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Legislative Bulletin……..……March 24, 2006

Contents:

H.R. 4975—Lobbying Accountability and Transparency Act (Dreier, R-CA)

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Order of Business: H.R. 4975 has been referred to five committees (Rules, Standards, House Administration, Judiciary, and Government Reform) and has not yet been scheduled for House floor consideration.

Summary by Title:

Title I - Enhancing Lobbying Disclosure

- Requires that lobbying disclosure reports be filed four times a year (up from two times a year in current law) and reduces from 45 days to 20 days the grace period for filing after the close of each reporting period. Makes various conforming amendments to reflect this switch to a quarterly reporting system.

- Requires that lobbying registration forms and disclosure reports be filed electronically (with the same deadlines as those for non-electronic filings). Provides for extensions of deadlines for electronic filings under certain circumstances.

- Authorizes "such sums" for the Secretary of the Senate and the Clerk of the House to create and maintain a new, publicly accessible database of lobbying registrations and disclosure reports. The database would have to be free to the public, accessible using the Internet (filings would have to be posted within 48 hours of receipt), searchable, storable, and downloadable.

- Increases from two years to seven years the time period for which past Executive Branch and Legislative Branch employment would have to be disclosed on lobbying registrations.

- Requires that lobbyists disclose, as part of their quarterly reports, the name of each federal candidate or officeholder, leadership PAC, political party committee, or other FEC-regulated political committee to which they made an FEC-reportable contribution, and the dates and amounts of such contributions.

- Requires that lobbyists disclose, as part of their quarterly reports, the date, recipient, and amount of any gift given to a qualified legislative branch official (defined in 2 U.S.C. 1602(4)) that triggers the House gift rule (Rule XXV, Clause 5).

- Increases the maximum civil penalty from $50,000 to $100,000 for lobbyists who knowingly fail to register or file, as required under current law, or to remedy a defective filing within 60 days after notice of such a defect by the Secretary of the Senate or the Clerk of the House of Representatives.

Title II - Slowing the Revolving Door

- Requires that the Clerk of the House inform all Members, officers, and relevant employees of the start- and end-dates of the one-year lobbying prohibitions that apply to them, and that the Clerk inform each House office affected by the prohibitions on these departing individuals. [For details on these current-law lobbying prohibitions for Members of Congress and officers and employees of the Legislative Branch, see 18 U.S.C. 207(e).]

- Amends House Rules to require that a Member file with the Committee on Standards of Official Conduct a statement that he or she is negotiating compensation for prospective employment or has any arrangement concerning prospective employment (within five business days of commencing the negotiation or entering the arrangement), if a conflict of interest or the appearance of a conflict of interest may exist.

- Amends House Rules to request that Members refrain from voting on any legislative measure pending before the House or any committee thereof, if the above-mentioned negotiation for employment might create a conflict of interest.

- Restates House Rules to prohibit House Members, officers, and staff from taking or withholding (or threatening to take or withhold) an official act or from influencing (or threatening to influence) the official act of another, with the intent to affect an employment decision or practice of any private or public entity (except Congress) on the basis of political party affiliation.

Title III – Suspension of Privately-Funded Travel; Curbing Lobbyist Gifts

- Prohibits House Members, officers, and staff from accepting a gift of travel (including any transportation, lodging, and meals ding such travel) from any private source. Trumps any provisions in House Rules to the contrary. There is no expiration date for

this prohibition; subsequent legislative action would be required to reverse the travel ban.

- Requires the Committee on Standards of Official Conduct to report its recommendations on gifts and travel rules to the House Rules Committee by December 15, 2006. The recommendations on travel would have to incorporate the ability of House Rules to "protect the House, its Members, officers, and employees, from **the appearance of** impropriety." [emphasis added] The recommendations on travel would also have to address whether current rules are adequate or whether new rules should be adopted to prevent only certain (as opposed to all) private entities to fund travel for Members, officers, and staff. The recommendations on gifts would have to address the appropriateness of the current dollar limitations (and whether such limits should be lowered).

- Prohibits registered lobbyists from accompanying Members on corporate charter flights when the aircraft for such flights is owned or operated by a person who is the client of the lobbyist or his firm. *[For example, if a Member is on a plane owned by a computer company, the computer company's in-house lobbyist COULD be on the plane with the Member, but any outside lobbyist hired by the computer company could NOT be on the plane.]*

- Amends House Rules to require that a gift of a ticket to a sporting or entertainment event be valued at the face value of the ticket or the highest cost of a ticket with a face value for the event, in the case of a ticket without a printed face value.

Title IV - Oversight of Lobbying and Enforcement

- Directs the House Inspector General to conduct random audits of lobbyists' disclosure reports and allows the Inspector General to refer disclosure violations to the Department of Justice for disciplinary action.

- Directs the House Inspector General to annually review and report on the lobbying related responsibilities of the Clerk of the House and to make recommendations for compliance improvements.

Title V - Institutional Reforms

- Creates a new point of order in the House against:
  --the rule for a general appropriations bill reported by the Committee on Appropriations whose report does not include a list of earmarks in the bill or in the report (accompanied by the name of any Member who submitted a request to the Committee on Appropriations for an earmark included in such list);
  --the rule for a conference report accompanying a general appropriations bill whose joint explanatory statement does not include a list of earmarks in the conference report or joint statement (accompanied by the name of any Member who submitted a request to the Committee on Appropriations for an earmark included in such list)

that were not committed to the conference committee by either House (i.e. not in the original House-passed or Senate-passed bill texts), not in the original House committee report, *and* not in a report of a Senate committee on a companion measure.

- Makes the above points of order non-waivable and provides the details for how the point of order would be raised and debated.

- Defines "earmark" as "a provision in a bill, joint resolution, or conference report, or language in an accompanying committee report or joint statement of managers, providing a specific amount of discretionary budget authority to a non-Federal entity, **if such entity is identified by name**." [emphasis added]. *[For example, an earmark for $300,000 for a swimming pool at 1500 Swimming Lane in East St. Louis, even if not properly identified with its requesting Member, would apparently NOT trigger the aforementioned points of order because no non-federal entity is named.]*

- Excludes government-sponsored enterprises (like Fannie Mae) from the definition of earmark. Also excludes earmarks for state governments, local governments, Indian tribes, and foreign governments, unless the provision or language also details the specific purposes for which the designated budget authority is to be expended.

- Directs the Standards Committee to provide ethics training once per Congress to each House employee. New employees would have to receive ethics training within 30 days of their start-date.

- Encourages, but does not require (because "adding qualifications to service as a Member may be unconstitutional"), Members to participate in ethics training. House employees would have to file certifications with the Standards Committee that they completed ethics training and are familiar with the contents of any pertinent publications so designated by the committee.

- Requires the Standards Committee to update its ethics manual once per Congress and to inform Members and staff of any rulings or advisory opinions that constitute changes to, or interpretations of, existing policies.

Title VI - Reform of Section 527 Organizations

This title consists of the **entire text of H.R. 513** ("Shays-Meehan"), as reported from the House Administration Committee, and **two provisions from H.R. 1316** ("Pence-Wynn"), as reported from the House Administration Committee.

In short, this title would make more independent citizens groups organized under Section 527 of the Internal Revenue Code subject to federal campaign finance regulations. The approach in H.R. 1316, largely absent from H.R. 4975, is to reduce campaign finance regulations.

Provisions from Shays-Meehan (H.R. 513)

Specifically, the language:

- Amends the Federal Election Campaign Act of 1971 (FECA) to include any applicable 527 organization in the definition of "political committee."

- Exempts from the definition of a 527 organization under FECA a committee, club, association, or other group of persons that
  --is a 501(c);
  --will not have more than $25,000 in receipts in a year;
  --is a political committee of a state or local candidate or which is a state or local committee of a political party;
  --is organized, operated, and makes disbursements exclusively for paying certain tax-deductible business expenses or expenses of a certain kind of political newsletter fund;
  --consists solely of candidates for or individuals holding state or local office, but only if the organization refers only to one or more non-federal candidates or applicable state or local issues in all of its voter drive activities, without reference to any federal candidate; or
  --engages in election or nomination activities relating exclusively to elections where no federal candidate appears on the ballot, or to influencing the selection, nomination, election, or appointment of one or more candidates to non-federal offices or individuals to non-elected offices, or to influencing one or more applicable state or local issues.

- Denies the above exclusivity test for any committee, club, association, or other group of persons that makes disbursements aggregating more than $1,000 for:
  --a public communication that promotes, supports, attacks, or opposes a clearly identified federal candidate during the year leading up the relevant general or runoff election; or
  --any voter drive activity during a calendar year, except if the group makes a voter drive in only one state with no reference to, or affiliation with, federal candidates or national parties and makes no contributions to federal candidates.

- Allows organizations to avoid FECA regulation if they, as part of a voter drive, refer to a federal candidate only in connection with an election for a non-federal office in which such federal candidate is also a candidate or in connection with the fact that the candidate has endorsed a non-federal candidate or has taken a position on an applicable state or local issue.

- Allows organizations to avoid FECA regulation if they, as part of a voter drive, refer to a national party only:
  --for the purpose of identifying a non-federal candidate;
  --for the purpose of identifying the entity making the public communication or carrying out the voter drive activity; or

--in a manner or context that does not reflect support for or opposition to a federal candidate and does reflect support for or opposition to a state or local candidate or an applicable state or local issue.

- Defines "voter drive activity" as any of the following activities conducted in connection with an election in which a federal candidate appears on the ballot (regardless of whether a state or local candidate also appears on the ballot):
  --voter registration activity;
  --voter identification;
  --get-out-the-vote activity;
  --generic campaign activity; or
  --any public communication related to these four activities.

- Sets the allocation and funding rules for certain expenses relating to a 527's federal and non-federal activities, as follows:
  --100% of the expenses for public communications or voter drive activities that refer to one or more clearly identified federal candidates, but do not refer to any clearly identified non-federal candidates, would have to be paid with funds from a federal account;
  --At least 50% (or greater if the FEC so determines by regulation) of the expenses for public communications and voter drive activities that refer to one or more clearly identified federal candidate(s) and one or more clearly identified non-federal candidate(s) would have to be paid with funds from a federal account;
  --At least 50% (or greater if the FEC so determines by regulation) of the expenses for public communications or voter drive activities that refer to a political party, but do not refer to any clearly identified federal or non-federal candidate, would have to be paid with funds from a federal account, except if the communications or activities relate exclusively to elections where no federal candidate appears on the ballot;
  --At least 50% (or greater if the FEC so determines by regulation) of the expenses for public communications or voter drive activities that refer to a political party and refer to one or more clearly identified non-federal candidates, but do not refer to any clearly identified federal candidates, would have to be paid with funds from a federal account, except if the communications or activities relate exclusively to elections where no candidate for federal office appears on the ballot;
  --At least 50% (unless otherwise determined by the FEC) of any administrative expenses, including rent, utilities, office supplies, and salaries not attributable to a clearly identified candidate, would have to be paid with funds from a federal account; and
  --At least 50% (or greater if the FEC so determines by regulation) of the direct costs of a fundraising program or event, including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected through

such program or event (unless the solicitations or related activities constitute a public communication—then it's 100% federal).

- Defines the term "federal account" as an account that consists solely of contributions subject to FECA's limitations, prohibitions, and reporting requirements. Funds in "nonfederal accounts" could only be raised from individuals but would not otherwise be subject to FECA's limitations and prohibitions (yet would be subject to certain reporting requirements).

- For purposes of the allocation provisions detailed above, a public communication or voter drive activity would not be treated as referring to a clearly identified federal candidate if it refers to a federal candidate only in connection with an election for a non-federal office in which such federal candidate is also a candidate or in connection with the fact that the candidate has endorsed a non-federal candidate or has taken a position on an applicable state or local issue.

- For purposes of the allocation provisions just detailed, a public communication or voter drive activity would not be treated as referring to a national party if such reference is only:
  --for the purpose of identifying a non-federal candidate;
  --for the purpose of identifying the entity making the public communication or carrying out the voter drive activity; or
  --in a manner or context that does not reflect support for or opposition to a federal candidate and does reflect support for or opposition to a state or local candidate or an applicable state or local issue.

- Prohibits a non-federal account from accepting more than $25,000 from any one individual in any calendar year.

- Deems as one account the non-federal accounts of 527s that are directly or indirectly established, financed, maintained, or controlled by the same person or persons.

- Prohibits donations to a qualified non-federal account from being solicited, received, directed, transferred, or spent by or in the name of any federal officeholder or any agent, officer, or employee of a national party committee.

- Clarifies that no provision of this legislation should be construed as:
  --approving, ratifying, or endorsing an FEC regulation;
  --establishing, modifying, or otherwise affecting the definition of "political organization" for purposes of the Internal Revenue Code of 1986; or
  --affecting the determination of whether a 501(c) is a political committee under FECA.

- Prescribes special rules for legal actions brought before 2009 to challenge the constitutionality of any provision in this legislation, including requiring that such action be filed in the U.S. District Court for the District of Columbia, be heard in

expedited fashion by a three-judge panel, and be appealed in expedited fashion directly to, and only by, the U.S. Supreme Court.

- Explicitly authorizes Members of Congress to bring an action challenging the constitutionality of this legislation or otherwise intervene in any such action brought against it. The court could require interveners taking similar positions to file joint papers or to be represented by a single attorney at oral argument.

Provisions from Pence-Wynn (H.R. 1316)

- Removes the party coordinated expenditure limits so that parties can spend an unlimited amount of money on their own candidates—even when they coordinate such spending with the affected candidates. This is identical to section 3 of Pence-Wynn (H.R. 1316), as it was reported from the House Administration Committee. *[Current law allows parties to spend an unlimited amount of INDEPENDENT expenditures on their candidates, but if parties coordinate with their own candidates on spending, they can only spend $10,000 per House candidate and $20,000 per Senate candidate.]*

- Provides that, if any provision or application of this legislation is held to be unconstitutional, the remainder of this legislation would not be affected by such a ruling. This is identical to section 16 of Pence-Wynn (H.R. 1316), as it was reported from the House Administration Committee.

Additional Background for This Title: A 527 organization, as defined by section 527 of the Internal Revenue Code, is a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of presidential or vice-presidential electors (whether or not such individuals or electors are selected, nominated, elected, or appointed).

Under current law, independent 527s (i.e. 527s that are not PACs or political parties or otherwise connected to officeholders) can raise individual and corporate funds (though corporate funds can't be used for electioneering communications) without limit (as long as the contributions were not solicited in a way to indicate that they'd be used in federal elections). 527s have to disclose donors over $200 to the IRS (and the FEC for electioneering communications).

Under current law:

- 527s can engage in lobbying, educational, political/campaign activities (not express advocacy of federal candidates), and electioneering communications (using individual contributions only).
- 527s cannot engage in express advocacy of federal candidates, make contributions to candidates, or use corporate contributions to make electioneering communications.

- Non-political expenditures and interest income greater than $100 per year are taxable for 527s.

To read the RSC document, "Fast Facts on 527s," visit this webpage:
http://www.house.gov/pence/rsc/doc/FastFacts_527s.doc

Outside Support for This Title: The Shays-Meehan portion of this language is supported by groups typically associated with an increased regulatory approach to campaign finance, such as Democracy 21 and Common Cause, among others.

Pence-Wynn is supported by groups typically associated with a freedom-based approach to campaign finance, such as FreedomWorks, the Center for Individual Freedom, the National Taxpayers Union, the American Conservative Union, and the National Association of Business PACs, among others.

Title VII - Forfeiture of Retirement Benefits

- Provides that Members of Congress would lose the government-contributions portion of their Civil Service Retirement System (CSRS) or Federal Employees' Retirement System (FERS) pension earned while serving as a Member, if convicted of bribery, acting as a foreign agent, or conspiring to commit offense or to defraud the United States, AND the offense occurs **after** enactment of this bill, while the Member was serving in Congress, and in direct connection to the Members' service in Congress.

- After conviction as detailed above, Members could not participate in CSRS or FERS at all.

- Allows Office of Personnel Management, given the "totality of the circumstances," to let spouses or dependent children receive the full pension of a convicted Member of Congress.

Committee Action: On March 16, 2005, H.R. 4975 was referred simultaneously to the Judiciary Committee, the Committee on House Administration, the Rules Committee, the Government Reform Committee, and the Committee on the Standards of Official Conduct. No committee has taken official action on the bill yet.

Possible Conservative Concerns: Some conservatives might be concerned about:
- the new federal regulations placed on citizens groups commonly known as 527s;
- the increased reporting requirements and other mandates placed on private companies;
- the ban on privately-funded travel, pending further action;
- the definition of "earmark" that excludes government-sponsored enterprises, unspecific state and local government projects, and projects that are not identified by the name of an entity;
- the continued inability of Members to strike or object to individual earmarks on the House floor; and

- the applicability of the new earmark-related points of order only to the rules for the relevant appropriations bills and not to the earmarks themselves or to non-appropriations bills (like the surface transportation reauthorizations). In other words, conservatives might be concerned about the exclusion of any direct remedy for individual earmarks on all types of bills.

Administration Position: An Administration position is not available at this time.

Cost to Taxpayers: A cost estimate for H.R. 4975 is not yet available. The "such sums" for the new database (see Title I above) would likely be several million dollars over five years. And CBO estimates that Title VI (H.R. 513) would authorize $1 million in the first year and insignificant amounts in subsequent years.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would expand federal regulations to limit the speech and activities of certain nonprofit entities organized under Section 527 of the tax code.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Although this bill would remove one private-sector mandate (regarding coordinated party expenditures), the bill contains numerous new private-sector mandates. As detailed above, the bill would impose a multitude of new registration and reporting requirements on private-sector lobbyists. Additionally, independent 527s would have to register as political committees with the FEC and comply with current regulations on federal campaign finance including certain limits on contributions and reporting and disclosure requirements.

Constitutional Authority: A committee report citing constitutional authority for H.R. 4975 is not yet available. The House Administration Committee, in House Report 109-181 for H.R. 513 (Title VI above), cites constitutional authority in Article I, Section 4, Clause 1 (the congressional power to make or alter regulations regarding the times, places, and manner of holding elections for senators and representatives).

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