U.S. House of Representatives
Committee on the Judiciary

Testimony of
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Committee on the Judiciary
U.S. House of Representatives
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*The views expressed in this testimony are solely my own and should not be ascribed to the trustees, officers, or other staff members of The Brookings Institution. A brief resume is attached.

Mr. Chairman and other members of the Subcommittee, thank for you inviting me to share my views of S. 1, the bill on lobbying reform passed by the Senate earlier this year. The prosecution and guilty pleas of lobbyist Jack Abramoff, Representatives Randy "Duke" Cunningham and Bob Ney, and several former congressional staff have understandably brought to public attention the adequacy of laws, congressional rules, and enforcement mechanisms regulating the interactions between lobbyists and Members of Congress and their staffs. These scandals, ongoing investigations of others, and the widespread public perception of a culture of corruption in Washington could provide the boost required to enact long-needed changes in that regulatory system.

Lobbying has changed dramatically in recent years. The number of registered lobbyists has tripled. Budgets for Washington representation and grassroots lobbying have risen exponentially. Retiring or defeated Members are now more likely to stay in Washington and join their ranks. Congressional staff routinely move from Capitol Hill to lobbying shops around town. Some Members have been actively involved in placing their staff and those of their colleagues in key positions within the lobbying community. Many Members enlist lobbyists to help raise campaign funds for their re-election campaigns, leadership PACs, endangered colleagues, and political party committees. The escalating cost of campaigns has put intense pressure on Members, even those with safe seats, and lobbyists to raise and contribute substantial sums of money. At the same time, more opportunities exist for Members and their leaders to deliver benefits to lobbyists and their clients. These include earmarks, in appropriations and authorization bills; invitations to participate in informal mark-up sessions in party task forces, standing committees, and conference committees; amendments added late in the legislative process under the veil of secrecy; and letters and calls to executive branch officials. These conditions foster practices that risk conflicts of interest and unethical or illegal behavior.

The House began the process of ethics and lobbying reform at the start of the 110th Congress by enacting in H. Res. 6 a number of rules changes governing gifts, privately-financed travel, and earmarks. A bipartisan task force has been commissioned to recommend ways of strengthening the ethics process in the House, including some role for an independent panel composed of former Members and others. What remains to be done is the enactment of changes in law, most importantly the Lobbying Disclosure Act of 1995 (P.L. 104-65), enhancing the transparency of interactions between Members of Congress and lobbyists.

S. 1 is an excellent point of departure for your deliberations on this latter responsibility. That bill, for example, very constructively requires quarterly, instead of semiannual, filing of lobbying disclosure reports, which are then made available to the public in a timely and useable fashion on the Internet. It also increases the penalties for failure to comply with lobbying laws and provides for a GAO audit of lobbying reports.

One of the most important provisions of S. 1, and also one of the most controversial, adds new language requiring lobbyists to disclose contributions they make, arrange, or collect for Members, candidates, leadership PACs, and political parties. These provisions, contained in Section 212 of the Senate bill, are identical to the language of H.R. 633, introduced by Representatives Chris Van Hollen and Marty Meehan. Unlike the restrictions on gifts and travel by lobbyists to Members already contained in the House and Senate rules, the new language provides for transparency, not prohibition. While federal campaign finance law requires candidate and political committees to disclose the source and size of contributions of at least $200, including those from lobbyists, lobbying disclosure law is silent on contributions. Yet many lobbyists are actively involved in political fundraising for Members they seek to influence. In addition to direct contributions, these efforts include administering leadership PACs, hosting fundraising events, and soliciting contributions from others (commonly known as "bundling").

I believe public disclosure of these contributions from lobbyists to members and their political and party committees would serve the broad public interest without unduly invading the privacy rights of lobbyists or

making unreasonable reporting demands on them. The language is carefully crafted to allow “good faith estimate(s)” of funds raised from events or solicitations when precise figures on such amounts are not available. To the extent Members believe such contributions are legitimate forms of political participation and do not compromise their ability to make independent decisions on legislative matters of interest to the lobbyists making the contributions, Members ought to be willing to make them transparent. The inclusion or exclusion of this provision in the legislation adopted by the House is likely to determine the seriousness of its response to the scandals associated with Jack Abramoff and the K Street Project.

Another important and, therefore, controversial provision of S. 1 deals with the “revolving door” problem. Current law (18 U.S. C. 207) provides for a one-year cooling off period before former Members can lobby the legislative branch; also, former senior congressional staff may not lobby their former employer, whether Member or committee, for the same amount of time. The Senate bill extends the cooling off period for Members from one to two years; the comparable period for senior congressional staff remains one year, but the prohibition on lobbying activity is extended to the entire Senate. In addition, the Senate bill expands the lobbying activities covered during the cooling off period from only direct contacts to include behind-the-scenes activities, advice, or consultations in support of lobbying contacts.

Make no mistake, this is a very tough provision. It would make former members and senior congressional staff less marketable in the lobbying community upon their departure from Congress and reduce their immediate post-Congress career options. But it would likely have a healthy impact on the policy process and the state of American democracy. The newly-defined cooling off period would encourage more diverse career patterns among former Members and staff, diminish the payoff from privileged connections and enhance the benefits of genuine expertise, and begin to change a culture fostering the quest for private gains from public service. I urge you to retain this language in the House bill.

The last item I would like to raise with you is one that is absent from the Senate bill, after a successful floor amendment to delete it from the underlying bill. Grassroots lobbying campaigns now constitute a major part of lobbying activities. Huge sums are spent on paid media, computerized phone banks, direct mail, and other forms of public communications to stimulate lobbying of Congress by citizens. Yet professional grassroots (“Astroturf”) lobbying organizations and lobbying firms are not required to report on the sums they spend on these campaigns. It makes little sense to exclude these activities whose costs may well exceed expenditures for direct lobbying.

The trick is to define these organizations and activities in a way that does not restrict the free flow of information. New requirements must also be crafted to avoid placing new reporting burdens on organizations that spend relatively small sums on grassroots lobbying or that are communicating with their own members or with the general public to recruit new members. I understand efforts to amend the original Senate language to reflect these concerns are well underway in the House. I urge you to bring these negotiations to a successful conclusion and include a grassroots lobbying disclosure provision in the House bill.

In sum, I recommend that you look favorably on S. 1, in particular its provisions regarding the disclosure of political contributions (including bundling) and the slowing of the revolving door between Congress and the lobbying community. I also recommend that you include in the House bill a provision to require the disclosure of sums spent on behalf of major grassroots lobbying campaigns. When combined with the new House rules adopted in January and a strengthened ethics review and enforcement process now being considered by a bipartisan task force, such a lobbying reform bill would go a long way in responding to scandals of recent Congresses and improving the ethical climate in Washington.
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Thomas E. Mann is the W. Averell Harriman Chair and Senior Fellow in Governance Studies at The Brookings Institution. Between 1987 and 1999, he was Director of Governmental Studies at Brookings. Before that, Mann was executive director of the American Political Science Association.

Born on September 10, 1944, in Milwaukee, he earned his B.A. in political science at the University of Florida and his M.A. and Ph.D. at the University of Michigan. He first came to Washington in 1969 as a Congressional Fellow in the offices of Senator Philip A. Hart and Representative James G. O'Hara.

Mann has taught at Princeton University, Johns Hopkins University, Georgetown University, the University of Virginia and American University; conducted polls for congressional candidates; worked as a consultant to IBM and the Public Broadcasting Service; chaired the Board of Overseers of the National Election Studies; and served as an expert witness in the constitutional defense of the McCain-Feingold campaign finance law. He lectures frequently in the United States and abroad on American politics and public policy and is also a regular contributor to newspaper stories and television and radio programs on politics and governance.

Mann is a fellow of the American Academy of Arts and Sciences and a member of the Council on Foreign Relations. He is a recipient of the American Political Science Association’s Frank J. Goodnow and Charles E. Merriam Awards.

Mann's published works include Unsafe at Any Margin: Interpreting Congressional Elections; Vital Statistics on Congress; The New Congress; A Question of Balance: The President, the Congress and Foreign Policy; Media Polls in American Politics; Renewing Congress; Congress, the Press, and the Public; Intensive Care: How Congress Shapes Health Policy; Campaign Finance Reform: A Sourcebook; The Permanent Campaign and Its Future; Inside the Campaign Finance Battle: Court Testimony on the New Reforms; The New Campaign Finance Sourcebook; and Party Lines: Competition, Partisanship and Congressional Redistricting.

He has also written numerous scholarly articles and opinion pieces on various aspects of American politics, including elections, political parties, Congress, the presidency and public policymaking.

He is currently working on projects dealing with redistricting, election reform, and party polarization. He and Norman Ornstein recently published The Broken Branch: How Congress is Failing America and How to Get It Back on Track (Oxford University Press, 2006).

Mann resides in Bethesda, Maryland with his wife Sheilah, who is also a political scientist. They have two children, Ted, an assistant curator at the Guggenheim Museum in New York, and Stephanie, an MBA student in the Kellogg School at Northwestern University.
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