LOBBYING REFORM: HOUSE-CLEANING OR WINDOW DRESSING?

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I. INTRODUCTION

In recent years, several extensive lobbying scandals have surfaced on Capitol Hill, implicating a number of high-ranking members of Congress. The national media has focused most directly on the scandal surrounding the activities of lobbyist Jack Abramoff and his associate Michael Scanlon.[1] Abramoff, under investigation by federal prosecutors for his lobbying activities, was indicted on several counts in January 2006 and has since reached a plea agreement with the government.[2] In the plea agreement, Abramoff agreed to testify concerning his efforts to influence several members of Congress.[3] The investigation and indictment have focused primarily upon Abramoff's efforts to promote the prospects of an Indian tribe-owned casino operation.[4] The central event of this investigation is an August 2002 golf trip to Scotland.[5] Evidence uncovered surrounding the trip has led to the indictment of former Abramoff associate David Safavian[6] and a guilty plea for accepting improper gifts by Chairman of the House Administration Committee Bob Ney.[7] As the result of his guilty plea, Ney resigned from Congress in October 2006.[8]

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1. Richard Wolffe & Holly Bailey, *Path of the Storm; Think of It as the Abramoff Effect. The Disgraced Lobbyist's Influence Tom Delay's Exit. Who's Next?*, NEWSWEEK, Apr. 17, 2006, at 28.

2. Jerry Seper & Audrey Hudson, *Abramoff-Linked Probe Focuses on Five Lawmakers; 3 Republicans, 2 Democrats Deny Wrongdoing*, WASH. TIMES, Jan. 11, 2006, at A1.

3. *Id*.

4. Michael Isikoff, Holly Bailey, & Evan Thomas, *A Washington Tidal Wave; Blackjack: Members of Congress Rushed to Give Back Money. Delay Stepped Aside. Reformers Pledged to Fix the System. Can Anything Change the Capitol's Money-Hungry Ways? Behind the Abramoff Scandal*, NEWSWEEK, Jan. 16, 2006, at 40.

5. *Id*.

6. Safavian resigned his post in the Bush Administration as Administrator of the Office of Procurement Policy just three days before his indictment was issued. Thomas B. Edsall, *A Detour in the Corridor of Power; Indictment Snaps Rapid Rise of Republican Star*, WASH. POST, Nov. 16, 2005, at A17.

7. *Ney Pleads Guilty, Will Resign from U.S. Congress*, SALT LAKE TRIBUNE WIRE SERVICES, Oct. 13, 2006.

8. *Id*.

In addition to Ney, a bipartisan group of senior members of Congress are rumored to be under investigation in the scandal.[9] Former House Majority Leader Tom Delay has also been implicated in the scandal due to his ties to Abramoff associate Michael Scanlon, who pleaded guilty to corruption charges in November 2005.[10] The investigation of Scanlon contributed to the pressure on Delay to resign his position in the House leadership.[11] In addition to those members of Congress directly involved with Abramoff's lobbying efforts, many others are scrambling to explain their connections to and contributions from Abramoff.[12]

In an even more disturbing, although more isolated, scandal, California Representative Randy "Duke" Cunningham was convicted of accepting over $2.4 million in bribes from military contractors in exchange for his efforts to steer government contracts their way.[13] On March 3, 2006, Representative Cunningham was sentenced to eights years and four months in prison for his acceptance of these *quid pro quo* bribes.[14] Following the sentence announcement, government prosecutors described the dealings between Cunningham and the contractors as "unprecedented" in their "depth, breadth, and length."[15]

When scandal reaches the highest levels of Congress, reforms are likely—if only to reassure the American people that Congress is attempting to rectify the problem. As a result, a number of proposals were introduced in the 109th Congress to address concerns surrounding unethical lobbying efforts. Additionally, many in Congress used these scandals to promote a wealth of "good government" proposals that do not necessarily address any specific allegations tied to Abramoff or Cunningham but are more generally intended to reduce the influence of lobbyists in the legislative process.

On February 1, 2006, the House of Representatives voted to change its rules to bar former Members who are now registered lobbyists from

9. Seper et al., *supra* note 2; federal prosecutors are investigating at least four other members of Congress including: Senator Conrad Burns, a Montana Republican; Senator Byron L. Dorgan, a North Dakota Democrat; Senate Minority Leader Harry Reid, a Nevada Democrat; and Representative J.D. Hayworth, an Arizona Republican.

10. Isikoff et al., *supra* note 4. Scanlon is the former Communications Director for former Majority Leader Delay.

11. *Id*.

12. Wolffe et al., *supra* note 1. Several members of Congress have reportedly returned contributions from Abramoff including: Representatives John Doolittle from California; Ernest Istook from Oklahoma; J.D. Hayworth from Arizona; and Katherine Harris from Florida.

13. Randal C. Archibold, *Ex-Congressman Gets 8-Year Term in Bribery Case*, N.Y. TIMES, Mar. 4, 2006, at A1.

14. *Id*. This is the longest such sentence ever given to a "member or former member of Congress in a federal corruption case."

15. *Id*.

accessing the House floor and the House gym.[16] The Senate included similar rules changes for that body in the broader lobbying reform legislation which passed the Senate on March 29, 2006.[17] Additionally, House Speaker Dennis Hastert and House Rules Committee Chairman David Dreier crafted a proposal to further reform lobbying on Capitol Hill that passed the House on May 3, 2006.[18] However, many in Congress, including Delay's replacement as House Majority Leader, John Boehner, and Senator John McCain, believe that these reforms do not go far enough. As a result, there are numerous proposals that contain additional reforms from which the ultimate legislation will most likely be drawn.

This Comment will explore the changes being promoted in Congress and will advocate the strategy most likely to curb potential corruption in the future. First, the Comment attempts to add a little perspective to the current debate surrounding lobbying activities. Part III discusses the current law as it relates to lobbying and ethical rules. In Part IV, this Comment examines many of the proposals that were introduced in the 109th Congress. Those proposals are broken down into categories and analyzed as to their likely effect on events similar the current scandals in Part V. Finally, this Comment concludes in Part VI with a proposal outlining which provisions should be adopted.

II. HISTORICAL PERSPECTIVE ON LOBBYING ACTIVITIES

It is important to note at the outset that most lobbyists are upstanding, law-abiding individuals who care deeply about the inner workings of our federal government. Contrary to the widely accepted view that lobbyists are influence peddlers who arrange deals in smoky backrooms to benefit special interests, the typical lobbyist is a person dedicated to a cause important both to the lobbyist and thousands, if not millions, of other people in this country. Nearly every organization, whether a large corporation, an association of small businesses, individual groups advocating improved care for those suffering from life-altering diseases like diabetes or cancer, labor unions, charities, ethnic and religious

16. H.R. Res. 648, 109th Cong. (2006) (passed by vote of 379-50-1 under suspension of the rules).

17. The Legislative Transparency and Accountability Act of 2006, S. 2349, 109th Cong. (2006). However, unlike the rules resolution passed in the House, which was effective as soon as it was passed by the House, the fact that the Senate included their rules changes within the broader legislation means that the changes will not take effect unless the legislation is signed into law by the President.

18. The Lobbying Accountability and Transparency Act of 2006, H.R. 4975, 109th Cong. (2006).

groups and so on, has a lobbying presence in Washington, D.C.[19] In fact, without these lobbyists, much of what occurs in our nation's capital could not be accomplished. Unfortunately, whenever there is a scandal in Washington, the stories surrounding the scandal are often sensationalized by both the media and politicians. As a result, an entire segment of the Washington populace is needlessly tarnished due to the misdeeds of a few.

Lobbyists and their activities are not a new phenomenon and, certainly, not a passing fad. Lobbyists, or a reasonable facsimile thereof, have probably been in existence as long as governments, and their activities are certainly deeply rooted in our nation's government. Lobbyists and lobbying activities have existed since the earliest days of our constitutional government.[20] When Alexander Hamilton, serving as Secretary of Treasury in the Washington Administration, was promoting his plan for a federal banking system, Thomas Jefferson, James Madison, and their supporters (primarily in the Virginia and other southern states) were leery of Hamilton's close connections to New York bankers, fearing that these ties influenced Hamilton's policy in an inappropriate manner.[21]

Similarly, in Federalist No. 10, Madison addressed concerns that, under a centralized, federal government, a few well-connected individuals could gain control of the entire government and use its power to their advantage.[22] Arguing that a representative system could

19. Lobbyist disclosure information is available in a searchable format at http://sopr.senate.gov/. A quick search of lobbying registration information for the first half of 2006 (Mid-Year Report, January 1 through June 30, 2006) yielded 1,928 separate client entries including entities such as: Harvard University; the Cincinnati Symphony Orchestra; the Kidney Cancer Association; the United States Anti-Doping Agency; the Hebrew Academy of Cleveland; the Ohio Zoo Consortium; the Service Employees International Union; the International Brotherhood of Teamsters; the Bricklayers and Allied Crafts Union; the U.S. Conference of Catholic Bishops; the National Association of Children's Hospitals; the American Red Cross; the Cleveland Museum of Art; the First United Methodist Church; YMCA of Greater New York; the National Network to End Domestic Violence; and the Diabetes Research Institute Foundation This is just a small sampling of the extensive list of lobbyists' clients that do not fit within the stereotypical corporate interest category. Additionally, in the interest of full disclosure for this Comment, although not included in the Mid-Year Report for 2006, the University of Cincinnati is listed as a client in every Mid-Year and Year-End Report from 1998 to 2005.

20. While the activities associated with lobbyists have most likely existed time in memoriam, the term "lobbyist" has its origins in the administration of President Ulysses S. Grant. Because his wife disapproved of his drinking, President Grant would often leave the White House to drink at a bar in the nearby Willard Hotel. It did not take long for rumors of Grant's visits to the Willard Hotel to spread throughout Washington. As a result, those wishing to discuss an issue with the President would wait in the Willard's lobby hoping to stop Grant on his way to the bar. President Grant soon after began to complain about the "lobbyists" who would impede his efforts to enjoy a drink. Ron Smith, *Compelled Cost Disclosure of Grassroots Lobbying Expenses*, 6 KAN. J.L. & PUB. POL'Y. 115 (1997).

21. JOSEPH ELLIS, FOUNDING BROTHERS 64–65 (2001).

22. FEDERALIST NO. 10, at 122–28 (James Madison) (Isaac Kramnick ed., Penguin Books, 1987)

better control such attempts at usurpation than a direct democracy, Madison conceded that corruption could, and likely would, occur.[23] He insisted, however, that the size and breadth of interests of the United States would be reflected in its representatives, and these broad interests would prevent the widespread corruption of the Congress as a whole.[24] Thus, in this explanation, Madison clearly anticipated the potential for corrupt and abusive lobbying practices. Yet, he was convinced that the design of federal government was sufficient to protect the interests of the American people against the machinations of the few.[25]

Most significantly, the right to petition the government, the essential foundation of all lobbying activities, is a long-standing principle of the Anglo-American legal system dating as far back as the adoption in England of the Magna Carta in 1215.[26] Invoking this important right, Thomas Jefferson charged in the Declaration of Independence: "In every stage of these oppressions, we have petitioned for redress, in the most

(1788). Madison describes the fears associated with "factions" which he defines as "a number of citizens … united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." *Id*. at 123.

23. *Id*. at 125.

24. *Id*. at 125–26.

25. Just such an interested individual came to the assistance of Secretary of the Treasury Salmon P. Chase when he was working diligently to raise funds needed for the execution of the Civil War. DORIS KEARNS GOODWIN, TEAM OF RIVALS 402–03 (2005). A wealthy banker from Philadelphia, Jay Cooke (and his brother, Henry), won the contract from the Treasury Department to help Secretary Chase establish a number of bond issuances that kept the Union army afloat financially in the early stages of the war. *Id*. However, in a series of acts that would shock the general public today, Cooke sent expensive gifts to Secretary Chase and even established an investment account for him. *Id*. If Cooke and his brother took advantage of the vulnerability of the U.S. Government in its time of need, Secretary Chase looked the other way, because he desperately needed their assistance. *Id*. at 510. Surely, some might argue (and some newspapers at the time nearly did) that the Cookes were war profiteers who utilized their connection to Chase, and their extravagant gifts to him, to lobby for his support of their efforts. *Id*. Consequently, the activities of these bankers far exceed anything of which Halliburton (one of the leading modern targets of unseemly lobbying accusations) has been accused by the many in the media.

Lobbying efforts, of course, are not limited to the federal government; state and local governments are also targets of lobbying activities. Again, this is not a recent trend. In 1832, when Abraham Lincoln first decided to run for the Illinois House of Representatives, he was urged to undertake the campaign by several residents of New Salem, the town in which Lincoln lived at the time. DAVID HERBERT DONALD, LINCOLN 41 (1995). Those advocating a Lincoln candidacy included James Rutledge, a local mill owner who relied on the Sangamon River for his economic success. *Id*. Rutledge and other local merchants feared that New Salem's economic development would be hindered if needed improvements to the Sangamon River were abandoned in favor of the construction of a new railroad, and they believed that Lincoln was the best person to protect their interests. *Id*. at 41–42. Not surprisingly, Lincoln made the improvements to the Sangamon River a central tenet of his campaign and vigorously attacked the construction of the proposed railroad. *Id*. at 42–43. Thus, even "Honest" Abe was susceptible to the lure of lobbyists.

26. Stacie Fatka & Jason Miles Levien, *Protecting the Right to Petition: Why a Lobbying Contingency Fee Prohibition Violates the Constitution*, 35 HARV. J. ON LEGIS. 559, 562 (1998).

humble terms; our repeated petitions have been answered only by repeated injury."[27] Not surprisingly, the right "to petition the Government for a redress of grievances" is one of the six enumerated liberties protected in the First Amendment to the U.S. Constitution.[28] As a result, Congress must be careful when drafting the reforms that are likely to result from the recent scandals. The American people have a long recognized and firmly established right to bring their concerns to their elected representatives, regardless of whether they employ lobbyists to communicate that message. Congress must not silence the voices of millions due to the transgressions of a few.

III. BACKGROUND

In 1995, when the Republican Party regained the majority in both houses of Congress for the first time since the Eisenhower Administration, one of their primary stated objectives was to "restor[e] the faith and trust of the American people in their government."[29] Implicit within this goal was the belief that the Democrats had handed the control of the legislative agenda over to lobbyists, power brokers, and other Washington insiders. While this rhetoric may have scored political points quickly, it may also have proved to be naïve and simplistic as evidenced by the recent scandals.

Still, the Republican-dominated 104th Congress, led in the House by Speaker Newt Gingrich and in the Senate by Majority Leader Bob Dole, did in fact enact several significant changes to the manner in which lobbyists and lobbying activities were regulated on Capitol Hill. First, they made important changes to the House and Senate gift rules. Next, they adopted the Lobbying Disclosures Act of 1995. Additionally, in a subsequent Congress, they adopted expansive campaign finance reform legislation, the impact of which is just beginning to be realized. To provide a framework for understanding the potential impact of the proposals currently before Congress, this Section will examine each of these changes, how they altered existing law, and their impact on lobbying activities.

27. THE DECLARATION OF INDEPENDENCE para. 30 (U.S. 1776).

28. U.S. CONST. amend. I.

29. THE REPUBLICAN CONTRACT WITH AMERICA (1994), *available at* http://www.house.gov/house/Contract/CONTRACT.html.

A. House/Senate Gift Rules (Ethics in Government Act)

From 1968, when the first restrictions on gifts to members of Congress were implemented, members of Congress and their employees were prohibited from accepting gifts from "persons with a direct interest in legislation."[30] However, in 1989, Congress adopted the Ethics Reform Act which imposed strict financial limits on what gifts could be accepted.[31]

Initially, the gift rules, as in force between January 1, 1992 and December 31, 1995, permitted a member of Congress to accept gifts of any size with a limitation of $250 in total gifts from any one source in a given year.[32] However, there were a number of significant exceptions to these rules, including that any gift worth less than $100 did not count toward the aggregate limit.[33] Additionally, meals that were not included in travel were excluded from the total, meaning that lobbyists could take members of Congress out to lunch without any meaningful restriction.[34]

Convinced that these limits were limitations in name only, the 104th Congress adopted far more restrictive standards; these new rules took effect January 1, 1996.[35] Under these more rigorous rules, no gift exceeding $50 could be accepted by members of Congress or their employees.[36] Additionally, the aggregate limitation from any one source in a given year was reduced to $100 with gifts under $10 not counting toward the total.[37] Of course, these rules contained exceptions to the gift restrictions, but they were still far more restrictive than their predecessors.

B. Lobbying Disclosures Act

A second method traditionally used by Congress to curb lobbying abuses has been to require lobbyists to register with Congress and disclose their activities. As Senator Carl Levin stated during a

30. HOUSE ETHICS COMM., RULES OF THE U.S. HOUSE OF REPRESENTATIVES ON GIFTS AND TRAVEL (2006), *available at* http://www.house.gov/ethics/Gifts_and_Travel_Chapter.htm#_Toc476623567.

31. *Id*.

32. *Id*.

33. *Id*.

34. *Id*. Of course, a meal costing more than $100 would be subject to the restriction. The dollar figure was calculated by the total value received by the Member of Congress or employee. Thus, any meal under $100 not associated with a trip was unregulated.

35. *Id*.

36. *Id*.

37. *Id*.

committee hearing on lobbying disclosure in 1992: "[L]obbying disclosure laws are badly broken and need to be fixed. The purpose of our lobbying laws is to tell the public who is being paid how much to lobby whom on what."[38] This sentiment, shared by many who study our government, has been the driving force behind several efforts to expand the disclosure requirements placed on lobbying activities, the most recent of which is the Lobbying Disclosure Act of 1995.[39]

The Lobbying Disclosure Act was passed in 1995 as an attempt by the newly elected Republican Congress to distance themselves from the perceived ethical inadequacies that had arisen during the forty years of Democrat congressional control.[40] In order to increase transparency of lobbying activities, the statute requires those defined therein as "lobbyists" to register with the Secretary of the Senate and the Clerk of the House, respectively.[41]

"Lobbyist" is defined in the statute as "any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact."[42] Those individuals who received less than $5,000 compensation or distributed less than $20,000 connected with lobbying activities over a six-month period are exempt from the registration requirements as are those who spend less than twenty percent of their time in service to a particular client on lobbying activities during that same six-month period.[43]

Registered lobbyists are required to make semi-annual reports to Congress on their lobbying activities and contacts including: the issues on which they are lobbying; which officials they are lobbying; which employees are doing the lobbying; and any foreign interest the lobbyist may represent.[44] Failure to comply with these requirements can subject

38. 138 CONG. REC. S2542 (daily ed. Feb. 27, 1992) (statement of Sen. Carl Levin).

39. Lobbying Disclosure Act of 1995, Pub. L. No. 104–65, 109 Stat. 691 (1995).

40. *Id*.

41. *Id*. § 4.

42. *Id*. § 3(10).

43. *Id*.

44. *Id*. § 5. Section 3(8)(A) specifically defines "lobbying contact" as:

> [A]ny oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to:
> (i) the formulation, modification, or adoption of Federal legislation (including legislation proposals);
> (ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive Order, or any other program, policy, or position of the United States Government;
> (iii) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or

a lobbyist to a maximum fine of $50,000.[45]

By carefully crafting the definition of "lobbyist" to include only those whose lobbying activities exceed twenty percent of their time spent in service to an organization or client, Congress effectively excluded those citizens who petition the government periodically for a change in the law as a part of their employment or activities with an organization, but do not do so as a primary means of income. In fact, Congress included specific language that the Lobbying Disclosure Act was not to be "construed to prohibit or interfere with . . . the right to petition the Government for redress of grievances . . . protected by the First Amendment of the Constitution."[46]

C. Anti-Bribery Statute

Another way in which Congress has attempted to regulate the inappropriate behavior of some lobbyists and public officials is the enactment of an anti-bribery statute.[47] The statute combines the elements of both bribery and illegal gratuities into a unified crime of bribery. Specifically, anyone who "corruptly gives, offers or promises"[48] or any public official[49] who "corruptly demands, seeks, receives, accepts, or agrees to receive or accept"[50] a gift or "anything of value" in exchange for an official act[51] will be subject to prosecution.

> (iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

Id. Covered executive branch officials include: the President; the Vice President; employees of the Executive Office of the President; and all high level employees of the both the civilian and military agencies as well as those with policy-making authority. For the legislative branch, Members of Congress, elected officials of either House, and all employees of a Member of Congress, leadership staff, or congressional committee, caucus, or working group are covered. *Id*. § 3(4).

45. Lobbying Disclosure Act of 1995, Pub. L. No. 104–65 § 7, 109 Stat. 691 (1995).

46. *Id*. § 8(a).

47. 18 U.S.C. § 201(b)–(c) (2006).

48. *Id.* § 201(b)(1).

49. "Public official" is defined in §201(a)(1) as:

> Member of Congress, Delegate, or Residence Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror.

Id.

50. 18 U.S.C. § 201(b)(2).

51. "Official act" is defined in § 201(a)(3) as a "decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit." *Id*.

The potential penalties for conviction of these crimes include monetary fines, or a maximum prison sentence of 15 years, or both.[52]

The inclusion of the word "corruptly" modifying the illegal actions differentiates the bribery portion of the statute from the illegal gratuities section.[53] Thus, under § 201(c), it is illegal for any person or public official to exchange an "official act" for "anything of value." Essentially, this section of the anti-bribery statute outlaws the standard *quid pro quo* gift. The penalty for violations of this section is a monetary fine up to three times the value of the gift, or a maximum prison term of two years, or both.[54]

Interestingly, most of the allegations that encompass the current scandals are explicitly prohibited by this statute. If the trips, gifts, and contributions that Jack Abramoff gave to members of Congress were in exchange for official acts, they are, at the very least, illegal gratuities and, possibly, bribes. Additionally, the money and gifts that Representative Cunningham received were bribes, and he was rightly convicted under this statute.

D. Campaign Finance Regulations

In addition to directly regulating lobbying activities, Congress has attempted to restrain improper influence by lobbyists through restrictions on financial contributions to campaign committees.[55] While not explicitly a lobbying activity, campaign contributions certainly assist lobbying efforts by elevating the profile of certain lobbyists in the eyes of some members of Congress. To paraphrase a quote from another, more infamous, Washington scandal, "just follow the money"[56] if you wish to find the origin or influence on a particular legislative provision. Convinced that campaign contributions equate to political influence and power, many lawmakers describe efforts to reform campaign finance

52. 18 U.S.C. § 201(b).

53. 18 U.S.C. § 201(b) also addresses fraudulent acts and any other act or omissions in violation of official duty that § 201(c) does not. Essentially, these additionally acts can be included within the term "corruptly." *Id*.

54. 18 U.S.C. § 201(c).

55. Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002).

56. ALL THE PRESIDENT'S MEN (Warner Bros. Pictures 1976). To dramatize advice supplied by the key Watergate informant in real life, the Hollywood version of Deep Throat urged Woodward to "follow the money" in order to uncover the source of the secret fund of money that paid for questionable legal representation of those under investigation for the Watergate break-in, specifically Howard Hunt. The phrase "follow the money" has taken on a life of its own in the lexicon of politics and our nation's capital. It has become synonymous with influence peddling and other questionable lobbying tactics to such an extent that several websites dedicated to the oversight of political campaign contributions have adopted the phrase as their moniker.

laws as attempts to take the political system back from the special interest groups or rid the political system of the corrupting influence of lobbyists.[57]

The most recent significant campaign finance legislation to be enacted into law was the Bipartisan Campaign Reform Act of 2002.[58] Although the primary focus of the legislation was a restriction on soft money contributions to political parties, it also had a significant effect on more general lobbying activities—specifically altering the limits on campaign contributions for individuals.[59]

Following the enactment of the Bipartisan Campaign Reform Act of 2002, the campaign contributions limits under federal law are as follows: individuals (lobbyists included) may contribute $2,100 per election cycle to any single federal candidate, $5,000 per year to a Political Action Committee (PAC), and $26,700 per year to a national political party all of which is subject to an aggregate limit of $101,400 per election cycle to all federal candidates and political parties; and PACs may contribute $5,000 per election cycle to each federal candidate.[60] The limits placed on individual contributions are indexed for inflation.[61]

IV. CURRENT PROPOSALS

In response to the lobbying scandals involving Jack Abramoff and Representative Cunningham, several legislative proposals were introduced in the 109th Congress. In addition, the House adopted rules changes aimed at closing the loopholes exploited in the the recent scandals.

This Section will discuss several of the major legislative proposals and the changes they would initiate to current law. Primarily, this Section will focus on the proposal advocated by the House Speaker Dennis Hastert and Rules Committee Chairman David Dreier,[62] which passed the House of Representatives on May 3, 2006 by a vote of 217–

57. Arguing in support of a final cloture vote in the Senate on the campaign finance reform legislation he sponsored with Senator Russ Feingold, Senator John McCain described the legislation as "curbing the influence of special interests" and stated that it would "enact real reform to return the power to the people and restore their faith in our government." 148 CONG. REC. S2096-02, S2109 (2002).

58. The Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155.

59. *Id*.

60. *Id*. § 305.

61. *Id*.

62. The Lobbying Accountability and Transparency Act of 2006, H.R. 4975, 109th Cong. (2006).

213.[63] Although the 109th Congress ultimately did not enact this or any other lobbying reform legislation, this legislation provides a solid starting point for this discussion. The House legislation will be contrasted with the S. 2349, the Legislative Transparency and Accountability Act of 2006, which passed the Senate on March 29, 2006 by a vote of 90–8.[64] Additionally, provisions advocated in the 109th Congress by several other influential members of Congress will be discussed including those supported by House Majority Leader John Boehner; Senator John McCain and fellow reformers Congressman Christopher Shays and Congressman Jeff Flake; and the House and Senate Democratic Leadership.[65]

First, Subsection A discusses the changes in lobbying activity disclosure requirements. The subsections that follow will examine each successive subject matter of the legislation in turn including: gift and travel restrictions; lobbying activity of former members of Congress and staff; earmark reform; ethics training and enforcement; campaign finance reform involving 527 groups[66]; and reforms of the legislative process.

A. Disclosure

On January 17, 2006, House Speaker Dennis Hastert and House Rules Committee Chairman David Dreier outlined the principles that encompassed the primary legislative vehicle for lobbying reform in the House during the 109th Congress.[67] These principles were incorporated into legislation introduced by Chairman Dreier.[68] That legislation, H.R. 4975, the Lobbying Accountability and Transparency Act of 2006, would have, if it had been enacted, increased disclosure requirements on the lobbyists, enhanced House gift and travel restrictions, and placed new restrictions on the lobbying activities of former members of Congress and former staff members.[69]

63. 152 CONG. REC. H2057 (2006) (House Roll Call Vote no. 119).

64. 152 CONG. REC. S2511 (2006) (Senate Record Vote no. 82).

65. Since the Democratic Party gained control of both houses of Congress in the November 2006 election, it will be interesting to follow the progress of lobbying reform efforts in the 110th Congress to see if the Democratic leadership continues to back these initiatives now that they control the agenda.

66. A "527 group" is one organized under the federal tax code for the primary purpose of engaging in election activities. See discussion *infra* at Part IV.F.

67. Press Release, Congressman David Dreier, House Approves 527 Reform (Jan. 17, 2006), *available at* http://dreier.house.gov/releases/pr011706.htm.

68. The Lobbying Accountability and Transparency Act of 2006, H.R. 4975, 109th Cong. (2006).

69. *Id*.

Specifically, to increase the transparency of disclosure, H.R. 4975 would have required electronic filing of disclosure statements by lobbyists and would have established a searchable online database of the disclosures that would be accessible by the public.[70] The legislation also mandated that more specific disclosures be made of lobbying activities than those contained in the Lobbying Disclosure Act passed in 1995.[71] In order to identify any potential conflicts of interest with particular members of Congress or staff members, lobbyists would have been required to disclose whether they had been employed by the government at any point in the previous seven years.[72] To clarify where a lobbyist is concentrating his/her efforts, the legislation would have required a lobbyist to further disclose all financial contributions to federal candidates, PACs, and political party committees.[73] Additionally, to expand the current law requirement that lobbyists report the total amount of money spent on lobbying efforts, H.R. 4975 would have required lobbyists to report any gift that would count against the aggregate total of $100 under the gift rules.[74]

In the Senate, S. 2349 added a provision requiring lobbyists to disclose money spent to stimulate grassroots lobbying activities.[75] This provision appeared to be aimed at placing a restriction on attempts by lobbyists to make the views of their clients appear to be the views of constituents through contrived grassroots efforts. However, to the extent that lobbyists actually represent a large group of people nationally, such activity should not be restricted or discouraged. Disclosure is acceptable, but Congress should not act to discourage communications from constituents merely because lobbyists represent their views in Washington.

B. Gift and Travel Restrictions

On travel restrictions, the House-passed legislation would have suspended all privately-funded travel by members of Congress and their staffs during the 109th Congress.[76] During this suspension, the House Ethics Committee would have been charged with reviewing and

70. *Id*. §§ 102–103.

71. *Id*.

72. *Id*. § 104.

73. The Lobbying Accountability and Transparency Act of 2006, H.R. 4975, 109th Cong. § 105 (2006).

74. *Id*.

75. The Legislative Transparency and Accountability Act of 2006, S. 2349, 109th Cong. § 220 (2006).

76. H.R. 4975, § 301.

reporting to the House Rules Committee proposed travel and gift rule modifications by December 15, 2006.[77] Substantively, the legislation would have prohibited registered lobbyists from joining members of Congress on corporate flights.[78] To enhance enforcement of gift rules, the legislation would have mandated that tickets to entertainment and sporting events be valued for gift purposes at the highest price level for the venue if no price is contained on the ticket itself.[79]

While not prohibiting all privately-funded travel, the Senate legislation would have stressed that Senate rules do not permit Senators to accept travel paid for by lobbyists.[80] Additionally, the legislation would have required all members of Congress accepting privately-funded travel to disclose such travel to the Ethics Committee and to declare that it is not being funded by lobbyists.[81] The public could access these disclosures on websites maintained by the Secretary of the Senate and the Clerk of the House.[82]

Going even further, the proposals sponsored by both the Senate and House Democratic Leadership would have banned privately-funded travel altogether.[83] However, neither the House nor the Senate adopted either of these proposals. The House and Senate Democratic Leadership proposals would have also banned all gifts beyond nominal value from lobbyists to members of Congress and their staff.[84] Senator Russ Feingold's legislation contained a similar provision.[85] Senators John McCain and Conrad Burns and Representative Christopher Shays have advocated a ban on all gifts in excess of $20.[86] As with the Democratic Leadership's initiatives, none of these proposals were adopted.

77. *Id*. § 302. Of course, this conveniently placed the date for the required recommendations safely after the November 2006 elections. However, this ploy did not matter in the long run since the Republicans lost control of both houses of Congress in the November 2006 election.

78. *Id*. § 303.

79. *Id*. § 304. This seemingly odd provision is necessary because tickets for luxury boxes to both the Verizon Center (formerly MCI Center) in Washington and Camden Yards in Baltimore contained either no price or were valued at $49, both conveniently under the $50 maximum for an acceptable gift under the gift rules.

80. S. 2349, § 107.

81. *Id*.

82. *Id*.

83. *See* Honest Leadership and Open Government Act of 2006, S. 2180, 109th Cong. (2006); Honest Leadership and Open Government Act of 2006, H.R. 4682, 109th Cong. (2006).

84. *See* S. 2180; H.R. 4682.

85. *See* Lobbying and Ethics Reform Act of 2005, S. 1398, 109th Cong. (2005).

86. *See* Lobbying Transparency and Accountability Act of 2005, S. 2128 109th Cong. (2005); *see also* The Lobbying Accountability and Transparency Act of 2006, H.R. 4975, 109th Cong. (2006).

C. Lobbying Activities of Former Members and Staff

In the House, the primary changes concerning the lobbying activities of former members of Congress and staff were included in the rules changes adopted on February 1, 2006.[87] However, H.R. 4975 contained a few additional provisions in this area. Specifically, the legislation maintained the current prohibition on former members of Congress from accepting a lobbying position within one-year of leaving Congress.[88] To this provision, the legislation would have added a requirement that the Clerk of the House and the Secretary of the Senate notify the former member of the beginning and ending of the prohibition period.[89] Additionally, H.R. 4975 would have required members of Congress to notify the Ethics Committee of any outside employment discussions within five days of the commencement of such discussions and to refrain from voting if such discussions would create a conflict of interest on certain matters.[90] Lastly, H.R. 4975 reaffirmed the *quid pro quo* rule by explicitly stating that official acts cannot be conditioned upon outside employment with interested groups.[91] Reflecting the House ban, the Senate-passed legislation would have amended Senate rules to restrict Senate floor access for any former Senator employed in a lobbying capacity.[92]

While the House and Senate legislation would have maintained the current one-year restriction on lobbying activities by former members, several of the other bills would have expanded the limitation to two years.[93] Of course, these provisions were not adopted.

D. Earmark Reform

To help curb abuses of the legislative process, the House legislation would have required enhanced disclosure of earmarks in all legislation.[94] Earmarks are a mechanism through which members of Congress can secure the authorization or funding for a specific project by having it

87. H.R. 648, 109th Cong. (2006).

88. H.R. 4975, § 201.

89. *Id*.

90. *Id*. § 202.

91. *Id*. § 203.

92. S. 2349, § 105 109th Cong. (2006).

93. The list includes legislation introduced by the following: the Senate Democratic Leadership (S. 2180, 109th Cong. (2006)); the House Democratic Leadership (H.R. 4682, 109th Cong. (2006)); Senators John McCain and Conrad Burns (S. 2128, 109th Cong. (2006)); Senator Russ Feingold (S. 1398, 109th Cong. (2006)); Representative Christopher Shays (H.R. 4575, 109th Cong. (2006)); and Representatives Martin Meehan and Rahm Emanuel (H.R. 2412, 109th Cong. (2006)).

94. H.R. 4975, § 501.

listed in the legislation itself or its accompanying committee report.[95] Without an earmark, a project would be forced to compete with other projects around the country for funds and be judged on its merits through a competitive process managed by the federal agency responsible for the distributing the taxpayer dollars.[96] The possibility of avoiding this competitive process is an enticing invitation for corrupt behavior by lobbyists.[97]

Often, earmarks, commonly known as "pork-barrel" projects, or simply "pork,"[98] are buried in massive pieces of legislation and reports that members of Congress, their staffs, and the public have little time to review before a vote.[99] Further, earmarks are often only identified, if at all, by the state to which the money will go. To provide greater transparency of earmarks, H.R. 4975 would have required a more explicit listing of all earmarks including the name of the sponsoring member of Congress.[100]

The Senate legislation included a nearly identical provision.[101] Additionally, Senator McCain[102] and Representative Jeff Flake[103] have proposed removing the legitimacy of any congressional earmark placed in a conference report but not in the text of the appropriations bill. This is an attempt to end efforts by lobbyists to bury earmarks in a conference report that has not been read by the vast majority of Congress. Unfortunately, the McCain-Flake proposal was not adopted.

E. Ethics Training and Enforcement

The House legislation would have further established more extensive ethics training for members of Congress and their staff.[104] Additionally, members of Congress convicted of accepting bribes would forfeit their government-funded pension accounts.[105] The Senate-passed legislation

95. Brian M. Reidl, *Six Budget Reforms to Restrain Lobbyists and Special Interests*, The Heritage Foundation Web Memo #968 (Jan. 25, 2006), *available at* http://www.heritage.org/Research/Budget/wm968.cfm.

96. *Id*.

97. *Id*.

98. This moniker leads to the dismissive comment that a member of Congress who wins funding for a local project through an earmark is "bringing home the bacon."

99. Press Release, Citizens Against Government Waste (Jan. 12, 2006), *available at* http://www.cagw.org/site/News2?page=NewsArticle&id=9528.

100. H.R. 4975, 109th Cong., §501 (2006).

101. S.2349, 109th Cong., §103 (2006).

102. S. 1495, 109th Cong. (2006).

103. H.R. 1642 109th Cong. (2006).

104. H.R. 4975, § 502.

105. *Id*. § 701.

would have further required that the Comptroller General review all lobbying disclosure reports and investigate any irregularities.[106]

Unfortunately, an amendment offered by Senators Susan Collins, Joseph Lieberman, John McCain, and Barak Obama to establish an independent Senate Office of Public Integrity was defeated.[107] The proposed Office would have had the responsibility to investigate any allegations of ethical violations of members of Congress and staff and to make recommendations on potential penalties if such a violation actually occurred.[108] The Office would have been managed by an independent Director with a law enforcement, judicial, or investigative background.[109] This amendment was defeated by a vote of 30–67.[110]

F. Campaign Finance Reform Related to 527 Groups

The unusual name, 527 groups, is derived from the section of the Internal Revenue Code under which these groups are organized.[111] The tax code defines a "527 group" as one "organized and operated primarily" for election activities.[112] The activities of 527 groups include "rais[ing] and spend[ing] unlimited and virtually unregulated sums of money on political activities."[113] Obviously, such a group would create numerous campaign finance concerns. Although the Bipartisan Campaign Finance Reform Act of 2002 was intended to regulate the utilization of soft money in the political system, the statute created a significant loophole related to 527 groups that has been exploited.[114] Specifically, the statute did not require 527 groups to file with the Federal Elections Commission ("FEC") to ensure the groups were complying with federal elections law.[115]

H.R. 513, introduced by House Rules Chairman Dreier and included within H.R. 4975, would have placed 527 groups on par with other political organizations by requiring 527 groups to comply with all federal campaign finance rules and report to the FEC as political

106. S. 2349, § 231.

107. *See* 152 CONG. REC. S2477-78 (2006) (Senate Record Vote no. 77)

108. *Id*. § 13.

109. *Id*. § 12(a).

110. 152 Cong. Rec. S2477-78 (2006). (Senate Record Vote no. 77).

111. *See* 26 U.S.C. § 527(i) (2006).

112. *Id*.

113. Press Release, David Dreier, House Approves 527 Reform (Apr. 5, 2006), *available at* http://dreier.house.gov/releases/pr040606.htm. Congressman David Dreier is the Chairman of the House Committee on Rules.

114. *Id*.

115. *Id*.

committees.[116] Under the legislation, however, 527 groups would have been permitted to continue a number of activities outside of the purview of federal regulation including: all fundraising and advocacy activities concerning exclusively non-Federal candidate elections; efforts related to state or local ballot initiatives; and advocacy activities concerning nominations to judicial positions and other non-elected offices.[117]

G. Legislative Process Reform

While the House legislation did not contain any legislative process reforms beyond the earmark provisions, the Senate legislation included two significant provisions. First, S. 2349 would have required that only members of a conference committee be permitted to insert provisions into a conference report.[118] This prohibition would be enforced by allowing Senators to object through a point of order against consideration of any conference report that contains a provision that does not conform to this rule.[119] To overcome the point of order and continue consideration of the legislation, a vote of three-fifths of the Senate would be required.[120] This parliamentary procedure is an effective mechanism for the Senate to police itself, since it is extremely rare that either political party controls three-fifths of the seats in the Senate. Thus, in the vast majority of instances, only a bipartisan vote could defeat the point of order.

More importantly, the Senate legislation would have required all conference reports be made available to all members of Congress and the general public for at least 24 hours before the report could be considered by the Senate.[121] To accomplish this requirement, the Secretary of the Senate would have been required to establish a website on which the reports would be posted.[122]

V. DISCUSSION OF THE LEGISLATIVE PROVISIONS AND A MODEST ALTERNATIVE PROPOSAL

In order to determine which legislative provisions Congress should enact, it is necessary to first analyze the problem Congress is attempting

116. H.R. 513, 109th Cong. (2005).

117. *Id*.

118. S. 2349, 109th Cong., § 102 (2006).

119. *Id*.

120. *Id*.

121. *Id*. § 104.

122. *Id*.

to address. As noted earlier in this Comment, Congress has regularly responded to ethical scandals and other perceived crises with new restrictions on member behavior and lobbying activities. Unfortunately, each new restriction has been met by ingenious efforts to evade the prohibitions. Thus, the question remains whether efforts to address perceived gaps in the current regulations are serious reform efforts or merely window dressing.

To answer this question, this subsection will examine the stated goals of congressional leaders in this reform effort and will explore whether such goals are attainable. To the extent that these goals are achievable, the next section discusses which of the proposals will most effectively do so. Lastly, this Section concludes that, although efforts to strengthen current laws are a welcome development, Congress should pursue reforms that will effectively undermine the motivation that prompts efforts to evade the lobbying laws and restrictions. This Section also advocates those proposals most likely to achieve that goal.

A. Analysis of the Problem

Theoretically, the goal of Congress in pursuing lobbying reform is to remove inappropriate influences from the current system. Not surprisingly, most congressional leaders have expressed that exact sentiment. For example, House Rules Committee Chairman Dreier stated that the reform efforts he championed in the 109th Congress would "enhance transparency, disclosure and accountability" in Congress.[123] Similarly, in January 2006, House Majority Leader John Boehner described the goal of lobbying reform as "[r]estoring the public trust."[124]

However, although transparency and the public trust are issues that need to be addressed, the more significant issue raised by the current scandals is one of ethical lapses. Congress should attempt to understand why ethical lapses have occurred in the past and determine how to prevent them in the future.

B. Grading the Legislative Proposals

If the contention is accepted that the true problem that precipitated the current lobbying scandals is the existence of unethical behavior by a

123. Press Release, David Dreier, House Takes First Step Toward Overall Lobbying Reform (Feb. 1, 2006), *available at* http://dreier.house.gov/releases/pr020106.htm.

124. Press Release, John Boehner, Statement by Rep. John Boehner (R-OH) on Lobbying Reform, (Jan. 17, 2006), *available at* http://johnboehner.house.gov/News.asp?FormMode=Detail&ID=1090.

small fraction of lobbyists and members of Congress, then the legislative response to this problem needs to be tailored to preventing such unethical behavior. Again, most of the acts underlying the current scandals are illegal under current law. Specifically, the primary allegations in the both the Abramoff and Cunningham scandals involve conduct—specifically members of Congress accepting gifts, contributions, and trips in exchange for official acts—that is already prohibited under the illegal gratuities section of the anti-bribery statute.[125]

A restriction on privately-funded travel for members of Congress, additional disclosure of lobbying activities, and a clarification of the acceptable value of gifts would not have prevented these alleged acts from occurring. In many instances, charging additional offenses will not deter someone already willing to violate the law. That is not to say, however, that these proposals have little or no benefit. Obviously, such actions may have the effect of deterring future illegal conduct particularly if criminal penalties are enhanced. Additionally, by expanding the activities to which the criminal sanctions apply, Congress may be able to close existing loopholes in the law and clarify exactly the activities that Congress intends to prohibit.

These proposals will not, however, stand in the way of a lobbyist or a member of Congress willing to arrange a *quid pro quo* transaction, which is already a federal crime. The primary purpose of such proposals is, thus, to reassure the public that something is being done by Congress to address the perceived ethical inadequacies. Unfortunately, it is not certain that such enactments will do anything to curb the motivation to act inappropriately. If Congress can remove, or dilute, the motivation to commit the crime, efforts to evade the law should substantially decrease. Why would anyone risk criminal sanctions if the reward, or their motivation, is gone? Therefore, removing the motivation for illegal acts should be the primary goal of the reform effort.

C. An Alternative Proposal

Although the existing statutory restrictions on lobbying, bribery, gratuities, and campaign contributions address a myriad of illegal acts, none of these statutes attempt to alter the motive for such illegal activities. The most obvious motive for violating the lobbying rules is to gain an unfair advantage in the legislative process. As history has demonstrated, so long as the possibility of such a legislative advantage

125. 18 U.S.C. § 201 (2006).

exists, there will be ethically-challenged individuals willing to exploit loopholes in the rules in order to provide an advantage for themselves and their clients. If Congress is serious about reforming the system, it must take steps to abrogate the motives for improper behavior.

1. Elimination of Earmarks

Simply stated, no single act would solve more of the ethical problems in Washington than an elimination of earmarks in legislation. The current rules entice lobbyists to use every means available to them within (and sometimes beyond) the law to sneak a pet project or critical legislative provision into a bill or committee report. Prohibiting this practice would substantially weaken the accompanying temptation for lobbyists to circumvent the law to assert their influence.

Obviously, the elimination of earmarks will also significantly weaken the influence of members of Congress by removing their ability to directly control how federal funds are spent within their districts. However, is such influence by members of Congress proper? Are members of Congress the appropriate individuals to be making such decisions? Or should they be more concerned with returning the money to their home states and communities where local officials can decide how to spend it? A strong argument could be made that local officials are far more informed on local issues and, thus, better equipped to make decisions to address them. Regardless, it is probably not realistic to expect Congress as a whole to decide to cede such authority exclusively to local politicians.[126]

However unrealistic the prospect of eliminating earmarks may be, doing so would dramatically reduce the degree of improper influence in the legislative process in a way that merely reforming the earmark process cannot. As long as earmarks exist, clever individuals will devise a manner in which they may exploit loopholes in the law. As a result, the motivation to evade the law will persist.

2. Public Availability of Conference Reports Prior to Voting

Assuming that the elimination of earmarks is an unlikely option, Congress should, at least, require that all legislation and its accompanying conference report be available to both members of Congress and the general public for a substantial period of time prior to a vote on the legislation. The Senate legislation in the 109th Congress

126. For one thing, it may strengthen the political position of local officials making them more viable competitors for the office currently held by the member of Congress.

would have required that reports be available for twenty-four hours prior to a vote.[127] Often, however, the reports are thousands of pages long. In such an event, twenty-four hours would simply not be enough time to properly review all of the provisions. With that in mind, the materials should be available, at the very least, seventy-two hours before a vote. A three-day period would accomplish the goal of permitting the public time to review the legislation without overly burdening the operations of Congress through unnecessarily long delays.

3. Prohibition on Omnibus Legislation

Omnibus legislation, as the name suggests, is legislation that represents a combination of several different proposals addressing disparate issues rolled into one bill; this mechanism is most often used for last-minute appropriations bills. Usually, members of Congress do not have an opportunity to amend an omnibus bill and must vote on it as a whole. To assist in the efforts to provide the general public the ability to adequately review legislation, omnibus legislation should be abolished. Only legislation addressing similar subject matter should be combined into one bill. The House rules on "germaneness" may serve as a guiding principle on when legislative proposals may properly be combined.[128] Additionally, to further restrict omnibus legislation, a page limit on the resulting legislation and committee report could be imposed on any attempts to combine legislation.

4. Conference and Committee Report Reform

Often, a lobbyist, knowing that many courts rely on the language in a conference or committee report to discern legislative intent, will encourage a committee staffer to insert in a committee report language that reflects a position beneficial to a client of the lobbyist, even if the inserted language conflicts with the statutory text.[129] The problem, of course, is that very few members of Congress ever read the actual text of a conference and committee reports.[130] To help alleviate this particular

127. S. 2349, § 104.

128. Rule XVI of the House Rules of the 109th Congress addressed germaneness by stating that: "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment." House of Representatives, Committee on Rules, http://www.rules.house.gov/ruleprec/109_house_rules_text.htm (last visited Jan. 21, 2007).

129. Antonin Scalia, *Common Law Courts in a Civil-Law System: The Role of the United States Federal Courts in Interpreting the Constitution and Laws*, *in* A MATTER OF INTERPRETATION 3, 34 (Amy Gutmann ed., 1997).

130. *Id*.

abuse, Congress should make a legislative determination on the validity of conference and committee reports. Two potential paths are to either prohibit any language in a conference or committee report that does not conform to the text of the bill, or to enact a law that clarifies that conference and committee reports are informational only and that courts should afford them little, if any, weight.

5. Office of Public Integrity

On the enforcement front, the best idea advanced in this debate was the proposal for an independent Office of Public Integrity as introduced by Senators Collins, Lieberman, McCain, and Obama.[131] An office independent from Congress with the responsibility of investigating ethical violations may be the best deterrent to such behavior. Further, nothing could restore public confidence more quickly and thoroughly than the knowledge that an independent investigator, rather than Congress itself, is reviewing ethical lapses in Congress. As a result, Congress should embrace this proposal and establish this Office.

VI. CONCLUSION

Although a number of the new restrictions on lobbying activities pursued during the 109th Congress would have been welcome reforms, Congress should go further in their efforts to cleanse the current system. The simple truth is that most of the conduct that has prompted the reform movement was illegal under existing law. If the law has failed to prevent activities that are currently illegal, why should anyone expect that further restrictions will prevent future transgressions? The fundamental reality is that, as long as the legislative system provides an avenue through which lobbyists can gain an unfair advantage for themselves or their clients, ethically-challenged individuals will exploit the loopholes in the law to gain these advantages. Thus, the only way to curb illegal activity is to remove the motive for such actions. The elimination of this motivation should be the primary goal of the 110th Congress.

131. *See* 152 CONG. REC. S2477-78 (2006) (Senate Amendment 3176 offered to S. 2349 on March 28, 2006).