. Do you have that?

Mr. CANNON. I have "Our World."

Mr. MICA. While you're looking at it, I wonder why staffers in the Office of Water try to get copies of Vice President Gore's press release on the budget into the PTA newsletter. If this is just an education grant, why did they think it was the appropriate thing?

And they must have thought this was something about politics, wouldn't you think?

Mr. CANNON. Well, perhaps you can point me to the particular provision.

Mr. MICA. Well, we'll give you a copy of the Ficks, F-i-c-k-s, memo.

[The information referred to follows:]

Fax to: Chris Bayham, Radon
From: Benjy Ficks, EPA, OW, OWOW, PCS
Re: National PTA's newsletter

Here's some information that you may want to include in the upcoming OUR WORLD newsletter. I am providing this information for Paula Monroe who is currently out. Thanks. Please let me know if any questions, 260–8652. Also, can you please forward this on to Ed Stermetz, as I do not have his fax number?

FIELD NOTES

The 1994 305(b) Report was released on December 14, 1995 documenting that about 40% of the Nation's surveyed rivers, lakes, and estuaries are not clean enough to meet basic uses such as fishing and swimming. (see attachment)

BUZZ WORDS

Watershed—an area of land that catches rain and snow, which drains into a marsh, stream, river, lake or ground water. Everyone lives in a watershed.

Wetlands—areas where the frequent and prolonged presence of water at or near the soil surface drives the natural system—meaning the kind of soils that form, the plants that grow, and the fish and/or wildlife communities that use the habitat. Swamps, marshes, and bogs are well-recognized types of wetlands. About 30% of our endangered species rely on wetlands.

ENVIRONMENTAL RESOURCES

U.S. EPA Wetlands Hotline (1–800–832–7828)—is a contractor-operated service open from 9 a.m. to 5 p.m. eastern standard time Monday through Friday. The hotline provides answers to many frequently asked questions regarding wetlands, such as "Why are wetlands important?" and "What role does EPA play in protecting wetlands?" Many publications are available. Call today to find out more.

WHAT'S GOING ON

The Conservation Technology Information Center (CTIC), a non-profit organization, sponsors a national Know Your Watershed campaign. To learn what you can do to protect your watershed, contact Know Your Watershed, 1220 Potter Drive, Room 170, West Lafayette, IN 47906, tel 317–494–9555 and 317–494–5969 (fax).

United States Environmental Protection Agency
Office of Water (4503F) Washington, DC 20460
EPA841-F-95-010 December 1995

EPA

Water Quality Conditions in the United States

A Profile from the 1994 National Water Quality Inventory Report to Congress

Findings

Based on the latest information reported to EPA by States, Tribes, and other jurisdictions with water quality responsibilities, about 40% of the Nation's surveyed rivers, lakes, and estuaries are not clean enough for basic uses such as fishing or swimming. The results are consistent with data last reported in 1992 and show that more work is needed if waters are to be made clean and healthy in all communities.

These results are based on water quality surveys conducted in 1992 and 1993. Nationwide, 17% of rivers, 42% of lakes, and 78% of estuaries were surveyed.

Polluted runoff from rainstorms and snowmelt is the leading cause of impairment in rivers, lakes, and estuaries. For rivers and lakes, runoff from agricultural lands is the biggest source of pollution. Storm sewers and urban runoff are the leading sources of pollution in estuaries. Bacteria, which can cause illnesses in swimmers and others involved in water-contact sports, are the most common pollutants impacting rivers. Nutrients, such as phosphates and nitrates, are the most often reported pollutant in lakes and estuaries. In excess, nutrients can create a chain of impacts that include algal blooms, fish kills, foul odors, and weed growth.

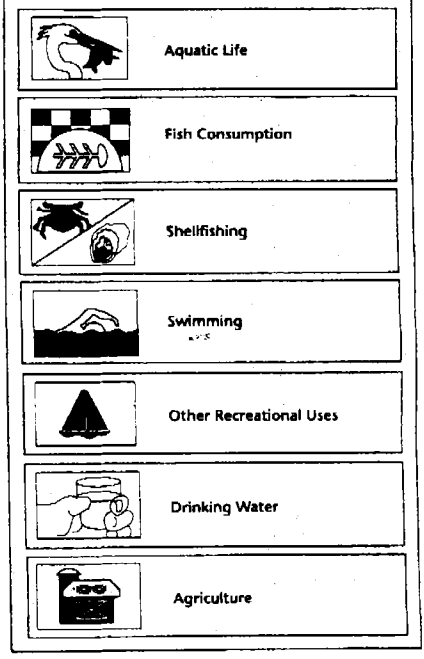
Background

Water quality surveys are conducted to determine a waterbody's overall health, including whether or not basic uses are being met. States, Tribes, or other jurisdictions define appropriate uses for a waterbody and incorporate these uses into water quality standards that are approved by EPA.

States and other jurisdictions conduct water quality surveys and report the findings to EPA every 2 years. EPA then prepares a biennial Report to Congress, which represents the most complete and up-to-date snapshot of water quality conditions around the country. This report is the tenth in a series of reports that have been prepared and submitted to Congress since 1975.

About 40% of the Nation's surveyed rivers, lakes, and estuaries are not clean enough to meet basic uses such as fishing or swimming.

How Our Waters Are Used

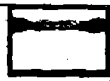


River Profile

Leading Causes of Pollution	
1	Bacteria
2	Siltation
3	Nutrients
4	Oxygen-Depleting Substances
5	Metals

- **About 36% of *surveyed* rivers are impaired – about the equivalent of 100 Mississippi Rivers.**
- The U.S. has 3.5 million miles of rivers and streams.
- Surveys were conducted on 615,806 miles, or 17%.

Leading Sources of Pollution	
1	Agriculture
2	Municipal Sewage Treatment Plants
3	Hydrologic/Habitat Modification
4	Urban Runoff/ Storm Sewers
5	Resource Extraction



Lake Profile

Leading Causes of Pollution	
1	Nutrients
2	Siltation
3	Oxygen-Depleting Substances
4	Metals
5	Suspended Solids

- **About 37% of *surveyed* lakes are impaired – about the equivalent of 6 Great Salt Lakes.**
- The U.S. has 41 million acres of lakes.
- Surveys were conducted on about 17 million acres, or 42%.*

*Excludes the Great Lakes.

Leading Sources of Pollution	
1	Agriculture
2	Municipal Sewage Treatment Plants
3	Urban Runoff/ Storm Sewers
4	Unspecified Nonpoint Sources
5	Hydrologic/Habitat Modification

Estuary Profile

Leading Causes of Pollution	
1	Nutrients
2	Bacteria
3	Oxygen-Depleting Substances
4	Habitat Alterations
5	Oil and Grease

- **About 37% of *surveyed* estuaries are impaired – about the equivalent of 3 Chesapeake Bays.**
- The U.S. has 34,400 square miles of estuaries.*
- Surveys were conducted on about 27,000 square miles, or 78%.

*Excludes an unknown number of estuaries in Alaska.

Leading Sources of Pollution	
1	Urban Runoff/ Storm Sewers
2	Municipal Sewage Treatment Plants
3	Agriculture
4	Industrial Point Sources
5	Petroleum Activities

VICE PRESIDENT GORE HIGHLIGHTS IMPACT OF BUDGET CUTS ON THE NATION'S WATER QUALITY

For Release: Thursday, December 14, 1995

Speaking at a Potomac, Md., drinking water treatment facility, Vice President Al Gore, Jr., accompanied by EPA Administrator Carol M. Browner, today stated that Republican budget cuts will hurt efforts to improve the quality of the nation's drinking water—and the rivers, lakes, and streams that are the sources of drinking water for millions of Americans.

"Safe, clean water is the first line of defense in protecting public health, protecting our children and our families, and protecting the basic values that are fundamental to the American quality of life," stated Vice President Gore. "We must not allow the Republican budget to roll back the progress of the past 25 years."

Administrator Browner released the latest EPA water quality survey, which indicates the need to continue progress in controlling pollution in U.S. waterways. As of 1994, nearly 40 percent of surveyed U.S. water bodies remain too polluted for fishing, swimming and other uses, a figure that is consistent with the results of EPA's 1992 survey. Major pollutants found in the survey of rivers, lakes, streams, and estuaries include sewage, disease-causing bacteria, fertilizer, toxic metals, oil and grease.

"We are holding our own in controlling water pollution, but we need to make more progress," Administrator Browner said. "Half of all Americans receive their drinking water from rivers, lakes, and streams. To protect public health, we must be vigilant in protecting our waterways."

The Vice President said that the Republican budget threatens the safety of water quality in four significant ways:

- A cut of 30 percent, or $462 million, in funds for states for building wastewater treatment plants that would keep raw sewage out of waterways. President Clinton's FY96 budget provides $1.6 billion for wastewater treatment funding;
- A cut of 17% in funds to set environmental and public health standards, including those protecting clean and safe water. The Republican budget cuts $310 million from the President's FY96 request;
- A 27% cut in enforcement of all environmental programs—including enforcement that would uphold safe drinking water and clean water standards—a total of $114 million cut from the President's FY96 budget; and
- A 45% cut in state loan funds that would help communities protect their drinking water. The Republican budget cuts $225 million, limiting states' ability to upgrade facilities that treat local drinking water to eliminate contaminants. President Clinton's FY96 budget request provided $500 million in loan funds that would go straight to the states for use in protecting community drinking water nationwide.

EPA's 1994 water survey is the result of a biennial assessment of the nation's waterways. Every two years, states, tribes and other jurisdictions assess local Waterways and report the assessments to EPA. EPA then reports the findings to Congress.

The 1994 survey represents 17 percent of the nation's rivers, 42 percent of the nation's lakes and 78 percent of the nation's bays and estuaries.

The 1994 data show that runoff, storm sewers, and municipal sewage treatment plants are the most significant sources of pollution, showing the need for funding to help states upgrade wastewater treatment. Agricultural runoff contributes to 60 percent of the water quality pollution found in rivers and 50 percent in surveyed lakes. Urban runoff and storm sewers are the leading source—contributing to 46 percent of the polluted bays and other estuaries.

Bacteria, nutrients, siltation and oxygen-depleting substances are the most widespread pollutants. For example, bacteria contribute to 34 percent of the polluted river miles. Bacteria are an indication of excessive sewage. Nutrients, such as nitrates in fertilizers and phosphates in detergents, contribute to 43 percent of lake pollution and 47 percent of bay and estuary pollution. Nutrients can deplete a waterbody's oxygen supply through the overstimulation of plant and algae growth. Silt also contributes to 34 percent of impaired river miles and 28 percent of impaired lakes. Silt can smother aquatic habitats.

As of September 1994, states and other jurisdictions had issued over 1,500 fish consumption advisories, recommending that the public restrict consumption of certain contaminated fish species. The majority of the advisories, 73 percent, address mercury contamination in fish.

Copies of the "National Water Quality Inventory: 1994 Report to Congress," will be available in mid-January 1996. In the interim, copies of a fact sheet, the executive summary, and state-specific fact sheets are available from EPA's Water Re-

source Center at 202–260–7786. This information also will be available soon on the Internet; call the Water Resource Center for access information.

Mr. CANNON. I have a copy of Ficks memorandum. I'm asking to be pointed to the particular provision or passage.

Mr. MICA. Again, if you'll look at the—I think there is an addendum also with Vice President Gore's release there, bashing the Republicans on EPA environmental budget issues.

Fortunately, in their good wisdom, they chose not to publish this, I understand now. But it does look like an attempt to insert a political—politically charged document in a grant, which I think they awarded, I since have found out, I think $112,000 to disseminate this information.

Mr. CANNON. I do see——

Mr. MICA. And if you would like to respond, I want to be fair. You can respond and——

Mr. CANNON. I'm looking at the same documents you're looking at and——

Mr. MICA. Well, you can examine it more carefully. And I don't want to put you on the spot. I would like you to look at two internal——

Mr. CANNON. But if I may——

Mr. MICA [continuing]. Memoranda written by unidentified EPA employees concerning this PTA grant. And I would like these documents—also without objection, they are going to be made a part of the record. That's listed No. 4.

[The information referred to follows:]

EPA/PTA COOPERATIVE AGREEMENT

Grant Number x824619–01

TOTAL AMOUNT FOR AGREEMENT

EPA share: $112,826.00
ORIA share: $79,826.00
OPPT share: $25,000.00
OWOW share: $8,000.00
PTA share: $5,939.00

AMOUNT OF AMENDMENT

This is an initial application.

PROJECT PERIOD

October 1, 1995 to September 30, 1996.

JUSTIFICATION FOR THIS COOPERATIVE AGREEMENT

■ Provides a "common-sense" approach to the largest stakeholder in the school community
• represents the collaboration of 12 EPA offices in 5 AAs (OAR, OW, OECA, OSWER, OPPTS)
• establishes a framework for future cross-agency initiatives
■ Supports the participation of 7 million parents and child advocates in community environmental issues in homes, schools, communities, and ecosystems
■ Responds to PTA's long-standing goal of establishing one-stop-shopping for environment issues
• pleases elected state and national child advocates
■ Enhances the capacity of 12 EPA offices to communicate effectively and efficiently with the school sector

Note to: Mary D. Nichols, Assistant Administrator
Office of Air and Radiation

From: Steve Page, Acting Director
Office of Radiation and Indoor Air

Subject: ORIA's Collaboration with the National Parent Teachers Association

Attached is a copy of two PTA Today articles (p. 13 and 32) featuring practical information and ideas to reduce the health risks of radon exposure in homes and schools. These articles represent the first step of an informal, collaborative effort between the EPA and the National Parent Teachers Association (PTA) to encourage radon testing and mitigation of homes and schools across the country.

Specifically, EPA's Radon Division will be channeling outreach materials to the PTA's grassroots membership to generate community support and action on radon. PTA's established and efficient grassroots network will enable EPA to convey practical information and tools to community leaders and activists at no cost and with a minimum of paperwork. The practical information and tools are packaged into community leader kits that are designed to raise awareness about radon's health risks and promote action to reduce radon exposure. By contacting their state PTA office, members can receive kits containing a scripted presentation accompanied by colored slides, an American Lung Association video on the health risks of radon, and EPA educational materials for distribution at local PTA meetings. Moreover, a system has been established to track the results of this collaborative effort in effort to evaluate its effectiveness.

The Office of Radiation and Indoor Air believes that efforts such as this represent important contributions towards changing how government does business.

Note to: Mary D. Nichols, Assistant Administrator
Office of Air and Radiation

From: Steve Page, Acting Director
Office of Radiation and Indoor Air

Subject: ORIA's Collaboration with the National Parent Teachers Association

Attached is a copy of a PTA Today article (p. 13) featuring practical information about the health risks of radon exposure in homes and schools. This particular article initiates an informal, collaborative effort between the EPA and Nation Parent Teachers Association (PTA) to encourage radon testing and mitigation in communities across the country.

With EPA's Radon Division providing educational materials and guidance and the PTA providing an established, efficient, and effective vehicle to convey practical information to a targeted audience, this initiative was quickly and efficiently implemented with a minimum of paper work and at minimal cost. Specifically, the PTA is working with the Radon Division to distribute community leader kits to PTA organizations at the state and local level. These kits contain a scripted presentation accompanied with colored slides, a video, and educational materials for distribution. Efforts such as these represent important contributions towards changing how government does business.

Mr. MICA. These memos, and I would really like to know if you consider them, and you can look at them and respond back to the committee. These are internal memorandums. If in fact they justify a grant and it's argued that it would be a good thing, and again I have to quote from this internal document, to quote, "please elected State and national child advocates."

And that "EPA's Radon Division will be channeling outreach materials to the PTA's grassroots membership to generate community support and action on radon. PTA's established and efficient grassroots network will enable PTA to convey practical information and tools to community leaders and activists at no cost, and with a minimum of paperwork."

That hardly seems to me like a apolitical motivation. I think you referred earlier, too, to some of these things that shouldn't be done at a grassroots level, let alone using public funds in a manner to promote this agenda.

Mr. CANNON. Mr. Chairman, I would point out that the community support and action on radon really supports a voluntary program that EPA conducts, which is informational entirely. So far as I know there was no legislation pending or at issue on radon that I'm aware of. There is certainly no mention of it in this document.

This is really—and we talk about the grassroots. This is a grassroots environmental program that really depends on information and communication in order to work. And I think that's what is being discussed here.

Mr. MICA. Well, my time has expired. I do have some additional questions, and I begin to see an emerging pattern all brought to my attention not by this committee, but what I read in EPA Watch. And without objection, that will also be made a copy of this record.

So at least the media is alerting the public and the Congresses to your activities, and I intend to follow them very closely. And when I see a pattern of abuse and misuse of taxpayer funds and also the authority given to you and granted to you, I intend to pursue it.

Without any further comment, I will yield to Mr. Shays.

[The information referred to follows:]

EPA ENLISTS PTA TO BATTLE CONGRESS OVER BUDGET CUTS

In a bid to mobilize millions of grassroots voices nationwide against Congressional efforts to cut EPA's budget, the agency is funding an environmental awareness newsletter that will be distributed by the National Parents Teachers Association (PTA).

The newsletter is the product of a cooperative agreement between EPA and the PTA and will be funded largely by the agency's Office of Radon. According to an EPA internal memo obtained by EPA WATCH, the newsletter will include "environmental buzz words, terms and definitions, hotlines, and news items."

The memo, produced by EPA's Office of Enforcement and Compliance and dated January 19, notes that staff from no fewer than 11 EPA offices are working with the PTA on the project. Assessing the possible impact of the EPA/PTA agreement, the memo points out that the newsletter "will potentially reach millions of PTA members nationwide."

"PTA COULD BECOME A MAJOR ALLY"

With an eye on the continuing battle over EPA's funding level for FY 1996, the memo observes that, "The PTA could become a major ally for the Agency in preventing Congress from slashing our budget, but their voices need to be heard."

The revelation that EPA is using taxpayers' money to fund a PTA newsletter which will take the agency's side in its ongoing budget battle with Congress is certain to reopen the discussion over EPA's practices in dealing with friendly outside groups that also receive EPA funding. Last year EPA Administrator Carol Browner was in a running battle with the House Government Reform and Oversight Committee over allegations of illegal lobbying on the part of the agency.

Congressional sources close to the illegal lobbying issue expresses amazement that EPA, after all the scrutiny it has undergone, would dare to fund a newsletter with such an obvious political mission." The memo, together with such related activities that may yet come to the surface, is expected to receive additional attention in appropriate Congressional committees in the weeks to come.

Mr. SHAYS. Thank you, Mr. Chairman. I was in the midst of asking Mr. McAteer questions about two memos. One memo was written is dated July 25, 1994 and it is entitled—subject is restrictions on lobbying by Thomas A. Williamson. Was he the Solicitor General?

Mr. MCATEER. He was.

Mr. SHAYS. And, Mr. McAteer, then I am referring to another one on April 11, 1989, Jerry J. Thorn, who is the acting solicitor and

has the same title, "Restrictions on Lobbying." And the question I have for you is: What is the difference between the memo of—memorandum of July 25, 1994 versus the one in April 11, 1989?

Mr. MCATEER. I'm sorry, I was unable to answer your question earlier. The 1994 memorandum by Thomas Williamson is simply a update of the 1989 memorandum. There were some intervening events—if you care, I can discuss those—which led to—my understanding is, which led to the reasons for the feeling that a updated "Restrictions on Lobbying" memo would be helpful.

Mr. SHAYS. Well, why don't you just tell me what the differences are. Without telling me the events, you can just tell me, what does the memorandum of 1994 do that the memorandum of 1989 left out?

Mr. MCATEER. It simply sets out in more specific detail some examples of what DOL employees may do and what DOL employees may not do. It also covers the very same area that the 1989 memo does. But it describes Mr. Williamson's understanding of what the prohibitions were under the Anti-Lobbying Act and a number of questions.

We have an ongoing training program at the Department——

Mr. SHAYS. So is your testimony under oath here that there is no redefinition of what was allowed under restrictions on lobbying?

Mr. MCATEER. There are not significant differences in the descriptions from the 1989 memo to the 1994 memo.

Mr. SHAYS. And I need to have your understanding of what significant is. The first paragraph in the 1994 memorandum describes the law, the Anti-Lobbying Act. And I guess that's from the Criminal Code.

And then the next paragraph, I'm going to read it. It says, "Read literally. This provision would appear to prohibit a wide range of activities engaged in by the department to build support for legislative initiatives. In fact, the limitation is a rather narrow one, aimed principally at grassroots lobbying by DOL employees or persons and entities who are not part of the Federal Government."

And then it continues, "Efforts by the Department to inform and educate the public about a pending legislative proposal and even a limited distribution of persuasive material designed to highlight the merits of the administration's positions are appropriate departmental activities and are not prohibited by the law as long as they are not accompanied by pleas to contact Members of Congress to vote for or against legislation."

Now, is it your testimony that that is not a change in the memorandum of 1989?

Mr. MCATEER. I don't believe that it is a change in the instructions with regard to section 1913 of the United States Code.

Mr. SHAYS. Is it a change in the policy memorandum of 1989?

Mr. MCATEER. The policy of 1989 did not address this specific question. This description is Mr. Williamson's understanding of what the law is.

Mr. SHAYS. So it is the Department's understanding that the limitation is a rather narrow one aimed principally at grassroots lobbying?

Mr. MCATEER. It is our understanding that this is the opinion of the Department of Justice, as well as the opinion of the General Accounting Office with regard to the appropriation rider.

Mr. SHAYS. Let me ask you this. What does it mean, not accompanied by pleas to contact Members of Congress? How do you define pleas?

Mr. MCATEER. I would define a plea as a request or a question in asking of someone to do something.

Mr. SHAYS. OK. Now, going to the requirements under the appropriations, Labor H.S. appropriations, it says, "No part of any appropriations contained in this act shall be used other than for normal and recognized executive legislative relationships for publicity or propaganda purposes, or for the preparation, distribution of use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before Congress, except in presentation to the Congress itself."

Mr. MCATEER. Yes, sir.

Mr. SHAYS. How do you reconcile that memorandum to the requirements of the writers on appropriations?

Mr. MCATEER. The requirement in the——

Mr. SHAYS. Is that restriction narrow or rather broad?

Mr. MCATEER. The restriction in the appropriations is a narrower description—restriction—than in the section 1913 of the United States Code.

Mr. SHAYS. You think it—your interpretation is that it is more narrow? That in other words, it's more restrictive or less restrictive?

Mr. MCATEER. More restrictive.

Mr. SHAYS. It's more restrictive on employees, correct?

Mr. MCATEER. That's correct.

Mr. SHAYS. How do you reconcile these two memoranda, the memorandum and the requirements of the appropriations writers?

Mr. MCATEER. The memoranda—I'm sorry, the restrictions on lobbying memoranda by Mr. Williamson and by Mr. Thorn address the question of what the United States Code restricts.

Mr. SHAYS. OK, I accept that. That's on the Code. So where is your memorandum helping your employees know that they can't do any of the things that you allow them to do under the criminal code?

Mr. MCATEER. The memoranda is here——

Mr. SHAYS. You want your employees to be—have guidance.

Mr. MCATEER. Correct.

Mr. SHAYS. As to proper action.

Mr. MCATEER. Right.

Mr. SHAYS. Would you show me your memorandum that would make them know that they have very, very restrictive requirements on them?

Mr. MCATEER. I can show you the materials that we use that are dated February 1993, entitled, "How to Keep Out of Trouble: Ethics Rules of Special Interest to Senior DOL Policy Officials."

Mr. SHAYS. So—right. But do you have——

Mr. MCATEER. Can I submit that for the record?

Mr. SHAYS. You definitely may submit anything for the record. I mean, without objection I would.

[The information referred to follows:]

HOW TO KEEP OUT OF TROUBLE

Ethics Rules of Special Interest to Senior DOL Policy Officials

INTRODUCTION

The purpose of this summary is to briefly describe a number of ethics rules which are applicable to senior policy officials. It also covers several related matters which frequently arise during a senior official's tenure with the Department.

The world of ethics is a very complex one. The purpose of this mini-guide is to help you recognize some potential trouble spots that may arise during your service with the Department. This guide should not be regarded by you as definitive or comprehensive. A number of areas are not covered and the resolution of many of these problems often depends on the specific facts involved. That is why you are repeatedly encouraged to seek the advice of an ethics counselor when the situations described in this guide arise.

The legal bases for the requirements described in this guide are numerous and varied. Many of the requirements are statutory, and persons who violate them are subject to criminal penalties which may include removal from federal office, fines, and imprisonment. Others are contained in Executive Orders, such as the recent Executive Order signed by President Clinton on post-employment lobbying. Still others are the subject of comprehensive regulations. The U.S. Office of Government Ethics, the agency having government-wide responsibilities for the ethics area, has issued a comprehensive new set of regulations governing ethical conduct for government employees. These regulations, effective February 3, 1993, are the most far-reaching revision of the ethical code in over 25 years. All employees are given copies of these regulations and are obligated to be familiar with their provisions. The Department of Labor also has its own regulations and internal policies for a number of the areas described in this summary.

Importance of Ethics Training. There are two important ways that you can ensure that you are fully aware of your responsibilities in this area. First, you should attend training, which is now required by U.S. Office of Government Ethics regulations, for most senior employees. Training will be offered shortly after senior officials arrive on duty at the Department, and on an annual basis thereafter. Training will also be provided upon request in selected areas, such as the Hatch Act or financial disclosure, by the Office of the Solicitor.

Availability of Ethics Counseling. Second, you are strongly encouraged to ask questions whenever you have questions about ethics-related matters. Especially in this area, "preventive medicine" is the best course of action to avoid embarrassment to the senior official, the Secretary, and the Department. Advice in the areas described in this memorandum can be obtained from the Office of the Solicitor. The Solicitor of Labor serves as the Designated Agency Ethics Official. The Alternate Designated Agency Ethics Official is the Associate Solicitor for Legislation and Legal Counsel, Robert A. Shapiro. If you have any questions, please call him at (202) 219–8201 or David J. Apol, the Counsel for Ethics, at (202) 219–8065.

"Warranties and Limitations". This document is designed to be an introductory, "user-friendly" guide to ethics. It is not an independent regulation, and does not supersede any of the legal authorities described above. Hopefully, this guide will be a useful starting point to recognizing and dealing with potential pitfalls.

GIFTS

Employees cannot accept gifts given to them because of their official position or from "prohibited sources". "Gifts" include free meals and travel, as well as tangible gifts. The term "prohibited source" means any person or organization which:

- ◆ is seeking official action by DOL;
- ◆ does business or seeks to do business with DOL;
- ◆ conducts activities regulated by DOL; OR
- ◆ has interests that may be substantially affected by the performance or non-performance of an employee's official duties.

Due to the fact that Department of Labor programs are so far reaching, this includes almost every business entity. Through OSHA, Wage-Hour, OFCCP, ERISA, MSHA, and other enforcement programs, the Department regulates virtually every employer in the country.

Prepared by the Office of the Solicitor, February 1993.

As a Department of Labor official, you should remember that even the appearance of favoritism or impartiality can cause embarrassment to both you and the Department. Such an appearance can be created where a gift is accepted even if acceptance does not affect how you perform your official duties.

There are exceptions to the gift prohibition. These generally allow an employee to accept:

- any unsolicited non-cash gift that does not exceed $20 in market value on any one occasion, and an aggregate amount of $50 per year from any one source,
- gifts clearly based on a personal relationship,
- food at, and the cost of admission to, events at which you are speaking,
- gifts based on outside business or employment relationships, and
- commercial discounts available to a wide class of people.

Gifts to supervisors are regulated as well. Most gifts to supervisors are prohibited. You may, however, exchange greeting cards with supervisors and subordinates. You may also, in general, give to your superiors or accept from your subordinates occasional gifts costing less than $10, and food which might be shared within your office or in a personal residence. Also, appropriate voluntary gifts (even if they exceed $10) may be given or accepted on non-regularly occurring events, such as marriage, illness, the birth of a child, or retirement.

TRAVEL AND RELATED EXPENSES

As a general rule, the travel and related expenses associated with the exercise of your official duties should be paid for by appropriated funds. However, in certain limited and exceptional circumstances, an agency head or the Deputy Secretary may authorize acceptance of travel and related expenses if an unsolicited offer is received from certain types of organizations.

An Assistant Secretary or other head of a DOL agency may authorize approval of acceptance of travel and related expenses on behalf of the agency under the Government Employees Training Act. This authority allows the agency head to approve acceptance of certain expenses incident to attendance at training sessions or meetings. Approval may only be given to accept expenses from nonprofit and tax-exempt ["501(c)(3)"] organizations and expenses paid from the treasury of a state, county, or municipality. Agency heads may not approve acceptance of these expenses where approval would create the appearance of favoritism or undue influence or if it would be otherwise unethical or improper to do so.

Additionally, the Deputy Secretary may approve the acceptance, by an agency head, of travel and related expenses from 501(c)(3) organizations, government entities, and foreign entities in order that an agency employee can attend a meeting or similar function. Official approval must be given in advance of the trip; accordingly, any such request should be made well in advance of any travel.

CONFLICTING FINANCIAL INTERESTS

A criminal statute prohibits personal and substantial participation, in an official capacity, in any particular matter which, to your knowledge, will have a direct and predictable effect on your financial interests, or those of your spouse, minor children, general partner, or an organization which you serve as a employee, director or partner.

A "particular matter" does not necessarily have to involve specific parties. It can include rulemaking or a general policy matter, as well as a specific investigation or enforcement action. Thus, you should seek the advice of an ethics counselor if your position requires you to take actions on matters affecting a specific company if you own stock in the company affected, or affecting a specific industry if you own stock in a company within the industry affected.

The counselor can provide assistance to you in divesting a conflicting outside interest, arranging your disqualification from participating in the matter, or requesting a waiver to allow such participation.

SEEKING OTHER EMPLOYMENT

You are prohibited from taking official action affecting the financial interests of any organization or individual with whom you are seeking or negotiating employment or with whom you have any arrangement concerning prospective employment. For example, if you are approached about possible future employment with a company which you affect in the performance of your official duties, you must unconditionally terminate all discussions of possible employment and reject the possibility of employment prior to any further involvement in the matter. If you wish to explore the possibility of future employment with such a company, you should discuss the matter with your supervisor so that other options can be considered. These might

include disqualification from further participation in the assignment or an appropriate waiver under the conflict of interest laws or ethics regulations.

IMPARTIALITY IN PERFORMING OFFICIAL DUTIES

In addition to the restrictions subject to criminal sanctions in the previous two sections, you are responsible for avoiding situations in which your actions may create the appearance of impropriety. Taking action on a matter could create an appearance of impropriety even if it does not affect your financial interest or that of your spouse, dependent child, or a company with which you have or seek employment. In particular, actions could create an appearance of impropriety if, for example, you were involved in a "particular matter involving specific parties" (e.g., a case, investigation, adjudication or administrative ruling) which will affect the financial interest of:

- any organization or person with whom you have or are seeking a business or other financial relationship;
- any member of your household or a relative with whom you have a close personal relationship;
- those with whom your spouse, parent, or dependent child has or is seeking to establish certain employment or business relationships;
- any person with whom you have been employed or had certain business relationships in the past year; OR
- any organization, other than a political party, in which you are actively involved;

The key test for determining if participation in a particular matter creates the appearance of impropriety is whether in your judgment, persons with knowledge of the relevant facts would question your impartiality in the matter.

If you believe that your actions would be questioned, you should not participate in the matter without proper authorization. The Office of the Solicitor should be consulted for advice in such instances.

MISUSE OF POSITION: SPONSORSHIP AND CO-SPONSORSHIP OF OUTSIDE ORGANIZATIONS

You are prohibited from using public office for your private gain or the private gain of another. Therefore, you should generally not endorse any product, service, organization, or enterprise in an official capacity. A frequent question that arises is whether the Department can co-sponsor conferences and other events with non-governmental entities. However meritorious these events or organizations may be, Department officials must be very cautious about lending the Department's name to them and should consult with the Office of the Solicitor to make sure the relationship does not violate any law or policy.

Similarly, you may not engage in fundraising in your official capacity unless such authority is specifically authorized. Moreover, you should not allow your official title to be used for private fundraising activities.

Ethics rules severely restrict the use of public information to further an employee's own or another person's private interests. "Non-public information" is information that the employee gains by reason of Federal employment and that the employee knows or reasonably should know has not been made available to the general public.

OUTSIDE ACTIVITIES

Outside activities may create conflicts of interest where your official responsibilities have an impact on organizations with which you are involved. This is especially true where you are an officer, director, trustee, or an employee of an outside organization. Additionally, you must take special care to avoid the appearance that your involvement implies Department of Labor endorsement of a group or organization.

Additionally, the criminal conflict of interest statute, with very limited exceptions, prohibits you from engaging in representational activities on behalf of any individual before the United States government. Consequently, outside of your official duties, in general, you should not call or write any federal official on behalf of any individual or organization.

With certain very limited exceptions, Presidential appointees cannot receive any income for outside activities during their term of office. In addition, all non-career employees earning more than the GS–15 rate (this includes all non-career SES employees) may not, in any calendar year, receive outside earned income which exceeds fifteen percent of the Level II Executive Schedule salary (for calendar year 1993 this would equal $20,040 or 15% of $133,600). Additionally, such employees may not receive any compensation for practicing a profession involving a fiduciary duty (e.g., accounting, law, or real estate), receive compensation for affiliating with a firm

which provides such services, receive compensation for serving on a board of directors or an officer of any organization, or receive compensation for teaching without prior agency approval.

SPEECHES, PARTICIPATION IN EVENTS SPONSORED BY FOR-PROFIT ORGANIZATIONS

Department of Labor policy generally prohibits all employees, in their official capacities, from speaking to or otherwise participating in events sponsored by private, for-profit organizations. The concern is that such events may be used by the organizations as client-building, client-retaining, or other profit-making purposes. Exceptions to this policy may be made on a case-by-case basis by the agency head, with the concurrence of the Deputy Secretary, when there will be some unusual benefit to the agency by virtue of its participation.

This policy does not cover and therefore does not prohibit Department officials from attending and participating in internal meetings of a company, firm, or organization when attendance is limited to employees, officers, or partners of that entity. It also does not prohibit official participation in events sponsored or co-sponsored by governmental entities, or by private non-profit organizations such as professional associations, business leagues, and labor organizations.

HONORARIA

All employees are prohibited by criminal statute from accepting compensation (or "honoraria") from any source other than the federal government for an appearance, speech, or an article regardless of whether done as an individual or in their official capacity and regardless of the subject matter of the speech, article or appearance. However, under certain circumstances, employees may be permitted to accept actual expenses for a speech or to designate a charity as the recipient of the honorarium. In addition, under appropriate conditions, employees may be permitted to teach a course involving multiple presentations offered by a state or local government or institution of higher reaming, or to give a series of lectures. These honoraria restrictions are relatively new and have been the subject of extensive publicity. As a result, all employees are encouraged to consult with an ethics official before agreeing to accept compensation for any appearance, speech, or writing.

FINANCIAL DISCLOSURE

All Presidential Appointees, all career and non-career Senior Executive Service employees, all career and non-career employees paid above the GS–15 rate, and most Schedule C employees are required to file Public Financial Disclosure Reports (SF–278's) within thirty days of entering a covered position. Reports must also be filed annually for each calendar year, and within thirty days of terminating employment. Failure to file any of these reports in a timely fashion will subject you personally to a $200 late filing fee. Although you should be notified by your agency's servicing personnel office when you are required to file, it is your responsibility to comply with the filing requirements. These reports are filed with the Office of Executive Personnel and are available for inspection when a written request is made by members of the public.

Additionally, each agency within the Department has designated certain positions at or below the GS–15 level for coverage under a corresponding system of confidential financial disclosure reports (SF–450's) for career employees and "special government employees".

POST-EMPLOYMENT RESTRICTIONS: THE NEW "ETHICS PLEDGE"

There are a number of post-employment restrictions placed on all employees when they leave governmental service. Additional restrictions are placed on "senior officials" of the Government. Departing employees should make sure that they learn of these restrictions before they leave the government because violations can result in criminal penalties.

In addition, President Clinton has issued an Executive Order requiring all senior appointees of his Administration, whether they are appointed by the President or the Secretary, to sign an ethics commitment. By signing the agreement, the senior employee agrees to a number of restrictions beyond those imposed by the conflict of interest laws. Among other restrictions, the senior employee is prohibited from lobbying any officer or employee of his or her former agency for five years after leaving government. The "senior employees" required to sign the pledge are those whose salary equals or exceeds Level V of the Executive Schedule ($108,200 as of January 1993). Senior employees required to sign the pledge will be contacted shortly after the: begin service with the Department.

POLITICAL ACTIVITY

The Hatch Act's basic restrictions on participation in partisan political activities are fully applicable to almost all DOL employees, including all SES and Schedule C employees. The only exempt (or "unhatched") DOL officials are those appointed to their positions by the President subject to the advice and consent of the Senate. (However, the Inspector General is fully covered by the Hatch Act.) Also, any employee who may be paid from a White House appropriation may be unhatched; however, such status should be verified with the Solicitor's Office.

Even unhatched employees, however, are prohibited from using government resources in support of their political activities. Additionally, criminal statutes prohibit any Federal employee, whether or not unhatched, from using their official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate. All employees are also prohibited from soliciting political contributions from Federal employees or in Federal facilities.

THE ANTI-LOBBYING ACT

Federal law prohibits any appropriated funds from being used for lobbying activities. In addition, an appropriation rider prohibits use of DOL funds for publicity or propaganda purposes designed to support or defeat legislation before the Congress. These laws have been construed as permitting agencies to inform the Congress of the Administration's position on matters before the Congress and otherwise responding to oversight requests. However, they do prohibit the Department from engaging in or promoting grass roots lobbying. That is, the Department may not contact outside individuals or organizations for the purpose of encouraging them to contact legislators to advocate views on legislative matters. In addition, the Department may not use its resources to assist a private lobbying effort.

CONTACTS AND MEETINGS WITH OUTSIDE GROUPS AND INDIVIDUALS

It is important that Departmental officials be aware of some legal limitations that may affect their contacts with non-governmental individuals or organizations on matters before the Department.

Any advisory group, task force, or committee which consists, at least in part, of persons who are not Federal officers or employees that is established or utilized for the purpose of obtaining advice or recommendations must comply with the Federal Advisory Committee Act (FACA). The FACA requires that such groups be formally established or "chartered"; that membership be balanced in terms of points of view represented; that advance notice of meetings be published in the Federal Register; that meetings be open to the public, with limited exceptions; and that records of the committee, including minutes, be available for public inspection.

Many problems with the FACA occur inadvertently, when an agency official seeks the input of outsiders by informally convening a group of citizens or "experts in the field" without realizing that this action establishes an advisory committee which is subject to the requirements of the law. Legal questions about advisory committees and FACA can be directed to Miriam Miller, Co-Counsel for Administrative Law, Division of Legislation and Legal Counsel, at (202) 219–8188.

In addition, contacts made to DOL deciding officials or employees about matters which are the subject of formal Departmental adjudicatory proceedings are generally prohibited by the Administrative Procedure Act. Such contacts, called "ex parte communications" are not formally prohibited during rulemaking proceedings; however, the Office of the Solicitor has issued guidance to ensure the fairness and openness of DOL rulemaking proceedings. This guidance includes procedures for the handling of ex parte communications and should be consulted whenever rulemaking activity is initiated.

LABOR RELATIONS: REQUIREMENTS FOR UNION CONSULTATION

The Department has collective bargaining agreements with three unions—AFGE Local 12, which represents employees in the Washington, D.C. metropolitan area, the National Council of Field Labor Locals, which represents field employees of the Department, and the National Union of Labor Investigators which represents field investigators in the Office of Labor Management Standards. When an agency takes an action which affects the working conditions of bargaining unit employees, the appropriate union(s) should be notified and consultations or negotiations may be required. This includes major changes such as agency reorganizations as well as minor changes such as shifting office space. The Department has an established process for handling these matters. Each agency has an administrative officer and a labor relations officer who are responsible for coordinating day-to-day relations

with the unions and who should be consulted whenever any change affecting bargaining unit employees is contemplated. Questions about these agreements and the requirements they impose should be directed to your agency's Labor Relations Officer.

Mr. MCATEER. Yes.

Mr. SHAYS. But you're really not addressing the problem. This was designed—this was a more restrictive—the first memorandum in 1989 was clearly more restrictive than the memorandum of 1994.

It told employees that, rather than their being confined, that they had a lot more latitude. And yet—and this is supposed to be a guidance of action for your employees, and yet when we look at the legislative appropriations rider we find out that they are very restricted on what they can do. This almost becomes a meaningless document unless misused by your employees.

Mr. MCATEER. The 1989 memoranda and the 1994 memoranda are simply efforts to address the same restrictions and they were efforts by different individuals to address the same restrictions.

Mr. CLINGER. The gentleman's time has expired.

Mr. SHAYS. I just need to correct one thing for the record. And, Mr. Chairman, the problem with the 5-minute rule is, you never get to the final conclusion here.

And I just want to say for the record that I made and you made a mistake, I believe. Would you read the last sentence of the first paragraph of Memorandum 89 and Memorandum 94?

Mr. MCATEER. I agree.

Mr. SHAYS. It starts as, "There is also a rider." Would you read that, please?

Mr. MCATEER. I agree that I did make a mistake that—it applies to the rider.

Mr. SHAYS. I would like to read the—I would like you to read them. Read the sentence, please.

Mr. MCATEER. Fine. "There is also a rider to the DOL Appropriations Act which bars the use of appropriated funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress."

Mr. SHAYS. That was in 1994. What was it in 1989? Would you read that, please?

Mr. MCATEER. It's the same language.

Mr. SHAYS. Would you read it?

Mr. MCATEER. "There is also a DOL Appropriations Act rider."

Mr. SHAYS. Keep reading.

Mr. MCATEER. "Which bars the use of appropriated funds for publicity or propaganda purposes designed to support or defeat the legislation pending before Congress."

Mr. SHAYS. OK.

Mr. MCATEER. So they both covered both of those. And I misspoke when I earlier testified. I was in error.

Mr. SHAYS. OK. I appreciate you saying that, but the bottom line is, being in error means that this is a very—and a memorandum that is not consistent with what you see written here. You say this is very restrictive, what was the appropriation rider.

And so I just would conclude, Mr. Chairman, that what you have is, you have in 1989 a restrictions on lobby memorandum by Mr.

Thorn that makes it clear that employees cannot basically lobby Congress.

And then you have a memorandum in 1994 that basically says that in fact the limitation is a rather narrow one aimed principally at grassroots. It then expands what you are allowed to do and doesn't include the fact that you've got appropriations riders, and appropriations riders are very restrictive on employees.

And I just think that, one, you enable your employees to do things that are simply illegal by this memorandum. And I am very puzzled why you would have had a memorandum in 1994 when the 1989 one was clearly a more accurate one.

Mr. CLINGER. The gentleman's time has now expired and I would now recognize the gentleman from New Hampshire, Mr. Bass, for 5 minutes.

Mr. BASS. Thank you very much, Mr. Chairman. And I think we should, in opening, remember that what we are attempting to do here is to clarify and make life easier for Federal employees in dealing with the issue of lobbying or expressing positions on important matters that may be pending before Congress.

And this legislation that we are considering today will not only affect a Clinton administration, but presumably future administrations afterward, which may ultimately be Republican. So I think it is important to understand that the purpose of this hearing is to try to bring the level of competence and make—above reproach, and to make Federal employees truly servants of the people and not servants of a particular political party or interest.

I guess my questions today are directed at Ms. Keener from the Veterans Administration. I'm a member of the Budget Committee, and I was particularly alarmed by many of the statements that Secretary Brown made in the course of deliberations last year on the Veterans Administration budget.

I refer to a number of e-mail communications, as well as a pay stub message that was sent out apparently to, according to his letter here, 255,082 employees. Now, in this pay stub message there were very clear opinions expressed.

For example, it says the administration's plan is much better for veterans and their families. It says the President has recommended a good fiscal year 1996 VA budget with $1.3-billion increase, and so on and so forth.

And then it ends by saying, "We hear a lot these days about making sacrifices. We need to point out that veterans and their families have already paid their dues."

Ms. Keener, how many of the 255,000 VA employees, in your opinion, needed this information in order to properly carry out their jobs?

Ms. KEENER. Well, I would like to give you a little bit of background on that particular statement that was issued, Mr. Bass. I think at that particular point in time what was happening in the Department is that there were employees who were extremely concerned about what was going to happen to our budget.

Every time you got on the elevator you heard people talking about who was going to be RIF'd, who was going to be furloughed, what was going to happen with the budget. We were getting calls from people in the field with these kinds of concerns.

I think that what happened is, is that particular statement was issued by the Secretary in specific response to a lot of rumors, a lot of misinformation that was being perpetuated throughout the Department and the country. And I think we reviewed that statement very carefully.

It was clearly our opinion that there was nothing in that statement that violated the Anti-Lobbying Act. The Secretary stated the facts. He stated his opinion. He thought the administration budget was better for veterans, but he did not clearly encourage anyone to contact their legislator. And in our opinion, it is not violative.

Mr. BASS. Did Secretary Brown realize that the VA outlays—proposed VA outlays for hospital and Medicare in the fiscal year 1996 budget for the administration was $17.1 billion and the House Republican budget $17.9 billion? Did he communicate that in any way to his employees?

Ms. KEENER. Those figures were not communicated, but I am sure you're aware of the fact that there has been significant discussion on those figures and that we'll probably just have to agree that we disagree on their significance regarding the budget.

Mr. BASS. But you can't disagree with the fact that this is fiscal year 1996, administration's $17.1 billion, House Republican budget $17.9 billion. Would that have done anything to stop the concerns about RIF's and so forth, if they had found out that the Republican budget was actually higher than the administration budget in area of hospital and medical care?

Ms. KEENER. Well, I don't think so, Mr. Bass, because that gets back to the basic disagreement regarding those numbers. And I think that there has been significant discussion that goes into a lot of detail about what those numbers do and how they work in budgets in the short term and in the long term. So I don't think that providing those numbers would have cleared up the differences that we have regarding them.

Mr. BASS. But you think that saying that this is a budget—this is comparing a budget resolution. The President has recommended a good fiscal year 1996 budget with a $1.3-billion increase including nearly $1 billion for health care.

On the other hand, the House of Representatives has approved a plan to increase veterans' health care by $563 million, and so forth. Now, which budget was the Secretary referring to in the Clinton administration, which one? There were three that were proposed in 1995. Which one?

Ms. KEENER. I'm not sure.

Mr. BASS. OK. So therefore, his statement here isn't any clearer than in terms of being—identifying the source of information, the numbers, than is the CBO numbers which actually compares the real budget differences at that time?

Ms. KEENER. No, sir. But his message was clearly based, and I think it was so stated, that this was his opinion. And his opinion is based on an analysis—at least in the August message it indicated that that was his opinion, that the administration budget was better than the House budget plan.

And after analysis, his opinion is based on what would be in the best interest of veterans. And that was clearly stated in the message.

Mr. BASS. Does it say anywhere in this pay stub message that this is his opinion?

Ms. KEENER. In the August——

Mr. BASS. I've got it right here and all the members of the committee have a copy. Just show me where it says in my opinion or in the opinion of the Secretary of——

Ms. KEENER. It says, "As I have been telling the Nation's veterans organizations this summer, the administration's plan is much better for veterans and their families."

Mr. BASS. Well, you would admit that nowhere—it mentions his opinion. Let me just ask you one last question, because I'm running out of time. I'm going to look for the quote here.

It's my understanding that the Secretary has made some rather pointed comments about the 1997 administration budget. And he says, and I quote—I think it was in March of this year—"that it would devastate the VA." Has he sent that information out, that comment out and that opinion out to the employees of the VA yet?

Ms. KEENER. No, he hasn't.

Mr. BASS. When does he plan to do it?

Ms. KEENER. Well, I don't think he does, Mr. Bass, because as I indicated, I think that the circumstances surrounding the time that this message was sent are very different than they are now.

Mr. BASS. It's OK then that the VA is devastated in 1996, but it was different in 1995.

Ms. KEENER. No, sir, that is not what I'm saying. What I'm saying is that at that time, in August 1995, we had numerous questions and concerns regarding the budget that came to us from our employees all over the country. After 7 months we finally have a budget now. People are not quite as insecure about their future Federal employment as they were back in the summer of 1995.

Mr. BASS. Even though the Secretary of—excuse me, I'd better—my time is up—the Secretary of Veterans Affairs has said that this budget would devastate the VA, that doesn't cause any concern, or less concern than a series of unsubstantiated numbers in 1995.

Mr. Chairman, thank you very much.

Mr. CLINGER. The gentleman's time has expired. The Chair recognizes the gentleman from Indiana, Mr. McIntosh, for 5 minutes.

Mr. MCINTOSH. Thank you, Chairman Clinger. I have a couple of questions for McAteer.

Mr. MCATEER. McAteer.

Mr. MCINTOSH. Thank you. There were two faxes that I wanted to ask you about. One is titled, "The Facts on Better Jobs and Higher Incomes." I take it each of these are a series of faxes. The other is, "America's Job Facts." Could you tell me the purpose of each of those faxes?

Mr. MCATEER. The Department developed a series of faxes in reply or in response to a number of questions that were raised from the public, from the Hill, from the media, concerning the position of the administration on topics that were affecting working men and women. And this fax, "The Facts on Better Jobs or Higher Incomes" was one of those series.

Mr. MCINTOSH. "America's Job Facts" looks like it is intended to encourage people to support the Reemployment Act of 1994. Most

of the faxes that I have seen deal with that specific legislation. Is that correct?

Mr. MCATEER. I believe they deal with the legislation, but I do not believe that they state, "America's Job Facts," do not believe that they state, that they ask anybody to take any action with regard to pending congressional action.

Mr. MCINTOSH. No, but they seem to be sort of an update on where things stand in that lobbying effort. Take, for example, the one August 2.

Mr. MCATEER. They are an update on where things stand. I would not say they are an update on where things stand in a lobbying effort.

Mr. MCINTOSH. Were the individuals who received those faxes supporters of that legislation?

Mr. MCATEER. Some of the individuals who received the faxes supported the legislation, and some of the individuals who received the faxes were not necessarily in support of the legislation.

Mr. MCINTOSH. And who is the highest ranking official at the Department who decided to go forward with these fax newsletters?

Mr. MCATEER. The Department went forward with the newsletters. The individuals who, in response to a request from Congressman Clinger, we have provided information as to the individuals who assisted in the development of those faxes, and that information is available to the committee. I'm sorry?

Mr. MCINTOSH. Did any political appointee nominated by the President and confirmed by the Senate approve of these newsletters or the conception of these newsletters?

Mr. MCATEER. Congressman McIntosh, the Department is under the direction of the Secretary and political appointees. If a document comes out of the Department of Labor, it is our document. So, political appointees would have, in essence——

Mr. MCINTOSH. So you are saying the Secretary approved the faxes?

Mr. MCATEER. I am not saying that the Secretary approved the faxes. If it is a department——

Mr. MCINTOSH. The Secretary approved the creation of the faxes?

Mr. MCATEER. I'm not saying that, either. I'm simply saying if the Department created a document——

Mr. MCINTOSH. Who, acting on behalf of the Secretary, approved the creation of the faxes?

Mr. MCATEER. If a document comes out of the Department, it is our document.

Mr. MCINTOSH. I understand that. I'm asking you for a name of a person. And were any of those people nominated by the President and confirmed by the U.S. Senate?

Mr. MCATEER. The documents, these two faxes that you are referring to, were documents that were published by the Department. And as acting solicitor——

Mr. MCINTOSH. Mr. McAteer, is it true that none of the Presidential appointees confirmed by the Senate approved the creation of these faxes?

Mr. MCATEER. I cannot——

Mr. MCINTOSH. A simple yes or no.

Mr. MCATEER. I cannot answer the question.

Mr. MCINTOSH. Do you know?

Mr. MCATEER. Because we do not know at this time whether—what individual approved these documents. We have tried to provide this information to the chairman of the committee. But there——

Mr. MCINTOSH. Mr. Chairman, I would like to ask that the gentleman return to the Department and provide an answer to that question to the committee in the next week or so.

Mr. MCATEER. Fine.

Mr. MCINTOSH. If you could make an inquiry of those officials.

Mr. CLINGER. We will hold the record open so that the gentleman can respond.

Mr. MCINTOSH. Similarly, if any of those officials gave final signoff for any of the faxes that were prepared.

Mr. CLINGER. Very good.

Mr. MCINTOSH. I have a couple of questions for Mr. Cannon, and I know some of this was discussed earlier. But, Mr. Cannon, could you give us an estimate of how many man-hours were spent at EPA in the Contract with America meeting of EPA Group and their activities during 1995 and 1996?

Mr. CANNON. The information I have, Congressman, is that for H.R. 9-related activities, the total expenditure, including salaries for staff involved—this is all activities, including analyzing legislation, gauging the programmatic implications, and developing a position, was about $300,000.

I would say for—and we talked a little bit about this earlier today—the outreach portion itself, although I don't have exact figures, is a smaller portion of that, probably in the range of $12–$15,000, is the information that I have now on that.

Mr. MCINTOSH. Real quickly, I don't know if this was discussed earlier, but are you familiar with the e-mail dated February 3 on subject Unfunded Mandates?

Mr. CANNON. I have a copy.

Mr. MCINTOSH. The copy I have has the name of the sending and receiving parties redacted.

Mr. CANNON. Yes, I have that. I have a copy of that document.

Mr. MCINTOSH. Were you familiar with this document before it was sent?

Mr. CANNON. No.

Mr. MCINTOSH. Would you advise your client at the Department that there are any legal questions relating to this document and the Anti-Lobbying laws if it was shown to you before it was sent?

Mr. CANNON. This document—let me give some background before I come to the answer. This document is an internal document. This is not a document, as I understand it, that was sent outside the agency.

It was a document that, on its face, records discussions between an agency employee and environmental groups who appear to be seeking information on the agency's position or activities relating to certain legislation.

To my knowledge, the sender of this—the sender of this e-mail did not receive a response. I don't think that this memorandum or what it represents runs afoul of the Anti-Lobbying Act.

[The information referred to follows:]

EXAMPLE

From:
To:
Date: February 3, 1995 11:59 am
Subject: unfunded mandates

Enviros are looking for some help in the conference committee on unfunded mandates. Just like us, they prefer the Senate version because it bars judicial review of cost estimates on regulations. Also as we do, they prefer the Senate version on the dollar figure thresholds for the requirements kicking in. So, they're wondering what we're planning to do to influence the conference committee to accept the Senate version. Letters from CMB? Calls from CMB? Any other stuff? Please let me know what we're doing or what you think we should/will be doing. They are lobbying conf. cmte. members and trying to get grassroots going as well. Thanks.

Also, they're wondering if we've produced a side-by-side analysis of the House and Senate bills. If so, let me know.

And to my knowledge, it was never—never resulted in materials being sent out from the agency. So I am not in a position to assess what those materials might have been or what their impact under the Anti-Lobbying Act might have been.

Mr. MCINTOSH. Mr. Horn, I have several other questions. If I could ask Mr. Cannon, if you could—we'll send you those questions if you could return answers to that? If we leave the hearing open for a week, I think Mr. Clinger had asked——

Mr. HORN [presiding]. Without objection, so ordered.

Mr. MCINTOSH. Great. Thank you.

Mr. HORN. The gentleman from California, namely me, is now recognized and Mr. Nordhaus, we'll go back to the question here.

Mr. NORDHAUS. Yes, sir.

Mr. HORN. Was the letter that Deputy Secretary White prepared reviewed by the Secretary at all?

Mr. NORDHAUS. No, it was not.

Mr. HORN. How many career officials were involved in the preparation of this letter?

Mr. NORDHAUS. Our response to the committee has a list of the people we were able to identify who assisted in some form or another with the letter. And I will try to figure out how many of them are career, roughly.

Mr. HORN. Could you identify them? Like Mr. Bickerton, let's say, is he career or Civil Service?

Mr. NORDHAUS. I believe he is——

Mr. HORN. I mean the political Schedule C or——

Mr. NORDHAUS. I believe he is—I would say roughly half of them are career, and Mr. Bickerton, for instance, according to my understanding is noncareer. But I can't—this is an estimate, but——

Mr. HORN. Well, could we check this, check this with personnel? Let us know in the week as to which of these are political appointees and which are career people, if you would. Appreciate it.

Mr. NORDHAUS. OK.

[The information referred to follows:]

J. Brison Bickerton	Formerly—Staff Assistant, Energy Information Administration.	GS–12	Noncareer.
Leonard Coburn	Industrial Specialist, Office of Fossil Energy.	GM–15	Career.
Joseph Easton	Special Assistant, Office of the Assistant Secretary for Fossil Energy.	GS–11	Noncareer.

Ann Farace	Special Assistant, Office of the Deputy Secretary.	GS–13	Career.
Clare Giesen	Special Assistant, Office of the Assistant Secretary for Energy Efficiency & Renewable Energy.	GS–14	Noncareer.
Melanie Kenderdine	Deputy Assistant Secretary for House Liaison, Office of Congressional, Public and Intergovernmental Affairs.	ES–1	Noncareer.
Almira Kennedy	Special Assistant, Office of the Deputy Secretary.	GS–12	Noncareer.
John Northington	Staff Assistant, Office of the Deputy Assistant Secretary for Gas and Petroleum Technologies.	GS–15	Noncareer.
Robert Porter	Supervisory Public Affairs Specialist, Office of Fossil Energy.	GM–15	Career.
C. Kyle Simpson	Associate Deputy Secretary for Energy Programs, Office of the Deputy Secretary.	ES–4	Noncareer.
Jeffrey Smith	On Intergovernmental Personnel Assignment from the Los Alamos National Laboratory.	n/a	n/a.
Melissa Tell	Formerly—Industry Specialist in the Office of Policy.	GS–12	Career.
Sandra Waisley	Physical Specialist, Office of Fossil Energy.	GS–13	Career.
William Wicker	Special Assistant, Press Secretary, Office of Congressional, Public and Intergovernmental Affairs.	GS–14	Noncareer.
Eric J. Fygi	Deputy General Counsel	ES–6	Career.
Robert R. Nordhaus	General Counsel	EL–IV	Noncareer.

Mr. HORN. It looks like essentially 16 members of the staff were involved in the preparation of this letter, so it wasn't just something the Deputy Secretary dictated one sunny afternoon.

And are there—I guess the question would be when you go back, are there anybody besides the 16 mentioned here, which include, of course, general counsel review? What was the total cost of this mailing?

Mr. NORDHAUS. According to the information that we supplied the committee, about $33,600.

Mr. HORN. And a lot of that, I take it, was the postage because of the weight of this 80-page report that was attached, an all that?

Mr. NORDHAUS. The breakdown is about $10,000 mailing and $23,000 printing, according to our figures.

Mr. HORN. And this does not include the actual time the 16 officials spent on this letter of the Deputy Secretary?

Mr. NORDHAUS. No. This is only direct costs and I can't give you an estimate of that. I can tell you that from my understanding that Deputy Secretary White did do a substantial part of the work on drafting the letter. The accompanying materials were prepared by others.

Mr. HORN. Now, you mentioned that Secretary O'Leary was not involved. It seems to me—was she in town? I mean, could she have been contacted or was she somewhere overseas and they couldn't find her?

Mr. NORDHAUS. I don't know. This was prepared over some period of time, I believe, that Mr. White believed that this is something that he should do under his own responsibility as the senior official on the energy side of the Department. And I do not believe that he consulted or tried to consult the Secretary.

Mr. HORN. Since he didn't sign it as acting Secretary, it meant the Secretary was probably in town, doesn't it? When he signs it as Deputy Secretary?

Mr. NORDHAUS. I—he may have decided to sign. I can't tell you whether that's the case or not.

Mr. HORN. I'm looking at page two of the letter and one of the best paragraphs—last paragraphs there, especially in light of our oil prices going up, is saying, and I quote, "Some in Congress want to sell the oil stockpiled in the strategic petroleum reserve in competition with the private sector and eliminate all tax incentives by labeling the corporate welfare. We are fighting back."

Now, I find it amusing and bemusing and interesting, because here DOE notes that Congress wants to sell oil in the strategic petroleum reserve. In light of the President's recent actions, it seems the President wants to sell oil from the strategic petroleum reserve.

It just depends on who is up at bat when, I guess. And given the oil prices, maybe this would have been a good thing. I'm not knocking it, but I find it amusing that the President is criticizing us for wanting to sell oil in the strategic petroleum reserve—an action, to my knowledge, which we never took.

Mr. NORDHAUS. Mr. Horn, could I say that, just on that subject, that I believe the letter went out at a time when oil prices were way down. They have subsequently, in the intervening year, increased steeply, so that from the point of view of the impacts of the sale of oil from the reserve, there is a much better case for doing it now than then.

But more importantly, Congress has directed us to do it now. And the action the President took was pursuant to a specific requirement by Congress to sell approximately—I think it's about 5 million—10 million—it was between 12 and 18 million barrels of oil between now and the end of the fiscal year.

Mr. HORN. Who were the "some" in Congress that is referred to in the letter that I quoted, the "some" that want to sell the oil stockpiled in the strategic petroleum reserve?

Mr. NORDHAUS. The response we gave to the committee, which I believe was formulated after an inquiry to Mr. White, was that it referred to those members who backed the various provisions of the House budget resolution for fiscal year 1996, which would have eliminated a very large portion of the funding for the Fossil Energy Program and for energy conservation research.

That's my understanding of what Mr. White was referring to, and I believe that is derived from information our staff got directly from Mr. White.

Mr. HORN. So it would be those of us who voted for the budget resolution, essentially? Is that how we categorize the "some?"

Mr. NORDHAUS. Those portions of the budget resolution which reduced funding for those two research programs.

Mr. HORN. I see my time is up, but let me ask one last question before I leave to vote. You noted that $33,000 in direct cost was spent on this mailing to 10–14,000, whatever, people. You have indirect costs, certainly, when you've got 16 people working on it. If—what do you think that cost, $5,000, $10,000, $20,000 worth of time?

Mr. NORDHAUS. I don't doubt that it's very large and probably would be very hard to reconstruct at this point. But I know, for instance, I'm listed there.

My involvement consisted of a brief conversation with a member of Mr. White's staff, a probably 5- to 10-minute review of the letter and a request to the deputy general counsel, Mr. Fygi, to take a look at the letter and to get back to Mr. White with some suggestions on it, one of which was that the questionnaire that was attached to that version of the letter would require OMB clearance.

Mr. HORN. Well, just to note, because I have to leave, if it hit $17,000 it would exceed your $50,000 limit, which is your own policy. That's simply the——

Mr. NORDHAUS. It would. If it hit $17,000 it would exceed that limit. But that would—because the communication is from a Senate-confirmed officer under the DOJ guidelines, even if it were above $50,000 it would appear to be OK.

Mr. MICA. The committee will stand at recess for approximately 5 minutes or the return of Mr. Clinger, the Chair.

[Recess.]

Mr. CLINGER. The committee will resume its sitting, in hopes that this will be the final question for this panel. I'm sure you'll be delighted to hear that.

I just have one question to ask Mr. McAteer, and that really relates to the, I think, 26 newsletters that were sent out, entitled—"America's Job Facts," and so forth. I guess the question is, can you honestly tell me that these newsletters, some of which are referring to pending legislation, do not violate the Labor H.S.S. appropriations rider?

It seems to me that they would be clearly precluded by the language of that rider, which is newsletters being sent to a mailing list of, what, about 300 or thereabout? Well, yeah, I mean a long, long list of elements. It just seems to me that it strains credulity, if you don't mind that——

Mr. MCATEER. The faxes were sent out, were an effort to keep the public—make the public aware and keep the public informed as the progress developed on the issue.

Mr. CLINGER. But I think——

Mr. MCATEER. It is not——

Mr. CLINGER. It is publicity about—and it is propaganda, in my view, which seems to me to be clearly precluded by the rider.

Mr. MCATEER. But it's not the—we don't believe that it violates under the Anti-Lobbying Act nor the appropriations riders, and let me explain why.

The General Accounting Office, which has the authority to deal with the appropriations rider, has indicated to us that the rule is that it needs to—to be violative of the appropriations rider, there needs to be a direct appeal to contact Members of Congress and that that we do not believe these faxes do.

Mr. CLINGER. All right. I think that gets to the real crux of the matter. I mean, if that is the interpretation, then anything goes as long as they are not a direct appeal to a Member of Congress. And I just think that becomes too narrow, too specious to allow to continue to stand, which is why I have introduced this legislation.

I want to thank all of the members of the panel. I appreciate your patience. I know it has not been a pleasant morning-afternoon. But at least it is not an evening that is also going to be unpleasant, and I really thank you very much for coming here today.

Mr. MCATEER. Thank you, sir.

Mr. CLINGER. And now I am pleased to ask the final panel of the day, and who have also exhibited enormous patience and fortitude in sticking with us. If you haven't left, I assume you are still here.

So I would call to the witness table Mr. Robert P. Murphy, the general counsel of the General Accounting Office, Mr. Lou Fisher, senior specialist in American national government with the Congressional Research Service of the Library of Congress, Mr. Al Cors, the director of Government Affairs for the National Taxpayers Union, and Mr. N. Jerold Cohen, chairman of section on taxation for the American Bar Association.

Welcome, gentlemen. If you might just remain standing, if you would. As I think you have heard me announce, we do, as a practice in this committee, as the principal oversight committee, swear all of our witnesses, so as not to prejudice any witness.

[Witnesses sworn.]

Mr. CLINGER. Let the record show that all of the witnesses answered in the affirmative. And, Mr. Cors, I understand that you are going to be our leadoff.

STATEMENTS OF AL CORS, JR., DIRECTOR OF GOVERNMENT RELATIONS, NATIONAL TAXPAYERS UNION, ALEXANDRIA, VA; ROBERT P. MURPHY, GENERAL COUNSEL, U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, DC; LOUIS FISHER, SENIOR SPECIALIST IN AMERICAN NATIONAL GOVERNMENT, CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS, WASHINGTON, DC; AND N. JEROLD COHEN, CHAIRMAN, SECTION ON TAXATION, AMERICAN BAR ASSOCIATION, WASHINGTON, DC

Mr. CORS. Mr. Chairman, thank you very much. I am most appreciative of the opportunity to appear here today and represent the National Taxpayers Union, America's largest taxpayer organization.

I would like to express our strongest possible support for the legislation you have introduced, H.R. 3078, and to compliment you and your cosponsors. This is needed legislation. Certainly, this hearing today has made it crystal clear that the law needs to be very specific, or needs to be made more effective.

And certainly the civil statute would be much more useful, it would appear, than the criminal statute that is now in place. So from a taxpayer's perspective, it is clear to us that the activities that have been discussed today, from our perspective are certainly—if not all, most—most of those activities would seem to us to be inappropriate uses of taxpayer dollars.

From a taxpayer's perspective the executive branch of Government's main duty, and certainly for all the many, many thousands of employees and the resources they use and have at their disposal, is to administer and enforce the laws as passed here in the legislative branch.

And I think certainly it is time to draw a line and I think your legislation does that very fairly. We would draw no distinction. This would be wrong. The examples would be wrong if they had been conducted under a Republican administration.

Certainly there were instances in past administrations that were problematic, and for that reason we certainly support your legislation and urge that it be passed.

[The prepared statement of Mr. Cors follows:]

PREPARED STATEMENT OF AL CORS, JR., DIRECTOR OF GOVERNMENT RELATIONS, NATIONAL TAXPAYERS UNION, ALEXANDRIA, VA

Mr. Chairman and Members of the Committee:

The 300,000-member National Taxpayers Union strongly supports your legislation, H.R. 3078, to prevent federal agencies from using tax money for lobbying.

The nation's taxpayers have a vital fiscal and ethical interest in ensuring that federal agencies do not engage in orchestrated attempts to influence legislation. Given their proximity to Congress, level of political expertise, and considerable resources, federal agencies can exert a disproportionate influence on the political process. Perhaps this was the original motivation behind the Anti-Lobbying Act, which is supposed to forbid any appropriation from Congress from being used "directly or indirectly . . . to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress."

Yet, such activities are commonplace today. Federal agencies have distributed flyers in opposition to Endangered Species Act reforms, conducted mass mailings that oppose reforms to EPA programs, and have even printed messages on employee pay stubs against proposed agency budget cuts. Such activities clearly must be stopped, and H.R. 3078 will do just that.

Your legislation is a carefully measured, non-partisan approach that will stand the test of time. It would reaffirm the intent of previously enacted law, by prohibiting federal agencies from using taxpayer funds to prepare lobbying materials to promote or oppose pending legislation. Just as important, it provides for enforcement through the General Accounting Office and the agency Inspector Generals, thus moving any barriers to administration of the law.

Finally, H.R. 3078 removes any doubts over the law's applicability by specifically exempting the President, Vice President, federal agency heads, and Senate-confirmed appointees from the lobbying restrictions. Contrary to some criticisms, your amendment will not prevent responsible public policymakers from expressing their views to Congress. Indeed, the proposal will help restore public confidence in the Executive Branch's primary role—to enforce and administer the law, not to unduly influence it.

Laws should be more than empty formalities. Moreover, federal employees should not be permitted to advance personal political agendas on the taxpayer's time clock. Furthermore, the nation's taxpayers have a right to hear both sides of any vigorous political debate. H.R. 3078 strikes the proper balance among all of these concerns. We urge this Committee and the House to pass this critical measure.

Mr. CLINGER. Thank you very much, Mr. Cors. I think you make the point that we try to stress here, although this has been sort of a partisan mud fight here today.

But I think the point needs to be made that if this is really going to be passed that it would be in place for whatever administrations might come in the future. And there have in fact been examples that I would have found equally reprehensible in previous Republican administrations.

So the battle here is really not, I think, between Republicans and Democrats, but rather a struggle between equal branches of Government and what the permissible limits should be on the activities of either branch.

In the case of Congress, we have our own rules and restrictions on what we can do equally. The executive branch needs to have some restraint on their ability to lobby the Congress.

Let's see, I think that if you are concluded, Mr. Cors, I would call on Mr. Murphy.

Mr. CORS. Mr. Chairman, if I may be excused, I have an appointment and I was not aware that the hearing was going to last as long as it did.

Mr. CLINGER. I don't know that any of us were, Mr. Cors, but if you have an appointment, you are excused.

Mr. CORS. Thank you very much, sir.

Mr. CLINGER. Mr. Murphy, please. And as I have said to everybody, your entire testimony will be in the record. And if you can summarize, that will be fine. If not, proceed at your——

Mr. MURPHY. I'll do that, Mr. Chairman. It's always a pleasure to appear before this committee.

Some 12 years ago, GAO issued a report taking a look at executive branch lobbying activities. And at that time we recommended a restriction that is quite similar to the one that you've proposed in H.R. 3078, and we are aware of no reason why there is any less necessity today for a uniform Governmentwide legislation on this subject.

In 1984 we were asked by the predecessor of this committee to review the adequacy of the current laws and regulations that govern executive branch efforts to influence the legislative process.

We concluded then that the applicable statutes were "unclear, imprecise, and judicially unenforceable, except in rare cases of extreme violation." Our concern about the appropriation act restrictions was largely that, because they were enacted every year, agencies weren't implementing guidance or regulations so that their employees knew what the rules were. As for us, an agency that was frequently asked to investigate and render a legal opinion on whether employees had violated those appropriation act restrictions, we didn't have regulatory guidance that supplemented the bare bones of the appropriation statutes.

So in 1984, after interviewing legislative and executive branch officials, we suggested continuing the existing framework of restrictions, but enacting into permanent law one of those restrictions that was in appropriation acts.

As I said, we proposed language that was similar to, although somewhat narrower, than the prohibition in H.R. 3078. We believe that our proposed language would encourage agencies to issue interpretive guidance to their employees and ensure that restrictions on expenditures of appropriated funds remain in effect, even when there is a continuing resolution and it is not obvious that those restrictions apply to the employees.

I want to make clear, Mr. Chairman, that substantive rules regarding lobbying by Federal officials are a matter of policy for the Congress to determine, and GAO doesn't have any position on that issue. But as an agency that is asked to investigate and render legal opinions, it is our strong feeling that permanent, Governmentwide legislation would be very helpful and would enhance the goals that Congress seeks to meet in its appropriation legislation.

I would just like to address briefly one issue that is raised by the proposed legislation and basically speak in support of it. We have, on occasion—I think we have had three occasions, and perhaps four—in which we have looked at alleged violations of the Interior

Department appropriation act restriction on which you have modeled your legislation.

In looking at those alleged violations, we found in—in the three cases that come immediately to mind—in two cases we found violations; in one case we did not. And in making those determinations, we had to look at a lot of issues. We had to look at the context in which the statements or the documents were issued. We had to look at what they said. But one of the things that we decided that we really had to take a look at was whether they were intended to influence the legislative process.

The reason we did that is that agencies have in many cases an affirmative obligation to provide information to the public. In other cases they are asked questions and they have to respond. For instance, in one of the examples that we looked at, a Federal agency employee was asked, "What can we do to help you with your appropriation this year?"

She responded, quite logically, "Well, you might call your Congressman or woman." Now, that was basically a civics lesson, and we didn't view that as intended to influence the legislative process.

In looking at these situations, we thought that motivation was important because it was the only way to distinguish, in our minds, between a legitimate, informative function by the agency, and what we would call lobbying, or an effort really to influence the legislative process.

So what I want to say is that we are happy to see in your bill that you have included the element of intention, which we think goes a long ways toward respecting agencies' obligation to provide information.

[The prepared statement of Mr. Murphy follows:]

PREPARED STATEMENT OF ROBERT P. MURPHY, GENERAL COUNSEL, U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, DC

Chairman Clinger, Ms. Collins, and Members of the Committee:

I am pleased to appear before you today to discuss H.R. 3078, a bill to amend title 31, United States Code, to prohibit the use of appropriated funds by federal agencies for lobbying activities, and to discuss the role of the General Accounting Office (GAO) in investigating alleged violations of anti-lobbying restrictions. Twelve years ago GAO recommended enactment of a restriction similar to that proposed in H.R. 3078. We are aware of no reason why permanent government-wide legislation is less necessary today.

In 1984, we were asked by the predecessor of this Committee to review the adequacy of current laws and regulations that govern executive branch efforts to influence the legislative process.[1] We concluded that the applicable statutes and written guidelines on agency lobbying were "unclear, imprecise, and judicially unenforceable except in rare cases of extreme violation." Our concern about appropriation act restrictions on lobbying was that none had been enacted into permanent law, and as a result there were no clear guidelines as to what constituted improper behavior.

Based on a series of interviews of legislative and executive branch officials, we suggested continuing the existing framework of controls, but enacting into permanent law the restriction regularly found in some appropriation acts. We proposed language similar to, although somewhat narrower than the prohibition in H.R. 3078. We believed that our proposed language would encourage agencies to issue interpretive guidance to their employees, and ensure that the restrictions on expenditures of appropriated funds remain in effect even when parts of the government are operating under a continuing resolution.

With this preface, I would like to briefly focus on three issues.

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[1] No Strong Indication That Restrictions On Executive Branch Lobbying Should Be Expanded, GGD–84–46 (March 20, 1984).

First, I would like to explain GAO's role in investigating alleged violations of the sundry restrictions on lobbying with appropriated funds contained in some but not all of the thirteen regular appropriation acts. Second, I will discuss H.R. 3078's prohibition on lobbying by federal agencies in light of its statutory model, section 303 of recent Department of Interior appropriation acts, and our decisions interpreting and applying section 303. And third, I would like to briefly touch on H.R. 3078's potential impact on our workload.

BACKGROUND

Generally speaking, there are two types of restrictions on the use of appropriated funds for lobbying activities—one criminal and the other civil. In 1919, Congress enacted what is now 18 U.S.C. § 1913, making the use of appropriated funds to lobby Congress a criminal offense. Since 18 U.S.C. § 1913 is a criminal statute, its enforcement is the responsibility of the Department of Justice and the courts. The Justice Department has construed 18 U.S.C. § 1913 to prohibit the use of appropriated funds for large-scale, high-expenditure indirect or "grass roots" lobbying campaigns. The role of enforcing the criminal laws is the Justice Department's, and GAO does not decide whether a given action violates the statute. In evaluating specific situations, we defer to the Justice Department's interpretation of section 1913 to determine whether to refer a particular matter to the Department for further investigation. To our knowledge no one has ever been indicted under the statute.

The second type of lobbying restriction is civil, typically although not exclusively found in the regular appropriation acts that prohibit the use of appropriated funds for certain lobbying activities. These acts have provided a number of different standards, with varying degrees of specificity and coverage. Attached to this testimony is a summary of the most recent appropriation act provisions. One version of the appropriation act restrictions that we have had the most occasion to apply has been the restriction on the use of appropriated funds "for publicity or propaganda purposes designed to support or defeat legislation pending before Congress." We have construed this provision to allow agencies to directly contact Members of Congress, but to prohibit indirect or grass roots lobbying through appeals to the public to contact their elected representatives.

H.R. 3078 is modeled on another appropriation act restriction that has been included in the Department of the Interior appropriation acts since fiscal year 1979. This provision is broader than other appropriation act restrictions. It prohibits the use of any funds appropriated in the Department of the Interior appropriation act "for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition" to any pending legislative proposal.

GAO'S ROLE IN INVESTIGATING AND ENFORCING LOBBYING RESTRICTIONS

GAO's role in investigating and enforcing statutory restrictions on the use of appropriated funds for lobbying is tied to GAO's historical role in the appropriation process. Under the Budget and Accounting Act of 1921, GAO's enabling statute, GAO is authorized to investigate "all matters related to the receipt, disbursement, and use of public money" and to "settle all accounts of the United States Government." Although our process for discharging these authorities has evolved significantly over the years, our role in determining whether taxpayer funds have been put to lawful use continues to rely on the 1921 statute.

Over the years, we have considered on a number of occasions whether actions by agencies, their officials, or recipients of agency funds, constitute an improper use of appropriated funds under the language of the various statutory lobbying restrictions. Requests for GAO investigations of alleged violations of the lobbying restrictions usually are made by congressional committees and individual members of the Congress. In some instances, on its own initiative GAO has found and addressed questionable agency activities which came to light in connection with its audits or evaluations of agency activities and programs.

GAO's investigation and reporting on alleged agency lobbying activities has generally been the full measure of our enforcement of the appropriations act restrictions. Although under our account settlement authority we theoretically can take exception to an improper or illegal expenditure in an accountable officer's account and seek recovery from the accountable officer of the amount improperly spent, as a practical matter this is often not viable.

It is not unusual that the amount of federal funds used in the prohibited activities is small, mingled with otherwise proper expenditures, and extremely difficult if not impossible to separate out from the proper costs. For example, the Department of the Interior estimated that approximately $90 was spent in a recent case of improper lobbying that we investigated. Also, the accountable officers who are person-

ally liable for the improper expenditures are not the agency officials who directed or carried out the prohibited activities. Nor are these accountable officers necessarily in a position to know that the vouchers they are asked to certify or the payments they make are in fact for an unlawful lobbying purpose. Under these circumstances, to seek recovery from these individuals misses the mark. Hence, our real "enforcement" tool is to report the unlawful activities to the Congress for its oversight of executive branch activities. That is the approach incorporated in H.R. 3078, and it is consistent with the views expressed in our 1984 report.

APPROPRIATION ACT MODEL FOR H.R. 3078

The language of H.R. 3078's prohibition closely conforms to the language of the anti-lobbying restriction contained in the Department of the Interior appropriation acts noted earlier. Section 303 of the recent Department of the Interior appropriation act precludes the use of funds appropriated in that act:

> "for any activity . . . that in any way tends to promote public support or opposition to any legislative proposal . . . on which congressional action is not complete."

Similarly, H.R. 3078 would restrict the use of funds made available to an agency by appropriation:

> "for any activity . . . that is intended to promote public support or opposition to any legislative proposal . . . on which congressional action is not complete."

While the basic restriction is essentially the same, there are some details in H.R. 3078 that are not in section 303 of the Department of Interior appropriation act on which it is modeled. In lieu of section 303's reference to "any activity or the publication or distribution of literature," H.R. 3078 includes a list of examples of prohibited activities drawn from provisions regularly contained in appropriations for the Departments of Labor, Health and Human Services, and Education. In addition, H.R. 3078 specifically includes as a "legislative proposal" the confirmation of the nomination of a public official or the ratification of a treaty. H.R. 3078, unlike the Department of Interior restriction, requires that for the use of appropriated funds to be prohibited the activity must be "intended" to promote public support or opposition to a pending legislative proposal rather than merely have that effect.

We have applied the Department of the Interior restriction in three cases. In two we found violations; in the third we did not. Let me briefly summarize those cases. In a 1979 decision, we concluded that a National Endowment for the Arts (NEA) mass mailing of an information packet implicitly advocated support of the appropriation for NEA's "Living Cities Program," thereby violating what was then section 304 of the applicable Department of Interior appropriation act. 59 Comp. Gen. 115 (1979). Recently, in a 1995 decision, we concluded that remarks made by a Fish and Wildlife Service employee at a press conference called to generate opposition to proposed amendments to the Clean Water Act tended to promote public opposition to the legislative proposal and hence violated the Department of the Interior appropriation act provision. B–262234, December 21, 1995. I would note that neither the Fish and Wildlife Service nor the Department of the Interior had provided written guidance to employees on section 303; and when the employee in question asked the Interior Regional Solicitor's office about what he could say about the proposed legislation, he was not told about section 303 or what it prohibits.

In the third case, after making a presentation at an arts management conference on the NEA's structure, its functions, and the status of its reauthorization, an NEA official responded to a question from the audience concerning what the audience could do to support the NEA. The NEA official responded that they could contact their elected representatives. Since the official's answer was more in the nature of a civics lesson, informational in nature, rather than an exhortation to contact Congress, we did not view the activity as a violation.

In each of these cases we had to reach a judgment whether under all the facts and circumstances present the activity tended to promote public support or opposition to a pending legislative proposal. Although the Department of the Interior restriction prohibits the use of appropriated funds for explicit appeals to the public to contact their elected representatives in support of or opposition to pending legislation, it also reaches more broadly to restrict appeals to the public that implicitly tend to promote support for or opposition to pending legislative measures. Accordingly, we have had to consider a variety of factors when analyzing whether a violation has occurred, including the timing, setting, audience, content, and the reasonably anticipated effect of the questioned activity.

One additional factor which is included in H.R. 3078 but was not explicitly included in the Department of the Interior language is whether the federal official intended to generate support for or opposition to legislation. While not in the language of the appropriation restriction, intention can be an important element of our analysis of a possible violation. This is because agencies are often called upon to provide information about their activities and programs in response to public inquiries, and cannot always prevent or even anticipate public response. As we noted in one case:

> ". . . there is a very thin line between the provision of legitimate information in response to public inquiries and the provision of information in response to the same requests which "tends to promote public support or opposition" to pending legislative proposals."

Even a strictly factual response to a question about the status of a program's appropriation could stimulate members of the public to contact Members of Congress. Without inclusion of some element of motivation, we believe that the bare language of the Department of the Interior restriction would establish a standard that might not achieve the control over agency lobbying that the Congress intended. Consequently, in addition to the effect of a communication governed by the Department of the Interior appropriation language, we have considered whether the communication was intended to promote support or opposition to a legislative proposal. For example, in the NEA "Living Cities Program" case, we concluded that the information package mailed out by NEA "was designed to promote public support for funding the Program." In the case of the NEA official who responded to a public question about what actions members of the audience could take to support NEA, we considered the fact that her response was "incidental to her presentation and was not part of any plan to generate action on the part of her audience."

EFFECT OF ENACTMENT OF H.R. 3078 ON GAO'S WORKLOAD

Over the past 20 years, we have issued about 25 reports or decisions concerning whether lobbying restrictions were violated. Some of those in which we found a violation are summarized in an attachment to this testimony. Although initially enactment of H.R. 3078 may lead to an increase in the number of requests for investigations, we do not anticipate that the number of requests will significantly increase. If the statute does produce a large influx of requests beyond our ability to investigate directly, the statute authorizes the Comptroller General to obtain the assistance of the various Inspectors General in investigating alleged violations.

Thank you, Mr. Chairman. This concludes my prepared remarks. I would be happy to answer any questions you may have.

ATTACHMENT 1—RESTRICTIONS ON LOBBYING THE CONGRESS INCLUDED IN FISCAL YEAR 1996 APPROPRIATION ACTS AND FINAL CONTINUING RESOLUTION

"PUBLICITY OR PROPAGANDA" RESTRICTIONS

1. Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, Final Continuing Resolution for Fiscal Year 1996, Pub. L. No. 104–134 §601, 110 Stat. 1321, as reported in H.R. Conf. Rep. No. 537, 104th Cong., 2d Sess. (1996).

> Sec. 601. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

2. Department of Defense Appropriations Act, 1996, Pub. L. No. 104–61, §8001, 109 Stat. 636 (1995):

> Sec. 8001. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

3. Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996, Pub. L. No. 104–107, §547, 110 Stat. 704, 741 (1996):

> Sec. 547. No part of any appropriations contained in this Act shall be used for publicity or propaganda purposes within the United States not authorized before the date of enactment of this Act by the Congress.

4. Treasury, Postal Service and General Government Appropriations Act, 1996, Pub. L. No. 104–52, §506, 109 Stat. 468 (1995):

> Sec. 506. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.

"PENDING LEGISLATION" RESTRICTIONS

1. Department of Defense Appropriations Act, 1996, Pub. L. No. 104–61, §8015, 109 Stat. 636 (1995):

Sec. 8015. None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.

2. Appropriations for the Department of the Interior and Related Agencies, Final Continuing Resolution for Fiscal Year 1996, Pub. L. No. 104–134, § 303, 110 Stat. 1321, as reported in H.R. Conf. Rep. No. 537, 104th Cong., 2d Sess. (1996):

Sec. 303. No part of any appropriations contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete.

3. Department of Transportation and Related Agencies Appropriations Act, 1996, Pub. L. No. 104–50, 109 Stat. 436 (1995):

Sec. 339. None of the funds in this Act 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, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation: Provided, That this shall not prevent officers or employees of the Department of Transportation or related agencies funded in this Act from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

MIXED "PUBLICITY OR PROPAGANDA"/"PENDING LEGISLATION" RESTRICTIONS

1. Appropriations for the District of Columbia, Final Continuing Resolution for Fiscal Year 1996, Pub. L. No. 104–134, § 113, 110 Stat. 1321, as reported in H.R. Conf. Rep. No. 537, 104th Cong., 2d Sess. (1996):

Sec. 113. No part of this appropriation shall be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.

2. Appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies, Final Continuing Resolution for Fiscal Year 1996, Pub. L. No. 104–134, § 503, 110 Stat. 1321, as reported in H.R. Conf. Rep. No. 537, 104th Cong., 2d Sess. (1996):

Sec. 503. (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, distributions, 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 any activity designed to influence legislation or appropriations pending before the Congress.

LOBBYING RESTRICTIONS USING OTHER FORMS, OR ON SPECIFIC SUBJECTS

1. Appropriations for the Legal Services Corporation, Final Continuing Resolution for Fiscal Year 1996, Pub. L. No. 104–134, § 504, 110 Stat. 1321, as reported in H.R. Conf. Rep. No. 537, 104th Cong., 2d Sess. (1996):

Sec. 504. (a) None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity (which may be referred to in this section as a "recipient")—

(4) that attempts to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, or any similar procedure of the Congress or a State or local legislative body;

(5) that attempts to influence the conduct of oversight proceedings of the Corporation or any person or entity receiving financial assistance provided by the Corporation;

(16) that initiates legal representation or participates in any other way, in litigation, lobbying, or rulemaking, involving an effort to reform a Federal or State welfare system, except that this paragraph shall not be construed to preclude a recipient from representing an individual eligible client who is seeking specific relief from a welfare agency if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation;

2. Appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices, Final Continuing Resolution for Fiscal Year 1996, Pub. L. No. 104–134, § 222, 110 Stat. 1321, as reported in H.R. Conf. Rep. No. 537, 104th Cong., 2d Sess. (1996):

> Sec. 222. . . . (b) No part of any appropriation contained in this Act shall be used for lobbying activities as prohibited by law.

3. Appropriations for the Department of Health and Human Services, Final Continuing Resolution for Fiscal Year 1996, Pub. L. No. 104–134, 110 Stat. 1321, as reported in H.R. Conf. Rep. No. 537, 104th Cong., 2d Sess. (1996):

> Provided further, . . . that such amounts shall not be expended for any activity (including the publication or distribution of literature) that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office.

4. Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996, Pub. L. No. 104–107, § 518, 110 Stat. 704, 727 (1996):

> Sec. 518. . . . Provided, That none of the funds made available under this Act may be used to lobby for or against abortion.

ATTACHMENT 2—VIOLATIONS OF ANTI-LOBBYING RESTRICTIONS IDENTIFIED BY THE GENERAL ACCOUNTING OFFICE, 1976–1996

1976

B–128938 (7/12/76)

An article in a newsletter published by the Planning and Conservation Foundation criticizing pending legislation and urging people to contact their representatives in Congress violates appropriation act lobbying restriction if paid for by Environmental Protection Agency.

1979

B–192746 (3/7/79)

The Maritime Administration violated an appropriation act restriction by contributing funds and administrative support to an organization that it knew was engaged in grass-roots lobbying activities.

CED–79–91 (5/15/79)

Participation by the Maritime Administration and its employees in National Maritime Council advertising campaign that encouraged the public to contact Members of Congress on pending legislation constituted violation of lobbying restriction.

59 Comp. Gen. 115

Information packet published by the National Endowment for the Arts violated the restriction of section 304 of Interior Appropriations Act that prohibits distribution of literature that in any way tends to support public support or opposition to pending legislation.

1981

60 Comp. Gen. 423

A campaign organized by the Legal Services Corporation (LSC) and its recipients in support of its reauthorization and funding constituted grass-roots lobbying contrary to the applicable lobbying restriction.

B–202787 (5/1/81)

A letter written by a recipient of a grant from the Community Services Administration urging members of the public to contact their Member of Congress urging support for the continuation of CSA constituted grass-roots lobbying in violation of an appropriation act lobbying restriction.

B–202975 (11/3/81)

A newsletter prepared and distributed by a subgrantee of the Urban Mass Transportation Administration urging members of the public to contact their elected representatives to urge continued financial support for the "people mover" program violated an appropriation act restriction on lobbying.

1982

GAO/AFMD–82–123 (9/29/82)

Extensive and cooperative effort by officials of the Air Force, the Office of the Secretary of Defense, and defense contractors to influence individual Members of Congress and the House-Senate conference with respect to the procurement of C–5B aircraft constituted violation of the appropriations restriction prohibiting the use of funds for publicity and propaganda purposes designed to affect pending legislation.

1983

B–212235 (11/17/83)

An article in a Department of Commerce publication by an employee of the Department, which concluded with a suggestion that persons might contact their Member of Congress to show support of an Administration bill, violated an anti-lobbying restriction in the agency's appropriation act.

1986

B–223098 (10/10/86)

Editorials prepared by the Small Business Administration and distributed to newspapers violated the "publicity and propaganda" restriction in an appropriation act. However, the SBA activities did not amount to grass-roots lobbying and therefore did not violate 18 U.S.C. § 1913.

B–222758 (6/25/86)

Hiring of a public affairs officer by the Chemical Warfare Review Commission to communicate with Members of Congress concerning pending legislation violated the lobbying restriction in the DOD appropriation act. The restriction prohibited the use of appropriations "in any way, directly or indirectly, to influence congressional action" on pending legislation.

1987

66 Comp. Gen 707

Covert propaganda activities by the Department of State intended to influence the media and the public to support the Administration's policies violated a lobbying and publicity restriction in the Commerce-State appropriation act.

1993

GAO/HRD–93–100 (5/4/93)

Two meetings scheduled by a grantee of the Office for Substance Abuse Prevention, Department of Health and Human Services, designed to generate public support for the Office violated an appropriation act lobbying restriction. Two publications by the Office, which acted as a clearing house for information, did not violate the anti-lobbying restriction.

1995

B–262234 (12/21/95)

Participation by a Fish and Wildlife employee in a press conference sponsored by Clean Water Action designed to encourage opposition to pending legislation constituted a violation of the limitation in section 303 of the Interior appropriation act. This restriction extends to explicit and implicit appeals to the public designed to promote support or opposition to pending legislation.

1996

GAO/RCED–96–72

Use by the State of Nevada of grant funds to produce a video tape, which concluded with an exhortation to write the viewers Congressman and stop the "steamrolling" of Nevada, constituted a violation of an appropriation act lobbying restriction. Language in the video was more than informational; it constituted grass-roots lobbying intended to influence legislation.

Mr. CLINGER. Can I interrupt you just at that point? I mean, some of the horror stories that we were hearing earlier this morning, it was suggested, I think this point you are making right now really answers a lot of that because you are making the point that

the legislation does distinguish between what is intentional activity and what is incidental to the exercise.

Mr. MURPHY. Yes.

Mr. CLINGER. And a lot of what they were talking about would have been, I think, deemed incidental. Isn't it true also the GAO has really developed some guidelines or is working on some guidelines that would make that kind of distinction?

Mr. MURPHY. Well, certainly if you look at the cases in which we have interpreted the language in the Interior Department appropriation act, we have articulated how we look at that language. In that sense, there is decisional guidance out there for the agencies.

If the bill passes, I would expect to see the executive branch implement Governmentwide guidelines interpreting the statute. That would also provide what I think the employees need and what we could use in reporting to the Congress about possible violations.

That's really all I wanted to present in my prepared testimony, Mr. Chairman.

Mr. CLINGER. Thank you very much, Mr. Murphy.

Anybody have a preference? Mr. Fisher.

Mr. FISHER. I'll go next.

Mr. CLINGER. Mr. Fisher.

Mr. FISHER. Several times in these hearings people have said that Congress shouldn't be restricting the ability of agencies and departments to tell voters and citizens what their views are, even if it happens to be a view contrary to Congress or what might be called a one-sided view.

I think that doesn't take into account that the problem we are talking about today has been one that's been with us the whole century. Starting from the early part of the century, Members of Congress from both parties have decided that some agency activities are impermissible in the use of appropriated funds.

And in my statement, I have an appendix with all the statutes, some of them in the United States Code, some of them in appropriation bills, sometimes even for particular agencies, Legal Services Corp., others. You may not lobby in certain ways.

So it is a problem and has been a problem. It's a bipartisan problem, and I think it's a problem even at the very top of Government. Some people would say that the President and Vice President and cabinet heads all have a right to communicate with the public.

But I think there would be some situations where even the departmental head would be out of bounds. And, Mr. Chairman, I would think of an example. Secretary of State could send a letter to every citizen in the country, saying that we ask for a certain amount of money, and it looks like Congress is going to give us less.

You know a letter like that would not be permissible, even though it is coming from the Secretary of State. The Department of Justice has said there are some things even coming from the President that would not be acceptable.

So the executive branch recognizes that there are limits on what they can do. Congress certainly through the statutes recognizes it. And I think we have enough guidance even from the agencies, from solicitors general, from the OLC and the Department of Justice that there are a number of agency actions, whether they call it in-

formative or not, that are just not acceptable. And there are a lot of do-nots indicated for agencies.

I think you've stated in your bill that the current criminal statute, never having been enforced, is not working the way it might have been intended.

And you are doing a noncriminal approach and there's plenty of guidance I think available to a general statute, as Mr. Murphy said, to explain to agencies what they can and cannot do, and I think protect careerists who want some guidance, probably recognize that their agency will be damaged if certain things happen, but are not likely to be convincing to political appointees who are in for maybe a year and a half not to go ahead on certain things.

But if there's a free-standing statute such as yours with noncriminal penalties and with the guidance of GAO and IG's in the agencies, I think you'd go a long way toward communicating to the agencies where the boundaries are.

And much of this would be through continual clarification of certain incidents, like the Fish and Wildlife. Others would be held up as examples of where agencies can go too far.

So I think the historical record shows there is a need for constant monitoring in this area, that there are agency abuses, and because of the problems with the criminal statute there is a need for some noncriminal remedy.

That's the comment that I wanted to make.

[The prepared statement of Mr. Fisher follows:]

PREPARED STATEMENT OF LOUIS FISHER, SENIOR SPECIALIST IN AMERICAN NATIONAL GOVERNMENT, CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS, WASHINGTON, DC

Mr. Chairman, thank you for inviting me to testify on H.R. 3078, which prohibits executive agencies from misusing appropriated funds for their lobbying activities.

The bill begins with three findings that capture the basic patterns in the long-standing controversy over executive lobbying: (1) federal agency employees have used appropriated funds to foster public support and opposition to legislation pending before the Congress; (2) there are conflicting interpretations of the existing anti-lobbying restrictions; and (3) the use of appropriated funds derived from tax revenues paid to the Treasury by all Americans to preferentially support or oppose pending legislation is inappropriate.

A flat ban on executive lobbying would raise serious constitutional issues because of the President's duties under Article II of the Constitution and the recognized latitude of departmental heads and other top presidential aides to lobby for their programs. But this bill explicitly exempts those officers and focuses on lower-level executive employees who use public funds to orchestrate, outside Congress, support for or opposition against pending legislation.

Members of Congress from both parties have regarded this kind of agency behavior as offensive and unacceptable. Many statutes have been enacted to prohibit this type of executive lobbying, but to the extent that they depend on the Justice Department to initiate criminal proceedings, these statutes have been ineffective. The Justice Department has never prosecuted anyone for violating a statutory prohibition on executive lobbying.

H.R. 3078 therefore establishes a non-criminal prohibition on the expenditure of appropriated funds by federal agencies for lobbying purposes, and makes it clear (also in response to Justice Department interpretations) that such funds may not be used in any manner or in any amount, however small, to organize efforts to affect the outcome of congressional action by appealing directly or indirectly for public support. Given the failure of criminal sanctions, H.R. 3078 makes sense.

Over the past eight decades, Congress has enacted a number of restrictions on executive branch lobbying. Those statutes, beginning in 1913, continue through to the present day. This record demonstrates the persistent, bipartisan interest of Congress and its determination to find appropriate remedies (Appendix A). Abuses of executive lobbying have been a regular feature of most administrations, Democratic

and Republican. Attached to this statement is a list of controversial executive lobbying actions from the Truman through the Clinton administrations (Appendix B).

ENFORCEMENT OF STATUTORY RESTRICTIONS

Several studies have used the term "legal fiction" to describe statutory restrictions on executive lobbying.[1] This reputation comes from some ambiguity and ambivalence in congressional policy and passive enforcement decisions by the Department of Justice.

Over the years, Members of Congress have simultaneously opposed and invited executive lobbying. Even those who advocate restrictions on departmental lobbying understand that the legislative process depends on a free flow of information from the executive branch to Congress. Section 1913, dating from 1919, recognizes both objectives. After prohibiting certain executive practices, the statute provides that it "shall not prevent officers or employees of the United States or its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business." 18 U.S.C. 1913 (1994). Critics of executive lobbying realize that agencies need some latitude in promoting their own programs. As one legislator remarked: "Certainly, any Administration should be expected to use all legal means at its disposal to encourage acceptance of its programs."[2]

Under Article II, Section 3, of the Constitution, Presidents have a right to give Congress information on the state of the union and to "recommend to their Consideration such Measures as he shall judge necessary and expedient." Vice Presidents and members of the President's Cabinet enjoy a broad latitude to speak out on public issues. The Justice Department has noted that agency heads may use the facilities of their institution to address unsolicited letters to members of Congress with respect to pending legislation.[3] Even with regard to the President, however, the Justice Department has indicated that there are limits on the President's use of appropriated funds for grassroots appeals:

> . . . we caution against grassroots appeals, even by the President, that involve substantial expenditures of appropriated funds for such things as television or radio time, newspaper or magazine advertisements, or mass, unsolicited distribution of printed materials.[4]

What Congress has opposed is agency use of appropriated funds to drum up public support or opposition to pending legislation. Legislators do not want to be on the receiving end of constituent pressures artificially manufactured by agency telephone calls, telegrams, departmental threats and coercion, and other stimuli originating from within an administration. Both branches have recognized that certain types of executive lobbying are improper. The General Accounting Office as well as the former Budget Bureau have objected to agency publications that are proselytizing in tone and propagandistic in substance.[5] The Justice Department has pointed out that the right of citizens to lobby Congress does not mean a right to federal funds for that purpose:

> Although private persons and organizations have a right to petition Congress and to disseminate their views freely, they can be expected, within the framework established by the Constitution, to do their lobbying at their own expense. They have no inherent or implicit right to use federal funds for that purpose unless Congress has given them that right. 5 Op. Off. Legal Counsel 180, 185 (1981).

Nevertheless, statutory sanctions against executive lobbying have had limited effect because of uncertainty about the law and Justice Department interpretations. Because of conflicting statutes, GAO has at times hesitated to find a violation of agency activity. Former Comptroller General Elmer B. Staats once explained:

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[1] J. Leiper Freeman, The Political Process: Executive Bureau-Legislative Committee Relations 39 (1966); Richard L. Engstrom and Thomas G. Walker, "Statutory Restraints on Administrative Lobbying—'Legal Fiction,'" 19 J. Public. L. 89 (1970).

[2] Ancher Nelsen, "Lobbying by the Administration," in We Propose: A Modern Congress 145 (Mary McInnis, ed. 1966).

[3] Letter from Assistant Attorney General Herbert J. Miller, Jr. to Congressman Glenard P. Lipscomb, May 10, 1962, reprinted at 108 Cong. Rec. 8451 (1962).

[4] Memorandum to Arthur B. Culverhouse, Jr., Counsel to the President, from Charles J. Cooper, Assistant Attorney General, Office of Legal Counsel, "Legal Constraints on Lobbying Efforts in Support of Contra Aid and Ratification of the INF Treaty," February 1, 1988; 12 Op. Off. Legal Counsel 39, Note 5 (prelim. print).

[5] Legislative Activities of Executive Agencies" (Part 10), hearings before the House Select Committee on Lobbying Activities, 81st Cong., 2d Sess. 24–25, 31–33 (1950).

> The reason for this is that agencies are authorized and, in some cases, specifically directed to keep the public informed concerning their programs. Where such authorized activities involve, incidentally, reference to legislation pending before Congress, it is extremely difficult to draw a dividing line between the permissible and the prohibited.[6]

Moreover, since Section 1913 is a criminal statute, GAO regards its enforcement as "the responsibility of the Department of Justice and the courts. Therefore, GAO will not 'decide' whether a given action constitutes a violation. GAO will, however, determine whether appropriated funds were used in a given instance, and refer matters to the Justice Department in appropriate cases."[7] Because a violation of Section 1913 constitutes an improper use of appropriated funds, such a violation "could form the basis of a GAO exception or disallowance. However, GAO can take no action unless the Justice Department or the courts first determine that there has been a violation."[8]

Although GAO and members of Congress have referred many cases to the Justice Department concerning lobbying with appropriated funds, there have never been any prosecutions under Section 1913. Nevertheless, the Justice Department has indicated the type of executive activity that would be impermissible. A memorandum in 1977 stated that "a campaign to contact a large group of citizens by means of a form letter prepared and signed by a federal official would be improper."[9] However, in 1989 the Justice Department restricted Section 1913 to "a significant expenditure of appropriated funds to solicit pressure on Congress" and a "substantial" grassroots lobbying campaign.[10]

According to the Justice Department, Congress enacted Section 1913 to prohibit grassroots mass-mailing campaigns at "great expense."[11] Looking to the legislative history of Section 1913, which involved an agency's telegram campaign at the cost of more than $7,500, the Justice Department estimates that violations of Section 1913 today would have to involve expenditures of at least $50,000.[12] However, $7,500 represented merely an example of agency abuse and was not intended as a dollar benchmark. Section 1913 does not establish a minimum level. It reads: "No part" of appropriated funds shall be used for grassroots lobbying.

Judging from the few judicial decisions that have been handed down, it is apparent that the courts are reluctant to adjudicate in the area of executive lobbying.[13] They seem inclined to defer to Congress and the executive branch on actions to be taken against improper lobbying by executive officials.

COMMENTS ON H.R. 3078

H.R. 3078 is thoughtfully crafted to reach executive lobbying abuses that are not now touched because of enforcement problems with Section 1913. Instead of relying on the Justice Department to protect legislative interests, this bill depends on the Comptroller General working in concert with agency Inspectors General. Their investigations can bring to light executive lobbying violations, leaving to Congress and its committees the decision to act through a variety of sanctions and penalties.

The availability of a statute that has a better chance of being enforced should send a strong signal to agencies. Executive officials—especially short-term political appointees—may conclude that lobbying abuses, even if uncovered, stand practically no chance of being penalized through the criminal statute. By shifting to non-criminal remedies and depending on the Comptroller General and Inspectors General in-

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[6] Letter from Comptroller General Staats to Congressman Thomas B. Curtis, September 7, 1967, cited in Engstrom and Walker, "Statutory Restraints on Administrative Lobbying—'Legal Fiction,'" at 98.

[7] United States General Accounting Office, Principles of Federal Appropriations Law, 2d ed., Vol. I, at 4–158.

[8] Id.

[9] Memorandum from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, to Robert J. Lipshutz, Counsel to the President, "Statutory Restraints on Lobbying Activity by Federal Officials," November 29, 1977, at 10, Note 21.

[10] Memorandum for Dick Thornburgh, Attorney General, from William P. Barr, Assistant Attorney General, Office of Legal Counsel, "Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts," September 28, 1989; 13 Op. Off. Legal Counsel 362 (prelim. print).

[11] Id. at 365.

[12] Id. (Note 7).

[13] *Grassley* v. *Legal Services Corp.*, 535 F.Supp. 818 (D.D.C. 1982); *National Treasury Emp. Union* v. *Campbell*, 654 F.2d 784 (D.C. Cir. 1981); *American Trucking, Etc.* v. *Department of Transp.*, 492 F.Supp. 566 (D.D.C. 1980); *American Conservative Union* v. *Carter*, No. 79–2495 (D.D.C. December 14, 1979); *Am. Public Gas Ass'n* v. *Fed. Energy Administration*, 408 F.Supp. 640 (D.D.C. 1976); *National Ass'n for Community Development* v. *Hodgson*, 356 F.Supp. 1399 (D.D.C. 1973).

stead of the Justice Department, agencies may realize that abuses on their part are more likely to result in significant costs to agency operations.

I have the following suggestions for H.R. 3078:

1. Coverage. Page 3 of the bill covers "any activity" by an agency, including the preparation of kits, etc. "Any activity" should be clear enough, but since that section covers such discrete activities as radio and television it may be helpful to add language on contemporary electronic communications, including fax, e-mail, and Internet, all of which are used regularly by agencies in their lobbying activities.

2. Dollar Thresholds. Given previous Justice Department interpretations, the drafters of H.R. 3078 found it necessary in Section 2(b) to cover executive lobbying "in any amount, however small." Nevertheless, that language appears in a section on findings and purpose, and it is possible that the Office of Law Revision, in adding this bill to Title 31, may start with the language at the top of page 3 of the bill and drop the language in Section 2, or perhaps use Section 2 only as a Note in the Code. I would therefore take the essential language of Section 2 and incorporate it into the new Section 1354.

3. Non-appropriated Funds. As currently drafted, H.R. 3078 is restricted to agency use of appropriated funds. The bill states that "no funds made available to any Federal agency by appropriation" shall be used for prohibited lobbying activities. Under the section on definitions, "Federal agency" includes any private corporation created by a congressional statute "for which the Congress appropriates funds." Without entering the complex area of private contractors who use public funds to lobby Congress, it may be possible to reach federal agencies who rely on non-appropriated funds (collecting fees, etc.). In principle, there should be no reason why these federal agencies should resort to grassroots lobbying simply because they are authorized (by Congress) to generate revenues rather than depend on appropriations.

4. Intent. H.R. 3078 provides that federal agencies may not use appropriated funds for certain activities "intended" to promote public support of opposition to any legislative proposal on which congressional action is not complete. Instead of having the Comptroller General, Inspectors General, and Congress try to determine the intent of an agency official, why not rely on an effects test? H.R. 3078 is not a criminal statute (like Section 1913, which does require intent). Other statutory prohibitions on agency lobbying, publicity, and propaganda do not depend on agency intent.

The language in H.R. 3078 could be made more direct in this manner: federal agencies may not use appropriated funds for any activity "that promotes public support or opposition" to any legislative proposal on which congressional action is not complete. The goal of the bill is to deter and punish improper agency actions, and it should not matter whether the action was intended or not. Enforcement of this statute depends on GAO and IG investigations, the reporting of those findings to Congress, and statutory actions to sanction improper agency behavior. It may be better to put agencies on notice that certain actions, regardless of intent, can be costly to their budgets and scope of authority.

5. Legislative History. Enough has been written about executive lobbying by the Department of Justice, the General Accounting Office, and agency Solicitors General to spell out in committee reports and floor statements a set of guidelines on prohibited lobbying activities. For example, in February 1996 the Department of the Interior released a detailed list of what agency employees may and may not do.

Mr. Chairman, I appreciate the opportunity to testify on H.R. 3078 and look forward to whatever questions you might have.

APPENDIX A: STATUTORY CONSTRAINTS

Publicity Experts (1913). With bipartisan backing, Congress in 1913 included in an appropriations bill this language: "No money appropriated by this or any other Act shall be used for the compensation of any publicity expert unless specifically appropriated for that purpose." 38 Stat. 212 (1913). This restriction responded to what legislators from both parties considered a pattern of agency abuse. Representative Frederick Gillett, Republican of Massachusetts, sponsored this provision after learning that the Civil Service Commission had advertised for a "publicity expert" in the Department of Agriculture. The CSC circular explained that the publicity expert would prepare news matter and secure the publication of such items in various periodicals and newspapers. 50 Cong. Rec. 4409 (1913). During debate on Gillett's amendment, it was pointed out that Congress had already prohibited such activity by the Forestry Service.

Congressman Gillett said that it "does not seem to me that it is proper for any department of the Government to employ a person simply as a press agent to advertise the work and doings of that department, and it is to prevent that in any department that this amendment is offered." Id. Democrat John Fitzgerald of New York,

chairman of the House Appropriations Committee, agreed with Gillett that there was "no place in the Government service for an employee whose sole duty was to extol and to advertise the activities of any particular service of the Government." Id. In response to a question, Gillett agreed that nothing in his amendment would prevent an employee of the Department of Agriculture from "giving to the country information as to the work of the department." Id. at 4411. In this sense, the amendment was aimed not at informative bulletins but rather press releases intended to promote the agency and its mission.

Agencies were able to circumvent this statutory restriction in part by avoiding the position of "publicity expert" but permitting positions for director of information, chief educational officer, supervisor of information research, director of publications, and other imaginative titles.[14] Although the 1913 legislation remains part of permanent law (5 U.S.C. 3107), it has been substantially diluted by other statutes that specifically authorize and fund experts who publicize agency programs. Today it is commonplace for Congress to supply funds to agencies and departments for public information officers. The issue is whether these officers supply basic information to the public or whether they step over the line and act like a "publicity expert."

Lobbying With Appropriated Moneys (1919). More troublesome to Congress is the practice of agencies using appropriated funds to stimulate public support or opposition to pending legislation. In 1919, Congress passed language to prohibit this practice, and this statutory restriction (known as the Lobbying With Appropriated Moneys Act) also remains part of permanent law. Debate in the House of Representatives reveals that members were offended by bureau chiefs and departmental heads "writing letters throughout the country, sending telegrams throughout the country, for this organization, for this man, for that company to write his Congressman, to wire his Congressman, in behalf of this or that legislation." Statutory language was devised to "absolutely put a stop to that sort of thing." 58 Cong. Rec. 403 (1919) (Cong. James Good). Currently codified at 18 U.S.C. 1913, the provision reads:

> 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, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.
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> Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined under this title or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

Authorization Bills. Congress has found it necessary to enact specific constraints to prohibit executive agencies from lobbying on particular public issues. For example, once the Civil Rights Commission decided to press its views on the abortion controversy, Congress passed legislation to halt this activity:

> Nothing in this chapter or any other Act shall be construed as authorizing the Commission, its advisory committees, or any other person under its supervision or control to study and collect, make appraisals of, or serve as a clearinghouse for any information about laws and policies of the Federal Government or any other governmental authority in the United States, with respect to abortion.[15]

From the start, the Legal Services Corporation has been prohibited from undertaking to influence the passage or defeat of any legislation by Congress or by a state or local legislative body. The Corporation shall not:

> undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, except that personnel of the Corporation may testify or make other appropriate

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[14] James L. McCamy, Government Publicity: Its Practices in Federal Administration 7 (1939).

[15] 42 U.S.C. 1975a(f) (1994). This limitation was first included in an authorization act for the Commission in 1978 (92 Stat. 1067) and repeated in 1983 (97 Stat. 1305, sec. 5(e)).

communication (A) when formally requested to do so by a legislative body, a committee, or a member thereof, or (B) in connection with legislation or appropriations directly affecting the activities of the Corporation. 88 Stat. 382, sec. 1006(c) (1974); 42 U.S.C. 2996e(c) (1994).

In 1987, Congress responded to executive branch lobbying for the Contras in Nicaragua by adding several sections to the Foreign Relations Authorization Act. One section prohibited the use of funds for political purposes. No funds authorized to be appropriated by the statute, or by any other statute authorizing funds "for any entity engaged in any activity concerning the foreign affairs of the United States," shall be used:

(1) for publicity or propaganda purposes designed to support or defeat legislation pending before Congress;

(2) to influence in any way the outcome of a political election in the United States; or

(3) for any publicity or propaganda purposes not authorized by Congress. 101 Stat. 1339, sec. 109 (1987).

Another section restricted the use of contract funds for "public diplomacy efforts" by the State Department. 101 Stat. 1349, sec. 141 (1987). The goal was to restrict State's ability to contract with outside groups for the purpose of boosting the Contras. CQ Almanac, 1987, at 156. Over a two-year period, International Business Communications (IBC) received $420,000 from the State Department to draft op-ed pieces for placement in U.S. newspapers, arrange meetings between members of the Contra movement and legislators, and similar public relations activities. S. Rept. No. 100–75, 100th Cong., 1st Sess. 26 (1987).

Appropriations Bills. In addition to provisions placed in permanent law (18 U.S.C. 1913 and 5 U.S.C. 3107), Congress each year in appropriations bills enacts other restrictions on departmental lobbying and public relations. Two early restrictions appeared in 1949 in the appropriations acts for the Agriculture Department and the Interior Department. 63 Stat. 342, 765. More recent examples, taken from fiscal 1995, cover the appropriations bills for Commerce, Justice, and State; Defense; District of Columbia; Foreign Operations; Interior; Labor, Health, and Human Services; and Treasury-Postal Services.

Some of these provisions state that "No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress."[16] The language for the D.C. appropriations bill is a slight variation on this: "No part of this appropriation shall be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature." 108 Stat. 2584, sec. 113.

GAO has explained why it is difficult to enforce and apply the "publicity or propaganda" restriction. Every agency, it says, "has a legitimate interest in communicating with the public and with the Congress regarding its functions, policies, and activities."[17] Agencies may disseminate information. They may not, according to GAO, engage in activities whose obvious purpose is "self-aggrandizement" or "puffery."[18] Secondly, GAO will find a violation of the publicity or propaganda restriction when agencies engage in "covert propaganda," which GAO defines as "materials such as editorials or other articles prepared by an agency or its contractors at the behest of the agency and circulated as the ostensible position of the parties outside the agency." A critical element of the violation is when the agency conceals its role in sponsoring the material.[19] The Justice Department acknowledges that the publicity-or-propaganda prohibition bars agencies from communicating support or opposition to pending legislation "through the undisclosed use of third parties."[20]

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[16] Commerce, Justice, State appropriations act for fiscal 1995, 108 Stat. 173, sec. 601; Defense appropriations act for fiscal 1995, 108 Stat. 2616, sec. 8001; foreign operations appropriations act for fiscal 1995, 108 Stat. 1646, sec. 554; Treasury-Postal Services appropriations act for fiscal 1995, 108 Stat. 2409, sec. 508.

[17] United States General Accounting Office, Principles of Federal Appropriations Law, 2nd ea., Vol. I, p. 4–162.

[18] Id. at 4–165.

[19] Id. at 4–166. In 1987, GAO held that the Department of State's Office of Public Diplomacy for Latin America and the Caribbean used deceptive covert propaganda to influence the media and the public to support the Administration's Latin America policies and therefore violated a restriction in State's annual appropriation act on the use of funds for publicity or propaganda not authorized by Congress. 66 Comp. Gen. 707 (1987).

[20] Memorandum to Arthur B. Culvahouse, Jr., Counsel to the President, from Charles J. Cooper, Assistant Attorney General, Office of Legal Counsel, "Legal Constraints on Lobbying Efforts

Continued

Other statutory provisions, such as in the Interior appropriation bill, focus on specific agency tactics in lobbying Congress: "No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete." 108 Stat. 2536, sec. 303. Language in the Labor-HHS appropriations bill is even more specific:

> Sect. 504. (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 any activity designed to influence legislation or appropriations pending before the Congress. 108 Stat. 2572, sec. 504. (1994).

Byrd Amendment. This latter provision—relating to grant and contract recipients—is treated more fully in what is called the "Byrd Amendment," added in 1989 to the Interior appropriations bill and codified at 31 U.S.C. 1352. Senator Robert C. Byrd was concerned about recipients of federal contracts, grants, or loans who used federal money to lobby the federal government for additional federal contracts, grants, or loans. His amendment states that no funds appropriated by any act may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement "to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress" in connection with these actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. The Lobbying Disclosure Act of 1995 made amendments to the Byrd Amendment. 109 Stat. 700, sec. 10 (1995).

APPENDIX B: CONTROVERSIAL ACTIONS

Truman Administration. On April 28, 1947, in response to reports of administrative lobbying abuse, the House of Representatives authorized an investigation by the Subcommittee on Publicity and Propaganda of the Committee on Expenditures in the Executive Departments. 93 Cong. Rec. 4152 (1947). The subcommittee was concerned about the efforts of federal officials to orchestrate an "artificially stimulated public demand" and to manufacture "sheer propaganda designed to influence public thinking and to bring pressure upon Congress." H. Rept. No. 2474, 80th Cong., 2d Sess. 2 (1948).

In 1948, the subcommittee reported what it considered to be a number of illegal and improper agency practices. It found particularly objectionable the administration's use of public funds to create "health workshops" around the country to promote President Truman's proposal for national health insurance. Id. at 3–4. The subcommittee also objected to actions by the War Department to use government funds "to generate a federally stimulated public demand upon Congress for enactment of compulsory military training." Id. at 5. The Department of Agriculture, the Federal Housing Authority, the Bureau of Reclamation, and other federal agencies were found to have engaged in improper propaganda activities.

Although the subcommittee expressed concern about executive lobbying, it hesitated to advocate new statutory controls: "[T]here is a fine line between legitimate information service, and activity on the part of agencies and individuals which is designed to condition the public mind, and [the subcommittee] cautions that it will take legislation drawn with meticulous care to prevent improper action without infringing on legitimate services or the rights of the individual public official." Id. at 9. It did conclude that there was "considerable overstaffing in the public-relations offices of a number of the executive agencies" and that "the number of such employees, as well as the number of publications by the executive agencies, can be drastically curtailed." Id.

Kennedy Administration. During the fall of 1961, the Kennedy administration sponsored a series of White House regional conferences around the country. Representative Ancher Nelsen, Republican of Minnesota, criticized the conferences as

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in Support of Contra Aid and Ratification of the INF Treaty," February 1, 1988; 12 Op. Off. Legal Counsel 37 (prelim. print).

efforts at the grass roots to foster the objectives of the White House. Postcards were handed out to permit members of the audience to tell the President about their support. Since Section 1913 carries criminal penalties, enforcement depended on the Justice Department, but it participated in the conferences and would have had to pass judgment on its own conduct.[21]

In 1963, Congress learned from citizens who served on Department of Agriculture committees that the meetings were being used primarily to propagandize administration programs.[22] Congress enacted specific language to prohibit the use of appropriated funds to influence the vote of farmers in any referendum or to influence agricultural legislation except as permitted by Section 1913. The legislation also prohibited funds for salaries or other expenses of members of county and community committees for engaging in any activities other than advisory and supervisory duties and delegated program functions prescribed in administrative regulations. 77 Stat. 827 (1963).

Nixon Administration. In 1973, the Nixon White House prepared a 145-page kit of materials to be used against Congress in the "Battle of the Budget." The kit consisted of guidelines for speeches, "one liners" and "horror stories" about wasteful federal programs—all to be used as part of a coordinated attack on the "spendthrift" Democratic-controlled Congress. Typical quips to be used in lampooning Congress: "This may look like a Santa Claus Congress—but it's got a bagful of bad news for the taxpayers" and "Just because the Congress passes the buck doesn't mean the President has to spend it." Comptroller General Elmer Staats concluded that the kit violated language in an appropriations act, which restricted funds for publicity or propaganda purposes designed to support or defeat pending legislation. Since Section 1913 contains fine and imprisonment provisions requiring prosecution by the Justice Department, the GAO concluded that it lacked jurisdiction to offer a judgment. 119 Cong. Rec. 11872–75, 13060–66, 14483–85 (1973). After a Ralph Nader litigation unit (Public Citizen, Inc.) went to court claiming that the White House had violated Section 1913, a White House official, in an affidavit, stated that all copies of the kit had been returned for destruction. The suit was subsequently dismissed on the ground that it was moot. *Public Citizen, Inc.* v. *Clawson,* Civil Action No. 759–73 (D.D.C. 1973).

Ford Administration. Lobbying by the Ford administration came under fire when several Republican Members of Congress complained that White House staffers had threatened to withhold federal favors unless the legislators voted with the administration. Representatives William Cohen and David Emery, both Maine Republicans, said that a White House lobbyist had told them that Ford's appointment of a former Republican governor from Maine to a federal post hinged on their willingness to support Ford's veto of a tax bill. Both legislators voted to override the veto—two of only nineteen Republicans in the House to do so. The New York Times, December 19, 1975, at 23. A similar incident occurred the next year, when the effort of a White House lobbyist to threaten Representative Larry Pressler, Republican of South Dakota, backfired. After the lobbyist apologized, Pressler told President Ford that such tactics were counterproductive and intolerable. 122 Cong. Rec. 4022–25 (1976).

Carter Administration. Several complaints were made about the Carter administration's use of public funds to campaign for the SALT II arms control treaty. Critics said that the State Department's Public Affairs Bureau, the SALT Working Group, the Office of the Counselor, and other bureaus and offices had participated in 1,065 speaking engagements and 1,028 media events. The State Department also distributed more than half a million copies of documents, reports, pamphlets, and speeches as part of the promotion of the treaty.[23] A memorandum from the Justice Department found no violations of Section 1913, pointing out that the statutory restriction applied only to "legislation or appropriation," not to treaties.[24] A suit was brought in federal court to challenge the Carter administration's promotion of SALT, but it was dismissed because the parties (six Senators, four Representatives, and the American Conservative Union) failed to establish specific injury under the standing

[21] Nelsen, "Lobbying by the Administration," at 149.

[22] H. Rept. No. 355, 88th Cong., 1st Sess. 28–29 (1963); S. Rept. No. 497, 88th Cong., 1st Sess. 23 (1963); H. Rept. 1088, 88th Cong., 1st Sess. 10 (1963).

[23] 125 Cong. Rec. 29739–40 (1979); Kenneth L. Adelman, "Rafshooning the Armageddon: The Selling of SALT," 9 Policy Rev. 85 (1979).

[24] Memorandum to Philip B. Heymann, Assistant Attorney General, Criminal Division, from Thomas H. Henderson, Jr., Chief, Public Integrity Section, Criminal Division, "Alleged Violations of 18 U.S.C. 1913 in Connection with Ratification of the Salt II Treaty; Possible Special Prosecutor Matter," October 15, 1979, at 13–15. A similar conclusion was reached by the Justice Department in 1987; Memorandum to Arthur B. Culvahouse, Jr., Counsel to the President, from Charles J. Cooper, Assistant Attorney General, Office of Legal Counsel, December 31, 1987.

doctrine. *American Conservative Union* v. *Carter,* Civil Action No. 79–2495 (D.D.C. 1979).

Also high on the list of agencies criticized for lobbying activities were the Indian Health Services, Commission on Civil Rights, Office of Juvenile Justice, the Maritime Administration, and Office of Surface Mining.[25] Especially irritating to some members of Congress was the use of federal funds by the Legal Services Corporation and ACTION (responsible for volunteer programs) to lobby Congress and state and local lawmakers.[26] Five U.S. Senators, one U.S. Representative, and one Iowa state senator brought an action against what they considered to be illegal lobbying and political activities by the Legal Services Corporation. A district court held that Congress, in enacting the Legal Services Corporation Act of 1975 and the various statutory restrictions on executive lobbying (including Section 1913), did not intend to create an implied cause of action. *Grassley* v. *Legal Services Corp.,* 535 F.Supp. 818 (S.D. Iowa 1982). The court also noted that Section 1913 could not be applied against the Legal Services Corporation because Section 1913 applies only to federal departments or agencies and its officers and employees. The Corporation is not a federal agency. Id. at 826 n. 6.

Reagan Administration. Legal challenges were brought against the Reagan administration's lobbying of defense funds. GAO accused the Air Force of using a contractor (the Lockheed Corporation) to perform certain types of lobbying activities that would have been illegal for the Air Force. GAO concluded that executive agencies should not ask a contractor to engage in grassroots lobbying activities that they could not legally perform themselves.[27] This dispute became part of a larger issue: How to control contractors who use federal funds to lobby Congress. Although there was concern that attempts to prevent such actions would raise free speech questions under the First Amendment, in 1983 the Office of Management and Budget issued guidelines to limit abuses.[28]

Another dispute during the Reagan administration was the disclosure that the Navy had maintained a rating system for members of Congress, giving them a numerical grade based on their votes on naval-related issues. After legislators and committees denounced the rating system, the Navy discontinued it. 128 Cong. Rec. 17173–76 (1982); H. Rept. No. 579, 98th Cong., 1st Sess. (1983).

In 1987, GAO concluded that the Reagan administration had engaged in two other activities that violated lobbying rules. In the first, GAO decided that the Office for Public Diplomacy for Latin America and the Caribbean had violated a restriction on the use of appropriated funds for publicity or propaganda purposes not authorized by Congress. The office had prepared and disseminated information as part of a campaign to influence the public and Congress to support increased funding for the Contras in Nicaragua.[29] In the second dispute, GAO reported that the Department of Energy violated federal regulations by orchestrating extensive lobbying by a private firm and by nuclear weapons scientists in order to prevent Congress from passing legislation that would ban nuclear tests. Washington Post, October 8, 1987, at A58.

Clinton Administration. On April 5, 1995, Mr. Edward Perry, Assistant Supervisor of the U.S. Fish & Wildlife Service's field office in State College, Pa., participated in a press conference sponsored by state and national environmental groups. Because he stated strong opposition to pending revisions to the wetlands provisions of the Clean Water Act, some members of Congress expressed concern that he may have violated Section 1913 and several other statutes. Although the Department of the Interior concluded on May 5, 1995, that Mr. Perry had not violated federal law,

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[25] On Indian Health Services, see S. Rept. No. 363, 96th Cong., 1st Sess. 94 (1979). On the Commission on Civil Rights, see S. Rept. No. 706, 96th Cong., 2d Sess. 9–11 (1980), and 126 Cong. Rec. 11721–22 (1980). On the Office of Juvenile Rights, see H. Rept. No. 96–946, 96th Cong., 2d Sess. 78–80 (1980). On the Maritime Administration, see Washington Post, January 28, 1979, at A5. On the Office of Surface Mining, see 126 Cong. Rec. 6834–45 (1980).

[26] On the Legal Services Corporation, see 93 Stat. 422 (1979); 126 Cong. Rec. 11509–10, 12758–60, 14687–95, 14711–27 (1980). See also "Department of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for 1981" (Part 9), hearings before the House Committee on Appropriations, 96th Cong., 2d Sess. 142, 153–54 (1980). On ACTION, see H. Rept. No. 164, 96th Cong., 1st Sess. 6, 29–30, 49–51, 69–96 (1979) and 125 Cong. Rec. 15654–56 (1979).

[27] "Allegations of Improper Lobbying by Department of Defense Personnel of the C–5B and B–1B Aircraft and Sale to Saudi Arabia of the Airborne Warning and Control System," Committee Print 24, the House Committee on Armed Services, 97th Cong., 2d Sess. (1982). See also GAO letter of September 29, 1982, to Congressman Jack Brooks, B–209049.

[28] "Uniform Lobbying Cost Principles Act of 1984," hearings before the Senate Committee on Governmental Affairs, 98th Cong., 2d Sess. (1984).

[29] Letter from Harry R. Van Cleve, for the Comptroller General of the United States, to Congressman Jack Brooks and Dante Fascell, September 30, 1987, B–229069.

the Fish & Wildlife Service issued guidelines a week later for Service employees who attend a press conference held by an advocacy group to discuss a bill being considered in Congress. If "the forum is considered biased, rather than neutral," statements by Service employees "will likely be interpreted as advocacy rather than information and education."[30]

On September 21, 1995, the General Accounting Office issued its report on this dispute and concluded that Mr. Perry's conduct constituted a violation of Section 303 of the Interior appropriations act for fiscal 1995 (P.L. No. 103–332, 108 Stat. 2499, 2536 (1994), which contains this language: "No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete." The GAO opinion noted that Section 303, like Section 1913, applies to grassroots lobbying, but

> unlike the other [statutory] provisions, there is no requirement that the agency explicitly appeal to the public to contact Congress. Rather, Section 303 has a broader reach, covering not only explicit but also implicit appeals to the public designed to promote public support for or opposition to pending legislation.[31]

The GAO opinion further stated that Mr. Perry had used appropriated funds to participate in a press conference sponsored by Clean Water Action; that Clean Water Action called the press conference to coincide with the legislation's active consideration in committee, to attract public attention, and to "link in the public mind the legislation and its sponsor Congressman Bud Shuster," who was the chairman of the committee considering the legislation; and that the press conference was called for the purpose of criticizing the pending bill. The GAO opinion also noted that the Department of the Interior, in its analysis of Mr. Perry's actions, misread the legislative history of Section 303. In February 1996, the Interior Department issued new guidelines on prohibited lobbying activities.

SUMMARY

Mr. Chairman, the findings in H.R. 3078 capture the basic patterns in the long-standing dispute over executive lobbying: (1) federal agency employees have used appropriated funds to foster public support and opposition to legislation pending before the Congress; (2) there are conflicting interpretations of the existing anti-lobbying restrictions; and (3) the use of appropriated funds derived from tax revenues paid to the Treasury by all Americans to preferentially support or oppose pending legislation is inappropriate.

A flat ban on executive lobbying would raise serious constitutional issues, but this bill explicitly exempts the President and the Vice President and allows other top officials to communicate to the public about presidential positions on pending legislation. The bill focuses, appropriately, on lower-level executive employees who use public funds to orchestrate, outside Congress, support for or opposition against pending legislation. Members of Congress from both parties have regarded this kind of agency behavior as offensive and unacceptable. Many statutes have been enacted to prohibit this type of executive lobbying (Appendix A), but problems with executive lobbying remain a regular feature of most administrations, Democratic and Republican (Appendix B).

The Justice Department has never prosecuted anyone for violating the Lobbying With Appropriated Moneys Act (18 U.S.C. 1913). For that reason, this bill relies on the General Accounting Office and agency Inspectors General to bring agency abuses to light. H.R. 3078 is thoughtfully crafted to reach executive lobbying abuses that are not now touched because of enforcement problems with Section 1913. The availability of a statute that has an opportunity of being enforced should send a strong signal to agencies and put executive officials on notice that continued abuses are more likely to result in significant costs to agency operations.

In my statement I include some suggested changes for H.R. 3078: (1) adding to the list of proscribed agency activities the kind of lobbying that can be done through electronic communications, including fax, e-mail, and Internet; (2) taking key features in Section 2 and repeating them in Section 3, especially executive lobbying "in any amount, however small"; (3) covering not merely agency activities funded by ap-

[30] Memorandum to All Fish and Wildlife Service Employees from the Office of Legislative Services, "General Guidance on Contacts with Congress and Expressing Views on Pending Legislation," May 12, 1995, at 3.

[31] Letter from the Comptroller General of the United States [signed by Robert P. Murphy, General Counsel] to the Honorable Bud Shuster, Chairman, House Committee on Transportation and Infrastructure, December 21, 1995, B–262234, at 6–7.

propriations but by non-appropriations as well; (4) adopting an effects test rather than looking to agency intent; and (5) preparing a legislative history that indicates (from experience) what agency employees may and may not do.

Mr. CLINGER. Thank you very much, Mr. Fisher. We may have a few questions here when we're concluded, but I want to make sure we get all the testimony in before those bells ring again.

So, Mr. Cohen, please.

Mr. COHEN. Thank you, Mr. Chairman. My name is Jerry Cohen and I am the chair of the American Bar Association's section of taxation. I am testifying today on behalf of the section. This testimony hasn't been approved by the American Bar Association House of Delegates, and thus is not a position of the ABA.

The tax section itself is comprised of over 20,000 tax lawyers and represents the largest and broadest-based professional organization of tax lawyers in the country, and we appreciate the opportunity to appear before the committee to testify on H.R. 3078.

We are concerned that H.R. 3078 as currently drafted could discourage Government tax personnel from participating in full and open discussions with tax practitioners and other members of the public who are interested in pending tax legislation.

This would have an adverse effect on the ability of taxpayers and their advisors to learn about pending legislation and the ability of the executive branch and Congress to enact sound and administrable tax policy. We believe the bill should be modified to address these concerns.

Now, while I am speaking on behalf of the tax section, these concerns aren't limited to tax legislation. I believe that on examination there are other sections of the ABA that would have similar concerns.

In each session of Congress we have scores of tax bills introduced, and tax changes of course are part of every budget proposal. Over the years we have found that one of the most effective ways for us to educate ourselves about those proposals is through panel discussions, speeches, and meetings with the technical staffs of the Treasury and the IRS.

We have been pleased that Government tax personnel generally agree with our view that regular communication with private tax practitioners on pending tax legislation is an important part of their jobs. If there is a prohibition on communications intended to promote or to be in opposition to legislation proposals, we know what the Government officials are going to do, what the tax personnel will do.

They will just stop communicating with the public altogether, and, at a minimum, the quality of our exchanges will deteriorate. As practicing tax attorneys, we need to hear the views of Government officials so that we can better understand the intended effect of proposed tax changes, assess their likelihood of enactment, advise our clients, and provide our views on how the law would work in practice.

In fact, we frequently will do that. We will suggest to tax personnel that the law will not work as they intended and suggest ways to change it to reach the desired intent. We believe there is a public need for open communication in the legislative process.

In our experience, better tax laws are written when there is an open exchange of views among Government decisionmakers and tax practitioners. And in our view, this needs to be interactive. We are concerned that in its present form the bill can discourage Government personnel with knowledge and experience from pointing out administrative problems with pending legislation or suggesting ways to simplify and improve pending tax legislation.

The section communicates regularly with Government tax personnel, both for purposes of educating our members and seeking to improve the quality of pending tax legislation. For example, just this past Sunday, we ended the May tax section meeting here in Washington, and at that meeting IRS and Treasury technicians participated in panels which discussed a number of tax legislation proposals, including proposals to increase pension portability, change the tax rules for cleanup and development of urban brownfields, and revise the tax treatment of certain complex financial transactions. Our committees also provide technical commentary on nearly every tax proposal that is made, and the authors of these comments frequently communicate with the IRS and the Treasury concerning those proposals.

Our experience is that we have helped to make the tax laws more taxpayer-friendly and more administrable. Based on what we hear, we can point out ways in which a proposal needs to avoid unintended consequences or undue taxpayer burdens. We usually find that the Government personnel appreciate these insights and the suggestions they get from practicing tax lawyers with years and years of hands-on experience, and we find that the tax legislative proposals are improved when there is a full exchange of views.

Our basic point is that we think H.R. 3078 could lead Government personnel to discuss tax legislation only among themselves, and we don't think that would be desirable. We hope that that is not the intention of the sponsors.

We have read and today heard the concerns that led to the introduction of H.R. 3078 and, in fact, I might say when I hear some of those concerns I feel like a duck out of water. I can not imagine those coming, for example, out of the Internal Revenue Service. I am not sure just what the result would be if the Internal Revenue Service tried to do some grassroots lobbying. Probably the opposite effect.

But if the concern is that officials are attempting to stimulate grassroots communication to Congress on legislation, we feel the bill could be targeted to that activity. As an example of how to draft a description of the prohibited activity, there is a definition of grassroots lobbying in the tax regulations. The key element is a call to action, a statement that the person should write their representative or similar communications designed to encourage a grassroots contact. We urge you to oppose any proposal that would inhibit Government officials from discussing tax legislation freely with members of the public.

Thank you, Mr. Chairman, and I will be available for any questions.

[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT OF N. JEROLD COHEN, CHAIRMAN, SECTION ON TAXATION, AMERICAN BAR ASSOCIATION, WASHINGTON, DC

Mr. Chairman and Members of the Committee:

My name is N. Jerold Cohen. I am the Chair of the American Bar Association's Section of Taxation. I am testifying today on behalf of the Section of Taxation. This testimony has not been approved by the House of Delegates or the Board of Governors of the ABA and should not be construed as representing the position of the ABA.

The Tax Section of the ABA is comprised of more than 20,000 tax lawyers located throughout the United States. It is the largest and broadest-based professional organization of tax lawyers in the country.

We appreciate the opportunity to appear before the Committee to comment on H.R. 3078, the Federal Agency Anti-Lobbying Act. We are concerned that H.R. 3078, as currently drafted, could discourage government tax personnel from participating in full and open discussions with tax practitioners and other members of the public who are interested in pending legislation. This would have an adverse effect on the ability of taxpayers and their advisors to learn about pending tax legislation, and on the ability of the executive branch and the Congress to enact sound and administrable tax policy. We believe that the bill should be modified to address these concerns.

While I am only speaking on behalf of the Section of Taxation, these concerns are obviously not limited to tax legislation. I believe that it is likely that, upon examination, other entities within the ABA would find that they have similar concerns.

H.R. 3078 denies appropriations for any federal agency activity, including any written or oral communication, "that is intended to promote public support or opposition to any legislative proposal . . . on which congressional action is not complete." There are limited exceptions for communications to Congress, public "communication of the views of the President" by the most senior administrative officials (including, in the case of the Treasury Department, only Senate-confirmed officials), and activities specifically authorized by law.

In each session of Congress, scores of tax bills are introduced, and tax changes are part of every budget proposal. Over the years, we have found that one of the most effective ways for us to educate ourselves about proposed tax legislation has been through panel discussions, speeches, and other meetings with the technical staffs of the Treasury and IRS. We have been pleased that government tax personnel generally agree with our view that regular communication with private tax practitioners on pending tax legislation is an important part of their jobs. If there is a prohibition on communications "intended" to promote support or opposition to legislative proposals, we know what many government tax personnel will do—they will stop communicating with the public altogether. At a minimum, the quality of the exchange of views will deteriorate. As practicing tax attorneys, we need to hear the views of government officials so that we can better understand the intended effect of proposed tax changes, assess their likelihood of enactment, advise our clients, and provide our views on how a law would work in practice.

In addition to our need to understand and assess pending legislation, there is a public need for open communication in the legislative process. In our experience, better tax laws are written when there is an open exchange of views among government decisionmakers and tax practitioners. This communication needs to be interactive, with each side participating fully. We are concerned that in its present form the bill could discourage government personnel with knowledge and experience from pointing out administrative problems with pending legislation or suggesting ways to simplify or improve pending tax legislation.

The Section of Taxation communicates regularly with government tax personnel, both for purposes of educating our members and for purposes of seeking to improve the quality of pending tax legislation. For example, the Section recently concluded its annual May meeting here in Washington, where IRS and Treasury technicians participated in panels discussing pending tax legislation to increase pension portability, change tax rules for cleanup and development of urban "brownfields," and revise the tax treatment of certain complex financial transactions. In addition, our Committees provide technical commentary on nearly every major tax law proposal, and the authors of those comments often engage in exchanges of views with IRS and Treasury personnel.

Our experience is that these government-practitioner exchanges make the tax laws more taxpayer-friendly and more administrable. Between proposal and enactment, we need to hear what the tax administrators think a proposal means, and how they would apply it in particular situations. Based on what we hear, we can point out ways in which a proposal needs changing to avoid unintended con-

sequences or undue taxpayer burdens. We usually find that government personnel appreciate the insights they gain from interaction with practicing tax lawyers with years of hands-on experience, and that legislative proposals are changed for the better when there is a full exchange of views.

Our basic point is that we are concerned that the enactment of H.R. 3078 could lead government personnel to discuss tax legislation only among themselves. We do not think that would be desirable, and we hope that is not the intention of the sponsors.

We have read and heard of the concerns that led to the introduction of H.R. 3078. We hope that these concerns can be addressed by legislation better targeted to the perceived abuses, without stifling full and open discussion of pending legislation. At a minimum, it should be made clear that the legislation does not prevent participation by government personnel in meetings where pending legislation will be discussed.

If the concern is that officials are attempting to stimulate grassroots communications to Congress on legislation, the bill should be targeted to that activity. As an example of how to draft a description of the prohibited activity, there is a definition of grassroots lobbying in the tax regulations, in which the key element is the "call to action:" a statement that the person should write their Representative, and similar communications designed to encourage a grassroots contact. See Treasury Regulation Section 56.4911-2(b)(2).

We urge you to oppose any proposal that would inhibit government officials from discussing tax legislation freely with members of the public. We appreciate the opportunity to comment, and we hope these comments will be useful to you as you consider this legislation.

SUMMARY

The Section of Taxation is concerned that H.R. 3078, as currently drafted, could discourage government tax personnel from participating in full and open discussions with tax practitioners and other members of the public who are interested in pending legislation. This would have an adverse effect on the ability of taxpayers and their advisors to learn about pending tax legislation, and on the ability of the executive branch and the Congress to enact sound and administrable tax policy. We believe that the bill should be modified to address these concerns.

In each session of Congress, scores of tax bills are introduced, and tax changes are part of every budget proposal. Over the years, we have found that one of the most effective ways for us to educate ourselves about proposed tax legislation has been through panel discussions, speeches, and other meetings with the technical staffs of the Treasury and IRS. We have been pleased that government tax personnel generally agree with our view that regular communication with private tax practitioners on pending tax legislation is an important part of their jobs. If there is a prohibition on communications "intended" to promote support or opposition to legislative proposals, we know what many government tax personnel will do—they will stop communicating with the public altogether. At a minimum, the quality of the exchange of views will deteriorate. As practicing tax attorneys, we need to hear the views of government officials so that we can better understand the intended effect of proposed tax changes, assess their likelihood of enactment, advise our clients, and provide our views on how a law would work in practice.

In addition to our need to understand and assess pending legislation, there is a public need for open communication in the legislative process. In our experience, better tax laws are written when there is an open exchange of views among government decisionmakers and tax practitioners. This communication needs to be interactive, with each side participating fully. We are concerned that in its present form the bill could discourage government personnel with knowledge and experience from pointing out administrative problems with pending legislation or suggesting ways to simplify or improve pending tax legislation.

Our basic point is that we are concerned that the enactment of H.R. 3078 could lead government personnel to discuss tax legislation only among themselves. We do not think that would be desirable, and we hope that is not the intention of the sponsors.

Mr. CLINGER. Thank you very much, Mr. Cohen.

Mr. Murphy, just following up on Mr. Cohen's concerns, I think they are legitimate concerns, particularly in regard to tax law and the need for a broad interchange.

Do you see anything in this legislation as it is drafted now that would inhibit or in any way discourage the kind of interchange that Mr. Cohen raises?

Mr. MURPHY. I am not familiar with the kind of dialog that Mr. Cohen has described. It seems to me that if the American Bar Association members are approaching the IRS to ask for advice about whether this is a good piece of legislation to advance or not, would this be administratively practical if they advance it? I shouldn't think so. But I must confess I just don't know enough about the details.

Mr. CLINGER. But then it would still, I think, come back to the idea: was the intent to proactively encourage.

Mr. MURPHY. Of course. And if the dialog took place because of an approach from the private citizen who wanted to talk to the IRS employee and the IRS employee was merely providing advice or discussion about the issue, you would have to ask whether they really intended to influence legislation or not or whether they were really responding to a request from the public. I mean, there may be a problem there but it doesn't seem to me, from what I have heard, that there would be.

Mr. CLINGER. Let me ask you this: Under my bill, it would impose upon GAO a heavy duty to monitor this legislation and to basically take action or make recommendations if and when you found a violation of the intent of this legislation. Presumably, you have similar kinds of responsibilities under the riders that are attached to the two or three appropriations bills that we have talked about.

But I am wondering has GAO ever had occasion to refer any instance that you have investigated under the 18 U.S.C. provision to the Justice Department for prosecution?

Mr. MURPHY. We have made such referrals. I don't believe that they have been made in the last 5 years, for example.

Mr. CLINGER. Do you know if any of them was ever prosecuted?

Mr. MURPHY. We are aware that none of them was ever prosecuted. We took a look at that issue in 1984 when we prepared the report I referred to earlier to see if there had been any prosecutions, and we were told that there had never been an indictment brought.

Mr. CLINGER. Do you have any idea why that would have been the case? I mean, in the case that you referred, obviously you felt that there was merit.

Mr. MURPHY. Well, we thought that certainly there was enough evidence of the possibility of a violation that it warranted further investigation by the Justice Department. I don't know the details of the results of their investigation.

Mr. CLINGER. Mr. Fisher, the question of constitutionality has been raised a number of times by some of the members of the panel, as well as by some of the witnesses earlier today, on the grounds that this could be either a violation of the first amendment or the separation of powers provisions in the Constitution.

I know that you have given this some study and have an opinion on that. Would you tell me, do you have any doubts about the constitutionality of the proposed legislation?

Mr. FISHER. I don't have any doubts about it. I don't understand the first amendment argument. To my knowledge, it hasn't been raised before. There are some first amendment concerns in the executive branch, but the cases usually concern the employee in an agency as a citizen, as a citizen, not the agency operating as a governmental unit. I don't think there is a first amendment issue.

And on the separation of power issue, I certainly think Congress has always considered it appropriate to place limits on the use of public funds. No one in the past in the Justice Department has ever raised a constitutional issue about either the provisions in the United States Code or the provisions in the appropriation bills. So I don't think there is a serious constitutional issue either on separation of powers or first amendment grounds.

Mr. CLINGER. Have you had occasion to see the letter that we received from the Justice Department?

Mr. FISHER. I did see that today, yes.

Mr. CLINGER. And you just don't agree with it?

Mr. FISHER. No. And I think the record shows that the Justice Department in the last year or two is reading its prerogatives in this area much more broadly than the Justice Department has done throughout this century.

Mr. CLINGER. The current Interior and Labor HHS appropriations bills do have language that we have basically used as a pattern for H.R. 3078. It is relatively close to that proposed in my bill. But, in your judgment, which is the more restrictive—the current language in those two appropriations bills which I have cited, or the restriction proposed in H.R. 3078? Which, in your view, would be more restrictive?

Mr. FISHER. Your bill is broader, because all these restrictions, including the criminal restrictions and the ones in the appropriation bills, always talk about pending legislation. Because of some OLC opinions, your bill is broader in talking about not just pending legislation but pending nominations, pending treaties. So you have the broader bill to make sure that all congressional activity, not just legislation, is addressed.

Mr. CLINGER. My time has just about expired. I thank you very much. The gentleman from California.

Mr. HORN. Thank you very much, Mr. Chairman. Dr. Fisher, you are not only an expert on the Constitution but you are a very good student of American history, as I recall. And I just wonder—and I would ask the others to comment if they wish—are you concerned that if a civil servant spent months or years opposing a legislation proposal that is before Congress, could that civil servant faithfully execute that proposal if it ever became law?

Mr. FISHER. If a civil servant—you're talking now about a top official or a lower official?

Mr. HORN. I'm talking about, let's say, a GS–13 to 15, a Senior Executive Service that is really civil service and not a hidden political appointee. If they are used by a particular administration to violently fight particular proposals on the Hill, should we assume that they can faithfully enforce that law that they have fought for 5 and 10 years with putting together propaganda pieces and actively involved in trying to bring the downfall of a particular policy?

Mr. FISHER. Well, if that employee is fighting the legislation through the normal executive legislative process, I don't think any of us question that the agencies have a right to contact you and say it's a bad bill. And that's a channel that is always open.

Mr. HORN. Well, I'm not thinking of that.

Mr. FISHER. More the grassroots.

Mr. HORN. Yes, I'm not thinking of one at the bureau chief level or the deputy assistant Secretary level. I'm thinking of the faithful civil service that makes the wheels go around in the Government that are doing a lot of, most of, the work maybe—the 13's and 14's. And yet if they come up in that adversarial way, would we be distrusting them? We had 16 people involved in the White letter. Some are political, some are not. They couldn't quite tell me. They are going to file it for the record.

So I'm just curious what kind of a climate that might bring.

Mr. FISHER. Your point is a good one. I think this recent Justice Department letter seems to assume that the entire executive branch is subservient to the President, that you have a unified executive and they all march to the President's orders. That has never been the reading of American history; most of the executive branch is there to carry out the law, as you say, in a nonpartisan way.

So to use lower level people in a concerted effort to frustrate pending legislation, I would not be too optimistic about those people helping to enforce the law later on. But that is a very narrow view that has been developed in the last few years, this idea that the entire executive branch is a tool of the President; whereas, we know in history it has been an instrument to carry out legislative policy.

Mr. HORN. I remember President Truman is reported to have said when the old general gets in here, namely President Eisenhower becoming President after him, he is going to give somebody an order around here and find out that nobody has done anything for 6 months. That was party criticism of the White House staff that Truman was frustrated with, even when you appoint them, as well as what happens in the bureaucracy. And we all know that Thomas Jefferson, the Secretary of State, said of the civil service of his day, "Few die and none resign."

But the Constitution and the civil service system, it seems to me, clearly designate that certain parts of the Government are charged with writing the laws; the other parts of the Government must execute the laws. Do you think that is just a childish delusion now of article I versus article II, that one develops the law?

We know since the Roosevelt administration very few major laws were developed in Congress until the mid-'60's, when the Civil Rights Act of 1964 and the Voting Rights Act of 1965 were practically all written—Voting Rights was all written—in the back office of the Republican leader of the Senate. And a lot of what the House passed was completely rewritten up here.

But that was rare. That was such a shock people were practically needing rehabilitation, blood transfusions, and everything else because the executive branch had simply been writing most of it and sending it up to the Hill and be rubber-stamped or very little done with most of it.

What is your feeling on that sort of traditional view of the Constitution versus all this lobbying going on that might change that relationship at all?

Mr. FISHER. Well, it was said earlier today about Members of Congress lobbying for their proposals and whipping up constituent enthusiasm. Well, that has been the traditional role of Members of Congress. That is what the framers expected.

Mr. HORN. And if they don't like what we are doing, they can get rid of us.

Mr. FISHER. And they can get rid of you.

Mr. HORN. Right.

Mr. FISHER. But this, the notion that the executive branch and the President are coequal in this respect and should be able, therefore, to lobby at the grassroots level just like Members of Congress, that, as you say, is a very new attitude. It took a long time, I'm sure you know, before Presidents could even admit that they were drafting bills. They would have to do it in a secret way.

But we do accept today that the executive branch has a large role in drafting legislation and lobbying for it through the channels that we have, but we certainly have a century of statutes that say that there are limits on what they can do with appropriated moneys to drum up support and opposition.

Mr. HORN. Perhaps this question has been asked, but I'm just curious. A lot of you have seen administrations come and go in this town. Do the examples that members have mentioned this morning seem to be greater than in previous administrations, or have we found every administration essentially since Eisenhower doing this type of thing of stirring up a grassroots lobby to back its programs and using civil servants to do it? Not political appointees, civil servants.

Mr. FISHER. At the back of my statement are some examples, and they go from Truman on. So it has been something of the whole post-World War II period in all the administrations.

Mr. HORN. Any thoughts, Mr. Cohen or Mr. Murphy?

Mr. COHEN. I was in the Carter administration as Chief Counsel to the IRS and this whole—what I am hearing is all pretty foreign to the IRS or to the Treasury. And I've been very closely acquainted with subsequent administrations in the IRS and the Treasury. They have been a number of some of my closest friends. And this just—as I said, I felt like a duck out of water when I'm hearing some of these remarks.

But Mr. Fisher did mention that he was talking about the notion of lobbying at the grassroots level. And I would like again to emphasize that, if that is the concern, then we are not really concerned. It is the problems that go beyond that are much narrower than the grassroots lobbying that raises the concerns with us about helping in the promulgation of effective tax legislation.

Mr. HORN. I think our concern is they are using taxpayer dollars to do what political parties are supposed to be doing. And we have the same thing. We will have another little stage tomorrow on another type of Travelgate where they travel into political areas and do political things and they don't reimburse the taxpayers, namely the Government, for the political part of what Presidents and cabinet officers must do.

Now, I think in President Carter's administration you had to kick back the political portion of a trip. Usually, IRS doesn't get involved in that so you didn't have to worry. But I was in the Eisenhower administration. The Secretary certainly paid back any part of the trip. And you sent the bill, where the bill was paid by the group you visited. But it wasn't the taxpayers bearing it.

Mr. COHEN. I think that is absolutely correct, and we were very cognizant of that.

Mr. HORN. Well, thank you, Mr. Chairman.

Mr. CLINGER. Thank you, Mr. Horn, very much. And the panel, let me thank you for, again, your patience. Very helpful testimony. I think we have had a good hearing and had a good expression of views on both sides of this issue. We will continue to work to try and address some of the concerns that have been raised, but I think we are onto something that really needs to be done.

If I might ask you if any of you would be averse to if we have additional questions that we might want to address to you that you might answer in writing.

Mr. MURPHY. Of course.

Mr. FISHER. Fine.

Mr. COHEN. Certainly.

Mr. CLINGER. Very good. Well, again, I thank you gentlemen. The committee stands adjourned.

[Whereupon, at 3:15 p.m., the committee was adjourned.]

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