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Debate Getting Heated on Pelosi-Claybrook Grassroots Lobbying Bill

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It hinges on the meaning of a couple of obscure phrases and the use of a grammatically awkward double negative (only in government, right?), but the debate among advocates and critics of House Speaker Nancy Pelosi's grassroots lobbying registration proposal is almost certainly among the most important of the year.

OMB Watch is among the most able advocates for the bill that would require quarterly reporting to Congress by non-profits, businesses and individuals who encourage 500 or more fellow citizens to communicate a particular view on a legislative issue to Members of Congress.

I've known OMB Watch's major domo, Gary Bass, for years and most recently worked with him on the bipartisan coalition backing the Coburn-Obama Federal Financial Accountability and Transparency Act of 2006 requiring the government to establish a searchable Google-like database of federal spending. I've always found him to be a reasonable, well-intentioned advocate of liberal causes and somebody I respect a great deal.

Earlier this week, OMB Watch issued a resounding defense of the Pelosi-Claybrook proposal and a detailed critique of the arguments of some of the major critics on the Right.

OMB Watch argues that the critics are wrong because the bill would only apply to paid professional lobbying groups that spend thousands of dollars on lobbying activities during a quarter. That means grassroots lobbyists would be exempt, according to OMB Watch:

The legislation (see S. 1, Legislative Transparency and Accountability Act), which is cosponsored by the leading Democrat and Republican in the Senate, requires grassroots lobbying disclosure for those companies, organizations, and lobbyists already required to register under the Lobbying Disclosure Act and spending significant amounts of money on grassroots lobbying activities.

"More specifically, the entity must first qualify to register under the Lobbying Disclosure Act (spend $24,500 semi-annually on direct lobbying activities, which the Democrats are proposing to change to $10,000 per quarter). If the entity qualifies for registration and spends $25,000 on grassroots lobbying activities, then will it be required to report on grassroots lobbying activities.

"Additionally, communications with less than 500 people or with any calculation of grassroots lobbying expenditures. Special rules are proposed for large grassroots lobbying firms, that is, firms that spend or have revenue of $25,000 or more in a quarter."

In other words, according to OMB Watch, the Pelosi-Claybrook proposal is no threat to grassroots lobbying that is done by citizen activists or others who are not being paid to generate pressure on Congress on a particular issue or legislative proposal.

Mark Fitzgibbons, president for corporate and legal affairs of a fund-raising firm headed by Richard A. Viguerie, responded in a lengthy letter to OMB Watch. (Full Disclosure: I was for about six months editor of Conservative Digest, a Viguerie-owned magazine in 1981). Oddly, I've never met Fitzgibbons and have talked with Viguerie on only a handful of occasions since "the old days" with the magazine.

Fitzgibbons points to the Pelosi-Claybrook's manipulation of the definition of what consitutes covered lobbying under the Disclosure of Lobbying Activities statute:

"Section 220(a) would amend the definition of lobbying activities in DLA 1602(7) to include 'paid efforts to stimulate grassroots lobbying.'

"'Paid' efforts is not defined by any dollar amount, but simply by only one qualifier, and that is the communications are directed at more than 500 members of the general public.

"Clearly, then, here is where the bill defines 'paid' as nothing more than speech and publication to the general public, with no harm of any sorts being targeted."

Fitzgibbons also notes that:

"Further evidencing the 'intent' of the legislation to regulate low-dollar communications by nonprofits and others, Section 220(b)(1) expressly makes 'paid' grassroots communications ineligible for the low-dollar registration exemptions for direct lobbying conducted by actual, direct lobbyists.

"'Retained' actual lobbyists would be exempt if total income is less that $2,500 per quarter, and 'employed' actual lobbyists would be exempt if expenses are less than $10,000 per quarter.

"These exemptions are created by use of a double negative, which we were taught in grammar school are disfavored because they lend to confusion, which may be why they are commonly used in legislation.

"The bill employs a 'third' negative, that while lending even further confusion, perhaps intentionally, clearly makes 'paid' grassroots communications ineligible for the low-dollar exemptions for direct lobbying in DLA 1603(a)(3)(A)(i) and (ii)."

In other words, according to Fitzgibbons, the big guys on K Street would be exempt, but the little guys out there in the real world beyond the Potomac River would not.

I'm not a lawyer and claim no expertise in reading arcane legislative language. Even so, it doesn't take a law degree to understand the clear language of the First Amendment: "Congress shall make no law respecting ... the freedom of speech ..."

I have no problem whatsoever requiring Members of Congress and indeed anybody else working for government, including the president, from disclosing everything from who they met with and what they talked about every hour on the official clock to where they went for vacation and how they paid for it. The obligation of disclosure should be on the elected official and appointed employee.

The problem with requiring registration of anybody conducting such a vague term as "grassroots lobbying" is simple: Registration sooner or later lleads to regulation, which in this case means, inevitably, government direction of the content of political speech.

And regulation of the free press, religion and assembly to petition goes hand-in-hand with regulation of speech. Without these foundational liberties, it is impossible to have the republican form of government we inherited from the Founders.

If worrying about that makes me a "First Amendment Absolutist," then I plead guilty.

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