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December 14, 2006

Ms. Joan Claybrook  
President  
Public Citizen  
215 Pennsylvania Avenue, SE  
Washington, DC 20003

Re: **Public Citizen Writes Ethics Bill With Loopholes for  
Itself and Big Corporations, Yet Would Restrict Real  
Citizen Democracy and First Amendment Rights**

Dear Ms. Claybrook:

While we agree that Congress and the Washington culture are in need of reform, the grassroots provisions of Speaker-Elect Pelosi's ethics bill that ***Public Citizen acknowledges on its website it is helping to craft*** are flawed to the point of hypocrisy.

Speaker-Elect Pelosi's ethics and lobbying reform bill for the incoming Congress, to be modeled after her 2006 bill, H.R. 4682, would place ***unprecedented*** congressional control and restrictions over the rights of real citizen associations to educate and inform citizens so that they may communicate with their elected representatives about policy matters and legislation that affect them. Section 204 of that bill would turn the definition of lobbying on its head to include communications to the ***general public***.

The bill also ***creates loopholes and special exemptions for large, wealthy special interests such as Public Citizen, large corporations, trade associations and unions***. Those loopholes would be available even to ***foreign corporations*** and membership nonprofits established and financed by ***individual billionaires***. The loophole under section 204(a)(2) would benefit K Street, Wall Street and foreign interests, while Main Street America suffers.

Public Citizen, in other words, is helping craft legislation that would help big special interests and Washington-based corruption that Public Citizen publicly mocks.

Section 204(a) of the 2006 bill would redefine "lobbying" to include grassroots policy communications ***to the general public***. Such communications would be subject to registration and quarterly reporting to Congress — that very same body that is often worthy of criticism by grassroots citizen action associations. ***The bill would apply to those who have no Washington-based lobbyists, who provide no money or gifts to Members of Congress, and who merely seek to speak, associate and petition the government.*** The bill would create more restrictions and

burdens on small, low-funded citizen associations than on the direct lobbying by large corporations, trade associations, unions, membership organizations like Public Citizen and other well-financed, Washington-based special interest organizations.

As a matter of fact and principle, regulating the speech, publishing, association and petitioning rights of citizens *is not targeted at corruption in Washington* as Public Citizen would have its supporters believe. Instead, it is targeted *directly at the First Amendment rights of citizens and their voluntary associations*. Your bill, therefore, would restrict rights of the real “watchdogs,” American citizens.

The registration and quarterly reporting of grassroots communications to the public that you support are a frontal attack on the First Amendment. Requiring citizen-critics of Congress or their communication agents to register with Congress, as H.R. 4682 and its apparent successor bill would do, would most certainly chill these rights. The *bill also would impose penalties on those who exercise their basic First Amendment rights* but who do not register with Congress. Public Citizen’s approach merely centralizes even more power in Washington, and gives advantage to big-spending special interests over real citizen associations who may already be strapped for funds.

The attached analysis prepared by lawyers with expertise in nonprofit advocacy supports our criticism of your efforts.

We therefore urge Public Citizen, its projects Congress Watch and CleanUpWashington, and others in your coalition<sup>1</sup> to renounce efforts to regulate grassroots communications, as the bill you are helping draft for Speaker-Elect Pelosi would apparently require. Since the grassroots provisions in the bill would help protect corruption in Washington, we ask that you confirm immediately that Public Citizen will oppose any and all regulation of grassroots communications to the general public.

Sincerely,

Dick Dingman  
Free Speech Coalition, Inc.

Shannon G. Benton  
TREA Senior Citizens League

Jim Babka  
DownsizeDC.org, Inc.

The Honorable Morton Blackwell  
Conservative Leadership PAC

Stephen Baskerville  
American Coalition for Fathers and Children

James Bopp, Jr.  
James Madison Center for Free Speech

Kimberly Bellissimo  
BMW Direct, Inc.

David N. Bossie  
Citizens United

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<sup>1</sup> Campaign Legal Center, Common Cause, Democracy 21, League of Women Voters, U.S. PIRG

Jim Boulet, Jr.  
English First

Michael Centanni  
Freedom's Defense Fund

Mark Chmura  
Americans for the Preservation of Liberty

Larry Cirignano  
CatholicVOTE.org

Kay Daly  
Coalition for a Fair Judiciary

Eugene Delgaudio  
Public Advocate of the U.S., Inc.

Bill Donohue  
The Catholic League

Bruce Eberle  
Eberle Associates, Inc.

Richard Falknor  
Maryland Taxpayers Association, Inc.

Mark Fitzgibbons  
American Target Advertising, Inc.

William Greene  
RightMarch.com

Colin A. Hanna  
Let Freedom Ring, Inc.

Rick Hendrix  
Clear Word Communications Group

Brenna Hill  
Health Freedom Foundation and American  
Association for Health Freedom

Don Irvine  
Accuracy in Media

Dr. John J. Karch  
Slovak League of America

David Keene  
American Conservative Union

Thomas P. Kilgannon  
Freedom Alliance

M.E. Lewis  
Lewis & Company Marketing  
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James L. Martin  
60 Plus Association

Rod D. Martin  
TheVanguard.org

Jeffrey Mazzella  
The Center for Individual Freedom

Manuel Miranda  
Third Branch Conference

Rev. Duane Motley  
New Yorkers for Constitutional Freedoms

Edward I. Nelson  
U.S. Border Control

C. Preston Noell III  
Tradition, Family, Property, Inc.

Jane Orient, M.D.  
Association of American Physicians and  
Surgeons and  
American Health Legal Foundation

Ron Pearson  
Council for America

Ben Piper  
ProEnglish

Larry Pratt  
Gun Owners of America, Inc.

Maurine Proctor  
Family Leader Network

Amy Ridenour  
National Center for Public Policy Research

Terrence Scanlon  
Capital Research Center

Thomas A. Schatz  
Council for Citizens Against  
Government Waste

Rev. Louis Sheldon  
Traditional Values Coalition

Craig Shirley  
Shirley & Banister Public Affairs

Ron Shuping  
The Inspiration Networks

J. Michael Smith  
Home School Legal Defense Association

Kenneth R. Timmerman  
Foundation for Democracy in Iran

Richard A. Viguerie  
ConservativeHQ.com

Paul Weyrich  
Free Congress Foundation

Donald E. Wildmon  
American Family Association

Jason Wright  
Institute for Liberty

Wendy Wright  
Concerned Women for America

cc: Coalition in footnote 1

## Analysis of Key “Grassroots” Provisions of Public Citizen/Pelosi Lobbying Reform Bill, H.R. 4682 (2006)\*

### I. Low-Dollar Communications By Independent Citizen Action Groups Must Be Reported Quarterly or Penalties Apply

Section 204(a)(1) of H.R. 4682 would redefine lobbying subject to registration and reporting to include communications to the general public. Informational and educational material 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. Lobbying would be redefined to include “paid” efforts to stimulate grassroots lobbying,<sup>A</sup> and would apply regardless of whether a grassroots effort (1) has direct lobbyists in Washington, (2) expends any money on meals, junkets, etc., which are the corrupting influences Public Citizen claims are part of the “ethics” problem, (3) makes political contributions to political candidates, or (4) is in any other way linked to the real culture of corruption in Washington.

Section 204(b)(2) targets genuine, small grassroots communications, and not the so-called “Astroturf” or wealthy, stealthy lobbying coalition efforts in support of high-priced direct lobbying. Section 204(b)(2) would amend 2 USC 1603(a)(3)(A) so that grassroots lobbying is *disqualified* from the registration exemptions for direct lobbyists, who need not register if their expenditures are below certain dollar amounts.<sup>B</sup> Section 204(b)(2) ***serves no purpose other than to require registration of grassroots efforts regardless of the dollar expenditures.*** Certain direct lobbying conducted in Washington would remain exempt from reporting under the same bill.

Nonprofits and other citizen action groups would be required to report their First Amendment activities to Congress on a quarterly basis, with severe civil and potentially criminal sanctions for failures to register and report.

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\*Prepared by Attorneys William J. Olson and Mark B. Weinberg (Legal Co-Counsel to the Free Speech Coalition, Inc.), John S. Miles and Mark J. Fitzgibbons.

<sup>A</sup> The 2006 Senate-passed bill, which is expected to be re-introduced in the next Congress, defined “paid” efforts to stimulate grassroots lobbying simply as excluding communications to fewer than 500 members of the general public, with no other qualifier, limitation, or specific dollar amount. See S. 2349, sec. 220(a)(2). ***Communications to 500 or more citizens, therefore, would be deemed “paid” communication subject to registration and quarterly reporting.***

<sup>B</sup> The lowest “direct” lobbying exemption amount would be \$2,500 per quarter for “retained” lobbyists and \$10,000 for organizations that “employ” lobbyists under 2 USC 1603(a)(3)(A), as amended by section 201(b)(5) of H.R. 4682.

## **II. Loopholes for Big Corporations, Trade Associations, Unions and Large Special Interests**

Section 204(a)(2) would amend 2 USC 1602 by adding new subsection (19)(B), which would exempt communications to “members, employees, officers or shareholders” from the same lobbying reporting requirements applicable to others, including small, citizen action associations. That means large corporations, trade associations, unions and other wealthy special interest groups would be able to spend hundreds of millions of dollars annually to mobilize countless millions of their associates for or against legislation, federal agency regulations, White House policy, judicial and cabinet appointments, *yet still not disclose those vast expenditures*. This loophole would be available even to (1) foreign corporations and (2) membership nonprofit organizations established and financed by individual billionaires, even foreign nationals.

## **III. Additional Registration Required for Those Who Do Not Have In-House Public Relations Staff**

In addition to the requirement that grassroots organizations themselves register, Section 204(a)(2) would amend 2 USC 1602 by adding new subsection (20) to require registration of “grassroots lobbying firms,” a new statutory classification. Additional registration, with concomitant costs and potential penalties, would apply to any person or entity retained to *communicate to the general public*, and receiving, spending or agreeing to spend \$50,000 in any three months. Even though such agencies neither lobby nor are hired by lobbyists, they would be required to register and report the same as lobbyists who actually engage in contacts with Congress. The dollar threshold, of course, is less than the costs of a single national direct mailing or just two issue ads placed in national newspapers. This separate registration of grassroots lobbying firms would be *in addition* to the registration requirements for grassroots efforts conducted in-house by citizen action associations.

## **IV. Examples of Adverse Impact of Grassroots Provisions**

### **A. Registration of Small Grassroots Associations**

A new nonprofit organization located in the Midwest, called Citizens for Real Reform (CRR), has three employees, one of whom is in charge of public outreach. CRR has no financing other than small-dollar individual donations from the general public, no Washington-based lobbyists, and spends no money on contributions, meals or junkets for politicians. The one employee operates CRR’s website, and spends most of his time sending out email alerts, and writing and placing issue ads for newspapers that provide information to citizens. These communications urge readers to contact Congress in opposition to certain legislation that protects special interests. Under H.R. 4682, CRR must register and report these grassroots activities since CRR has a paid employee in charge of “stimulating” public action.

## B. Registration of Other Grassroots Communications

CRR next retains a direct marketing agency to communicate CRR's positions to the general public. The agency agrees to mail 100,000 prospect letters to citizens around the nation at \$.50 each (\$50,000) over a three month period, and create a more useful website for CRR for \$2,000. The agency engages in no lobbying. The direct mail appeal generates only \$40,000 in contributions, thus it *loses* \$10,000. The agency retained by CRR spent more than \$50,000. Although it lost money on the project, the agency would be required to register and report as a grassroots lobbying firm on behalf of CRR.

## C. Loophole for Corporations

Five large companies support the legislation CRR opposes. The in-house public relations teams of each company spends \$10 million sending communications to their employees, officers and shareholders urging them to contact Members of Congress in support of the legislation. That \$10 million in grassroots expenditures is **not** required to be reported under HR 4682, supported by Public Citizen.

## D. Loophole for Large Membership Nonprofits

Three "seniors" nonprofits with 20 million members receive \$20 million directly from a foreign-owned company. That money is earmarked for the nonprofits to mobilize their members in support of the legislation, and it is not used in any direct lobbying. The \$20 million spent by the nonprofits urging their members to support the legislation is **not** required to be reported under H.R. 4682.<sup>C</sup>

## V. Conclusion

H.R. 4682 would target and restrict the First Amendment rights of citizens on an unprecedented and needless basis. There is no correlation between the fundamental rights being targeted by this and similar bills and the real ethics and corruption problems in Washington. The bill also provides huge loopholes for wealthy Washington insiders and special interests that actually may be engaging in (1) writing legislation and making policy without disclosure and "sunshine," (2) providing money, gifts and trips for Members of Congress, and (3) seeking pork, privileges and handouts from Congress.

There are ways to legislate to reduce corruption in Washington, but regulating First Amendment rights, in the way H.R. 4682 proposes to do, would only further corruption, not reduce it.

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<sup>C</sup> Only financing directly or indirectly received from or arranged by a "retained" lobbyist would make such membership communications subject to reporting. H.R. 4682, Sec. 204(a)(2), amending 2 USC 1602 with new subsection (19).