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Q AND A ON PROVISION IN PENDING SENATE BILL THAT REQUIRES DISCLOSURE OF AMOUNTS SPENT ON “ASTROTURF” LOBBYING CAMPAIGNS

The ethics and lobbying reform bill pending in the Senate contains an important provision to require professional lobbying firms, and organizations registered and reporting under the lobbying laws, to report the amounts they spend to conduct “Astroturf” lobbying campaigns.

“Astroturf” lobbying campaigns involve paid media, phone bank, direct mail and other paid public communication campaigns to urge the general public to lobby Congress on legislation. Currently the huge amounts spent on these lobbying campaigns are not disclosed.

A number of incorrect claims have been made about the pending proposal to require disclosure of the amounts spent on “Astroturf” lobbying efforts. Some of these claims are based on incorrect interpretations of the legislative proposal, while others are based on an analysis of the wrong proposal.

For example, a number of criticisms of the proposed disclosure requirement for “Astroturf” lobbying made by a group called the Free Speech Coalition, Incorporated are based on language in H.R. 4682 introduced in the House last year, and do not apply to the disclosure provision contained in the bill currently being consideration by the Senate.

The Senate-passed bill last year, S. 2349, included the same “Astroturf” lobbying disclosure provision that is contained in the Senate bill currently being considered. This provision was supported last year by reform groups and a number of non-profit organizations.

This Q and A deals with the disclosure provision for “Astroturf” lobbying contained in the ethics and lobbying reform bill that is currently pending in the Senate.

Q. Who is covered and who is exempted from the “Astroturf” disclosure provision?

A. The “Astroturf” disclosure provisions would require professional “Astroturf” lobbying firms to register and report the amounts they receive to conduct “Astroturf” lobbying campaigns, and would also require lobbying organizations already registered under the law to report the aggregate amount they spend on “Astroturf” lobbying efforts, if the amount spent is significant — more than \$25,000 per quarter.

The disclosure provision would not apply to any individual or organization that is not otherwise required to register and report as a lobbyist or lobbying organization, other than currently unregistered professional “Astroturf” lobbying firms.

The provision also would not require registered lobbying organizations to report any of the money they spend to communicate with their own members urging them to lobby Congress (traditional grassroots lobbying campaigns).

Instead, the disclosure provision would only apply to money spent by professional “Astroturf” lobbying firms and registered lobbying organizations on paid media and other public communication campaigns to urge the general public to lobby Congress on legislation. (professional “Astroturf” lobbying campaigns).

Q. How does the “Astroturf” lobbying provision affect free speech or lobbying activities?

A. The lobbying disclosure provision would not in any way restrict free speech and would not in any way restrict lobbying activities by anyone. The “Astroturf” disclosure provision would only require disclosure of the money being spent by professional “Astroturf” lobbying firms and registered lobbying organizations and the legislative issues they are advocating in Congress.

Q. Have the courts addressed the constitutionality of requiring disclosure of grassroots lobbying activities?

A. Yes. The Supreme Court has long made clear that disclosure of professional grassroots lobbying activities is constitutional because such disclosure serves important governmental interests. In *U.S. v. Harriss*, 347 U.S. 612 (1954), the Court approved an earlier lobbying disclosure scheme which included not only direct communications to Congress but also “artificially stimulated letter campaign[s]” to influence legislation. The Court cited legislative history that described these efforts as by those “who do not visit the Capitol but initiate propaganda from all over the country, in the form of letters and telegrams...” 347 U.S. at 620 n.10. The Court said that disclosure of these efforts is a form of “self-protection”:

Present day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures....

Toward that end, Congress has not sought to prohibit these pressures. It has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose. It wants only to know who is being hired, who is putting up the money, and how much....Under these circumstances, we believe that Congress...is not constitutionally forbidden to require the disclosure of lobbying activities. 347 U.S. at 625.

Following the *Harriss* decision, several lower courts upheld state grassroots lobbying disclosure provisions as well.

Q. What would be required to be disclosed under the “Astroturf” lobbying disclosure provision?

A. The disclosure provision would require professional “Astroturf” lobbying firms to register and to report the total amount they receive from each client to conduct “Astroturf” lobbying campaigns and the amount of that total figure that is spent on paid advertising.

The provision would also require organizations that are already required to register and report their direct lobbying activities in Congress, to also report a good faith estimate of the aggregate amount they spend on “Astroturf” lobbying efforts—efforts to communicate to the general public, not their own members—if the spending is more than \$25,000 during a quarter.

Today, for example, a professional “Astroturf” lobbying firm can spend large amounts on a broadcast advertising campaign to urge the public to lobby for or against a tax provision involving the oil industry, or for or against a policy position involving health issues, without any information being provided to the public on the amounts being spent on these “Astroturf” lobbying campaigns.

Q. Some have claimed that the lobbying disclosure provision targets genuine, small grassroots communications, and not the so-called “Astroturf” or wealthy, stealth lobbying coalition efforts in support of high-priced direct lobbying. Is this correct?

A. No. The disclosure requirements apply only in two ways. First, professional “Astroturf” lobbying firms are required to register and report their “Astroturf” lobbying activities. These are the “hired-gun” lobbying firms that are in the business of conducting “Astroturf” lobbying campaigns and that are retained by a client for pay to engage in public communication campaigns to urge the public to lobby Congress on legislation.

Second, other than “Astroturf” lobbying firms, only groups which are otherwise required to register and report under the lobbying disclosure laws, because they engage in direct lobbying activities in Congress, would have to report their “Astroturf” lobbying efforts. But these groups only would be required to report if they had expenditures of more than \$25,000 on “Astroturf” lobbying aimed at the general public during the quarterly reporting period.

Most citizens groups never even trigger the requirement that they register under the lobbying laws. Those groups that do register would have to report amounts spent on “Astroturf” lobbying campaigns *only if* they spent a substantial amount — more than \$25,000 during the quarterly reporting period — on those campaigns.

This provision is not going to affect “genuine, small” grassroots efforts and would not cover any citizens groups conducting “grassroots” lobbying activities that only involve their own members.

Q. Some groups claim that informational and educational materials sent to the general public about policy matters, regardless of how little money is spent to disseminate those communications, would be required to be registered and reported quarterly. Is that true?

A. No. Groups that are not required to register and report under the lobbying disclosure laws could send an unlimited amount of informational and educational materials to the general public and there would be no reporting required for these activities, even if the materials urged the public to lobby Congress.

Groups that are already required to report under the law would be required to report their expenditures for “informational and educational” materials only if the materials urge the general public to lobby Congress on legislation and the groups spend more than \$25,000 during the quarterly reporting period involved.

Q. Some groups claim that there is a provision in the bill that serves no purpose other than to require registration of grassroots efforts regardless of the dollar expenditures. Is that true?

A. No. The provision cited by these groups actually provides just the opposite result. Opponents of the “Astroturf” lobbying disclosure provision refer to a section in the current lobbying law which provides an exemption from registration as a lobbying organization for any group which spends less than \$10,000 on direct “lobbying activities” in a quarter. A section in the proposed new “Astroturf” provision says that in applying this exemption, the term “lobbying activities shall not include paid efforts to stimulate grassroots lobbying.”

This means that even if a group spends \$10,000, \$100,000 or more on any form of grassroots lobbying activities, the group would still not be required to register as a lobbying organization, unless the group also spent at least \$10,000 on direct lobbying activities.

And, as long as the group is not required to register as a lobbying organization, it would not have to report any of the money it spends on “Astroturf” lobbying activities.

Thus, opponents of this provision are interpreting the proposed new “Astroturf” disclosure provision precisely backwards. The provision, in fact, serves as a protection for groups which engage in “grassroots and/or Astroturf” lobbying activities but do not do direct lobbying—by shielding those groups from having to register and report under the lobbying disclosure laws.

Q. Some groups claim that the bill “creates loopholes for large, wealthy special interests,” “foreign corporations” and non-profits “established and financed by individual billionaires.” Is that true?

A. No. The disclosure provision defines “paid efforts to stimulate grassroots lobbying,” or “Astroturf” lobbying, to include paid attempts “to influence the general public.” The

provision expressly exempts from this definition “any communications by an entity directed to its members, employees, officers or shareholders.”

Opponents cite this exemption as a “loophole” that would allow a large corporation to influence policy by communicating to its shareholders. In fact, this exemption exists to extend to all organizations, including non-profit membership groups, the right to communicate internally within the organization to their own members, without those communications being impeded in any way, and without the communications being subject to reporting requirements.

Q. Some groups claim that a non-profit group that has three employees, accepts only small dollar contributions from the public, and spends no money on lobbyists, would have to register if one of its employees operates a Web site and sends out email alerts, or places informational ads in newspapers that urge readers to contact Congress on legislation. Is this true?

A. No. The hypothetical group cited in this example would not be required to register and report as a lobbying organization. Since the group does no direct lobbying, it is not required to register as a lobbying organization and is therefore not required to report any money it spends on “grassroots” or “Astroturf” lobbying activities. The group also would not have to register or report as an “Astroturf” lobbying firm, since the group has not been retained by a client to engage in “paid efforts” to conduct “Astroturf” lobbying activities.

The bottom line is that the enactment of this disclosure provision would not require the hypothetical group cited in this example to register or report under the lobbying disclosure laws.

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