Testimony of

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On Lobbying Reform

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I would like to thank Chairman Collins and the members of the Homeland Security and Government Affairs Committee for the opportunity to testify today on lobbying and related reforms.

I would also like to express my appreciation to the Chairman for moving so quickly to hold these hearings and address issues that are of deep concern to the American people.

According to a recent *CNN/USA Today/Gallup* poll (January 10, 2006), "corruption ranked among the concerns most often cited by those polled, with 43 percent telling pollsters it would be an 'extremely important' issue in 2006," just two percent below the 45 percent response for the war in Iraq and terrorism. Other polls have similarly shown that citizens are greatly concerned about government corruption and the lobbying scandals in Washington.

A *Washington Post-ABC News* poll (January 10, 2005) found that "Nine in ten said it should be illegal for lobbyists to give members of Congress gifts, trips or anything else of value." The *Post* poll also stated, "Two in three, including majorities of Republicans and Democrats, would go far beyond current proposals for change and make it illegal for lobbyists to make campaign contributions to members of Congress or to congressional candidates."

As these polls show, the American people are looking for strong medicine to solve the serious problems they see in the way Washington works and the way lobbyists function in Congress.

At the outset, I would like to make two basic points about government integrity reforms.

First, reforms matter. They do change the way people act and in this particular area, they can change the way lobbyists function in Congress.

Second, reforms have worked.

It is a common Washington game to challenge the idea that government integrity reforms can make any difference, while they are being considered in Congress, and then once reforms are enacted, to immediately begin making the case they aren't working.

Most often, these challenges come from individuals who wanted to keep the status quo in the first place and then want to try to get back to it as soon as they can.

Here are some examples of government integrity reforms that did matter and have worked:

The financial disclosure requirements for Members and other government officials, adopted in the 1970s, have served to minimize the cases of federal officeholders using their public office for personal financial gain. The recent criminal case involving a plea bargain agreement by Representative Duke Cunningham and the charges of misuse of office for personal gain that have been made regarding Representative William Jefferson are rare examples. Our country appears to have done very well at the national level, and much better than most other countries, in preventing the misuse of public office for personal gain. The financial disclosure rules have been a major factor in achieving this result.

The congressional rules preventing Members from practicing professions for profit and limiting their outside earned income, also enacted in the 1970s, have served to prevent conflicts of interest and have also been an important factor in preventing the misuse of public office for personal financial gain.

The congressional rule preventing Members from accepting honoraria fees adopted in the 1980s has served to stop special interests from paying private fees to Members whose positions they are trying to influence.

The Bipartisan Campaign Reform Act of 2002 ended the corrupting link between members of Congress who were soliciting huge, unlimited soft money contributions to support their campaigns and big donors who were providing such contributions and seeking to influence government decisions made by those Members.

The opportunities to enact these kinds of basic integrity reforms are cyclical in nature. They come when government integrity and corruption problems get out-of-control and reach a crisis stage.

We are at such a moment and the Washington lobbying scandals provide such an opportunity. We urge the Committee to propose bold, necessary, and effective reforms to change the way lobbyists do business in Congress.

We urge the Committee to respond decisively to the overwhelming public support for fundamental changes.

Republican and Democratic congressional leaders recently unveiled proposals to reform the lobbying laws and congressional ethics rules, although bills setting forth the legislative language for these proposals are not yet publicly available.

This followed the introduction last year of reform bills by Senator John McCain (R-AZ) and Representative Christopher Shays (R-CT), by Senator Russell Feingold (D-WI) and by Representatives Marty Meehan (D-MA) and Rahm Emanuel (D-IL).

A number of important new reforms have been presented in these bills and proposals. In order to determine just how effective any of the proposed reforms will be, however, it is necessary to analyze the legislative language of the proposals. This is a case where reality lies in the details.

We urge the Committee to combine the best provisions from these various proposals, to supplement them with additional reforms, and to send the Senate a strong, comprehensive and effective package of reforms for consideration and passage.

There are two bottom line issues here that must be effectively addressed to deal with the lobbying scandals: first, the multiple ways in which lobbyists and lobbying groups use money to curry favor and gain influence in Congress, and second, the absence of any effective enforcement of the laws and ethics rules that cover Members.

Democracy 21 has joined with six other reform groups to set forth six benchmarks for lobbying reform which we are supporting and working to enact. I would like to submit our benchmark reforms for the record.

Lobbyists and Money

The multiple ways in which lobbyists currently use money to curry favor and gain influence with Members include:

- Making campaign contributions to Members and their leadership PACs;
- Hosting fundraisers for Members and their leadership PACs;
- Raising and bundling contributions for Members and their leadership PACs;
- Arranging trips for Members, paid for by their clients or employers;
- Arranging company planes for Members at greatly subsidized fares;
- Paying for parties for Members, such as parties at the national conventions;
- Paying for meals and tickets to sporting and entertainment events for Members;

- Making contributions to foundations established or controlled by Members;
- Financing retreats and conferences held by Members.

In many of these cases, no public disclosure is required for these various uses of money by lobbyists. For example, a lobbyist can contribute up to $2,100 per election to a Member, which is required to be disclosed by campaign finance laws. Yet the same lobbyist can host a fundraiser or solicit funds for a Member that results in $25,000 or $50,000, or more, being provided to the Member through the fundraising efforts of the lobbyist, and there is no public disclosure required of these large sums provided by the lobbyist to the Member.

Washington lobbyist Jack Abramoff provided large amounts of campaign contributions for Members by arranging for his clients to contribute the funds.

In fact, Jack Abramoff used money on Capitol Hill in every way he could think of to pursue his lobbying agenda. Abramoff gave campaign contributions, arranged contributions to be made by his clients, arranged trips, including golfing adventures, provided free meals, provided skybox tickets to sporting events, and the like.

These kinds of uses of money, however, were not unique to Abramoff; they are common tools of the Washington lobbying trade.

The nexus between lobbyists, money and lawmakers has to be broken.

It is important to recognize in this regard that lobbyists providing money to help Members have a unique attribute that is not possessed by other individuals: lobbyists are in the business of influencing congressional decisions. This is what they do for a living.

In these circumstances, money provided by lobbyists to Members in the various ways set forth above must be presumed to be money intended to help influence the decisions of Members, and must be subject to appropriate controls to protect the integrity of congressional decisions.

To break the lobbyist money nexus, Democracy 21 has joined with other reform groups in recommending the following reforms:

First, campaign contributions from lobbyists and lobbying firm PACs to federal candidates should be capped at $200 per candidate per election. Contributions to national parties and leadership PACs should be capped at $500 per election cycle.

Second, lobbyists and lobbying firms should be prohibited from soliciting, arranging or delivering campaign contributions, and also from serving as officials on candidate campaign committees and leadership PACs.

Third, lobbyists, lobbying firms and lobbying organizations should be prohibited from paying for, or arranging payments for, events "honoring" members of Congress, such as parties at national conventions, from contributing or arranging contributions to entities established or controlled by members of Congress, such as foundations, and from financing Members' conferences, retreats and the like.

At a minimum, public disclosure must be required by lobbyists for any of these uses of money that Congress does not act to prohibit.

In addition, gifts and privately financed and subsidized travel for Members should be banned as discussed below.

Oversight and Enforcement

The bodies responsible for overseeing and enforcing the laws and ethics rules that apply to members of Congress are abject failures. We have been functioning without a "sheriff" or "judge" for Congress and that leads to a "wild west," "anything goes" attitude and approach, and ends up in corruption scandals like the Abramoff affair.

The Federal Election Commission (FEC), for example, which is responsible for enforcing the campaign finance laws, is a failed and captive agency. FEC Commissioners see their job as representing the interests of incumbent officeholders and party officials, often at the great expense of the interests of the American people.

It is the FEC, for example, that created the soft money system, which turned into a $500 million national scandal, and that has refused to properly enforce the campaign finance laws as they apply to 527 groups.

The Commission has been severely rebuked and admonished by the courts for wrongly interpreting the campaign finance laws passed by Congress. Nevertheless, the FEC goes merrily on its way continuing to ignore Congress and to ignore the courts, functioning as a "super-legislature disregarding congressional intent," in the words of federal district court Judge Kollar-Kotelly.

As *The Washington Post* stated in an editorial (July 11, 2003), the FEC "is an agency that was designed to fail, and at that task, at least, it has succeeded brilliantly."

The *Post* also stated in an editorial (August 4, 2005), "Assigned by Congress to write regulations implementing the McCain-Feingold campaign finance law, the [FEC] has instead spent the past few years writing and defending rules that would undermine it."

The *New York Times* said in an editorial (September 21, 2004) that the FEC is "a blight on American politics that must be scrapped and replaced with nonpartisan regulators who have the interests of voters, not politicians, at heart."

Similar editorials have run in newspapers throughout the country, such as *The Boston Globe*, *Newsday*, *The Philadelphia Inquirer*, *The Kansas City Star* and the *Los Angeles Times.*

The FEC is an agency with no public credibility today and must be replaced with a real campaign finance enforcement body. Legislation was introduced in the last Congress by Senators McCain and Feingold, and Representatives Shays and Meehan to accomplish this goal by creating a new body to enforce the campaign finance laws.

The congressional Ethics Committees have neither the resources to properly oversee the financial disclosure and travel reports currently filed by Members nor the inclination to pursue serious allegations of ethics violations by Members.

As a result, despite all of the stories about Jack Abramoff's improper conduct on Capitol Hill involving Members and congressional staff, there is no indication that either the House or Senate Ethics Committee has conducted any investigation of these matters.

Previous major congressional scandals, including the Koreagate and ABSCAM scandals in the House in the late 1970s and the Keating Five affair in the Senate in the late 1980s, all involved major congressional ethics investigations. In the Abramoff affair, however, which could turn out to be the biggest congressional scandal in modern times, the ethics committees apparently have done nothing to investigate the matter.

The performance of the House Ethics Committee, in particular, is its own scandal. During the entire year of 1995, the House Ethics Committee has not even been functional. This failure of the Committee to be able to operate for an entire year is unprecedented and demonstrates a complete breakdown of the process in the House for overseeing and enforcing House ethics rules.

It is essential for Congress to establish a new means for overseeing and enforcing congressional ethics rules if new, and old, rules are going to be effective in the future.

We urge this Committee to support the establishment of an independent, nonpartisan and professional Office of Public Integrity in Congress to oversee and help enforce ethics rules and lobbying laws, just as we have a Public Integrity Section in the Justice Department to enforce the criminal laws dealing with public corruption.

The Office should be responsible for many of the tasks currently assigned to the congressional ethics committees, the Clerk of the House and the Secretary of the Senate. This should include investigating non-frivolous allegations of ethics violations by Members, and presenting appropriate cases to the House and Senate Ethics Committees, while still leaving the Committees to make final decisions about whether congressional ethics rules have been violated and to recommend sanctions for violations.

It is also critical that the Office be provided with adequate funds to effectively carry out these responsibilities.

The Office's jurisdiction should cover both the House and Senate and should have a professional, nonpartisan staff led by a publicly credible, professionally experienced individual chosen by the Republican and Democratic leaders in Congress. The Office should:

- Monitor and oversee financial disclosure and other reports filed by Members and lobbying reports filed by lobbyists and lobbying organizations;
- Advise Members, staff and lobbyists on compliance with the rules;
- Conduct investigations of non-frivolous allegations of ethics violations, including complaints filed by Members and by outside individuals and groups;
- Present cases involving potential ethics violations to the House and Senate Ethics Committees for their decisions and, where appropriate, make recommendations to the full House and Senate for sanctions; and
- Refer potential lobbying law violations to the Justice Department for civil enforcement.

Members of Congress take the position that under the Constitution they have the sole responsibility for the rules governing Congress, including the congressional ethics rules. If that is the case, then Congress must start doing the job of enforcing its ethics rules. In failing to carry out this responsibility, members of Congress have failed the American people and seriously damaged the institution in which they serve.

Ban Private Interests from Financing Members' Trips

Current congressional ethics rules prohibit lobbyists from paying for trips by Members but allow the lobbyists' clients or employers, and anyone else, to pay for the trips, if the trips are in connection with "official business." Lobbyists are permitted to arrange trips and travel with Members on the trips.

Published reports have shown that such trips are all too often more vacation and recreational in nature than "official business" trips, and are paid for by corporations, trade associations, and others with matters pending in Congress. Reports also show that the disclosure requirements for such trips have been ignored or evaded by some Members.

Congress should ban private interests from financing travel for Members and congressional staff and should apply this ban to federal judges and executive branch officials as well. Trips for "official business" should be paid for with public funds.

Any such ban, furthermore, also must end the current practice of corporations making their corporate planes available to Members to travel, and greatly subsidizing the cost of these trips by charging Members only the cost of a first class air fare rather than the cost of a chartered plane.

This practice is widely used by Members and provides them with privately subsidized travel, often worth thousands of dollars per trip, and with corporate planes available at their convenience. In return, company lobbyists can and do accompany Members on the flights and have them as a captive audience for the flights' duration.

Members should be required by both congressional ethics rules and campaign finance laws to pay the cost of a charter plane in these circumstances. This would virtually end this practice.

Another issue that has been raised and has caused some confusion involves the use by Members and congressional party campaign committees of their campaign funds to pay for trips associated with fundraising events.

Expenditures for trips have been made by Members from their campaign committee funds in holding fundraising events at ski resorts and the like, and by congressional party campaign committees in holding fundraising events at resorts and major sporting events.

This issue would be addressed, in part, by preventing Members from paying first class fares rather than charter fares for planes provided by corporations and others to travel to these “fundraising events.”

In addition, detailed campaign finance disclosures should be required from Members and party campaign committees regarding the campaign funds they spend in association with fundraising events. The disclosures should include the location of each fundraiser, the amounts raised and the identity of contributors attending the event, and the costs of the event, including travel costs, lodging costs, the costs for entertainment activities and tickets to sporting events, and the like.

The issues involved here also raise larger questions about campaign finance practices and the need for fundamental reform. They do not, however, undermine the importance, value and great impact of banning the private financing and subsidizing of Members’ travel.

Banning Gifts

Current congressional ethics rules limit gifts from a single giver to no more than $50 per individual gift, and an aggregate of $100 per year. This includes such items as meals and tickets to sporting and entertainment events. There is no disclosure of these gifts, however, leaving room for widespread evasion to occur.

There are proposals for banning gifts or limiting gifts to token amounts. Any new gift restriction must close the loophole in the current gift rules that allows lobbyists, their clients and others to finance parties given to “honor” specific members of Congress, such as the lavish five-and six-figure parties thrown at the national party conventions.

Without closing this gift loophole, we will end up prohibiting a lobbyist from paying $25 for a Member’s lunch while allowing the same lobbyist to pay $25,000, or more, to finance a party that, in essence, is being given by the Member.

In addition, in the event that any gifts are allowed, the scam must be shut down whereby skybox and luxury tickets to sporting and entertainment events are grossly undervalued in order to “comply” with the current $50 gift limit.

Slow the revolving door.

There are currently hundreds of former members of Congress who stayed in Washington to pursue lobbying careers and are registered lobbyists.

The current revolving door provisions prohibit members of Congress from directly lobbying Congress for one year after they leave their jobs. The provisions allow Members, however, to engage in all other lobbying activities, including planning and directing lobbying campaigns, and participating in lobbying strategy sessions.

These provisions need to be strengthened.

Members should be prohibited from directly lobbying their former congressional colleagues for compensation for two years, and the prohibition should include all lobbying activities, not just direct lobbying contacts.

In addition, former Members who register as lobbyists should not receive special congressional privileges, such as access to the House and Senate chambers..

Senior congressional staff, currently subject to a one year restriction, should be prohibited from making lobbying contacts for compensation with their former offices or committees for two years after leaving their positions.

Place sunshine on lobbying activities and financial disclosure reports.

In recent years, the role of "Astro Turf" lobbying firms has grown enormously. These firms generate lobbying of Congress by the public through the use of paid advertising campaigns and computerized phone banking campaigns.

Grassroots lobbying may well account for as much, if not more, of the funds spent to lobby Congress, as direct lobbying expenditures. There is simply no way to know, however, because no disclosure is currently required of the various grassroots lobbying campaigns that are conducted.

Professional grassroots lobbying firms should be required under lobbying laws to disclose their clients, the amounts they are receiving and spending on these activities, the issues they work on for their clients and the amount being spent on paid advertising campaigns. These firms are often doing just as much, or more, to influence congressional decisions as direct lobbying firms, without making the same kind of public disclosures that are required from direct lobbying firms.

In addition, lobbying reports and reports filed by Members should be filed in an electronic format and made fully searchable on the Internet. Lobbying reports, which are now filed semi-annually, should be required on a quarterly basis, and should include a list

of the Members' offices and the congressional committees that were directly lobbied during the quarter.

Also, reports filed by lobbying coalitions should disclose the real financial backers of the coalition, not just the name of the front group which gives the public no real information of which interests stand behind stealth lobbying coalitions.

Conclusion

An unusual opportunity exists today to enact important, effective reforms to change the way lobbyists function in Congress. These opportunities do not come along often and it is critical to seize the moment. Citizens want strong, comprehensive and effective reforms and will not accept cosmetic changes designed to maintain the status quo in Washington.

I appreciate the opportunity to submit this testimony and would be happy to answer any questions members of the Committee may have.