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Antilobbying - Fast Track [1]

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MEMORADNUM

TO: ^{Rob}~~Rob~~ Weiner - for approval - 6-6297 Rm: 29
Bob Kyle - for sign-off
✓ Russell Horowitz - for fact checking
✓ Dan Tarullo - for comment
✓ Gene Sperling - for comment
Don Gips - for comment

CC: Victoria Radd

FROM: Karen Skelton

SUBJECT: Attached draft endorsement letter of FAST TRACK by
U.S. Information Technology Community

Please review the attached letter drafted by the Department of Commerce and return to my office, room 115, OEOB by Thursday, September 4, 1997.

Thank you.

DRAFT

Mr. President:

We, the members of the U.S. information technology community in America, write to express our strong support for swift passage of fast track trade negotiating authority. This Administration has stood shoulder to shoulder with us over the past five years working to tear down barriers and negotiate agreements to expand opportunities for America's high tech firms and their workers. Our industry is crucial to our nation's competitiveness and the economic health of our communities, and expanded exports are the key to a strong economic future.

We applaud your Administration's strong support of our high tech industries and your successful negotiation of the WTO Basic Agreement on Telecommunications Services, the Information Technology Agreement, the WTO TRIPs agreement, and the U.S.-China intellectual property agreement. Your efforts to open further the vast and growing global markets for our cutting edge technologies, including in Europe, Asia and Latin America have produced dramatic results. Through exports, our semiconductor, telecommunications and software industries are leading the world again in both market share and technological development.

Even so, much more needs to be done. Extensive trade barriers still exist in most of the fastest growing markets for U.S. high tech products. These include local content requirements, inadequate intellectual property protection, import licensing quotas, burdensome equipment certification requirements, forced technology transfer requirements, and discriminatory procurement practices. For most of our companies, exports are key to our survival. In fact, one-third of our info tech products and services are exported -- nearly \$91 billion in 1996. *of what?*

We need fast track, Mr. President, for your Administration to forge ahead and continue reducing these barriers. We need fast track to negotiate a second round of the Information Technology Agreement; to move forward on WTO negotiations on government procurement and intellectual property; and to negotiate important sectoral agreements under the APEC in the areas of telecom and information equipment, medical equipment and devices, and environmental technology.

Time is of the essence. Competition is fierce around the world. We cannot stand by the sidelines as our competitors continue to forge ahead in negotiating preferential trade agreements, even as they maintain barriers that deny fair access for America's most competitive products and industries. We thank you for your leadership on expanding trade opportunities, and look forward to working with you in the weeks ahead.

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MAY 17, 1996, FRIDAY

SECTION: IN THE NEWS

LENGTH: 42875 words

HEADLINE: HOUSE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE HEARING
TOPIC: LEGISLATION THAT WOULD BAR FEDERAL AGENCIES FROM USING FEDERAL FUNDS TO LOBBY THE CONGRESS
CHAIRMAN: REP. WILLIAM CLINGER (R-PA)
PANEL I: SEN. TED STEVENS (R-AK); REP. W.J. "BILLY" TAUZIN (R-LA); REP. CHARLES T. CANADY (R-FLA)
PANEL II: J. DAVITT MCATEER, ACTING SOLICITOR GENERAL, LABOR DEPARTMENT; ROBERT NORDAUS, GENERAL COUNSEL, ENERGY DEPARTMENT; MARY LOU KEENER, GENERAL COUNSEL, VETERANS AFFAIRS DEPARTMENT; JOSEPH B. DIAL, COMMISSIONER, COMMODITY FUTURES TRADING COMMISSION; JONATHAN CANNON, GENERAL COUNSEL, ENVIRONMENTAL PROTECTION AGENCY
PANEL III: ROBERT P. MURPHY, GENERAL COUNSEL, GENERAL ACCOUNTING OFFICE; LOU FISHER, SENIOR SPECIALIST IN AMERICA NATIONAL GOVERNMENT, CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS; AL CORS, DIRECTOR OF GOVERNMENT AFFAIRS, NATIONAL TAXPAYERS UNION; JEROLD COHEN, CHAIR, SECTION ON TAXATION, AMERICAN BAR ASSOCIATION
2154 RAYBURN HOUSE OFFICE BUILDING

BODY:

REP. CLINGER: I'd like to welcome my colleagues as well as our distinguished witnesses this morning to discuss the need for and solicit comments on new legislation to clarify what federal employees can and cannot do with regard to lobbying with taxpayer dollars.

We will hear from a representative of a trade association that 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 -- (audio break) -- which is somewhat like the fox guarding the chicken coop -- (audio break) -- 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 -- (audio break) -- 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 wrong-doing, 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 is intended. Everything from one agency's mass political mailing costing about \$33,000 -- (audio break) -- senior bureaucrats working on a strategy to defeat so-called Contract-with- America legislation. It's happening across the board in almost every federal agency. Most Americans would likely be shocked to hear, learn that their hard-earned tax dollars are being used to fund these types of activities.

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HR 3078 attempts to address many of the problems with the existing law by creating a civil statute -- (audio break) -- 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 -- (audio break) -- grass roots organizations. However, by current law, federal agencies would be able to continue to communicate directly with Congress. There's no attempt here to muzzle the 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 and there have been examples in previous administrations that I think clearly should have been precluded by -- would have been precluded by this legislation. It clearly 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'm 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 is to seek comment and find ways on how we can approve 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 were angry or uncomfortable in preparing these materials or forced to work with outside interest groups. Yet none of them felt they could come forward and testify because of the enormous fear of losing their jobs or concerns of 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, quote, "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."

And I would now be pleased to yield to the gentlelady from Illinois, the ranking member of the committee, Ms. Collins.

REP. COLLINS: Thank you Mr. Chairman.

Last week the Republican members of this committee had a big sign posted over their side on the aisle which said, "The public's right to know." While 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 interesting that Republican who are so fond of reminding us that the government belongs to the people, propose in the bill that 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 agencies anti-lobbying act, HR 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 promote public support or position to any legislative proposal on which Congressional action is not complete," end of quote. 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 two 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 the

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especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good," end quote. 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 Republican's 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 Republicans effort 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 mamograms.

Now the Republican majority in Congress soon found out that while they may not think getting rid of the deadly E-coli bacteria in meat, in eliminating equally deadly parasites in the drinking water are worthy of 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 difficult the approach 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 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 has the right, but the duty to make his case direct 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 the people won't find out that their plan for balancing the budget cuts health care, cuts education, cuts environmental regulations, cuts neutral 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 grass roots lobbying. But we have a law in 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 cannot even put a statement giving the administration's position on pending legislation. Why is it so strong to use taxpayer's -- so wrong to use taxpayer's money to put out the administration's position on legislation but not wrong to use taxpayer's money, like Chairman McIntosh recently did, to put out a press release 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

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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 hear 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 of 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 the positions the administration take. 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 like to see -- I don't see anything in it at all that you represent a serious problem for EPA.

Mr. Chairman, at the beginning of this Congress, you made a point of insisting that all witnesses who testify before the committee be sworn to tell the truth, the whole truth and nothing but the truth. What possible legal affect 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 would 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 provide 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?

REP. 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, does not speak to the requirement that the witnesses names be made known.

REP. COLLINS: Well, I differ with you in your interpretation of that, Mr. Chairman, and we'll look into it further. But, again, I see no need for this witness to testify on this matter. 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 witnesses 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.

REP. CLINGER: I thank the gentlelady for her opening statement. And I'm going to defer any additional opening statement. I would ask members if they would be so inclined to insert them into the record or if they would use their first round of questioning to make those opening statements but 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 Government Affairs Committee in the Senate and who has has been a champion leader in this effort to ensure that taxpayers' dollars are not used inappropriately for grass-roots -- to generate grass-roots lobbying efforts.

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

SEN. STEVENS: Well, thank you very much, Chairman Clinger. And I do

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appreciate the courtesy of other members and I do have a meeting of my committee at ten o'clock.

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. And 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.

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 described a recent lecture an Alaska ferry hosted by a uniformed Forest Service employee. The employee discussed the dispute over logging in the Tsongas 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 Forrest Service through its uniformed officers to promote such 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 the cost to the taxpayers of \$46,500. The Washington Post recently reported complaints that the EPA planned its Earth Day activities to coincide with the Democratic National Committee media buy in a Congressional district of a vulnerable Republican freshman; that 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 of views on pending minimum wage legislation.

The Secretary of Labor has issues a press release that criticized Republican budget cuts and called on unemployed young people to contact Republican Congressman 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 most difficult thing to understand of all of these -- the Veterans Affairs secretary has repeatedly enclosed political and lobbying information in Veterans Administration paychecks.

Now 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 in 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.

And for the committee's record I would like to offer a series of items which demonstrate -- 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. And 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

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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.

REP. CLINGER: Thank you. Without objection, that will be made a part of the record and I know, Senator, that you must leave shortly. Does any member have any questions of the Senator before --

SEN. STEVENS: I will be pleased to stay for questions if you have any except for Billy.

REP. CLINGER: (Laughs.) 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 and --

SEN. STEVENS: Thank you. Thank you for your courtesy

REP. CLINGER: -- we'll look forward to working with you on this legislation.

I'm now pleased to recognize our friend and colleague, the gentleman from Louisiana, Mr. Tauzin, who has also been very active in this effort.

REP. TAUZIN: Thank you, Mr. Chairman. First let me say I'm not the secret witness. 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 Democrat and Republican administrations.

Secondly, it is 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 to repeal it if it is simply useless, if you believe that is not our role, you ought also vote against this bill and dismiss it. If you believe that un-elected -- not President Reagan, not my dear friend Cardiss Collins who was elected by her constituent in her district -- if you believe that un-elected 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 be very interested in this legislation. This legislation doesn't muzzle the president. Neither does it muzzle his executive agencies in discussing how programs work or discussing with Congress why they think a program deserves to be continued 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 forbidden, it ought not occur in a free society where elected representatives and elected executives should be carrying on the business of their government,

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that when bureaucrats come between the people and their elected representatives to -- to influence the outcome of a policy debate, something is wrong. We are 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 a 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 change 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 effect 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 -- 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 policy makers 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, and 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 a -- in a -- 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's 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.

REP. CLINGER: Thank you, Mr. Tauzin, for your excellent testimony. You will recall that this is not to first time we have visited this matter.

In fact, this bill or this proposal was considered on the floor of the House within the last few months as -- as an amendment -- a possible amendment to the lobby reform bill which has been enacted into law. And you will recall, also at that time, it did have bipartisan support. There was a recognition that this did address a legitimate problem. It was not a partisan problem. And I recall Mr. Barney Frank from Judiciary Committee indicating that he felt that this was a legitimate proposal and -- and a worthy proposal.

The only problem was that there was a real concern that any amendment to that

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reform bill was going to -- was going to jeopardize the passage of the bill. And therefore, all amendments were resisted in defeat of it, but not on substance, rather they were defeated because of the procedural threat that the bill, the whole bill, might go down because it would have to go back to a conference in the Senate. So I just wanted to make the point that -- 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 or appointees from taking the case directly to the American people in arguing for or against proposals to the Congress? Is there anything here that -- that blocks that -- that vital link of communication between the elected president and his representatives and the American people?

REP. TAUZIN: First of all, let me say that you're exactly correct. We in fact had a dialogue with Mr. Barney Frank on the floor of the House in which we tried to make it very clear in that dialogue that this was not a partisan issue at all. We were very careful in that dialogue to -- to mention instances of abuse during the Reagan years, during the Bush years of federal agencies improperly using federal dollars to -- to lobby efforts here on the -- in the -- in the Congress. And I hope we can keep it a nonpartisan bill and keep it in nonpartisan tones.

To answer you 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 are 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 with 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 behind or -- or oppose or to support any particular legislation. And that's all this bill is aimed at curbing.

REP. CLINGER: And it's really just focused on the production of materials, propaganda if you will, fliers, brochures, printed material, and other type --

REP. TAUZIN: And we've given --

REP. CLINGER: -- material.

REP. TAUZIN: -- we've given some examples in our -- 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, pretty important public policy debate. The department of -- one department sent out hundreds of -- of letters and newsletters to organizations that were -- 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 of both sides of the aisle voted in overwhelming numbers for that bill. It was one of 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 am sure perhaps not even communicating with the president. There was a -- a -- a letter that was sent from one of commissioners in -- in one of the important commissions in our government literally, again, lobbying

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specifically on a specific proposal to merge a couple of agencies. It's that that we talk about here. It's the -- 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 -- to muddy the waters of the debate.

REP. CLINGER: Thank you. The gentleman from California or any member on either side have any questions?

REP. : Mr. Chairman I --

REP. HENRY WAXMAN (D-CA): Yeah. Mr. Tauzin's got a busy day. He's probably got to talk to a lot of people advancing issues in --

REP. : -- (Laughs.)

REP. WAXMAN: -- that he strongly supports since I wouldn't want to detain him.

REP. TAUZIN: Thank you, Mr. Waxman.

REP. CLINGER: Any questions on --

REP. (MS.): Could I --

REP. CLINGER: I'm sorry.

REP. (MS): I'd like to really quote a comment that was in the publication Tax Notes that Representative Kennedy made, and I'd like to quote directly from his statements. "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 agencies position on legislative proposals. Do we really want that?", end quote. And my question is: Does this bill, do you believe, infringe in any way on -- 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?

And I'd like to put in the record a -- a letter from the American Bar Association where they -- they say that in their opinion that better laws are written when there's an open exchange of views among government decision makers. And in this case, they're talking about tax policies. So I just --

REP. CLINGER: Without objection that will be made a part of the record.

REP. TAUZIN: Thank the gentle lady. Let me point out, number one, that no, there is no -- there is no attempt to stifle any change 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 in the interior -- the language is in the 1978 -- in the interior appropriations bill every year. And it's also in the recent labor AGHS appropriation bill. It's language we've dealt with before. It simply extends that language to all federal agencies. But 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. 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.

REP. (MS.): Their letter's in opposition. They feel that you --

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

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

REP. GUTKNECHT: Well, Mr. Chairman, I -- I want to thank you for having this hearing, and I especially want to thank Congressman Tauzin because I think he's been a -- 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 then I would like to get specifics about the unfunded mandates you alluded to one of the agencies. Can you give us some specifics

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on that, Congressman?

REP. TAUZIN: Well, the agency involved was EPA. The agency literally sent out e-mail encouraging and discussing environmental groups' efforts to lobby -- lobby strategies to defeat the unfunded mandates bill. The unfunded mandates bill was one of three bills that the -- 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 -- 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.

REP. GUTKNECHT: So essentially, the EPA was one of the --

REP. TAUZIN: Yes.

REP. GUTKNECHT: Because with we've got some other documents that, hopefully in this hearing or subsequent, I'd like to talk about some of the things that have, you know, that have been going on. I'd also like to remind you, Mr. Tauzin, and other members of something. This debate goes back a long ways, and 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 -- said over 200 years ago. So this debate has been going on for a long time, and frankly I -- 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 -- that many of us disbelieve and abhor, and especially doing it with taxpayer's money.

Now I, you know, disagree the 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 poling, when they're doing other things that are clearly political, you don't have to be a -- a Fulbright scholar to understand that that really steps over the line. And at some point, if we really believe in the concept of we the people, we the people have got to re-establish who works for whom around here, and more and more it looks like the people are working for the agencies. And 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.

REP. TAUZIN: Now, you raise a good point. Now, this is not about us. It's about the people back home who go through elections and try to elect a new legislative body to debate an idea that they believe in or that they want to sponsor or support for the proposition to change the way government works in their lives in some fashion. And 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 -- 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 proper -- to promote. It's a rather -- you know I wasn't around when Jefferson made that statement, I think Senator Stevens was, but -- (laughter) -- if 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

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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.

REP. 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. And I don't think you have to, you know, 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. And we can share that later. Some of the arguments have been made by some of the agencies, some of the, quote, "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, and a lot of things 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's been happening, the more they're going to say it's time for us to take some action. Thank you very much.

REP. CLINGER: Does any other member have any questions of the gentleman from Louisiana? Yes, sir, the gentleman from here.

REP. : Mr. Tauzin, when are the, what are the penalties under this statute? I've looked at it, and I've looked at the present law. I take it that this not criminal; is that right or --

REP. TAUZIN: That's correct. I don't believe we have a criminal provision under --

REP. : Is there a penalty?

REP. CLINGER: I'm sorry. What is being referred to?

REP. TAUZIN: The question is of the penalty provision of the statute. I don't have it in front of me. I'd be glad to --

REP. : Okay.

REP. TAUZIN: -- try to --

REP. : But we're discussing a piece of legislation, and I assume we're trying to prevent something. And I have been practicing for 20 years, and usually we're trying to prevent something, there's some kind of penalty. And I'm just trying to figure out what it is.

REP. CLINGER: Under the -- Under this proposal?

REP. : Under this proposal.

REP. CLINGER: Under this proposal. Under this proposal, it basically gives the controller 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 -- the title 18 provision is a criminal statute but, as has been indicated, even though it's been on the books since 1919, nobody has ever been prosecuted under that piece of legislation.

REP. : And who would pay that -- repay that money?

REP. CLINGER: It would go to -- the perpetrator or the agency would be required to -- to repay that as a result of failure to -- the failure to use the money inappropriately. It actually would probably come back up here.

REP. : Now, let me make sure I'm clear on what you just said. The money -- somebody spends some money on one of these pamphlets or whatever, and then they're found to have done this wrongful thing. And then they have to pay the money back out of their pockets or out of the government fund?

REP. CLINGER: No. No individual would be required to. It would be the agency that -- that had put out or had promoted or paid for production of material

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which would not be permissible under this statute. REP. : And so the money -- so we got a double whack here --

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

REP. : So in other words, you -- the person -- the agency pays out and then they pays -- they pay back what they've already paid out. Is that right?

REP. CLINGER: I'm sorry.

REP. : I guess what I'm confused about is I assume that what 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 on state -- and 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. I mean, there's no -- no -- no -- no individual is being held responsible. It's the agency.

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

REP. : But the fact still remains that the money is still taxpayer's money that's being paid back. I guess that's where my confusion comes from, and I -- I -- 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.

REP. : If the gentleman would yield.

REP. : Certainly.

REP. TAUZIN: But you put your finger on the problem however we end up writing a penalty section, the problem is that current penalty does have only criminal sanctions.

REP. : Right.

REP. 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 to make sure that there's a cost to you for doing so. And if you're an agency that's misusing federal funds, you ought to suffer some penalty as a result. The penalty is a loss of those funds in your budget. Now, maybe there's a better way to do that, and we'd invite your discussion on that but the criminal sanction of putting people in jail simply hadn't worked.

REP. : Oh, and I understand that. I guess all I'm wondering is if whether this is an exercise in futility. And that's -- that's what I'm getting at. I don't -- if you -- 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 -- 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 sponsor's objective.

REP. : If the gentleman would yield to me?

REP. : Of course.

REP. CLINGER: There is another dimension to this, and that is the fact that right now there really is nobody sort of minding the store. There's nobody monitoring it in any way what does go 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. That's the GAO. So that what you have in this, you know, regardless of the penalty, you do have higher visibility, a grater sensitivity, I think, by virtue of GAO's involvement to -- to people thinking a little carefully about what kind of activity or

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what they're going to paying for in the way of grass roots lobby.

REP. TAUZIN: Let me -- can I give you a real example?

REP. : Certainly.

REP. TAUZIN: A real example involves the proposed sale of strategic petroleum reserve oil. Now, I don't know how you feel about that, but I have -- 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 in case we ever have another curtailment of oil and an embargo or something against our country. And we're more dependent than ever now.

So it's -- it's a pretty serious debate. The agency of our government made a proposal to sell some of that oil because they wanted to extra money in their budget to do a -- to do a project. They had a -- they had a Weeks (sp) 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 that we ought not be selling the oil for that. That 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 efforts by the agency against our amendment to stop them from selling that oil for that purpose. I think they violated the law. But what are we going to do? We're not going to put Hazel in jail. Hazel's a dear personal friend of mine, and nobody wants to put her or her people in jail over this. But that practice should have been examined by someone. This bill says the GAO can look at it, and -- and it can say wait a minute. You over stepped the line here. You got involved in muddying the debate up 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 -- would add that element of someone watching them without this extreme penalty of having to put someone in jail over the issue.

REP. CLINGER: Thank you. If there are no further questions of the gentleman from Louisiana --

REP. TAUZIN: Thank you.

REP. CLINGER: Mr. Tauzin, we thank you very much for your appearance this morning and for your very helpful contribution to the debate.

REP. TAUZIN: Thank you, Mr. Chairman.

REP. CLINGER: 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.

REP. 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 that 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?

REP. CLINGER: I do not know the name of the witness.

REP. WAXMAN: And how was this -- (laughter) -- oh, 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?

REP. CLINGER: Staff does know, yes.

REP. WAXMAN: 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?

REP. CLINGER: You could request it, obviously. I mean, I think that in this case we did not request or indicate that -- whether the witness would be -- testify anonymously or not. It was at his request, and it was primarily because of his concern, as I understand it, that his testimony might bring down upon

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his head the wrath or the retribution of people, and it might adversely affect the members of the trade association which he represents. And he did not want to put jeopardy those people.

I think you'll find that his testimony is not inflammatory, nor is it subject -- I mean, I think it's a fairly innocuous testimony, but he was concerned that there would be recrimination if in fact he were to testify openly. I would say that this is not an unprecedented action, and it was certainly not something that we orchestrated for purposes of -- (unintelligible) -- or high theater.

REP. WAXMAN: No, it's not high theater. (Laughter.)

REP. CLINGER: Or low theater, for that matter.

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

REP. CLINGER: There is a process for having executive session. However, not for the purpose of -- for this purpose. I think that executive sessions are normally called when it -- called into play on 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 in -- or anonymously.

REP.: Mr. Chairman, a couple of follow-up questions, if I may. I understand that this gentleman is a lobbyist, is that correct?

REP. CLINGER: He works for a trade association. I'm -- he works for a trade association.

REP.: Okay, so we can presume -- well, maybe I'll ask that question if you get to me, 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. And so --

REP. CLINGER: You will certainly have the opportunity to explore what that -- what, if any, that vested interest may be. I mean, he's not going to be immune from questioning.

REP.: Again, I guess I would follow up on Mr. Waxman's question in terms -- as far as I know, and 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?

REP. CLINGER: Well, I think just request the -- you know, obviously, I would be receptive to a request for a witness. We've always done that. We've given an opportunity here --

REP.: And if we believe that this gentleman is perjuring himself, what would be our process for seeking some sort of redress to that? REP. CLINGER: The redress that you would have to seek any witness who is being charged with perjury. He's going to be sworn.

REP.: So then would we have perjury proceedings brought against every Mr. X in the country?

REP. CLINGER: Oh, come on.

REP.: Or how would we know who this gentleman -- seriously, it's a serious question.

REP. CLINGER: I would -- you know, if you want to move to go into executive session, I would entertain that motion, although I think that 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

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other committees. So I think it's -- you know, this is not unprecedented.

REP. WAXMAN: Mr. Chairman?

REP. CLINGER: It is not being done -- this is not being done at my request. It's done at the witness's request.

REP. WAXMAN: Mr. Chairman, I -- 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. And last week, you know, we had the committee vote the official counsel of the president in contempt without giving him a chance to be heard. Now we have a man attacking the agency, 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 prerogative and we'll look forward to hearing from Mr. Hood. (Laughter.)

REP. CLINGER: I thank the gentleman.

REP. WAXMAN: But I do want to know whether he is the author of "Primary Colors." (Laughter.)

REP. COLLINS: Mr. Chairman?

REP. CLINGER: The gentlewoman from Illinois.

REP. COLLINS: Mr. Chairman, I just want to say that I've served on this committee for 10 years. During that time, I've served under -- as a minority member to the majority. We had worked very closely together. I remember Congressman Bonior a number of times, especially in the area of the IRS and situations with a certain couple 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.

REP. CLINGER: I thank the gentlewoman. The witness is standing, and if you would raise your hand and repeat after me. Do you swear the testimony you are about to give this committee will be the whole truth and nothing but the truth?

WITNESS X: I do.

REP. CLINGER: Let the record indicate that the witness answered in the affirmative. And we're delighted to welcome you, sir, to the hearing and look forward to your testimony.

WITNESS X: Thank you, Mr. Chairman. (Laughter.) 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" -- (laughter) -- or I wouldn't need to still have the job that I do.

One of the other reasons that I 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 had

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

On February 17th, I received the first fax, which was three pages, from the EPA's public liaison division, and that speech was entitled, "Facts about the Contract With America Provisions on Risk Assessment and Regulatory Reform." It was followed by two pages of arguments directly against HR 9.

We received five more faxes, which are described and you have, I believe, distributed to you, and the last fax came on March 20th, a nine-page fax consisting of a press release dated March 16th 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 and 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.

Following the EPA's faxes, we received two faxes from the Denver office of the Department of Energy, only one of which I could locate for this hearing. But the faxes were addressed, "Dear Friends," and contained a whole series of DOE 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 or my organization may favor and that 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 very 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

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can use those tax dollars to lobby against their position.

I will 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.

REP. CLINGER: Thank you, sir. We'll now proceed under the five-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, and I would ask unanimous consent to put them in the record at this point.

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

WITNESS 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. (Laughter.)

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

WITNESS X: I've worked for this association for a little over five years.

REP. CLINGER: Can you give us -- please give us a little indication of your background and so forth.

WITNESS X: I'll be happy to, sir. I started -- 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. REP. CLINGER: Now, the documents that you have brought with you and that you've entered in the record here today, when was the first instance when you received documents from any agency with regard to the pending legislation?

WITNESS X: Well, we received the first one on February 17th, and as I recall, it was a -- 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 in-box. 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 believed 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. This is -- it goes through the positions of the administration on these issues, and it was intended to lobby us, clearly.

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

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

REP. CLINGER: Had you -- were you in any meetings with any officials of EPA that would have had under discussion items in the Contract With America?

WITNESS X: No, sir.

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

WITNESS 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 proposed in early '94. The EPA,

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there are a number of regulations almost at any given time that would affect our membership.

REP. CLINGER: Right. Have you received materials such as are included in this package that you've submitted this morning from any other agency besides EPA or DOE?

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

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

REP.: (Off mike.)

REP. CLINGER: I think he said he'd worked for some other trade association.

WITNESS 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.

REP. 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 or -- in other words, what were you expected to do with the material, the information that you had been given?

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

REP. CLINGER: All right, thank you. Now I'll recognize the gentleman from California, Mr. Waxman, for five minutes.

REP. WAXMAN: Thank you for identifying me, Mr. Chairman. I wish you hadn't. (Laughter.)

Mr. X, I have a copy of the information that was faxed to you, and this is 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?

WITNESS X: I don't think there's anything improper except that there's a law that bans lobbying, and it is in fact lobbying. If --

REP. WAXMAN: Do you feel -- oh, excuse me, I don't want to interrupt you.

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

REP. 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?

WITNESS X: I'm using the same standard that the tax code uses in terms of what we have to report as lobbying.

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

WITNESS X: Yes, sir.

REP. WAXMAN: Okay. Do you think that's in violation of existing law?

WITNESS X: Yes, sir, I do.

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

WITNESS X: No, sir.

REP. WAXMAN: Has anybody in your family been threatened?

WITNESS X: No, sir.

REP. WAXMAN: Are you part of a witness protection program anywhere? (Laughter.)

WITNESS X: No, sir. I think I've explained why we have concerns. The agencies here --

REP. WAXMAN: I -- excuse me, Mr. X.

WITNESS X: -- can very (subtly ?) affect our businesses.

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REP. WAXMAN: 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 can look at it, if somebody will please do that. This document, that I'm going to characterize while it's coming to you, is a press statement issued under the name -- or the stationary of the vice president's office, and 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?

WITNESS X: Well, sir, it depends on who it was sent to. If it was sent to the press, it would be not a problem.

REP. WAXMAN: Well, this was sent to industry groups. Well, let's assume it's sent to industry groups.

WITNESS X: Well, if it's sent there on request, again, that's proper. If it's sent to a list of people who --

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

REP. CLINGER: Show me. I don't think we have a copy of the document that has been --

REP. WAXMAN: Okay, we'll get that to you.

REP. CLINGER: -- presented to the witness.

REP. WAXMAN: I'm sorry.

REP. CLINGER: If we could get a copy of it?

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

WITNESS X: I think there is a distinction, yes, sir.

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

WITNESS X: Well, it wouldn't be pleasant. (Laughter.)

REP. WAXMAN: Do you think that if a subcommittee of this committee held 14 field hearings all in the districts of freshman Republicans, that that's a use of taxpayers' funds for political purposes?

WITNESS X: Sir, I can't -- I didn't hear that question very clearly.

REP. WAXMAN: There are 14 field hearings. Eleven of the 14 are in the districts of freshman Republicans. Is that -- just giving you that information alone, on issues -- on the Contract With America, does that sound like abuse of taxpayers' funds?

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

REP. WAXMAN: So have administrations, haven't they?

WITNESS X: Yes, sir.

REP. 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? WITNESS X: I believe that the material -- that sending the material to us -- (audio break) -- take the administration position if we wanted favorable treatment, yes.

REP. WAXMAN: I see.

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Nobody said that to you? That's your feeling about it?

WITNESS X: Yes, sir.

REP. 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 someday 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 Mick (sp) for counsel of the President on this issue where he responded and his response, as well, about the legal precedence on this very question.

REP. CLINGER: Without objection, so ordered. The Chair now recognizes the gentleman from New Mexico, Mr. Schiff, for five minutes.

REP. STEVEN SCHIFF (R-NM): 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 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 I'm -- my own spelling is wrong.

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 talked 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 legislations 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 and that is, that the Environmental Protection Agency, the Department of Energy, the Veterans Department, those agencies are not obligated down to every single person who works there to support the Clinton political agenda.

They are 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 taxpayer's 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.

And 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 said 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 that -- 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?

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

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REP. SCHIFF: Could you then explain that a little further, please?

WITNESS X: Well simply that there is a -- if you work with the agency, if you help them they'll help you; that sort of attitude.

REP. SCHIFF: And was it your -- was that your impression, with respect to the documents we received by fax, also? You help them and they'll help you?

WITNESS X: That's the impression I had, sir.

REP. SCHIFF: And would the contrary be true, if you don't help them, they might not help you?

WITNESS X: I had that concern.

REP. SCHIFF: All right. Okay. Mr. Chairman, I have no further questions of the witness and yield back to you any time.

REP. CLINGER: Thank the gentleman for yielding back. The Chair now recognizes the gentleman from Wisconsin, Mr. Barrett, for five minutes.

REP. THOMAS M BARRETT (D-WI): Thank you, Mr. Chairman. Mr. Witness, is that your real voice? (Laughter.)

WITNESS X: No, it's not.

REP. BARRETT: Okay; just was checking on it. Have you contributed, made any campaign contributions to anybody on this committee?

WITNESS X: Well I can't see the committee at this point. I don't think so. (Laughter.)

REP. BARRETT: Have you made any campaign contributions to any members of Congress this session?

WITNESS X: I don't believe so, not -- I haven't had enough money this year, frankly. (Laughter.)

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

WITNESS X: We don't have a pact, sir.

REP. BARRETT: So you have made no -- have you been involved in any political campaigns?

WITNESS X: I have in the past, yes.

REP. BARRETT: For Republicans or for Democrats?

WITNESS X: For Republicans.

REP. BARRETT: And how recently?

WITNESS X: As recently as '95.

REP. BARRETT: Okay. 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?

WITNESS X: Not other than, perhaps, attending a campaign event.

REP. BARRETT: And who would that be for?

WITNESS X: It was for Mr. Davis. REP. BARRETT: Mr. Davis. Thank you.

REP. THOMAS M DAVIS (R-VA): I don't recognize the gentleman. (Laughter.)

REP. CLINGER: But he's happy to attend as many events, as are you, Mr. Barrett, and anybody else.

REP. BARRETT: Mr. Davis, you were certainly quick to jump on that one.

(Laughter.) You seem a little defensive about this fine supporter of yours. I hope you're not as defensive about all your supporters.

REP. DAVIS: Listen, they probably live in Northern Virginia or --

REP. BARRETT: Okay. It's my time. I'll retain my time, if I could. Were you approached by someone on the committee for your testimony?

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

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

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

REP. BARRETT: And who was that call from?

WITNESS X: Who was the call from?

REP. BARRETT: Yes.

WITNESS X: From Ms. Blanchard (sp).

REP. BARRETT: Okay. And did she suggest that you testify before the committee?

WITNESS X: She asked whether I would be willing to testify.

REP. BARRETT: And what was your response?

WITNESS 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.

REP. BARRETT: And what was her response to that? WITNESS X: She said they would look into whether that was possible.

REP. 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?

WITNESS 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.

REP. BARRETT: So she -- who else knows your identity on the committee? Any -- I assume -- the Chairman said, he doesn't. Any other members know your identity?

WITNESS X: Well I don't know. I've been told by Ms. Blanchard (sp) that she's the only one. I trust that that's correct.

REP. BARRETT: Okay. Turning to 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 United States Environmental Protection Agency, a political appointee of the President, why you object to her taking a political position?

WITNESS 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.

REP. BARRETT: Okay. Have you received unsolicited any positions from republican members of Congress, or the leadership in Congress, on political positions?

WITNESS X: Not that I can recall, sir.

REP. BARRETT: You have never received any unsolicited information from republican members of the Congress on positions?

WITNESS X: As I say, not that -- 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.

REP. BARRETT: Okay. Would you feel that would be inappropriate, for example, a newsletter? Would you think a newsletter would be inappropriate?

WITNESS X: You know, I think that the Congress has its own rules and regulations as to what --

REP. BARRETT: I'm not asking that; I understand that. I'm asking whether you think that would be -- obviously you feel it's inappropriate for the executive agency to do that, but not inappropriate for the legislative agency to do that.

WITNESS X: I think what I said, sir, is that you have a federal law that says it is illegal for federal agencies to do this. I don't -- I'm not sure I know exactly what the federal law is that applies to Congressmen. They should follow the law.

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

WITNESS X: No, sir.

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REP. BARRETT: Thank you.

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

REP. ROBERT EHRLICH (R-MD): 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?

REP. CLINGER: I have not.

REP. EHRLICH: Thank you. Sir, with respect to the last line of questioning, just let me ask a follow-up. Were you a lobbyist under the Bush Administration, during the term of the Bush Administration? Were you a lobbyist?

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

REP. 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?

WITNESS X: Yes, sir, I think I would.

REP. EHRLICH: Now -- okay. Well the first part of the question is --

WITNESS X: No, I did not -- did I recall receiving anything like this from the Bush Administration, no.

REP. EHRLICH: Thank you, sir. With regard 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?

WITNESS 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.

REP. EHRLICH: Why did you do that?

WITNESS 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.

REP.

REP. EHRLICH: Sir, how did your colleagues -- your professional colleagues react to, 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 material as reaching the law?

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

REP. EHRLICH: I understand that.

WITNESS 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.

REP. EHRLICH: Sir, how many small businesses does your association represent?

WITNESS X: About 5000.

REP. 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?

WITNESS X: Sir, I'm 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; very easy.

REP. EHRLICH: Now, sir, define the term "subtle". In what -- what would constitute subtle retaliatory actions, in your view?

WITNESS 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.

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REP. EHRLICH: Okay.

WITNESS X: There would be no way to show that that was in retaliation.

REP. EHRLICH: And certainly to the extent you'd even utilize that word, you would risk further retaliation; correct? WITNESS X: I'm not sure what that question was.

REP. EHRLICH: If you would complain about this sort of activity, you would risk further retaliation in the future; is that your view?

WITNESS X: That is my concern, yes, sir.

REP. EHRLICH: Sir, what changes do you think are needed in current law? Let's get to substance for a second because 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 5000 businesses that pay you to represent their interests here on the Hill?

WITNESS 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 and counterversion (sp) of the law.

REP. EHRLICH: Well, sir, the only reason I asked the question is, it seems that your credibility is being put at issue simply because you happen to agree in a 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?

WITNESS 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.

REP. EHRLICH: Certainly your presence at Mr. Davis' fundraiser does not -- he's a good friend of mine so, thank you very much.

REP. CLINGER: Your time has expired. The other gentleman from Maryland, Mr. Cummings, is recognized for five minutes.

REP. ELIJAH CUMMINGS (D-MD): Yes, 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, and you 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, did you -- 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?

WITNESS X: Yes, sir, I did.

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

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

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

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

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

WITNESS X: Not that I can specifically attribute, no.

REP. CUMMINGS: Now let me ask you this, you -- 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.

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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?

WITNESS 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.

REP. CUMMINGS: But the fact is, is that you regularly -- you, I take it, you're a lobbyist; you used to be a legislator of 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. --

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

REP. CUMMINGS: Now did you have to -- did you -- was it known by others that you were taking these views? In other words, could that word, I take it, in order for that word to be effective that is, the fact that you're going against the President's policies, I take it, in order for that to be effective, somebody had to know about it in the administration; is that correct? WITNESS X: Yes, sir.

REP. CUMMINGS: They did know about it, didn't they?

WITNESS X: Yes, sir.

REP.

REP. CUMMINGS: And did you receive any kind of retaliatory actions; did anything happen to you?

WITNESS X: Not that I can discern.

REP. 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 was that you didn't go along with the agencies of the federal government that you might run into some problems; is that -- I mean, I don't want to put words in your mouth, be that's what you said, wasn't it?

WITNESS X: No. What I said was that there -- when an association receives materials, there's an implicit suggestion that supporting the agency position will result in more favorable treatment.

REP. CUMMINGS: So -- and I take it -- and what is your view, with regard to taking a position opposite to the President or the agency's views?

WITNESS X: Well I guess the converse would be true that the implicit suggestion is that you would have lost favorable treatment.

REP. CUMMINGS: But have you found that to be true? Have you found that to be true since March 9th? Have you found it to be true at all?

WITNESS X: I can't --

REP. CUMMINGS: You personally?

WITNESS 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 rule-makings. And we haven't heard yet on some of those.

REP. CUMMINGS: One last question. If Ms. Browner sent you a letter and faxed it to you given the position of her agency, would you be sitting here today? And you had a personal note, three or four pages, handwritten, same information, would you be here today? WITNESS X: No, I think if I knew that she had sent it out to 40 or 50 other trade associations unsolicited, using tax dollars, I might be sitting here today, yes.

REP. CUMMINGS: You understand that according to my reading of the law, this legislation, that would not be a violation; do you understand that?

WITNESS X: I'm not sure.

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

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REP. JON D FOX (R-PA): Thank you, Mr. Chairman. I thank the witness for attending and 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 speaks for each of us that it came from the witness behind the --

REP. CLINGER: I'm sorry.

REP. FOX: I want to put these in the record.

REP. CLINGER: Without objection. They have been already made a part of the record.

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

WITNESS X: A little over five years.

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

WITNESS X: I'm sorry -- what was the question?

REP. FOX: The Exhibit 1 has information regarding environmental legislation. And when was the first time you received documents on that legislation?

WITNESS X: The first time I received documents was on February 17th.

REP. FOX: And did in any way you solicit material?

WITNESS X: No, sir.

REP. FOX: Did EPA contact you verbally?

WITNESS X: No, they did not. I simply received a fax with my name on this title page.

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

WITNESS X: No, sir.

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

WITNESS X: We always have regulations pending before EPA.

REP. FOX: Have you received materials, such as those, from any other federal agencies other than EPA or the Department of Energy?

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

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

WITNESS X: I was frankly angry --

REP. FOX: Okay.

WITNESS X: -- after seeing my tax dollars used for lobbying purposes.

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

WITNESS X: Was the question, would I make any changes to the legislation?

REP. FOX: Yes.

WITNESS 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.

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

WITNESS X: Well certainly, yes.

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

REP. CLINGER: Thank the gentleman. The Chair now recognizes the gentleman from New Hampshire, Mr. Bass.

REP. CHARLES BASS (R-NH): Thank you very much, Mr. Chairman. At this time, I'd like to yield to my colleague, Mr. McIntosh.

REP. DAVID M MCINTOSH (R-IN): Thank you. REP. CLINGER: The gentleman from Indiana is recognized.

REP. MCINTOSH: Thank you, Mr. Bass. Mr. X, a couple of different questions for you. You indicated that it was your opinion that the documents you received

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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 together to organize a lobbying effort?

WITNESS X: I would say that the list of recipients is very similar to the kind list that a coalition or group --

(Audio gap.)

(Recess.)

REP. CLINGER: The Committee on Government Reform and Oversight will resume its sitting. I'm pleased to welcome the members of Panel Three to the committee. They consist of: J Davitt McAteer, Acting Solicitor, Department of Labor; Mr. Robert Nordhaus, General Counsel for the Department of Energy; Ms. Mary Lou Keener, General Counsel to the Department of Veterans Affairs; the Honorable Joseph B Dial, Commodities Futures Commission 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 in all witnesses. If you have no objection, I would ask you to rise and raise your right hand. Do you swear the testimony you're about to give this committee will be the truth, the whole truth, and nothing but the truth?

WITNESSES: I do.

REP. CLINGER: Let the record show that all of the witnesses answered in the affirmative. We're ready to go. Who would like to lead off?

MR. JONATHAN CANNON: Mr. Chairman, my name is John Canon (ph). I'm General Counsel to the EPA. If it's agreeable to you, I would like to proceed.

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

MR. CANNON: Thank you.

REP. CLINGER: Your entire testimony will be submitted for the record. You can summarize it 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 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. I'm talking 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, 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 the existing Department of Justice guidelines interpreting that act.

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 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. 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 non-government organizations and the press

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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 might be interested in the agency's programs. The information set out was designed to advise people on those lists that the agency's views on important matters.

In his testimony, he does not 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 that 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 that 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 the 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 are 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. I will tell you we've gotten responses folks that 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 HR 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. I'm concerned, basically, with the manner in which the bill would limit those who can speak for an agency on matters related to proposed legislation and on constraints on the methods by which even those who are authorized to speak may communicate to the public about these important issues. 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 posed legislation to Senate-confirmed appointees, it essentially ignores the pivotal role (of staff ?) in communication, including preparation of speeches, answering routine questions from the public, from reporters, from stake-holders, providing public information on agency policies to a wide array of stake-holders, and also 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.

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We also have concerns about limiting communication to radio, television or other public communication media since a lot of the work we do is work with stake-holders in meeting. And candid conversations about issues pending at the day are very important to those relationships and to the success of those communications. There are other examples which I have given in my written testimony. I see my time is up, for which I commend 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.

REP. CLINGER: Thank you, Mr. Cannon.

Mr. Dial. Again, if I may just indicate to the entire panel, all of your statements will be entered in full in the record. If you can summarize, we would be grateful, but you may proceed as you choose.

MR. JOSEPH DIAL: I shall do so, sir. Thank you very much. I thank the committee for permitting me to substitute for our acting chairman, John Etole (ph) 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 Commodities Futures Trading Commission to testify on HR 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 USC, Section 19.13 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 19.13.

In view of the serious Constitutional issues raised by the Department of Justice with respect to HR 3078, the commission is unable to support passage of the bill. Moreover, HR 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 B3 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 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 important issues before their agencies. The narrow exception in HR 3078 will 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 -- prohibit them 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 parities.

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

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

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

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

REP. CLINGER: That's perfectly fine. Mr. Nordhaus, the chair recognizes you, and again I would --

MR. ROBERT 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 HR 3078 raises, three issues in particular. First, is it Constitutional? Secondly, is it sound policy? Third, is this 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 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. Agency views that have not been articulated directly by the president, presumably, cannot be presented. 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 cut off virtually all executive branch communications to the public on pending legislation, but it leaves members of Congress and their staffs free to continue tax payer funded communications to the public.

We think that -- it's certainly my view, and I think my colleagues share this -- that robust, public debate on public issues is important, something that members of Congress should engage in. We think it's something that executive branch employees and presidential appointees should engage in also. We think what

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ought to go on is a debate and not a monologue. For these reasons, we think that our system and the quality of public debate would be significantly impaired if HR 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're involved in major -- our major work is energy, environmental clean-up, national security, non-proliferation. These issues are important, controversial, and almost all of them are the subject of some pending legislation somewhere in the House or the 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 clean-up of our former nuclear weapons facilities will feed back 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 its 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 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 Denver Regional Support Office. I would like to just briefly say that, first, we fully concur with Mr. Schiff's concerns with the spelling of the word -- what 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.

REP. 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? I think that's what we're considering here today. Ms. Keener, do you want to go now?

MS. KEENER: Yes, sir.

REP. CLINGER: You're recognized for five 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 HR 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 HR 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 communication with the veterans community. Second, I'd like to respond to your specific concerns regarding Secretary Brown's effort 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 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, recognized that there are limits. The secretary and all of us clearly recognize and honor the legal limitations

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imposed by the Anti-Lobbying Act. We have all consistently acted within guidelines provided by the Department of Justice.

In June of 1995, Secretary Brown issued guidance to all VA employees, explaining to them the limitations of the act and strengthening 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.

HR 3078 would have a chilling effect on our ability to do this, 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, HR 3078 could bar VA officials from writing letters or making phone calls in response to veterans' inquiries regarding the possible effect 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 number one on your list of reasons to support HR 3078, I'd like to briefly address Secretary Brown's August 29, 1995 message to VA employees on their earning and leave statements. 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 of 1994 and through messages printed on their bi-weekly earning-of-leave statements since August 31 of 1993. This comprises all of those messages that have been sent out to employees by the secretary.

In August of 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's 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 representative. Veterans and other VA constituents have a right to and they currently 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 would be happy to answer any questions.

REP. CLINGER: Thank you, Ms. Keener. Now I would recognize Mr. McAteer.

MR. J DAVITT MCATEER: Thank you, Mr. Chairman. I'm Davitt McAteer, Acting

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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 contracts 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 labor document identified in the press release accompanying the introduction of HR 3078.

The department has serious concerns about 3078 because we believe it is overly broad and of questionable Constitutionality. But equally importantly, 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 Facts 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 '94 and early '95 under the title America's Jobs Facts. We have previously provided copies to the committee. The department came to develop this newsletter because we 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 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 development, report on relevant private sector developments, and provide excerpts of remarks by the president, the secretary and business and labor leaders.

We used a 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 a 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 grass-roots 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 of the faxes. As Mr. Cannon has indicated in his text before us, there was a list of who received the faxes. That distribution list was a broad spectra of individuals, organizations, members of Congress on both sides of the aisle, to the US Chamber of Commerce, the Business Round Table, as well as trade unions.

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The distribution was not narrowly 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 3078, we believe that there are necessary limits to restrict improper lobbying activities by executive branch officials. Interpretations in the 1989 OLC opinion that former Assistant Attorney General Barr and the April 1995 anti-lobbying guidelines issued by OLC Assistant Attorney General Walter Dillinger (ph) set forth the proper and workable framework for limiting improper, grass-roots 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 that training material 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 writers, and the OLC opinions protect against abuses. The changes contemplated by HR 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 rights and interests of members of the public. Thank you, sir.

REP. 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 grass-roots lobbying by administration officials. But that was the purpose of the hearing -- was to make sure we all know where the various positions are. A couple of questions before we proceed to the five minute rule.

One is that 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 perceived, in addition to the Department of Justice memorandum -- we've gotten legal memorandums from both the CRS and the GAO and the opinions which indicate that it is Constitutional because Congress retains the power to tell agencies exactly how appropriated funds can and cannot be used. That is 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 and riders. I think the Department of the Interior, the Department of Health and Human Services -- there's 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 at least need to 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 of this side of the panel strenuously opposed most if not all of the items of the Contract with America. 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: If I could characterize it generally, our response to HR 9 was, first, to analyze it and to try to understand what its provisions meant with respect to our program. We spent a lot of time internally looking at that and

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doing analyses that would allow us to make some assessment.

REP. CLINGER: Were you coordinating those activities with groups or agencies outside of the agency itself?

MR. CANNON: There may have been discussions with groups outside, with folks in the administration in that part of the process.

REP. CLINGER: But beyond the administration, with groups or associations --

MR. CANNON: During that analytical phase?

REP. CLINGER: Through any phase of the --

MR. CANNON: Well, I will tell you, if I may proceed. We did analyses. We developed views about the bill. We did, through various means, communicate our view to the public. 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 forms that set forth their views on the legislation.

REP. 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 concerns or opposition to HR 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 the agency.

REP. CLINGER: Wasn't the purpose of the group, however, to really mount a vigorous opposition to HR 9 with the objective of ultimately generating enough to defeat that proposal?

MR. CANNON: I wouldn't characterize the purpose in that manner. 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 HR 9 and to inform the public debate in an open and vigorous way with respect to that.

REP. CLINGER: I have here a number of documents which I'd ask the clerk to distribute at this point, the first page of it reading "Contract of America 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 -- I actually have some sense that these documents might be entered at some point into the record.

MR. CANNON: Presuming the right to object --
(Crosstalk.)

MR. CANNON: -- we can get a copy of it.

REP. CLINGER: I've asked the clerk, please, to distribute that document.

MR. CANNON: I withdraw my objection. REP. CLINGER: Thank the gentleman. Let me just read a couple of excerpts from that. Mr. Cannon, I'd ask you if you would characterize those as just sort of an information generating activity. One, the opening paragraph --

MR. CANNON: Excuse me, Mr. Chairman. May I have a copy of the document, or --
REP.

REP. CLINGER: Where are the documents?

MR. CANNON: Is this --

REP. CLINGER: I think you have the document.

MR. CANNON: Thank you.

REP. CLINGER: The leading paragraph is "EPA has decided to be overt about our opposition to the Contract with America and try to get our message out about its impact on environmental protection." Then going to the next page, "Examples of contract. Office of Water working with OPPE and OCLA to develop an example of

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the impacts of the contract using cryptosporidium as an example." And further down on that page, "coordinated outreach strategy. Pulled 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 Donna Bosi (ph)" 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 in -- or generating information to the private sector. That sounds very much like grass-roots lobbying and would seem to me 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 the various groups that might be interested in HR 9 and the agency's views on HR 9. That's exactly what we did. 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 HR 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 which we felt would be interested in having our views on the subject.

REP. CLINGER: So you are indicating these materials were used to generate public opposition to the legislation. Are you not? I mean --

MR. CANNON: These were used to communicate the agency's views on HR 9 --

REP. CLINGER: So you would take a very narrow view and say that was in no sense trying to encourage anybody to lobby Congress with regard to the matter. It was only an information --

MR. CANNON: Correct.

REP. CLINGER: I find that a little uncertain.

MR. CANNON: Certainly within the meeting of any lobbying act. None of these materials -- at least I am aware of no materials in --

REP. CLINGER: I'm not charging you with any violation of law. I think what I'm saying is that there may well be -- that is why I think there's a need to tighten existing law with regard to this matter. My time has expired. I would yield to the gentleman from Wisconsin, Mr. Barrett, for five minutes.

REP. THOMAS BARRETT (D-WI): Thank you, Mr. Chairman. Ms. Keener, how many veterans are alive today?

MS. KEENER: Approximately 26 million.

REP. 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.

REP. 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 the VA -- if that was good for veterans, if we could live with that bill or if our bill, the VA bill, the administration's 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 have not been able to answer that question posed by that VSO representative regarding opposing legislation. One of our directors or one of

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our people out in the field, any of the people who are not president appointees, would certainly not be able to respond to those kinds of questions that veterans and others may pose regarding what kinds of legislation may be in the best interest of veterans.

REP. BARRETT: Okay. Thank you. Mr. Cannon, when you indicated that none of these faxes were sent 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 in 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 is from the National Rural Water Association, and I know that they have, for the current water legislation -- I'm sure Mr. Waxman can speak better -- (audio break) -- (I?) oppose some of the things they supported last session. I, as a person from Milwaukee, Wisconsin, 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 it would be a grave disservice to the citizens of this country if the Environmental Protection Agency were muzzled, and were not able to communicate with the people of the country about that serious outbreak that occurred in my home community. So I just want to thank for doing that.

Mr. Dial, very quickly, my understanding is you're a Republican, is that correct?

MR. DIAL: That's correct.

REP. BARRETT: You're a Republican appointee.

MR. DOWNS: I was appointed by President Bush in 1991.

REP. BARRETT: And were you directed to bring your testimony here today in opposition, or raise the concerns here, or --

MR. DIAL: The commission received a letter -- the acting chairman of the commission received a letter that made a request for all the information we had available with regard to the communication that I initiated to the members of the Agricultural Advisory Committee to CFTC.

REP. 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 five-and-a-half years, and I wasn't in Congress at that time, but I can recall sitting, as almost every American did, listening to the representatives from 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, that -- those daily press briefings, which one can certainly argue, directly or indirectly, were intended to influence how members of Congress voted, would have been prohibited under this legislation. So you could not have spokespersons for the Pentagon, spokespersons for the Department of Defense, give those daily briefings.

Again, I do not think we'd 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 the issues, to address them in a serious way. My view of this legislation is that I have certainly, on found occasions where there is a member of the administration, whether it's on a state level or the federal level, would appear either for or against a piece of legislation.

And I've always viewed it as sort of like standardized tests. When I was

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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 lousy in the can. And I think both sides of the aisle feel the same way. I'm 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 are not given by the head of an agency. And I think that this legislation goes far too far in muzzling the American peoples' right to know. I yield back the balance of my time.

REP. CLINGER: The gentleman yields back the balance of his time, I'm now pleased to recognize the gentleman from Minnesota, Mr. Gutknecht.

REP. GILL GUTKNECHT (R-MN): 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, and I don't see how in the world that's related to what we're talking about here. What we're really talking about is using taxpayers' dollars to lobby for a particular point.

REP. BARRETT: Would the gentleman yield briefly? Would the gentleman yield?

REP. GUTKNECHT: Briefly, for a question.

REP. 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 that is not -- does not happen again, I think would be a disservice. And you're right. It did not happen in the 104th Congress. And I'm happy that it did not happen in the 104th Congress. I don't want to see that happen ever again, anywhere.

And I yield back your time. REP. GUTKNECHT: But whether this bill passes or not, I think the chances are that it could happen, might happen, but ultimately it's local officials who are responsible. But using taxpayers' dollars to advance a particular point of view.

Ms. Keener, how long have you been with the Veterans Administration?

MS. KEENER: Approximately three years.

REP. GUTKNECHT: Three years. Well, you may not be able to answer this question. I suspect, and I don't know but I'd like to find out, has any other commissioner sent out notices in peoples' 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.

REP. GUTKNECHT: Thank you. Let me follow up with another point. He raised the issue -- my colleague from Wisconsin raised the issue of the Gulf War. How would you have reacted -- now I suspect -- 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 how my colleagues would have reacted, if, for example, the former secretary would have put out fact 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's ever happened before.

Now I will admit, that we've 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. And frankly, I suspect that my colleagues on the other side would feel very upset -- because again, I would say that veterans have a very keen interest in public -- I

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would agree they're interested in what's happening here in Washington. But I think you would resent any attempt by this Congress to force you to mail out facts about the Contract with America, at least from our perspective. I mean, it isn't a matter of who's right and who's wrong, or who you agree with or disagree with. It really is about whether taxpayers' dollars should get used for this. I'm going to turn briefly to the gentleman from the EPA, because I have here -- I think they have made available to you, a copy of a memorandum -- a letter and memo that went out, called "Fact Sheet," to various Chambers of Commerce. Are you familiar with that letter?

MR. CANNON: I don't have -- I'm looking for the materials that I have been provided. I don't find that included among them.

REP. GUTKNECHT: We'll hand it off -

REP. CLINGER: The clerk will provide Mr. Cannon with a copy of the letter.

REP. GUTKNECHT: It's my understanding that 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 was -- it appears on its face to have been sent by Mike McCabe (sp), who is the regional administrator of Region Three.

REP. 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, and therefore -- 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.

REP. 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 approved it? I mean, can 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.

REP. 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. But I'm assuming that there would be people who received this who would not agree with --

REP. GUTKNECHT: With your political point of view?

MR. CANNON: Excuse me?

REP. GUTKNECHT: With your political point of view, they wouldn't agree with your political point of view?

MR. CANNON: With the views expressed in this letter, yes.

REP. GUTKNECHT: With 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 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.

REP. GUTKNECHT: Do you think it's your responsibility to tell both sides? These are taxpayers, right? This is a political debate, I think, and don't they have a right to hear both sides?

MR. CANNON: I believe we have a right -- or we have an obligation to discuss with people openly these issues.

I think we're stating our views --

REP. GUTKNECHT: No, no. Now, the word "openly" is a pretty important word.

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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.

REP. GUTKNECHT: Okay. 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 to respond to that, to openly discuss the issues with them.

REP. GUTKNECHT: When you send something out on a letter like this, and it says "Fact Sheet," and the facts are still in dispute -- as a matter of fact, I think from 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, and to call it a Fact Sheet -- many of us, at least on this side, would say that's a gross overstatement. Wouldn't you agree?

MR. CANNON: Well, 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.

REP. CLINGER: The gentleman's time has expired.

REP. GUTKNECHT: Thank you, Mr. Chairman.

REP. CLINGER: And the chair now recognizes the gentleman from California, Mr. Waxman.

REP. WAXMAN: Thank you, Mr. Chairman. I don't understand what objection anybody would have to 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 an 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 points 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. Now, I don't think there's 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's 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 me perfectly legitimate. I just find this whole hearing very perplexing, that the 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 Stockmeyer's (ph) 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 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's a press release, that I'll put into the record, of a David M McIntosh. "McIntosh: 'The best way to help low-wage workers is to cut their taxes.'"

REP. MICA: Will the gentleman yield?

REP. 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. And this is on official congressional press release stationery, it has his congressional office on it.

Who asked me to yield?

REP. MICA: I did.

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REP. WAXMAN: What's wrong with this?

REP. MICA: Well --

REP. WAXMAN: Why do you (expect?) Mr. McIntosh --

REP. MICA: 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 views the opposite of each of these agencies -- for example, people believe that the budget for EPA is too large, and that taxpayers shouldn't be funding some of those programs. Should we appropriate the money so that citizens can speak out with government funds and send to chambers of commerce a letter containing their own taxpayer-paid-for fact sheet which (says?) these programs are wrong.

REP. WAXMAN: Let me -- let me reclaim my -- let me reclaim my time.

REP. MICA: Would that be appropriate?

REP. WAXMAN: 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, which I'm sure --

REP. MICA: So you agree that --

REP. WAXMAN: My time now. I just don't see anything wrong with it. It is not lobbying to disseminate information.

I find something really troubling. This committee had non-profit groups in here; we try to muzzle them from expressing their point of view. (You?) try to keep an 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 from the SPRO as part of the president's budget to pay for decommissioning of 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 that 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 communication from two presidential appointees within the Department of Energy to members of Congress. And I think there's -- and it related to the president's position in his budget. I don't think there's 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.

REP. 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 and what it thinks it ought to have in the budget? Why should we keep a Republican member from asking a question that's 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, and I think there may well be constitutional questions. But even if there are not, this policy that's being advanced to keep information that's not lobbying -- getting information, sending information -- is just going too far, from my point of view.

I'd be pleased to yield to Mr. Mica -- Mr. Mica's not here. I would have

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liked to have yielded to him, just to show that I'm willing to do such a thing. (Laughter.)

I'll yield back the balance of my time to you, Mr. Chairman.

REP. CLINGER: I thank the gentleman for yielding back.

I think -- you know, obviously, the intent of this legislation is not to prevent or preclude or make it illegal for the administration to present their point of view on legislation. And there are certainly legitimate ways -- my word, this president's very effective at getting across his point of view on legislation and I think that I would also commend many of the members of the cabinet who have done an equally good job.

What this legislation is to do is not to gag anybody. It is in fact, however, to say that there should be limits to this, and it's, 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, and the reason I crafted 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 grass roots. And 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. And then 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 of this position. But it was sent also to environmental groups to urge them to weigh in on the matter, and 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 manning and staffing and doing the efforts that the EPA Contract with America working group were involved in.

MR. CANNON: Mr. Chairman, I did have those figures, or some figures that might be responsive to your question.

REP. CLINGER: My understanding was that -- we'd heard there were over 300 senior officials were working on some aspect of opposition to HR 9, many of whom would be career. And we're not saying that this was all entirely illegal, but I think that the concern I have is that if it wasn't inappropriate behavior, then perhaps we need to redefine what is appropriate behavior. And that that is really 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; 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.

This is -- the analysis and the review and the 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

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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.

REP. CLINGER: We're going to recess for about three minutes -- oh, we don't have to recess. The gentleman from Virginia will take the chair.

REP. DAVIS: Let me just catch my breath, here.

Let me -- say, I may get more than five minutes; I'm the only one here.

I think we've heard some good policy arguments from some of you. 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, and 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 lists, unofficial House moderates -- document 00024984. Have that in front of you? If not, if the staff could find that, make sure you get it.

This list has caused me considerable embarrassment, but I would just ask, first of all, do you know who prepared this list?

MR. CANNON: May I take a moment, Mr. Chairman, to go through it?

REP. DAVIS: Sure; please.

MR. CANNON: No, sir, I don't.

REP. DAVIS: That's too bad -- this was produced by your agency. So you may not be able to answer some of the questions. There are some factual errors on it, just to call -- 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. My recollection --

REP. DAVIS: All right. See if you can come back and, for the record, let us know who prepared this.

MR. CANNON: Right.

REP. DAVIS: Can you do that?

MR. CANNON: Yes.

REP. DAVIS: My concerns are as follows: we have a list of unofficial House moderates. Looking down the list: Roscoe Bartlett, Tomn Coburn, Hostettler -- now look 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 the comment here is he took Swift's old district -- he didn't take Swift's, that was Metcalf. But there are a number of factual errors on here, as we go through, which may say something about whoever prepared this list's knowledge of the process and facts.

But you can't -- 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 think that would be useful to you or to the committee.

REP. DAVIS: All right. Well, I just wish you could find out who prepared it, what it was used for, at that point -- I think the committee has a right to know. I think members whose names are here who got comments about their voting behavior or their other characteristics ought to see what someone over at the EPA who was utilizing this thinks of them. And do you feel that 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 --

REP. DAVIS: The document's in front of you; it speaks for itself.

MR. CANNON: I don't have the details of the background or how it was used. But under the Anti-lobbying Act, which regulates the agency's behavior on lobbying issues, there is nothing, as we understand the Justice Department

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guidelines, that precludes the agency from directly contacting members of Congress on legislative issues of concern to the agency so that if -- whether this list was used or other means were used as a basis for contacting members, that would perfectly appropriate and lawful.

REP. DAVIS: But just from seeing this for the first time, and they talked 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 insure that and give that to outside groups and say yeah, 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.

REP. DAVIS: What do you mean it would create an issue?

MR. CANNON: Well, the anti-lobbying --

REP. DAVIS: 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 giving it to outside groups and saying, well here they are, go after them. Here are the members we think are vulnerable?

Now let me -- 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 to have the number of league of conservation voters members in their districts. It's a good way to make public policy I guess, but the activities were either vulnerable to an electorate, persuadable perhaps on philosophical grounds, surely vulnerable which I would take to mean politically we could be pressured, or a prodigal friend 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 you have, 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 field?).

MR. CANNON: Again, I can't be very helpful to you because I don't know how it was compiled or how it was --

REP. DAVIS: But if it were shared, if this were given -- this information were given to outside groups for lobbying in terms of vulnerable, persuadable, -- (inaudible) -- or purely vulnerable, do you think that creates some issue and perhaps some illegality under the plans statutes?

MR. CANNON: If this were part of a substantial grass roots lobbying campaign which expressly called on the public to contact Congress, that would certainly be an issue under the Antilobbying Act.

REP. DAVIS: That's really, that's what I want. I just want to make sure we were understanding -- (inaudible) -- all 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 from the -- I'm a member of the Tuesday lunch bunch.

MR. CANNON: I'm sure it's --

REP. DAVIS: I feel almost dissed.

MR. CANNON: If they're --

REP. DAVIS: I got members coming up to me saying, Davis, Coburn is on the moderate list. You're not on it. What's wrong?

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MR. CANNON: Right. We could, I guess, consider amending the list to make it more --

(Cross talk.)

REP. DAVIS: -- you know. When we find out who prepared it, maybe you could share with them the recent ratings from the different agencies and maybe they'll make the revisions as we go through it.

I would now yield to Mr. Mica or recognize Mr. Mica, the gentlemen from Florida.

REP. JOHN MICA (R-FL): Thank you Mr. Chairman. I really, I just become more and more appalled, more shocked, more outraged every time that particularly EPA -- I mean, you set the standard for this type of questionable activity -- your agency. I mean, sometimes it's the game 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 year. Were you aware of that fiasco?

MR. CANNON: I have heard about that.

REP. MICA: I mean, that's the game that can't --

(Cross talk.)

REP. CLINGER: Sounds like he's hearing about it again today too.

REP. MICA: -- can't shoot straight, but I mean, 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 (ph) contract and that's what I want to question about, but the more I learn, the more I'm just absolutely alarmed. I'm going to ask the clerk to distribute these and here's a copy for the others in case they don't have them of all of the things I'm going to question about.

Mr. Cannon, I'm sure you're aware of some of the allegations. The EPA has improperly given a grant to the national PTA (ph) for the purpose of fostering the PTA's (ph) opposition to proposed reductions in EPA's budget. During EPA's appropriation hearing on April 16th, Administrator Browner told the 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.

REP. MICA: Well, let me hand you a copy of an internal memorandum that I got and that's number one, and I'd like that to be a part of the record if could be. This is a copy of an internal memorandum from Ann Lassiter (sp), which apparently is 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 although 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, and according to this memorandum the only adverse --

REP. CLINGER: Without objection.

REP. MICA: -- the only adverse action taken against the employee was to, as stated in the memo, is some lessons to be learned from the incident and to meet with the employee to discuss legal obligations under the Antilobbying 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 -- (inaudible) -- or actual reprimands or other action taken against an employee, I'm concerned that there are Privacy Act concerns related to that employee.

REP. 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

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you would. Would you do that?

MR. CANNON: We will do that consistent with the employee's Privacy Act rights.

REP. MICA: Let me, if I may, turn to the substance of the allegations concerning EPA's funding of grants to the PTA (ph). According to your employee, one of the purposes of the grant was to allow the voices of the PTA (ph) members to be heard on EPA budget and other environmental issues. Mr. Chairman, I'd like to make an internal OECA (ph) memorandum part of the record as well?

REP. CLINGER: Hearing no objections, so ordered.

REP. MICA: Now, as Miss Lassiter's (sp) memo says the employee denies that he really meant he said what he 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 of poor Josh Steiner (sp) lying to his diary. I 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. I don't have a copy of the document, and she'll give you a copy of that document.

(Cross talk.)

MR. CANNON: I may have it here. Is this a March 21st, 1996 document?

REP. MICA: Yes. That's interesting, and 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 a copy of an E-mail which we obtained, and we've also stricken the employee's names. It does look like they do pay some attention to what I say down there, but this is an interesting memo because this memo -- and Mr. Chairman, I'd like it made part of the record if I may?

REP. CLINGER: Without objection.

(Cross talk.)

REP. MICA: This is dated March 12th, 1996, before the Lassiter (sp) memo of March 21st, directing in how this response should be (coming?), but 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". Then, I'll drop down into it. It says, please be careful not to use language that suggests the EPA is using PTA (ph) 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 and also be glad to have you respond in writing to the committee to that since my time has expired. Mr. Chairman, I'd like to get back into this, but I see my time has expired.

REP. CLINGER: Well to keep things (moving, I'm going to have to vote, but I will turn the gavel over to Mr. Mica. I'll turn it over and you can recognize the gentleman from California.

MR. : Mr. Mica -- (inaudible).

MR. CANNON: If I may respond to the congressman just on one point. The grants that we give to the PTA (ph) and other organizations have limits in them that preclude any monies we give to these organizations from being used for lobbying purposes, and I would expect that to have been a provision in the PTA (ph) grant and to be adhered to by the PTA (ph) in carrying out the conditions of the grant.

REP. MICA: 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 five minutes.

REP. STEVE HORN (R-CA): Thank you very much, Mr. Chairman. Mr. Nordhouse (sp), if I might, I'd like to have a dialogue 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, health was part of the Department

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of Energy. But aside from that, I've not had any prior service in the Department of Energy.

REP. HORN: In other words, you weren't there under the Bush administration?

MR. NORDHAUS: No sir.

REP. HORN: Okay, because there was another question I'd like ask all of you later on anybody that was -- has seen two administrations working. You're familiar with the letter of June 12th, 1995, that was sent by the deputy secretary of energy, I believe?

MR. NORDHAUS: Yes sir, I am.

REP. 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 member of executives and trade associations of the oil and gas industry 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 Paper Work 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 the department's work and what he was trying to do.

My understanding is that from talking with 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 then debate in the House and Senate.

REP. 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.

REP. 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.

REP. HORN: Now as I understand it this package, as you suggest, there was more than a letter, and can you tell me what was included with that letter?

MR. NORDHAUS: Well, included with the letter, and I have the materials that your staff just provided -- the committee staff just provided with me where some statistical and other materials, Gulf of Mexico operating (rotary rigs?) weekly average, oil imports from the Persian Gulf, the OE's (ph) R&D budget, the natural gas R&D budget, the overall DOE budget, and a couple of clips relating the importance of the DOE research program to the oil and gas industry.

REP. HORN: I understand from staff that apparently the first annual progress report entitled the Domestic Natural Gas and Oil Initiative, this is spring 1995, was included also. Is that correct?

MR. NORDHAUS: Let me -- what I was working from was your handout, not my copy. Let me take a look at that.

REP. 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 he claims it was included. It's a spring of 1995 -- MR. NORDHAUS: If you'll give me a second, I'll find it in my materials.

(Cross talk.)

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REP. HORN: -- pages. And Mr. Chairman, I'd like the letter and attachments that I've noted, except for the 80 pages --

REP. MICA: Without objection.

REP. HORN: -- put in the record at this point so we know what we're talking about.

REP. MICA: Without objection, so ordered.

MR. NORDHAUS: Our staff shows what was included was the domestic natural gas and with a copy of the department's report on the domestic oil and natural gas initiative --

REP. HORN: Right, that's the --

(Cross talk.)

MR. NORDHAUS: -- plus a summary of it --

REP. HORN: Sure.

MR. NORDHAUS: -- and probably some other materials that were not included in the handout you just gave me.

REP. 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 on page -- yeah, our response to the committee's question five describes in general terms who's on the mailing list, including a number of members of Congress, governors, trade associations and that's about as much of detail as I have. I don't have access to the full mailing list. It was quite extensive. I believe there was some --

REP. HORN: Do you know how many exactly?

MR. NORDHAUS: My understanding is around 13,000. REP. HORN: Yeah, that sounds about right. Here's the list actually and it's -- I look at a ream being 500 pages, probably that. So I figure it's over 600.

MR. NORDHAUS: Yeah.

REP. HORN: But at 600, you sent it to roughly 14,400 because there's 24 names to a page here which does include members of Congress including myself and my brother who's a distinguished energy expert. I noticed he was there too, and I don't (envy?) the letter, however, so I'm going to talk to him about that.

REP. CLINGER: The gentleman's time has expired.

REP. HORN: Well, can I proceed out of order to go through this or --

REP. CLINGER: I think we need to give Mr. Shays an opportunity to question who has not had an opportunity, and I would now recognize the gentleman from Connecticut. We can --

REP. HORN: Maybe we could then combine the answers --

REP. CHRISTOPHER SHAYS (R-CT): Thank you, Mr. Chairman. Mr. Chairman, first I'd like to thank you for conducting this hearing and to let you know in principle I am very supportive of what you are attempting to accomplish, and I would like my statement submitted in the record and so --

REP. MICA: Without objection, so ordered.

REP. SHAYS: Thank you. I would like to focus on the two areas where I have basic oversight and particularly the Department of Labor. Mr. Meckiteer (sp), 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. Chairman, 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.

REP. SHAYS: With that in mind, could you kind of help sort out for me the two

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different memorandums on restrictions on lobbying, and they both have the same title, but one is dated April 11th, 1985, and it's executive staff, Jerry Thorne (sp), acting solicitor. Do you have that document in front of you? Then you have another statement from solicitor of labor, Thomas Williamson, and it's entitled restriction of lobbying and it's July 25th, 1994. Do you have both of those? MR. MCATEER: I think so, Congressman.

REP. SHAYS: One is April 11th, 1985, and one is July 25, '94.

MR. MCATEER: I have the memorandum from Jerry Thorne (sp) from '89.

REP. SHAYS: You're right, you know what, it may be '89. I'm sorry, it is '89.

MR. MCATEER: Okay.

REP. SHAYS: It's a dated copy here. Do you have both of those?

MR. MCATEER: I do have them.

REP. SHAYS: What was insufficient in terms of the memorandum of '89? 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.

REP. SHAYS: 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 have come out of your department.

MR. MCATEER: Right.

REP. SHAYS: So, would you tell me what the difference is between what was done in '94 versus what was done in '89? That's really the basis for this hearing, because we believe -- I need to know that answer. What is the difference?

MR. MCATEER: I'm sorry, I can't -- I have looked at the documents.

REP. SHAYS: Okay, what is your -- (inaudible)? Maybe I'm not asking the right person.

MR. MCATEER: The acting solicitor of labor.

REP. SHAYS: So, this is your area of expertise?

MR. MCATEER: Right. Yes, sir.

REP. SHAYS: And this is a hearing on lobbying.

MR. MCATEER: Right.

REP. SHAYS: And we have a '94 memorandum that is different than the '89. The '89 seems satisfactory to me. What is not sufficient in the '89 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'd be happy to address --

REP. SHAYS: We're going to have a vote, and I will come back after the vote. Is that all right, Mr. Chairman? In the meantime, you can look at the two documents and then go over them with me.

MR. MCATEER: Okay.

REP. SHAYS: Is that all right, Mr. Chairman?

REP. CLINGER: Sure. We have a few more minutes if you want to --

REP. SHAYS: Well, that is my basic question. We only have one vote?

REP. CLINGER: I think we only have one vote, yes.

REP. SHAYS: Is that all right?

REP. CLINGER: Sure, go ahead.

Commissioner Dial, the letter to industry, which has been alluded to in your testimony and before, opposing the merger of SEC and CFTC, your letter, I think, does not violate the law because it does not meet the test for being a substantial grassroots lobbying effort under existing interpretation. Is that --

MR. DIAL: Yes, Mr. Chairman.

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REP. CLINGER: However, it does recommend that several private interest groups that they contact specific members of Congress. That's been our concern all along. You know, 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 law?

MR. DIAL: With your permission, sir, may I give you a little background on the circumstances?

REP. CLINGER: Certainly.

MR. DIAL: The issue, which is covered in the letter, my letter of March 23rd, is an issue that had been brought before the Agricultural Advisory Committee, the Commodity Futures Trading Commission, on two previous occasions, namely the biannual meetings of 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 activity and the responsibilities that we fulfill.

Both sides of the issue of CFTC being merged with another agency, whether it's SEC or in the instance in the spring of '93 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 of background with regard to CFTC vis-a-vis Congress' role for the agency and its communications with the agricultural community.

I 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.

REP. CLINGER: As I've indicated, I don't think that under the existing law and the interpretation thereof, this was in the legal action. But I do think that it highlights the reason why we are proposing legislation which would make that tighter, because I think clearly, there is certainly 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 -- I don't think it would rise to the threshold of being an illegal act under the existing criminal statute. I think it is a 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 drastic lobbying.

You know, as I understand it, attached to the letter was a copy of two pages of bullet points which basically were opposing pointing out why the merger should have been opposed. So this was, and you were presenting your point of view, a perfectly legitimate point of view. All I'm trying to say is this is the kind of thing we are trying to get a handle on and get our arms around it and 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 adhere to? In your appropriation, there's been reference made to the limitations in some of the appropriations bills, specifically Labor, Interior and Health and Human Services. This basically tracks the language or I guess we track the language in this bill -- appropriations. Is there anything comparable to that in the

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CFTC appropriations? MR. DIAL: I'm not aware of whether there is or there is not, sir.

REP. CLINGER: All right. You don't know of any. I would assume that your counsel would have told you if there were such a limitation in your --

MR. DIAL: Well, we didn't discuss that particular subject. I will be happy to respond to your question in writing.

REP. CLINGER: Okay, that would be appreciated. We will recess briefly and hopefully we will be able to conclude this very shortly. I appreciate your patience and your willingness to stay here all this length of time. But I think we perhaps have -- I know there are a couple more questions that need to be asked. So we'll recess until Mr. Somebody gets back here.

(Brief recess.)

REP. CLINGER: -- another panel before we finish this panel. I will yield myself time. 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 believe you said it was completely unimportant to EPA in making a grant to PTA to know whether it was proenvironment or antienvironment 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?

MR. CANNON: I'm not aware of it.

REP. CLINGER: Is that the criteria that you use for awarding any of these grants?

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 or a range of different purposes.

REP. CLINGER: 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 is irrelevant? Is that the case?

MR. CANNON: Well, I was looking through the documents that I had been provided. I'm looking at the --

REP. CLINGER: 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, let me answer your question this way, I'm looking at the objectives of the partnership as stated in the agreement. It indicates that the objectives were to strengthen our efforts to assure that children in America are safe from environmental hazards that pose health threats.

REP. CLINGER: So, basically, again, these were the EPA environmental issues and where it stood; is that correct?

MR. CANNON: Yes.

REP. CLINGER: If possible, I'd like the clerk to provide you -- do you have a copy of the grant application? Are you reading from it?

MR.

MR. CANNON: I'm reading from a document that is titled proposal for cooperative partnership between the national PTA and the US --

REP. CLINGER: Okay, the grant application you have.

MR. CANNON: Right.

REP. CLINGER: Could you explain to me, then, why if the condition of receiving the grant that the PTA was obliged to file in their grant application a listing of all proenvironmental resolutions that have passed since 1970?

MR. CANNON: I have before me a document that is titled PTA Resolutions and Positions on Environmental Issues.

REP. CLINGER: And that was --

MR. CANNON: I don't know. Perhaps I'm missing it. I don't have documents before me that explain how this came to be.

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REP. CLINGER: 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 proenvironmental advocate? Isn't that correct?

MR. CANNON: My answer has to be, Mr. Chairman, the EPA would give this grant to PTA on determining that PTA was capable of carrying out these joint objectives.

REP. CLINGER: 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 me try another question.

I'd 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's their publication, which I, without objection, will also make part of the record. That's the FIX (ph) memo. It's number three. Do you have that? MR. CANNON: I have --

REP. CLINGER: While you're looking at it, I wonder why staffers in the Office of Water, tried 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? They must have thought this was something about politics, wouldn't you think?

MR. CANNON: Perhaps you can point me to the particular position.

REP. CLINGER: Well, we'll give you a copy of the FIX memo.

MR. CANNON: I have a copy of the FIX memo. I'm asking to be pointed to the particular provision or passage.

REP. CLINGER: Well, again, if you'll look at the -- I think there's 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 politically charged document in a grant, which I think they awarded, I've since found out, I think \$112,000 to disseminate this information. If you'd like to respond, I want to be fair, you can respond.

MR. CANNON: I'm looking at the same documents you're looking at.

REP. CLINGER: You can examine it more carefully. I don't want to put you on the spot. I'd like you to look at two internal memoranda written by unidentified EPA employees concerning this PTA grant. I'd like these documents -- also, without objection, they're going to be made a part of the record. That's listed number 4.

These memos, and I'd really like to know if you considered them, you can look at them and respond back to the committee, these are internal memorandums, if, in fact, they justify grants. It's argued that it would be a good thing -- again, I have to quote from this internal document, "please elect a state and national child advocate."

"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 political motivation. I think you referred earlier 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. As far as I know, there was no legislation pending or at issue on radon that I'm aware of. There's certainly no mention of it in

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these documents.

This is really -- I mean, we talk about the grassroots. This is the grassroots environmental program that really depends on information and communication in order to work. I think that's what's being discussed.

REP. CLINGER: Well, my time is expired. I do have some additional questions. I begin to see an emerging pattern, all brought to my attention not by this committee but what I read in EPA Watch. Without objection, that will also be made a copy of this record. So at least the media is alerting the public and the congress as to your activities.

I intend to follow them very closely. 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'll yield to Mr. Shays.

REP. SHAYS: Thank you, Mr. Chairman. I was in the midst of asking Mr. MacIntyre questions about two memos. One memo that was written is dated July 25, 1994, and its subject is restrictions on lobbying by Thomas A. Williamson. Was he the solicitor general?

MR. McATEER: He was.

REP. SHAYS: And, Mr. MacIntyre, I'm referring to another one on April 11, 1989, Gerry Thorn, who is the acting solicitor, and it has the same title, Restrictions on Lobbying. The question I have for you is, what is the difference between the memorandum of July 25, 1994, versus the one on April 11, 1989?

MR. McATEER: I'm sorry I was unable to answer your question earlier. The 1994 memorandum about Thomas Williamson is simply an 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 an updated restrictions on lobbying memo would be helpful.

REP. 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 '94 do that the memorandum of '89 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 are under the antilobbying act and a number of questions -- we have an ongoing training program at the department.

REP. SHAYS: It's your testimony under oath here that there is no redefinition of what was allowed under restrictions in lobbying?

MR. McATEER: There's not significant differences in the descriptions from the 1989 memo to the 1994 memo.

REP. SHAYS: But I need to have your understanding of what significant is. The first paragraph in the '94 memorandum describes the law, the antilobbying act. I guess that's from the criminal code.

Then the next paragraph, I'm going to read 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 initiative. In fact, the limitation is a rather narrow one aimed principally at grassroots lobbying by DOL employees, to persons and entities who are not part of the federal government." Then it continues, "efforts by the department to inform and educate the public about a pending legislative proposal, and even a limited distribution to persuade the materials 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."

Now, is it your testimony that that is not a change in the memorandum of '89?

MR. McATEER: I don't believe that it is a change in the instructions with

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regard to the Section 1913 of the U.S. Code.

REP. SHAYS: Is it a change in the policy memorandum of '89?

MR. McATEER: The policy of 1989 did not address this specific question. This description is Mr. Williamson's understanding of what the law is.

REP. 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 that is the opinion of the Department of Justice as well as the opinion of the General Accounting Office with regards to the appropriations.

REP. SHAYS: Now, 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, an asking of someone to do something.

REP. SHAYS: Now, going to the requirements under the appropriations, Labor HS appropriation, 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 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 presentations to congress itself.

How do you reconcile that memorandum to the requirements of the riders and appropriations?

WITNESS: The requirement --

REP. SHAYS: Is that restriction narrow or rather broad?

WITNESS: The restriction in the appropriations is a narrower description -- restriction -- than in the Section 1913 of the US Code.

REP. : Your interpretation is that it's more narrow, that, in other words, it's more restrictive or less restrictive?

WITNESS: More restrictive -- the appropriation --

REP. : More restrictive on employees, correct?

WITNESS: That's correct.

REP. : How do you reconcile these two memoranda -- the memoranda and the requirements of the appropriations rider?

WITNESS: The memoranda -- I'm sorry -- the restrictions on lobbying memoranda by Mr. Williamson and by Mr. Thorne (ph) address the question of what the United States Code restricts.

REP. : Okay. 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 Codes?

WITNESS: The memoranda is here --

REP. : So you want your employees to have guidance as to the proper action. Would you show me your memorandum that would make them know that they have very, very restrictive requirements on them?

WITNESS: I can show you the materials that we use. Those are dated February 1993, entitled, "How to Keep Out of Trouble: Ethics Rules of Special Interest to Senior DOL Policy Officials."

REP. : So, right, but --

WITNESS: Can I submit that for the record?

REP. : Definitely you can submit anything for the record, without objection, I would assume. But you're really not addressing the problem. This was designed -- this was a more restrictive -- the first memorandum in '89 was clearly more restrictive than the memorandum of '94. 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 to your employees -- and yet when we look at the legislative appropriations rider, we find out that they are very

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restricted on what they can do. This almost becomes a meaningless document, unless misused by your employees.

WITNESS: 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.

REP. CLINGER: The gentleman's time has expired.

REP. : I just need to correct one thing for the record. And Mr. Chairman, the problem with the five minute rule is, you never get to the final conclusion here. And I just want to state 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?

WITNESS: I agree --

REP. : Where it says, "There is also a rider" -- would you read that please?

WITNESS: I agree that I did make a mistake (inaudible) to the rider.

REP. : I'd like you to read them. Read the sentence please.

WITNESS: 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."

REP. : That was '94. What was it in '89? Would you read that please?

WITNESS: It's the same language. "There is also an appropriations rider --"

REP. : Keep reading.

WITNESS: "Which bars the use of appropriated funds for publicity or propaganda purposes designed to support or defeat the legislation pending before Congress." So they both covered both of those and I mis-spoke when I earlier testified. I was in error.

REP. : Yeah, okay, I appreciate your saying that, but the bottom line is, being in error means that this is a very -- in a memorandum that is not consistent with what you see written here. You say this is very restrictive, as was the appropriation rider. And so I just would conclude, Mr. Chairman, that what you have is, you have an '89 and a -- restrictions on lobbying memorandum by Mr. Thorne (ph) that makes it clear that employees cannot basically lobby Congress. And then you have a memorandum in '94 that basically says that in fact, the limitation is a rather narrow one and principally (inaudible).

It then expands what you're 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 '94 when the '89 one was clearly a more accurate one.

REP. CLINGER: The gentleman's time has now expired. And I would now recognize the gentleman from New Hampshire, Mr. Bass, for five minutes.

REP. BASS: Thank you very much, Mr. Chairman. And I think we should (inaudible) opening remember that what we're 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're considering today will not only effect a Clinton administration but presumably future administrations afterwards, which may ultimately be Republican.

So I think it's important to understand that the purpose of this hearing is to try to bring this level of competence and make above reproach and 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

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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 -- to 250,082 employees. Now, in this pay stub message there were very clear opinions expressed. For example, it said, "The administration's plan is much better for veterans and their families." It says, "The president has recommended a good FY '96 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'd 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 RIFed, 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 that that particular statement was issued by the secretary in specific response to a lot of rumors, a lot of mis-information 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. The secretary stated the facts. He stated his opinions. He thought the administration budget was better for veterans, but he did not clearly encourage anyone to contact their legislator and (inaudible).

REP. BASS: Did Secretary Brown realize that the VA outlays -- proposed VA outlays for hospital and Medicare in the FY '96 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'm sure you're aware of the fact that there's been significant discussion on those figures and that we'll probably just have to agree that we disagree on their significance regarding the budget.

REP. BASS: But you can't disagree with the fact that this is FY '96 -- the administration's \$17.1 billion, House Republican budget, \$17.9 billion. Would that have done anything to stop the concerns about RIF, and so forth, if they found out that the Republican budget was actually higher than the administration budget in the 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 had regarding them.

REP. BASS: But you think that saying, this is comparing a budget resolution -- the president recommended a good FY '96 budget with a \$1.3 billion increase, including nearly one 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?

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MS. KEENER: I'm not sure.

REP. BASS: Okay. So therefore, his statement here isn't any clearer then, in terms of being -- identifying the source of information, the numbers (inaudible) was and is the CBO numbers, which actually compare the real budget differences at that time?

MS. KEENER: No, because his message was clearly based and I think it was so stated that this was his opinion, and his opinion was 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.

REP. BASS: Does it say anywhere in the pay stub message that this is opinion?

MS. KEENER: In the August --

REP. 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" if --

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.

REP. BASS: Well, you admit that that in no way 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 had 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 --

REP. BASS: When does he plan to?

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.

REP. BASS: It's okay then that the VA is devastated in 1996 but it was different in 1995?

MS. KEENER: No, sir, that's not what I'm saying. What I'm saying is that at that time, in August of 1995, we had numerous questions and concerns regarding the budget that came to us from our employees all over the country. After seven 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 '95.

REP. BASS: Even though the secretary of -- excuse me. 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.

REP. CLINGER: The gentleman's time has expired. The Chair recognizes the gentleman from Indiana, Mr. McIntosh for five minutes.

REP. DAVID MCINTOSH (R-ID): Thank you, Chairman Clinger. I have a couple of questions for Mr. McAteer. There were two faxes that I wanted to ask you about. One is titled "The Fax on Better Jobs and Higher Income." I take it each of these are a series of faxes. The other is "America's Job Fax." Could you tell me the purpose of each of those faxes?

MR. McATEER (ph): 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 Fax on Better Jobs or Higher Income" -- was one of those series.

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REP. McINTOSH: The "America's Job Fax" looked like it intended to encourage people to support the Re-employment Act of 1994, and most of the faxes that I've seen deal with that specific legislation. Is that correct?

MR. McATEER (ph): I believe they deal with the legislation but I do not believe that they state -- "America's Job Fax" -- do not believe that they state -- that they ask anybody to take any action with regard to any congressional action.

REP. McINTOSH: No, but they seem to be sort of an update on where things stand in that lobbying effort. Take, for example, the one on August 2nd.

MR. McATEER: There are updates on where things stand. I would not say they're an update on where things stand in a lobbying effort.

REP. 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.

REP. McINTOSH: And who's 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.

REP. McINTOSH: Did any political appointee nominated by the president and confirmed by the Senate approve of these newsletters of the conception of these newsletters?

MR. McATEER: Congressman Clinger, the Department is -- under the direction of the secretary and political appointees. If a document that comes out of the Department of Labor, it is our document. So political appointees would have, in essence --

REP. McINTOSH: So you're saying that the secretary approved the faxes? MR.

McATEER: I'm not saying that the secretary approved the faxes. If it is a --

REP. McINTOSH: The secretary approved the creation of the faxes?

MR. McATEER: I'm not saying that, either. I'm simply saying that the Department --

REP. McINTOSH: Who acted on behalf of the secretary to approve the creation of --

MR. McATEER: If a document that comes out of the Department, it is our document.

REP. McINTOSH: I understand that. I am asking you for the name of a person, and were any of those people nominated by the president and confirmed by the United States Senate?

MR. McATEER: The documents -- these two faxes that you're referring to -- the documents that were published by the Department as --

REP. 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 --

REP. McINTOSH: A simple yes or no. MR. McATEER: I cannot answer the question.

REP. McINTOSH: Do you know?

MR. McATEER: We do not know at this time whether -- what individual approved of this document. We have tried to provide this information to the chairman of the committee.

REP. McINTOSH: Mr. Chairman, I'd 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.

REP. McINTOSH: If you could make an inquiry of those officials --

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REP. CLINGER: We will hold the record open so that the (chairman ?) can respond.

REP. McINTOSH: Similarly, if any of those officials gave final sign-off for any of the faxes that were prepared.

REP. CLINGER: Very good.

REP. 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 the EPA group and their activities during 1995 and 1996?

MR. CANNON: The information I have, Congressman, is that for H R 9 and related activities, the total expenditure, including salaries for staff -- this is all activities, including analyzing legislation, gauging 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 out-reach portion, itself, although I don't have exact figures -- is a smaller portion of that, probably in the range of twelve to fifteen thousand dollars, is the information that I have now.

REP. McINTOSH: Real quickly -- I don't know if this was discussed earlier -- but are you familiar with the e-mail dated February 3rd on the subject, unfunded mandates?

MR. CANNON: The copy I have has the name of the sending and receiving parties redacted.

REP. McINTOSH: Yes, I have a copy of that document. Were you familiar with this document before it was sent?

MR. CANNON): No. REP. 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 for activities relating to certain legislation.

To my knowledge, 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, and to my knowledge, it never resulted in materials being sent out to the agency, so I'm not in a position to assess what those materials might have been, or what their impact under the Anti-Lobbying Act might have been.

REP. McINTOSH: Mr. Clinger, I -- 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 the answers to that, we'll leave the hearing open for a week, I think, Mr. Clinger, then.

REP. CLINGER: Without objection.

REP. McINTOSH: Thank you.

REP. CLINGER: The gentleman from California, namely me, is now recognized. And Mr. Nordhaus we'll go back to the question here.

MR. NORDHAUS: Yes, sir.

REP. CLINGER: Was the letter that Deputy Secretary White prepared reviewed by the secretary at all?

MR. NORDHAUS: No, it was not.

REP. CLINGER: 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.

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REP. CLINGER: Could you identify them, like Mr. Bickerton (ph) let's say? Is he career or Civil Service?

MR. NORDHAUS: I believe he is --

REP. CLINGER: I mean, political (inaudible).

MR. NORDHAUS: I would say roughly half of them are career. And Mr. Bickerton (ph), for instance, according to my understanding, is non-career. But I can't -- this is -- REP. CLINGER: Well, could we 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. We'd appreciate it.

It looks like essentially 15 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 whether -- 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.

REP. CLINGER: A lot of that, I take it, was postage, because of the weight of this 80 page report that was attached, and all that?

MR. NORDHAUS: What the break-down is -- about 10,000 mailing and 23,000 printing, according to our figures.

REP. CLINGER: And this does not include the actual time the 16 officials spent on this letter for the deputy secretary?

MR. NORDHAUS: No. This is only direct costs. 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.

REP. CLINGER: Now, you mention 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 believed and Mr. White believed that this is something 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 with Secretary O'Leary.

REP. CLINGER: 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: He may have decided to sign. I can't tell you whether that's the case or not.

REP. CLINGER: 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 stockpile to the Strategic Petroleum Reserve, in competition with the private sector, and eliminate all tax incentives by (labeling ?) the corporate welfare. We are fighting back" -- unquote.

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 to the Strategic Petroleum Reserve. It just depends on who's 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've since

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subsequently in the intervening year increased steeply, so that from the point of view of the impact of the sale of oil from the Reserve, there's 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 the specific requirement by Congress to sell approximately -- I think it's about -- it was between 12 and 18 million barrels of oil between now and the end of the fiscal year.

REP. CLINGER: Who were the "some in Congress" that is referred to in the letter that I quote -- (inaudible) that want to sell the oil stockpile to 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 FY '96, 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 that is derived from information our staff got directly from Mr. White.

REP. CLINGER: So it would be those of us who voted for the budget resolution, essentially? Is that how we categorize --

MR. NORDHAUS: Those portions of the budget resolution which reduce funding for those two research programs.

REP. CLINGER: I see my time's up, but let me ask one last question before I leave to vote. You noted that \$33,000 in direct costs was spent on this mailing to ten, fourteen thousand, whatever people. You have indirect costs, certainly, when you've got 16 people working on it. What do you think that costs -- \$5,000, \$10,000, \$20,000 worth of time?

MR. NORDHAUS: I doubt that it's very large. It probably would be very hard to reconstruct at this point. But I know, for instance, I am listed there. My involvement consisted of a brief conversation with a member of Mr. White's staff, a probably five to ten minute review of the letter, and a request to the deputy general counsel, Mr. Figgy (ph), 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.

REP. CLINGER: Well, just to note, because I have to leave, that if it hit \$17,000, it would exceed your \$50,000 limit, which is your own policy. That's simply the point.

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 okay.

REP. CLINGER: The committee will stand in recess for approximately five minutes or return --

(Recess.)

MR. : The faxes that 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.

It is publicity, and it is about, it is propaganda, in my view, which seems to me clearly proposed by the right.

But it's not the, we don't believe that it violates either 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 be to violative of the appropriation rider, there needs to be a direct appeal to contact members of Congress.

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And that, we do not believe, these faxes do.

I think that gets to the real crux of the matter.

I mean, if that is the interpretation, then anything goes, as long as there's not a direct appeal to a member of Congress.

And I just think that that becomes too narrow, too specious, to allow it to continue to stand, which is why I have introduced this legislation.

I want to thank all the members of the panel, I appreciate your patience, I know it's not been a pleasant morning, afternoon, but at least it's not an evening that's also going to be unpleasant.

And I really thank you very much for coming here today.

REP. CLINGER: Thank you, Senator (inaudible word.)

(off mike, inaudible)

REP. CLINGER: And now I'm 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're 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, the 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. Jerold Cohen, Chair of Section of Taxation for the American Bar Association.

Welcome, gentlemen.

If you'd like, just remain standing, if you would, as I think you've heard me announce we do, as practice in this committee, as the principal oversight committee, swear all of our witnesses, so as not to prejudice any witness.

If you raise your right hand, and repeat after me - do you swear that the testimony you're about to give the committee be the truth, the whole truth, and nothing but the truth?

(Several I do's)

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 lead-off witness?

MR. CORS: Mr. Chairman, thank you very much.

I'm most appreciative of the opportunity to appear here today, and represent the National Taxpayers Union, America's largest taxpayer organization.

I'd like to express our strongest possible support for the legislation you've introduced, HR 3078, to compliment you and your co-sponsors. This is needed legislation.

Certainly this hearing today has made it crystal clear that the law needs to be very specific, or it needs to be made more effective, and certainly the civil statute would be much more useful, it would appear, than the criminal statute that's now in place.

So from a taxpayer's perspective, it's clear to us that the activities that have been discussed today, from our perspective, are certainly, if not almost, 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 of 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's time to draw a line, and I think your legislation does that very fairly.

You know, we would draw no distinction, this would be wrong, the examples

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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 strongly support your legislation and urge it to be passed.

REP. CLINGER: Thank you very much, Mr. Cors.

I think you make the point that we tried to stress here, although this has been sort of a partisan mudslide here today, but I think the point needs to be made that really this is going to be, if it passes, it would be in-place for whatever administrations might come in the future, and there have been 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, if you're concluded, Mr. Cors, I would call on Mr. Murphy.

Mr. Chairman, if I may be, I have an appointment and I was not aware that the hearing was going to last that long - REP. CLINGER: I don't that any of us were, Mr. Cors, but if you have an appointment, you're excused.

MR. CORS: Thank you very much sir.

REP. 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 would be fine, if not -

MR. MURPHY: I'll do that, Mr. Chairman,

It's always a pleasure to appear before this committee.

Some twelve years ago GAO issued a report, taking a look at Executive Branch lobbying activities.

And at that time we recommended a restriction that's quite similar to the one that you've proposed in HR 3078, and we're aware of no reason why there is any less necessity today for a uniform government-wide 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, quote, unclear, imprecise, and judicially enforceable, 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.

And for us, an agency that was frequently asked to investigate and render a legal opinion, on whether employees had violated this Appropriation Act restrictions, we didn't have regulatory guidance that supplemented the barebones of the appropriations' 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's in the Appropriation Act.

As I said, we proposed language that was similar to, although somewhat narrower, than the prohibition in HR 3078.

We believe that our proposed language would encourage agencies to issue interpretive guidance to their employees, and ensure that restriction on expenditures of appropriate funds remain in effect, even when there's a

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Continuing Resolution, and it's 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's asked to investigate and render legal opinions, it's our strong feeling that permanent government-wide 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 crossed legislation. And basically speak in support of it.

We have, on occasion, I think we've had three occasions and perhaps four in which we have looked at alleged violations of the Interior Department Appropriation Act restriction, one which you have modeled, in your legislation. In looking at those alleged violations, we found, 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. And 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, so 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. And 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. And so 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 were happy to see in your Bill that you have included the element of intention, which we think goes a long way towards respecting agencies' obligations to provide information.

REP. CLINGER: 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're making right now, really answers a lot of it.

Because you're making the point that the legislation does distinguish between what is intentional activity and what is incidental to the exercise.

And a lot of what they were trying to (inaudible), would have been, I think, being 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've interpreted the language in the Interior Department Appropriation Act, we've articulated how we look at that language, and in that sense, there's decisional guidance out there for the agencies.

If the Bill passes, I would expect to see the Executive Branch implement government law and guidelines interpreting the statute, and there 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.

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REP. CLINGER: Thank you very much Mr. Murphy.

Anybody have a preference, Mr. Fisher?

MR. FISHER: Well I'll go next.

Several times today in the 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're 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.

In my statement I have an appendix with all the statutes, some of them in the US Code, some of them in Appropriation Bills, sometimes even for particular agencies, Legal Services Corporation, others, you may not lobby in certain ways. So it is a problem, it 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 a departmental head would be out of bounds.

And Mr.

Chairman, I would, as an example of the Secretary of State could send a letter to every citizen in the country, saying that we asked 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's coming from the Secretary of State.

And the Department of Justice has said there's something even coming from the President 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 informative or not, are just not acceptable.

And there are a lot of do nots indicated for agencies.

So I think you stated in your bill that the current criminal statute, never having been enforced, is not working the way it might have intended, and you're doing a non-criminal 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 non-criminal penalties, and with the guidance of GAO and IGs and agencies, I think would go a long way toward communicating to the agencies that, where the boundaries are. And much of this would be through continual clarification, certain incidents, Fish and Wildlife, others would be held up as examples of where agencies can go too far.

I think there is, the historical record shows there's a need for constant monitoring in this area, that there are agency abuses, and because of the problems with criminal statutes, there's a need for some non-criminal remedy. That's the comment that I wanted to make.

REP. CLINGER: Thanks very much, Mr. Fisher.

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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, I'm the chair of the American Bar Association section of taxation.

I'm 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 HR 3078.

We are concerned that HR 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 administratable (ph) tax policy.

We believe the Bill should be modified to address these concerns.

Now while I'm 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've 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've 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's a prohibition on communications intended to promote, or to be in opposition to legislative 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 view 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's a public need for open communication in the legislative process.

In our experience, better tax laws are written when there's an open exchange of views among government decision-makers and tax practitioners.

And in our view, this needs to be interactive.

We're 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 and improve pending tax legislation.

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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 our May tax section meeting here in Washington, and at that meeting IRS and Treasury technicians participated in panels which discussed a number of tax legislative proposals, including proposals to increase pension portability, change the tax rules for cleanup and development of urban brown (ph) fields, and revise the tax treatment of certain complex financial transactions. Our committee has also provided technical commentary on nearly every tax proposal that is made, and the authors of these comments frequently communicate with the IRS and with 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's a full exchange of views.

Our basic point is that we think that HR 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've read, and today heard the concerns that led to the introduction of HR 3078.

And, in fact, I might say, when I hear some of those concerns, I feel like a duck out of water.

I cannot imagine those coming, for example, out of the Internal Revenue Service. I'm not sure just what the result would be if the Internal Revenue Service tried to do some grassroots lobbying, of probably the opposite effect.

But if the concern is that officials are attempting to stimulate grassroots communication to Congress on legislation, we feel that the Bill could be targeted to that activity.

As an example of how to draft a description of prohibited activity, there's 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.

REP. CLINGER: Thank you very much, Mr. Cohen.

Mr. Murphy, just following up on Mr. Cohen's concerns, and I think they are legitimate concerns, particularly in regard to tax law and the need for a broad interchange, so you see anything in this legislation, as it's drafted now, that would inhibit, or in any way discourage, the kind of interchange that Mr. Cohen raises?

MR. MURPHY: I'm not familiar with the kind of dialogue that Mr. Cohen has described.

It seems to me that if the American Bar Association members who 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

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shouldn't think so.

But I must confess I just don't know enough about the details.

REP. CLINGER: But it could then, it would still, I think, to come to this idea of was the intent to proactively encourage -

MR. MURPHY: Of course, and if the approach, if the dialogue took place because of an approach from the private citizens who wanted to talk to the IRS employee, and the IRS employee is merely providing advance advice or discussion about the issue, you'd have to ask whether they really intended to influence legislation or not, or that they're really responding to a request from the public.

Yes, I, there may be a problem there, but it doesn't seem to me, from what I've heard, that there would be.

REP. CLINGER: Let me ask you this.

Under my Bill, it would impose upon GAO a heavy duty to monitor this thing, and to basically take action or make recommendations, if and when you find 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 talked about, but I'm wondering, have you, has GAO ever had occasion to refer any instance that you've investigated under the 18 USC (ph) provision to the Justice Department for prosecution?

MR. MURPHY: We have made such referrals.

I don't believe that they've been made in the last five years, for example.

REP. CLINGER: Do you know if any of them were ever prosecuted? MR. MURPHY: We're aware that none of them were 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 prosecutions, and we were told that there had never been an indictment drawn.

REP. CLINGER: Do you have any idea why that would have been the case?

I mean, you know, the case that you referred, I was, you felt that there was merit?

MR. MURPHY: Well we thought that certainly there was enough evidence of the possibility of a violation, and that it warranted further investigation of the Justice Department.

I don't know the details of the results of their investigation.

REP. 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 is a, 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.

So I don't think there's 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 the Constitutional issue about either the provisions in the US Code or the provisions in the Appropriation Bills.

So I don't think there's a serious Constitutional issue, either on Separation

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of Powers or First Amendment.

REP. CLINGER: Have you had, have you had occasion to see the letter that we received from the Justice Department?

MR. FISHER: I did see that today, yes.

REP.

REP. 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.

REP. CLINGER: The current Interior (ph) labor (ph) and HHS Appropriations Bill do have language that we basically use as a pattern for HR 3078, it's relatively close to that proposed in my Bill.

But in your judgement, which is the more restrictive, the current language in those two Appropriation Bills which I've cited for the restriction proposed in 3078, which would, in your view, 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, and because of some OLC opinions your Bill is broader, and talking about not just pending legislation, but pending nominations, pending treaties, so you have the broader Bill, to make sure that all Congressional activities, not just legislation, that's addressed.

REP. CLINGER: My time has just about expired.

I thank you very much.

The gentleman from California.

REP. HORN: Thank you very much, Mr. Chairman.

Dr. Fisher, you're not only an expert on the Constitution, but you're a very good student of American history, as I recall.

And I just wonder how you, and I'd ask the others to comment if they wish.

Are you concerned that if a civil servant spent months or years opposing a legislative proposal that's 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 -

REP. 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 fought for five and ten years, with putting together propaganda pieces and actively involved in trying to bring the downfall of the 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's always open.

(cross talk)

- but your point is more than grassroots?

REP. HORN: Yes, I'm not thinking of one at the Bureau Chief's 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 13s and 14s.

And yet, if they come up in that adversarial way, would we be distrusting him?

We had 16 people involved in the Dwhite (ph) letter.

Some are political, some aren't, they couldn't quite tell me, they're going to file it for the record.

So I'm just curious what kind of a climate that -

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MR. FISHER: Well 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. And that's never been the reading of American history. Most of the Executive Branch is there to carry out the laws, in a nonpartisan way.

So to use lower-level people, and a concerted effort to frustrate pending legislation, would not be too optimistic about those people helping to enforce the law later on.

But that's a, it's a very narrow view that we, 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 that in history it has been an instrument to carry out legislative policy.

REP. 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's going to give somebody an order around here and find out that nobody's done anything for six months.

That was partly 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, as Secretary of State, said of the Civil Service of his day, few die and none resign.

(laughter)

But the Constitution and the Civil Service System, it seems to me, clearly designates 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's just a childish delusion now, of Article One versus Article Two, that one develops the laws?

We know since the Roosevelt administration very few major laws were developed in Congress until the mid-sixties, when the Civil Rights Act of '64, the Voting Rights Act of '65, were practically all written, the 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 has simply been writing most, and sending it up to the Hill, and he rubber-stamped, or very little done with most of it.

What's your feeling on that sort of traditional view of the Constitution, versus all of this lobbying going on, that might change that relationship at all?

MR. FISHER: Well as it was said earlier today about members of Congress lobbying for their proposals, and whipping up constituent enthusiasm, well that's been the traditional role of members of Congress. That's what the framers expected.

REP. HORN: And if they don't like what we're doing they can get rid of us.

MR. FISHER: And they can get rid of you.

REP. HORN: Right.

MR.

MR. FISHER: But the notion that the Executive Branch and the President are co-equal in this respect, and should be able therefore to lobby at the grassroots level, just like members of Congress, that's, 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.

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But we certainly have a century of statutes that say there are limits on what they can do with appropriated monies, to drum up support and opposition.

REP. HORN: Perhaps this question has been asked, but I'm just curious, that 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: The back of my statement has some examples, they go from Truman on. So it's been something of the whole post-World-War-II period, in all of the administrations.

REP. HORN: Any thoughts, Mr. Cohen, Mr. Murphy?

MR. : I was in Carter administration, as chief counsel to the IRS, and this whole, what I'm hearing is all pretty foreign to the IRS or to the Treasury.

I have, I have been very closely acquainted with subsequent administrations and the IRS and the Treasury, they've been a number of some 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.

Mr. Fisher did mention that, he was talking about the notion of lobbying at the grassroots level, and I'd like, again, to emphasize that if that's the concern, then we're not really concerned.

It's 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.

REP. HORN: I think our concern is they're using taxpayer dollars to do what political parties are supposed to be doing.

And we have the same thing, we'll 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 President Carter's administration, you had to kick back the political portion of a trip, usually the 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, or you, the bill was paid by the group you visited.

But it wasn't the taxpayers bearing it.

MR. : Well I think that's absolutely correct, we were very cognizant of that.

REP. HORN: Well thank you, Mr. Chairman.

REP. CLINGER: Thank you, Mr. Horn, very much.

And the panel, let me thank you for, again, your patience, very helpful testimony, I think we've had a good hearing, and a good expression of views on both sides of this issue.

We'll continue to work to try and address some of the concerns that have been raised, but I think we're on to something that really needs to be done.

If I might ask you, if any of you would be adverse, if we have additional questions, that we might want to address to you, that you might answer in writing.

Would that be -

MR. : Of course not -

MR. : Fine, certainly.

REP. CLINGER: Very good.

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Well again, thank you gentlemen, and the committee stands adjourned.
(gavel)
END

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OPINION OF THE OFFICE OF LEGAL COUNSEL

Legal Constraints on Lobbying Efforts In Support Of Contra
Aid And Ratification Of The INF Treaty

1988 OLC LEXIS 5; 12 Op. O.L.C. 36

February 1, 1988

NOTICE: THIS OPINION IS A PRELIMINARY VERSION AND HAS NOT
BEEN RELEASED FOR PUBLICATION IN THE PERMANENT VOLUME.

ADDRESSEE:

[*1]

MEMORANDUM TO ARTHUR B. CULVAHOUSE, JR.

COUNSEL TO THE PRESIDENT

OPINIONBY: COOPER

OPINION:

Introduction and Summary

You have requested the opinion of this Office concerning the extent to which the Anti-Lobbying Act, 18 U.S.C. 1913, and section 109 of the Foreign Relations Authorization Act for Fiscal Year 1988 impose constraints on the use of appropriated funds for proposed lobbying efforts in support of continued aid to the Nicaraguan Contras and ratification of the INF Treaty. n1 These provisions create three separate restrictions on the use of appropriated funds for lobbying purposes: 18 U.S.C. 1913 prohibits the use of appropriated funds for activities designed to influence members of Congress concerning any legislation or appropriation; subsection (1) of section 109 of the Foreign Relations Authorization Act for Fiscal Year 1988 prohibits expenditures for "publicity or propaganda" designed to influence members of Congress regarding pending legislation; and subsection (3) of section 109 prohibits the use of appropriated funds for "publicity or propaganda purposes not authorized by Congress."

n1 This memorandum addresses as a matter of statutory interpretation only the extent to which these provisions restrict lobbying activities. Should these statutory prohibitions foreclose specific activities you wish to pursue, we would be pleased to consider in a supplementary memorandum the constitutionality of these prohibitions as applied to such activities. [*2]

We understand that the lobbying activities under consideration may include mass mailings requesting the recipient to contact members of Congress and urge that they support the Administration's positions. They may also include briefings of opinion leaders throughout the country by appropriate Administration officials, as well as coordinating private lobbying efforts in support of Contra aid and ratification of the INF Treaty. The Administration is also considering referring media requests for "op-ed pieces" or interviews to Administration supporters in the private sector, soliciting the media to publish articles by or interviews with private sector supporters of the Administration's positions, and possibly preparing "op-ed pieces" for publication over the signature of private sector supporters.

In light of the time constraints under which our advice is sought, we have relied on this Office's traditional learning concerning the scope of section 1913 and have not reexamined our long-standing interpretation of this provision. Moreover, for the interpretation of section 109 of the Foreign Relations Authorization Act, we have relied largely on the Comptroller General's opinions interpreting [*3] previous publicity or propaganda riders. Of course, the opinions of the Comptroller General, an agent of Congress, are not as a general matter binding on the executive branch. Opinions concerning publicity or propaganda riders similar to section 109, however, are relevant to the construction of that section because they may well be the best indication of what members of Congress intended to prohibit by enactment of such a rider. n2

n2 Moreover, we note that the Comptroller General has a statutory role in certifying the expenses the Treasury may pay from appropriated funds. See 31 U.S.C. 3526. Although we do not address or endorse the constitutionality of this provision, the Comptroller General's role in the certification process provides him with a means by which he may attempt to enforce his opinions in this area of the law.

Based on these sources, we have concluded that section 1913 and sections 109(1) and (2) are wholly inapplicable to lobbying efforts in support of the INF Treaty. Accordingly, appropriated funds may be expended on grass-roots lobbying and assistance to private lobbying groups at any time with regard to ratification of the INF Treaty. Section 109(3) [*4] is applicable to lobbying in support of the INF Treaty. This section prohibits the Administration from engaging in "covert propaganda." Accordingly, the Administration may not communicate its support of the treaty through the undisclosed use of third parties.

We also conclude that because (1) section 1913 has been interpreted not to apply to grass-roots lobbying by the President, his aides, or Cabinet officials within the scope of their official responsibilities, and (2) section 109(1) has been read to apply only to lobbying on behalf of pending legislation, the President, his aides, and Cabinet officials may use appropriated funds for grass-roots lobbying on behalf of aid to the Contras until the introduction of legislation on that subject. After the legislation is introduced, however, section 109(1) would prohibit the Administration from engaging in activities which have as their principal purpose grass-roots lobbying, but would not interfere with a wide variety of informational activities, such as writing letters, giving speeches, and briefing opinion leaders. Both before and after legislation is introduced, section 109(3) prohibits communications on behalf of the Contras [*5] that are made in the guise of third parties.

Analysis

A. Anti-Lobbying Act

18 U.S.C. 1913 provides:

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, request for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

Although section 1913's broad wording would seem to prohibit virtually any efforts by the executive branch to influence congressional action in matters of legislation and appropriation, [*6] the Department of Justice has consistently read the provision more narrowly. Both the Office of Legal Counsel and the Criminal Division have taken the position that section 1913 does not apply at all to the lobbying activities of those officials of the executive branch whose positions typically and historically entail an active effort to secure public support for the legislative proposals of their administration. n3 This construction is based on the language of the statute that exempts lobbying activities that are carried on pursuant to an "express authorization by Congress." The Department's view has been that, as to those officials whose positions typically and historically entail actively seeking public support for legislative proposals, continued appropriation of funds by Congress for such positions constitutes "express authorization by Congress" for the lobbying activities of these officials, and thus exempts their activities from section 1913. n4 Officials whose activities are covered by this "express authorization" exception to section 1913 include the President, his aides and assistants within the Executive Office of the President, and Cabinet members within their areas of [*7] responsibility. n5

n3 See Memorandum from Charles J. Cooper, Assistant Attorney General, Office of Legal Counsel, to Arthur B. Culvahouse, Jr., Counsel to the President, December 31, 1987 ("Culvahouse memo"), at 6 n. 7; Memorandum from Charles J. Cooper, Assistant Attorney General, Office of Legal Counsel, to John R. Bolton, Assistant Attorney General, Office of Legislative Affairs, October 27, 1987 ("Bolton memo"), at 5-6; Memorandum from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, to Paul Michel, Acting Deputy Attorney General, February 20, 1980 ("Michel memo"), at 2, 3-4; Memorandum from Thomas H. Henderson, Jr., Chief, Public Integrity Section, Criminal Division, to Philip B. Heymann, Assistant Attorney General, Criminal Division, October 15, 1979 ("Henderson memo"), at 8-10.

n4 Culvahouse memo at 6 n. 7; Bolton memo at 5-6; Henderson memo at 8-10; Michel memo at 2, 3-4.

n5 Although this Department has consistently construed section 1913 as not inhibiting the lobbying activities, including grass-roots lobbying, of the President, his aides and assistants in the Executive Office, and Cabinet members within their areas of responsibility, we suggest that this analysis should not be stretched to justify lobbying activities of unprecedented scope. Accordingly, we caution against grass-roots 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. [*8]

As to those officials who are within the coverage of section 1913, the Department has consistently interpreted the statute to prohibit only "grass-roots" lobbying by executive branch employees, i.e., communication by

executive branch employees directed to members of the public and intended to persuade them to lobby members of Congress. Even this restriction, however, does not apply to public speeches or writings in which executive branch officials urge public support for particular legislation, where such speeches or writings are not part of a large-scale campaign intended to galvanize the public into lobbying activity of its own. n6

n6 Culvahouse memo at 6 n. 7; Bolton memo at 5; Memorandum from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, to Robert J. Lipshutz, Counsel to the President, December 29, 1977 ("Harmon memo"), at 10-14.

In sum, the Department has construed section 1913 to proscribe only "conduct by those to whom no official lobbying responsibilities are delegated by the President or the head of an agency or department, and [to] limit lobbying activities outside the subject area of official responsibility of those with formal lobbying duties. [*9] The nature of the activities those subject to the statute may not engage in is limited to large-scale grass-roots efforts to generate contacts with Members of Congress." Michel memo at 4 (footnote omitted).

B. Foreign Relations Authorization Act

The remaining two restrictions on the use of appropriated funds for lobbying are contained in section 109 of the Foreign Relations Authorization Act for Fiscal Year 1988. That section states:

No funds authorized to be appropriated by this Act or by any other Act 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.

Of these three provisions only subsections (1) and (3) are immediately relevant to the activities you have under consideration. n7

n7 To conform to the restrictions of section 109(2), any lobbying efforts should, of course, eschew any suggestion that legislators should be supported or defeated in any election because of their position on Contra aid or the INF Treaty. [*10]

Section 109(1) originally appeared as section 503(1) of S. 1394, the Senate version of the authorization bill. There is no legislative history directly bearing on the reasons for its introduction or the scope of the activities it was meant to prohibit. n8

n8 Publicity or propaganda riders date back at least to the early 1950s. See, e.g., @ 702, Labor-Federal Security Appropriation Act, 1952, Public Law 134, 82d Cong., 65 Stat. 223 (1951). The sparse legislative history available on this provision indicates that it was intended by its sponsor "to prevent as

far as possible the spending of unreasonable amounts for propaganda and publicity purposes." 97 Cong. Rec. 4098 (1951) (remarks of Representative Smith of Wisconsin). The section's sponsor also expressed the belief, not entirely justified by experience, that "[W]e can well distinguish between what is propaganda and what is educational matter." Id. We do not find these comments particularly helpful in construing section 702 of the 1951 Act, much less so in construing section 109. We consider it likely that the Congress that enacted the Foreign Relations Authorization Act was more influenced by the recent Comptroller General decisions interpreting publicity or propaganda riders than by the relatively opaque remarks of a single congressman thirty-six years earlier. [*11]

The Comptroller General has construed previous publicity or propaganda riders regarding pending legislation as prohibiting grass-roots lobbying. As a recent Comptroller General opinion put it (B-208593, April 2, 1987):

The Comptroller General has construed this kind of lobbying statute as applying to indirect or "grass-roots" lobbying. In other words, the statute prohibits appeals to members of the public suggesting that they, in turn, contact their elected representatives to indicate support of, or opposition to, pending legislation, thereby expressly or implicitly urging the legislators to vote in a particular manner.

See also B-164105, 56 Comp. Gen. 889, 890-891 (1977).

Appeals to members of the public to "let the Congress know how they feel on this critical issue" or to "contact your representatives and make sure they are aware of your feelings concerning this important legislation" are considered violations of the publicity or propaganda prohibition when the context of the appeal makes clear what views the public is being urged to communicate. B-178648, September 21, 1973; B-128938, July 12, 1976; General Accounting Office, Principles of Federal Appropriations [*12] Law 3-136 - 3-137 (1982) ("GAO Manual"). An appeal to the public to contact members of Congress in regard to a particular issue is not legitimized by including a disclaimer that the appeal is made "regardless of whether those who contact their Congressmen happen to be in agreement with me." B-178648, September 21, 1973.

On the other hand, the Comptroller General has not interpreted provisions identical to section 109(1) to prohibit communication to the public concerning legislation. In construing these riders, the Comptroller General has recognized that "[E]very agency has a legitimate interest in communicating with the public and with the Congress regarding its function, policies, and activities." GAO Manual at 3-133. In decision B-178528, July 27, 1973, the Comptroller General noted: "The President, his Cabinet, and other high officials have a duty to inform the public on government policies and, traditionally, high-ranking officials have utilized government resources to disseminate information in explanation and defense of those policies." Clearly the Comptroller General does not interpret the publicity or propaganda riders as prohibiting the use appropriated funds for all [*13] communications concerning legislation. B-164105, 56 Comp. Gen. 889, 890 (1977); B-178528, July 27, 1973. n9 In other words, the Comptroller General essentially prohibits communications whose raison d'etre is generating public pressure to influence Congress. Communications setting forth an agency's position on legislation are permissible, however, even if their natural consequence is to increase the support for this position. n10

n9 We do not believe that either section 1913 or the publicity or propaganda riders impose any requirement of neutrality or balance in the presentation of the Administration's views. The Comptroller General has recognized that whenever an agency's policies or activities are affected by pending or proposed legislation, "discussion by officials of that policy or activity will necessarily, either explicitly or by implication, refer to such legislation and will presumably be either in support of or opposition to it." B-164105, 56 Comp. Gen. 889, 890 (1977). The Administration may advocate one side or the other on issues of public policy without violating statutory limits on the use of appropriated funds.

It is true that in two instances GAO considered government publications to constitute propaganda because they were "oversimplified" and "misleading." The first case involved a pamphlet distributed by the former Energy Research and Development Administration ("ERDA") entitled "Shedding Light on Facts About Nuclear Energy." The pamphlet, which had a strong pronuclear bias, purportedly had been created as part of an employee motivational program, but GAO found that ERDA had "printed copies of the pamphlet far in excess of any legitimate program needs and inundated the State of California with them in the months preceding a nuclear safeguards initiative vote in that State." GAO Manual at 3-140. GAO determined that the pamphlet constituted "propaganda" because it was "oversimplified and misleading," and recommended that distribution be halted and remaining copies destroyed. Id. GAO did not find, however, that publication of the pamphlet constituted an illegal use of appropriated funds because it was directed at state rather than federal legislation. Id.

The other instance in which GAO objected to publications because they were "oversimplified" also involved an issue concerning nuclear energy, the Clinch River Breeder Reactor Project. Upon review, GAO found that several of the publications were "oversimplified and distorted propaganda and as such questionable for distribution to the public." GAO Manual at 3-140. Because the publications had been funded with private money, however, the GAO found no violation of federal law.

We do not believe that these two cases impose any substantial limits on executive branch speech. As already indicated, the Comptroller General has recognized in a published opinion that executive branch officials are not neutral on questions of public policy and that they must be free to express their views. The Comptroller General's unpublished opinions in the nuclear energy cases must be narrowly construed as limited to false or misleading factual information and not as imposing any general requirement of neutrality or objectivity. Any other approach would raise very serious constitutional concerns.

n10 Moreover, the Comptroller General has recognized that the publicity or propaganda riders provide little clear guidance in distinguishing permissible from prohibited expenditures. He has stated (GAO Manual at 3-134):

GAO will rely heavily on the agency's administrative justification. In other words, the agency gets the benefit of any legitimate doubt. GAO will override the agency's determination only where it is clear that the action was designed to influence Congress in certain precise ways.

The Comptroller General does not "override administrative determinations and

justification of propriety, except where they are so palpably erroneous as to be unreasonable in the face of the prohibiting statute." B-178528, July 27, 1973. [*14]

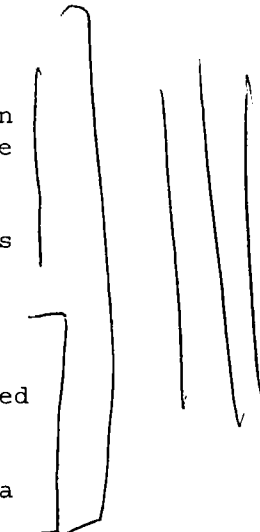
A corollary to the Comptroller General's prohibition on grass roots lobbying is a prohibition on the provision of assistance to private groups engaged in lobbying on pending legislation. This is "an outgrowth of the concept that an agency should not be able to do indirectly that which it cannot do directly." GAO Manual at 3-141.

There are very few Comptroller General decisions in this area. The GAO Manual, however, states (GAO Manual at 3-141) that the publicity or propaganda riders bar:

the use of appropriated funds to develop propaganda material to be given to private lobbying organizations to be used in their efforts to lobby Congress. An important distinction must be made. There would be nothing wrong with servicing requests for information from outside groups, lobbyists included, by providing such items as stock education materials or position papers from agency files, since this material would presumably be available in any event under the Freedom of Information Act. The improper use of appropriated funds arises when an agency assigns personnel or otherwise provides administrative support to prepare material not otherwise in existence to be given to a private lobbying [*15] organization.

This aspect of the Comptroller General's jurisprudence may be best characterized as a prohibition on active assistance to groups or individuals seeking to influence legislation. Administration officials may provide such groups only assistance that does not require the expenditure of additional appropriated funds.

In short, the Comptroller General interprets the publicity or propaganda rider concerning pending legislation in much the same way that this office and the Criminal Division have interpreted 18 U.S.C. 1913. n11 There are, however, two significant differences. The Department of Justice has opined that section 1913 does not apply at all to the lobbying activities of those officials of the executive branch whose positions typically and historically entail an active effort to secure public support for the legislative proposals of their administration, at least to the extent that those officials engage in the kinds of activities typically and historically engaged in by the occupants of those offices. We have held that this exception to section 1913 includes the President, his aides and assistants within the Executive Office of the President, and Cabinet members [*16] within their areas of responsibility. Under our interpretation, these officials would be permitted to use appropriated funds to engage in grass-roots lobbying to the extent that such lobbying has typically and historically been engaged in by their predecessors. Nothing in the Comptroller General's opinions, however, suggests that the GAO recognizes a comparable exception under the publicity or propaganda rider.



n11 Although publicity or propaganda riders have received little attention from this office, our conclusions have not been inconsistent with those of the Comptroller General. In a 1977 opinion we interpreted the riders as speaking to "mass distribution, the use of federal funds to underwrite a dissemination of some magnitude." Harmon memo at 5. The conduct that Congress sought to avoid was not routine executive branch lobbying of Congress or of particular citizen

interest groups, but was rather "the unchecked growth of a government public relations arm used to disseminate agency appeals to the public at large" Id. at 6.

In keeping with this understanding, the Harmon memo concluded that the publicity or propaganda rider imposed no limitation on "the initial expression of an official's opinion," but only upon the "subsequent dissemination by the Government of those views when they no longer qualify as a news event, e.g., the mass mailing of unsolicited copies of an official's speech urging support of particular legislation." Id. (footnote omitted). The memo cautioned, however, that the circumstances of a particular dissemination may bring otherwise inoffensive speech within the prohibition of the publicity or propaganda rider. As the memo noted: "Extensive campaigns in support of administration proposals may . . . become so excessive as to amount to forbidden overreaching by the Executive Branch. Under some circumstances, therefore, expression that is ordinarily outside the scope of the rider may well rise to the level of propaganda." Id. n. 14.

The same opinion noted two further limitations derived from the publicity or propaganda rider. First, the rider prohibits grass-roots lobbying. "An explicit or implicit call for citizens to contact their Congressional representatives with their views involves a clearly forbidden effort in the nature of propaganda to influence legislation." Id. at 7 (footnote omitted). Finally, the memo suggested that "partisan expressions" were also "suspect," although it recognized that the rider did not prohibit taking a stand on a controversial issue. Id. [*17]

The second major difference is that the publicity or propaganda rider applies only when legislation is "pending." The Comptroller General recognizes that this is a threshold requirement in determining the applicability of the publicity or propaganda rider. GAO Manual at 3-134. This interpretation is supported by a comparison of section 109(1), which refers to "pending legislation," with 18 U.S.C. 1913, which specifically prohibits certain lobbying activities "whether before or after the introduction of any bill or resolution."

The final restriction discussed in this memorandum is the prohibition of section 109(3) on the use of appropriated funds for "publicity or propaganda purposes not authorized by Congress." This subsection was added in an amendment offered by Senator Kerry, who explained that his amendment was motivated by a particular abuse (133 Cong. Rec. S 13571 (daily ed. Oct. 6, 1987)):

During the Iran hearings, we learned of money that was being illegally spent by the State Department on propaganda efforts with respect to the whole issue of Central America. It was agreed by the members of the Foreign Relations Committee that there should be some criminal penalties [*18] attached to that and not merely a prohibition as to that activity. n12

n12 In addition to adding the prohibition on use of appropriated funds for publicity or propaganda purposes not authorized by Congress, Senator Kerry's amendment also provided criminal penalties of up to one year's imprisonment and/or a fine of up to \$1000, as well as removal from office. 133 Cong. Rec. S. 13571 (daily ed. October 6, 1987). The House bill did not contain a publicity or propaganda provision. At the conference, the two houses agreed to Senator Kerry's version, but without the criminal and employment penalties. 133 Cong. Rec. H 11330 (daily ed. Dec. 14, 1987).

Although Senator Kerry did not specify what he meant by "money that was being illegally spent by the State Department on propaganda efforts with respect to the whole issue of Central America," it appears that he was referring to the self-described "white propaganda" operation conducted by the State Department's Office of Public Diplomacy for Latin America and the Caribbean ("S/LPD"). The Report of the Congressional Committees Investigating the Iran-Contra Affair describes the "public diplomacy" efforts of S/LPD as "public relations-lobbying, [*19] all at taxpayers' expense." H.R. Rep. 433 (S. Rep. 216), 100th Cong., 1st Sess. 34 (1987). The report also quotes with apparent approval the Comptroller General's conclusion that the "white propaganda" efforts violated the restriction prohibiting the use of federal funds for publicity or propaganda purposes not authorized by Congress. Id. (quoting Comptroller General decision B-229069, September 30, 1987).

In his report the Comptroller General evaluated the legality of certain activities of the Office for Public Diplomacy. These activities included "arrang[ing] for the publication of articles which purportedly had been prepared by, and reflected the views of, persons not associated with the government but which, in fact, had been prepared at the request of government officials and partially or wholly paid for with government funds." B-229069, September 30, 1987. S/LPD also used a "cut-out" to arrange visits to various news media by a Nicaraguan opposition leader. Id. The Comptroller General found that these activities were "beyond the range of acceptable agency public information activities because the article was prepared in whole or part by S/LPD staff as the ostensible [*20] position of persons not associated with the government and the media visits arranged by S/LPD were misleading as to their origin and reasonably constituted 'propaganda' within the common understanding of that term." Id. Such activities therefore violated the rider of the Department of State appropriation act in effect at that time that prohibited "publicity or propaganda . . . not authorized by Congress." n13

n13 The application of such publicity or propaganda riders to covert propaganda activities apparently originated in an opinion in October 1986 regarding the Small Business Administration. At that time the Administration was proposing to transfer the SBA to the Department of Commerce and to eliminate SBA's finance and investment programs and some management assistance activities. SBA prepared a substantial amount of public information material explaining and generally supporting the proposed changes. These included a pamphlet entitled "The Future of SBA," suggested editorials, and suggested "letters to the editor." The Comptroller General found no problem with most of the material, but noted he had "serious difficulties with SBA's distribution of 'suggested editorials' supporting the Administration's reorganization plan. The editorials, prepared by SBA for publication as the ostensible editorial position of the recipient newspapers, are misleading as to their origin and reasonably constitute 'propaganda' within the common understanding of that term." B-223098, October 10, 1986. The Comptroller General concluded that "[T]he SBA 'suggested editorials' are beyond the range of acceptable agency public information activities and, accordingly, violate the 'publicity and propaganda' prohibition of section 601." Id. [*21]

The prohibition in subsection (3) on the use of appropriated funds for "publicity or propaganda purposes not authorized by Congress" would thus appear to embody the view expressed in the Comptroller General's September 30, 1987, opinion that "covert propaganda activities of an agency" are an illegal use of appropriated funds. n14

n14 The Comptroller General has also consistently interpreted earlier riders prohibiting "publicity or propaganda . . . not authorized by Congress" as prohibiting agency "self-aggrandizement" or "puffery," i.e., "publicity of a nature tending to emphasize the importance of the agency or activity in question." B-106139, 31 Comp. Gen. 311, 313 (1952). It seems clear that this prohibition would not be applicable to any of your contemplated activities.

C. Application of 18 U.S.C. 1913 and Section 109 of the Foreign Relations Authorization Act to Lobbying Activities on Behalf of the INF Treaty and Contra Aid

1) INF Treaty

For the reasons set forth in our December 31, 1987, memorandum, we do not believe that the Senate's advice and consent to the ratification of a treaty constitutes "legislation." Although that memorandum discussed legislation [*22] within the context of 18 U.S.C. 1913, we believe that it has the same meaning when used in the rider prohibiting the use of appropriated funds to influence pending legislation. Because we do not believe that the advice and consent of the Senate constitutes legislation, the publicity or propaganda rider of section 109(1) would be inapplicable to lobbying efforts in support of the INF Treaty. Accordingly, we conclude that neither the grass-roots lobbying restriction nor the prohibition on assistance to private lobbying groups would apply to your efforts in support of the INF Treaty.

It is clear, however, that the rider prohibiting covert propaganda activities would apply to ratification of the INF Treaty. The legislative history of section 109(3) implies Congressional approval of the Comptroller General's view, enunciated in his September 30, 1987, opinion, that the "not authorized by Congress" version of the publicity or propaganda rider prohibits covert propaganda activities. Accordingly, the Administration may not covertly communicate its support of the INF Treaty in the guise of a private group or individual.

2) Contra Aid

According to the Comptroller General, the legal [*23] restrictions of section 109(1) on lobbying in support of aid to the Contras depend on whether the lobbying occurs before or after legislation reflecting the Administration's position is introduced in Congress. In the absence of such pending legislation, section 109(1) is simply inapplicable to lobbying efforts. Moreover, under the Department's longstanding interpretation of section 1913, that provision would not restrict grass-roots activities of the President, his aides within the Executive Office of the President, or Cabinet members within their areas of responsibility. Accordingly, the only restriction on Administration lobbying activities in the period preceding introduction of an Administration-backed bill derives from section 109(3), which prohibits covert attempts to mold opinion through the undisclosed use of third parties.

After an Administration-backed bill is introduced, however, section 109(1) would be applicable. Under the Comptroller General's interpretation, this provision would restrict Administration officials, including those in the Executive Office of the President, from engaging in grass-roots lobbying. It would not, however, restrict Administration officials [*24] from engaging in public informational activities such as writing speeches or letters in the

areas of their official responsibility or briefing opinion leaders, even if the natural consequence of such activities is to increase public support for the President's position on legislation aiding the Contras.

According to the decisions of the Comptroller General in this area, the legality of providing assistance to private groups that support Contra aid will depend on whether the assistance requires the use of appropriated funds in excess of what would otherwise be expended. Accordingly, the Administration can make available to private groups, upon request, printed materials that explain and justify the Administration's position on Contra aid. These materials must be items that were created in the normal course of business and not specifically produced for use by these private groups.

We also believe that the Administration may respond to media requests for "op-ed pieces" or interviews by referring the media to supporters in the private sector, because such responses would not involve additional use of appropriated funds. It would be unwise, however, for the Administration to solicit [*25] the media to print articles by or interviews with anyone not serving in the government. And, of course, the Administration cannot assist in the preparation of any articles or statements by private sector supporters, other than through the provision of informational materials as described in the preceding paragraph.

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Assistant Attorney General

Office of Legal Counsel

Filomen D'Agostino and Max E. Greenberg Research Fund at the New York University School of Law is gratefully acknowledged.

- - - - -End Footnotes- - - - -

TEXT:

... [*55] GAO as to whether the April 14, 1980 opinion of the LSC Office of General Counsel was correct. The responsive GAO Opinion, dated November 24, 1980, basically agreed with LSC's memorandum (B-163762).

Congressperson Sensenbrenner subsequently notified the GAO of activities that he thought violated the Act. LSC had formed a coalition with various groups to direct a lobbying campaign in support of LSC's reauthorization, in response to then President Reagan's attempt to eliminate LSC, and had mailed out packets to people in the field on how to effectively lobby members of Congress (LSC's survival activities campaign). In the Opinion of the Comptroller General, dated May 1, 1981, the GAO concluded that LSC had engaged in grassroots lobbying prohibited by the statute but had not engaged in prohibited political activities (B-202116). According to the GAO, "We have always construed other anti-lobbying restrictions as permitting officials to express their views on pending or proposed legislation as it affects their policies and activities directly to Congress or to the public," but not grassroots lobbying, which is

defined as appeals addressed to the public at large or to selected individuals suggesting that they contact their elected representatives and indicate their support of or opposition to legislation being considered by Congress. Id. GAO did not find support for LSC's broad interpretation that it could engage in all activities necessary to influence legislation affecting LSC, including grass roots lobbying. The Opinion concluded that in summary, through the use of recipient organizations and their contacts at the State and local level, LSC has developed an extensive lobbying campaign to support reauthorization legislation for the Corporation and related appropriation measures being considered by the Congress. This activity violates the anti-lobbying statutory and appropriation restrictions described above.

Id.

In response to this GAO Opinion, LSC, in a letter dated May 11, 1981, disagreed with the GAO interpretation, attributing the difficulty meshing riders attached to appropriation bills (the Treasury Rider and the Moorhead Amendment) with the authorization legislation. However, LSC decided to advise all personnel to stop all activities that came within the GAO definition of grassroots lobbying. (A subsequent GAO Opinion, dated September 19, 1983, in response to a request by Senator Hatch, found some violations of the restrictions on training, coalition building activities and opposing ballot measures in the LSC survival

activities \$ (B-210338/B-202116\$)).

n82 Hearings on S. 547 Before the Senate Comm. on Labor and Human Resources,
98th Cong., 1st Sess. (1983).

n83 Id.

n84 The survival campaign by ...

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COMMENT: SECTION 501(c)(3) AND LOBBYING: The Case for the Local Organization

MELISSA WALLER BALDWINMELISSA WALLER BALDWIN

TEXT:

[*203] I. INTRODUCTION

Within the world of non-profit organizations, classification as an Internal Revenue Code section 501(c)(3) organization is a highly desired status. Organizations have come to realize the benefit of this classification which, as stated in section 501(a), is an exemption from taxation. n1 The most advantageous benefit for section 501(c)(3) organizations, however, is the ability for donors to [*204] deduct contributions made to the organization from their income, estate and gift taxes. n2 This is a characteristic unique to section 501(c)(3) organizations and is not shared by other section 501 organization classifications. n3

- - - - -Footnotes- - - - -

n1 I.R.C. @ 501(a)(1988). The exemption from taxation also includes a variety of other taxes. See *infra* notes 40-44 and accompanying text.

n2 See I.R.C. @@ 170(a), (c)(2), @ 2055(a)(2), @ 2522(a)(2) (1988). This benefit, however, is limited. See *infra* notes 45-52 and accompanying text.

n3 See *T.J. Moss Tie Co. v. Commissioner*, 18 T.C. 188 (1952), nonacq., 1952-2 C.B. 5, petition dismissed, *Commissioner v. T.J. Moss Tie Co.*, 201 F.2d 512 (8th Cir. 1953); Mark A. Hall & John D. Colombo, *The Donative Theory of the Charitable Tax Exemption*, 52 OHIO ST. L.J. 1379, 1439 & nn. 170-71 (1991).

- - - - -End Footnotes- - - - -

Not-for-profit organizations meeting the section 501(c)(3) criteria are numerous. n4 The average person can easily name some of the more visible organizations, such as the United Way, Red Cross, YMCA, Habitat for Humanity, Girl Scouts and Boy Scouts. Other organizations meeting this criteria are not as obvious. These might include Underwriters Laboratory and The Motion Picture Association of America. Due to the number of these organizations and the benefits given to them by Congress, section 501(c)(3) status is intensely scrutinized, whether by the public or by Congress themselves. This scrutiny forces the not-for-profits to be accountable to their donors and suffer credibility losses when they fail to meet expectations. Most often, the charge is for misdirecting donated dollars. For instance, local United Way chapters attempted to distance themselves from their national organization when the

salary, compensation and self-dealing charges of its leader, William J. Aramony, became known to the public. n5 The Freedom Forum has also come under scrutiny for not controlling its administration and trustee fees expenses. n6 The National Association for the Advancement of Colored Persons (NAACP) has also come under close review as charges of a secret settlement made with NAACP funds for a personal sexual harassment claim have surfaced. n7

- - - - -Footnotes- - - - -

n4 See I.R.S. Publication 78, Cumulative List of Organizations (listing approximately 375,000 organizations described in section 170(c) of the Code, including section 501(c)(3) organizations); Rev. Proc. 82-39, 1982-2 C.B. 759; I.R.C. @ 170(c)(2)(B).

n5 Ken Moritsugu, United Way Dues Still Not Remitted, ST. PETERSBURG TIMES, June 30, 1992, at 1; Gloria Negri, United Way Donations Down \$ 3 Million; Local Chapter Says Programs Will Feel Pinch of Funding Shortage, B. GLOBE, Nov. 14, 1992, at 36 (local association tactics included not remitting chapter dues to the national organization, and thoroughly explaining operating expenses incurred and the local nature of those expenses).

n6 Paul Farhi, Neuharth Foundation Spares No Expense: Freedom Forum Spends Lavishly and Pays High Trustee Fees, WASH. POST, Mar. 23, 1993, at A1.

n7 Rosalind Bentley, NAACP Poised to Release Audit, STAR TRIB., July 8, 1995, at A1.

- - - - -End Footnotes- - - - -

In Congress, the investigations into not-for-profit organizations are generally related to abuses in influencing legislation. The charge raised by those opposing the non-profits is one of unfair advantage against the for-profits: section 501(c)(3) organizations enjoy tax-exemptions while possessing, in essence, "unlimited" lobbying privileges. n8 The proposed "solutions" in this arena are frequently requests by legislators to increase restrictions on section 501(c)(3) status or to make changes in lobbying entitlement. n9 In fact, this perennial debate [*205] has recently centered on the American Association of Retired People (AARP) and the National Rifle Association (NRA). n10

- - - - -Footnotes- - - - -

n8 See, e.g., Fred Stokeld, AARP Feels the Heat on Capitol Hill, 12 EXEMPT ORG. TAX REV. 13 (July 1995).

n9 Examples of "solutions" impacting section 501(c)(3) organizations include the addition of sections 501(h), 4911 and 509. Tax Reform Act of 1976, Pub. L. No. 94-455, @ 1307, 90 Stat. 1520, 1720 (1976) (creating a new set of lobbying rules applicable to section 501(c)(3) organizations); Tax Reform Act of 1969, Pub. L. No. 91-172, 83 Stat. 487, 513-21 (1969) (creating presumption of private foundation status for section 501(c)(3) organizations). Today, suggestions include a 20% cap of the organization's lobbying expenses, sliding to a 5% cap depending on the total amount spent. 141 CONG. REC. H11433-34 (daily ed. Oct. 30, 1995) (statement of Rep. McIntosh).

For recent examples of bills which have been introduced to improve existing lobbying regulations, see, e.g., S. 1060, 105th Cong. (1995) (a bill to require registration for congressional and executive branch professional lobbyists); S. 1935, 103d Cong. (1994) (bill prohibiting receipt of gifts and other benefits from lobbyists and requiring gifts received to be disclosed); S. 349, 103d Cong. (1993) (requiring disclosure of the client and the area of interest when seeking to influence federal government officials through lobbying); H.R. 823, 103d Cong. (1993) (same); H.R. 3545, 100th Cong. (1987) (enacting the Omnibus Budget Reconciliation Act of 1987). President Clinton recently signed the Lobbying Disclosure Act into law proclaiming the act to be the first major overhaul of lobbying laws since 1947. Donna Smith, Clinton meets with Republican Leaders on Budget, REUTERS BUS. REP., Dec. 19, 1995; Lobbying Disclosure Act of 1995, Pub. L. No. 104-65, 109 Stat. 691- 706 (to be codified at 2 U.S.C. @@ 1601-12).

n10 The business practices of the AARP came under review this past summer. Exempt Organizations to Receive Scrutiny, Cong. Index (CCH) at 22 (June 16, 1995). The IRS is presently examining tax deductions given the NRA. Edward T. Pound et al., Tax Exempt!, U.S. NEWS AND WORLD REP., Oct. 2, 1995, at 36, 37.

- - - - -End Footnotes- - - - -

Despite the congressional demands for redefining what groups constitute a section 501(c)(3) organization, or what additional restrictions should be placed on those organizations, this comment will address why lobbying by certain section 501(c)(3) organizations is not inherently against public policy if certain tax code modifications are adopted. To reach this thesis, a general overview is needed. Part II will present preliminary information about section 501(c)(3) organizations and part III will discuss issues raised when section 501(c)(3) organizations influence legislation. In part IV, a proposed solution and associated discussion considering the above stated theory will be given as well as modifications to the Code to effectuate the proposed solution.

II. AN OVERVIEW OF SECTION 501(C)(3) ORGANIZATIONS

This part will present an overview of section 501(c)(3) organizations. To begin, general information about non-profit organizations will be discussed, following with a review of the criteria required to become a recognized section 501(c)(3) organization. Next, the benefits of classification as a section 501(c)(3) organization will be addressed. Finally, theories justifying the preferential treatment for non-profit organizations within the tax code will be offered.

A. Preliminary information about section 501(c)(3) organizations

The Internal Revenue Code exempts from taxation twenty-five types of organizations. These include civic leagues organized for the promotion of social welfare, n11 labor, agriculture, or horticulture organizations, n12 business leagues, [*206] chambers of commerce, real estates boards, n13 and cemetery companies, n14 among others. Section 501(c)(3) organizations are a subset of the tax exempt organizations and are defined as "corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes. . . or for the prevention of cruelty to children or animals. . . ." n15 Examples of these organizations include churches, museums, schools, universities, hospitals, and others which seek to promote social welfare. n16

-Footnotes-

n11 I.R.C. @ 501(c)(4) (1988).

n12 I.R.C. @ 501(c)(5).

n13 I.R.C. @ 501(c)(6).

n14 I.R.C. @ 501(c)(13).

n15 I.R.C. @ 501(c)(3). The full text reads:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

I.R.C. @ 501(c)(3).

n16 Treas. Reg. @ 1.501(c)(3)-1(d) (as amended in 1990).

-End Footnotes-

The impact of organizations within the non-profit sector is staggering. The total number of organizations claiming tax-exempt status is estimated to be one million. n17 Furthermore, each year about 45,000 new organizations become taxexempt. n18 In terms of our economy, the revenues of tax-exempt organizations have grown over 225% in fifteen years. Additionally, they hold more than one trillion dollars worth of assets and account for approximately ten percent of the gross domestic product. n19

-Footnotes-

n17 Government Accounting Office Rep., Exempt Organization's Execs' Income Up in 1992, GAO Reports, 11 EXEMPT ORG. TAX REV. 739, 741 (Apr. 1995).

n18 Pound et al., supra note 10, at 36.

n19 Government Accounting Office Rep., supra note 17, at 741.

-End Footnotes-

B. Criteria for section 501(c)(3) organizations

The present day rules for becoming a section 501(c)(3) organization, thus qualifying for the charitable tax exemption, require the satisfaction of several requirements. The first of these requirements is for the charitable organization to overcome the congressional presumption that it is a private foundation

rather than a community based organization providing services for its members. n20 According to this congressional presumption, a private foundation is defined as "any domestic or foreign organization described in section 501(c)(3). . . ." n21 This presumption, however, does have an exception. Organizations which have "broad public support[,] actively function in a supporting relationship to such an [*207] organization . . . [or] test for public safety[,] " will not be considered private foundations. n22 Thus, in order to surmount the private foundation presumption, the organization must show it meets the description of "broad public support."

- - - - -Footnotes- - - - -

n20 See I.R.C. @ 509(a) (1988).

n21 Treas. Reg. @ 1.509(a)-1 (1972).

n22 Id. The exclusions are listed in I.R.C. @@ 509(a)(1), (2), (3) and (4). I.R.C. @@ 509(a)(1), (2), (3) and (4). "Broad public support" is further defined within the regulations as meeting the two tests: more than one-third of the organization's support comes from gifts, grants contributions, membership fees and admissions, section 509(a)(2)(A), and not more than one-third of the organization's support comes from investments and unrelated business income, section 509(a)(2)(B). Treas. Reg. @ 1.509(a)-3.

- - - - -End Footnotes- - - - -

The second requirement for achieving section 501(c)(3) status is to meet the organizational and operational tests. n23 If an organization fails either of these tests, it will not be eligible for the charitable exemption. n24 The organizational test requires the organization to include several key provisions in its articles of incorporation. n25 The first of these provisions is to limit the organization's purposes to participation in one or more exempt purpose and to expressly deny the organization the power "to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purpose." n26 An exempt purpose is identified as an organization and operation with a religious, charitable, scientific, testing for public safety, literary, educational or prevention of cruelty to children or animals purpose. n27 The statement of this purpose may be "as broad as, or more specific than, the purposes stated in section 501(c)(3)." n28

- - - - -Footnotes- - - - -

n23 Treas. Reg. @ 1.501(c)(3)-1(a)(1) (as amended in 1990).

n24 Id.

n25 Treas. Reg. @ 1.501(c)(3)-1(b) (as amended in 1990).

n26 Treas. Reg. @ 1.501(c)(3)-1(b)(1)(i) (as amended in 1990).

n27 Treas. Reg. @ 1.501(c)(3)-(d)(1)(i) (as amended in 1990).

n28 Treas. Reg. @ 1.501(c)(3)-1(b)(1)(ii) (as amended in 1990).

- - - - -End Footnotes- - - - -

The other provision required within the articles of incorporation mandates that the organizational documents dedicate corporate assets to an exempt purpose. n29 The example of this rule given within the Regulations is distribution of assets for an exempt purpose upon dissolution of the organization. n30 Distribution to members or shareholders results in non-compliance with the organizational test thus no charitable exemption is available. n31

- - - - -Footnotes- - - - -

n29 Treas. Reg. @ 1.501(c)(3)-1(b)(4) (as amended in 1990).

n30 Id.

n31 Id.

- - - - -End Footnotes- - - - -

The operational test states that an organization will be regarded as "operated exclusively" for an exempt purpose if it engages only in activities primarily intended to accomplish the purpose specified in section 501(c)(3). n32 A special provision is included for organizations termed "action organizations." These are organizations which spend a substantial part of their activities influencing legislation, intervening in the campaign of a public office candidate, or campaigning for their primary objectives which are achievable only through passage or defeat of legislation. n33 "Action organizations" are considered not to be operated exclusively for exempt purposes, and thus, not permitted to receive [*208] the charitable exemption under section 501(c)(3). n34 The organization may, however, qualify as a social welfare organization under section 501(c)(4). n35

- - - - -Footnotes- - - - -

n32 Treas. Reg. @ 1.501(c)(3)-1(c) (as amended in 1990).

n33 Treas. Reg. @ 1.501(c)(3)-1(c)(3)(ii), (iii), (iv) (as amended in 1990).

n34 Treas. Reg. @ 1.501(c)(3)-1(c)(3)(i), -1(a)(1) (as amended in 1990).

n35 Treas. Reg. @ 1.501(c)(3)-1(c)(1)(v) (as amended in 1990).

- - - - -End Footnotes- - - - -

The third requirement to become a section 501(c)(3) organization is to ensure net income does not inure, in whole or in part, to the benefit of private shareholders or individuals. n36 A "private shareholder or individual" is a person who has a personal and private interest in the activities of the organization. n37 "Inurement" occurs when payments other than reasonable compensation for goods and services are made. n38

- - - - -Footnotes- - - - -

n36 I.R.C. @ 501(c)(3) (1988).

n37 Treas. Reg. @ 1.501(a)-1(c) (as amended in 1982).

n38 See, e.g., Gemological Institute of America, Inc., 17 T.C. 1604 (1952),
aff'd per curiam, 212 F.2d 205 (2d Cir. 1956).

- - - - -End Footnotes- - - - -

The final requirement is that no substantial part of the organization's activities may be attempts to influence legislation or participate in political candidate campaigns. n39 This requirement necessitates discussion of the rules surrounding lobbying by section 501(c)(3) organizations and will be discussed in Part III A.

- - - - -Footnotes- - - - -

n39 Treas. Reg. @ 1.501(c)(3)-1(b)(3) (as amended in 1990).

- - - - -End Footnotes- - - - -

C. Benefits of organizing under section 501(c)(3)

Why an organization desires to be recognized by the I.R.S. as a section 501(c)(3) organization is relatively clear: section 501(a) grants an exemption from federal taxation. n40 This is a powerful incentive, as this status also is often a precursor to a variety of other benefits such as an exemption from federal unemployment taxes, n41 cheaper, third class postage rates, n42 and states' exemptions from local income, property, sales, and use taxes. n43 Specifically subject to taxation, however, as a congressional solution to the charges of abuse of taxpayer's donated dollars, is taxation of unrelated business income (UBIT). n44

- - - - -Footnotes- - - - -

n40 I.R.C. @ 501(a).

n41 I.R.C. @ 3306(c)(8) (1988).

n42 Tax-Exempt Organizations: Organization, Operation and Reporting Requirements, Tax Mgmt. (BNA) No. 464, at A-40 (3d ed. 1990).

n43 Id. at A-40-1.

n44 I.R.C. @@ 511-14 (1988). This is income which is unrelated to the charitable organization's exempt purpose and is taxed at regular corporate rates. @@ 511-14.

- - - - -End Footnotes- - - - -

The other powerful incentive motivating organizations to receive recognition as a section 501(c)(3) is the ability for the organization to receive contributions which qualify as deductions from the contributor's income, estate or gift taxes. n45 The authority for personal deductions comes from Internal Revenue Code section 170. This section states that a deduction shall be

allowed for charitable contribution payments. n46

- - - - -Footnotes- - - - -

n45 I.R.C. @@ 170(a), (c)(2), @ 2055(a)(2), @ 2522(a)(2) (1988).

n46 I.R.C. @ 170(a).

- - - - -End Footnotes- - - - -

[*209] Charitable contributions are further defined as including contributions or gifts made to, among other groups, charities as described in section 501(c)(3). n47 Furthermore, businesses are permitted to use this deduction for contributions made, subject to the limits established in section 170. n48 Thus, an organization claiming the cross-referencing status of section 170 and 501(c)(3) has a powerful tool with which to solicit dollars and is more appealing to the potential donor since an incentive for generosity has been created within the tax code.

- - - - -Footnotes- - - - -

n47 I.R.C. @ 170(c)(1) - (5).

n48 I.R.C. @ 162(b) (1988); Treas. Reg. @@ 1.162-15(a)(1), (2) (1965).

- - - - -End Footnotes- - - - -

Caution, however, is required since the types of organizations to which deductions may be made is fewer than the types of organizations which qualify for the tax exemption. n49 This is because of the classification process of exempt organizations within section 501. Section 501(c) lists the different types of organizations which qualify for the exemption. n50 Section 501(c)(3) organizations are then divided into public charities and private foundations. n51 Only public charities which meet the cross-referencing definition within section 170 are eligible for contribution deductions on the donor's income tax returns. n52 Thus, not all organizations that have section 501(c)(3) tax exempt status can have contributions deducted under the authority of section 170.

- - - - -Footnotes- - - - -

n49 See T.J. Moss Tie Co. v. Commissioner, 18 T.C. 188 (1952), nonacq., 1952-2 C.B. 5, petition dismissed, Commissioner v. T.J. Moss Tie Co., 201 F.2d 512 (8th Cir. 1953).

n50 I.R.C. @ 501(c) (1988).

n51 I.R.C. @ 509(a) (1988); Treas. Reg. @ 1.509(a)-1 (1972).

n52 I.R.C. @ 170(c) (1988); Treas. Reg. @ 1.170A-1(a) (as amended in 1990).

- - - - -End Footnotes- - - - -

The deductions available to donors, however, are not simply for contributions made to a not-for-profit organization. Businesses can deduct "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any