21ST CENTURY LOBBY AND CAMPAIGN FINANCE REFORM:
ENOUGH TO PREVENT SCANDAL

A Thesis
submitted to the Faculty of
The School of Continuing Studies
And of
The Graduate School of Arts and Sciences
in partial fulfillment of the requirements for the
degree of
Master of Arts in Liberal Studies

By

Colby H. Miller, BA

Georgetown University
Washington, D.C.
8 April, 2011
21st CENTURY LOBBY AND CAMPAIGN FINANCE REFORM:
ENOUGH TO PREVENT SCANDAL

Colby H. Miller, BA

MALS Mentor: Dr. James H. Hershman, Ph.D.

ABSTRACT

The first amendment to the constitution provides the opportunity for every American citizen to freely petition the government of the United States to ensure their interests are always considered while officials in all branches of government carry out their duties. Whether by individual lobbyists or by special interest groups, the act of petitioning the United States government is as vital to democracy as the separation of powers themselves.

While the act of lobbying effectively checks the balance of power in our nation's government institutions, ethics laws and regulations, created by these governing bodies, provide mechanisms for the institutions to check themselves. This thesis examines whether current lobby and campaign finance reform is sufficient enough to prevent the reoccurrence of 21st century scandals involving Congress,
lobbyists and industry. Scandals involving the firms Preston Gates & Ellis, where Jack Abramoff lobbied, PMA Group, and MZM Incorporated revealed an unprecedented level of corruption that engrossed White House officials, senior Members of Congress, their staff, and industry leaders.

Each scandal shared a common bond in that they were born out of the desire to secure congressional directed spending for clients of each lobbying firm. These firms broke numerous campaign and ethics laws as defined by House and Senate Ethics Committee rules and the Federal Election Commission. By identifying inherent weakness in the law that resulted in a lack of oversight, providing a sense of entitlement to those involved, this thesis will determine if current lobby and campaign finance reform and regulation are adequate to prevent these types of scandals. At the heart of lobbyist corruption is the selfish desire of a few individuals at the cost of their clients and the trust of the American people. Current enacted legislation went a long way to create transparency in lobbyist-to-Member relationships and is beyond adequate to prevent the types of reoccurring scandals committed by Jack Abramoff, the PMA
Group and MZM Inc. and regardless of the mandates of the Honest Leadership and Open Government Act of 2007, there will always be someone who tries to circumvent its rules. Further legislation and regulation in this area would constitute a gross miscarriage of justice and an erosion of the First Amendment right to the freedom of assembly and right to petition the government of the United States of America.
CONTENTS

ABSTRACT ................................................................. ii
LIST OF FIGURES ......................................................... vi
INTRODUCTION: THE ORIGIN OF LOBBYING. ...................... 1
CHAPTER 1: RECENT – BUT NOT SUFFICIENT – REFORM ............. 9
CHAPTER 2: ABRAMOFF EMPIRE FALLS .................................. 30
CHAPTER 3: PMA GROUP AND MZM INC. VS THE FEC ............... 40
CHAPTER 4: 21st CENTURY REFORM ENACTED ....................... 58
CONCLUSION: ROADS TO SCANDAL CLOSED – REFORM SUFFICIENT 94
BIBLIOGRAPHY ............................................................... 107
# LIST OF FIGURES

<table>
<thead>
<tr>
<th>Figure</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Pecuniary Letter</td>
<td>75</td>
</tr>
<tr>
<td>2. Lobby Restriction Letter</td>
<td>78</td>
</tr>
</tbody>
</table>
INTRODUCTION

THE ORIGIN OF LOBBYING

Liberal democracy consists of government entities that advance liberties and represent the will of the majority, such as the freedom of assembly. Such democracy is expressed through elected officials in the executive and legislative branches and brings with it a powerful first amendment constitutional right. The first amendment to the constitution provides the opportunity for every American citizen to freely petition the government of the United States to ensure their interests are always considered while officials in all branches of government carry out their duties. Whether by individual lobbyists or by special interest groups, the act of petitioning the United States government is as vital to democracy as the separation of powers themselves.

While the act of lobbying effectively checks the balance of power in our nation's government institutions, ethics law and regulation, created by these governing bodies, provide mechanisms for the institutions to check themselves. This thesis will examine whether current lobby and campaign finance reform are sufficient enough
to prevent the reoccurrence of 21st century scandals involving Congress, lobbyists and industry. Incidents involving the firms Preston Gates & Ellis, where Jack Abramoff lobbied, PMA Group, and MZM Incorporated revealed an unprecedented level of corruption that engrossed White House officials, senior Members of Congress, their staff, and industry leaders.

Each scandal shared a common bond. They were born out of the desire to secure congressional directed spending for clients of each lobbying firm. These firms broke numerous campaign and ethics laws as defined by House and Senate Ethics Committees and the Federal Election Commission. By identifying inherent weakness in the law that resulted in a lack of oversight, providing a sense of entitlement to those involved, the thesis will determine if current lobbying and campaign finance reform and regulation are adequate.

As we begin to solve the puzzle as to whether current legislative reform is sufficient to prevent scandal, a look back to how our founding fathers deliberated on the dangers of a majority is essential. Even then, as party lines were first drawn and initial
constituencies born, the fate of the minority in a republic form of government was a point of considerable concern and already lobbying efforts toward policy that made up our nation’s first laws was in full swing.

Two of our nation’s most prominent and influential early politicians and presidents, James Madison and Thomas Jefferson, laid the framework essential to protecting the rights of the people, especially the minority, and provided principles to safeguard and preserve liberty.

The Federalist Papers were a collection of essays written over the course of 1787 and 1788 by some of the most influential of our Founding Fathers, Alexander Hamilton, James Madison, and John Jay. Written under the penname Publius, the authors strongly advocated for the ratification of the Constitution. Several examples of the founding fathers underpinning design for modern-day lobbying can be found in the Federalist Papers.

In Federalist 10, James Madison cautioned that factions were a major threat to the majority. He defined factions as selfish entities, working against the rights
of others and the public interest.\textsuperscript{1} “The instability, injustice, and confusion introduced into public councils have, in truth, been the mortal diseases under which popular governments have everywhere perished.”\textsuperscript{2} Nonetheless, he goes on to write that factions could only be eliminated by “destroying the liberty for which is essential to their existence or by giving every citizen the same opinions, the same passions, and the same interests.”\textsuperscript{3} By arguing factions introduce confusion into public counsels, but destroying the liberty that causes their existence leads to robotic citizenry that is led by an autocracy, one can assume that Madison deemed factions necessary to a functioning republic. As a result, modern day political parties, organizations, interest groups, and lobbyists are essentially inherent to the Constitution and can be suppressed only by violating its guiding principles.

Federalist 52, believed to have been written by Hamilton or Madison, discussed the importance of the

\begin{itemize}
\item\textsuperscript{1}Jerome B. Agel, \textit{We The People: Great Documents of the American Nation} (New York: Barnes and Noble, 1997), 54-59.
\item\textsuperscript{2}Ibid.
\item\textsuperscript{3}Ibid.
\end{itemize}
people who elect their Representatives. In fact, the author said that it is essential to liberty that the government in general should have a common interest with the people.\textsuperscript{4} The branch of government under consideration should have an immediate dependence and sympathy with the people.\textsuperscript{5}

In order to effectively maintain such a common interest, wherein each branch of government is able to empathize with the people, some sort of intermediary must be present. In most cases, interest groups and lobbyists act as intermediaries between the people and the government to ensure that ‘common interests’ are heard and not lost altogether.

After his election to President in 1801, Thomas Jefferson’s inaugural address to the nation explained that all Americans would unite in common efforts for the common good.\textsuperscript{6} During the endeavor to ensure the will of


\footnotesize \textsuperscript{5} Ibid.

\footnotesize \textsuperscript{6} Edward Dumbauld, ed., The Political Writings of Thomas Jefferson, Representative Selections (New York: The Liberal Arts Press, 1955), 41-46.
the common good is met, Jefferson noted that although the will of the majority in all cases would prevail, that will must also be reasonable.⁷ He told his new constituency that the minority possessed their equal rights and that equal laws guard those rights.⁸ He went on to make the point that violating this equality would amount to oppression.⁹

It is clear that even when the guiding principles of our great nation were being shaped and the laws by which it would be governed were framed, our founding fathers made certain that every citizen would be heard. Each citizen would also be given the opportunity to have open relations with those they elected to public office, even if their party affiliation was in the minority. You will find that lobbying is in fact a direct descendant of the first amendment to our Constitution and the practice upholds the same virtues that our founding fathers used to shape this great democracy.

⁷Dumbauld, Political Writings, 41-46.
⁸Ibid.
⁹Ibid.
Voters are not merely electors of those they put in to office, they are also constituents of the laws and policies put into place by the majority rule. Special interest groups and lobbyists work every day to ensure that the constituencies of the policies they represent are fairly and justly heard not only on Capitol Hill, but also at state and local levels of government as well.

Even French political theorist Alexis de Tocqueville noted, with astonishment, “In no country in the world has the principle of association been more successfully used, or applied to a greater multitude of objects, than in America.”

The first amendment to our Constitution states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

---


11U.S. Constitution, amend. 1.
The right to petition the Government is in another sense the right of a church, organization, or union to lobby any entity of the United States Government. To infringe on the ability of these constituent organizations to gain access to the government to petition their grievances is unconstitutional.

Lobbying is the act of gaining access to the government by an entity or individual to inform and influence elected and appointed officials of issues important to them. Those lobbying or petitioning their government may be constituents, interest groups or lobbyists acting on behalf of such groups. Recent lobby and campaign finance reform aims to assure that majority interests refrain from overwhelming the elected national agenda. These recent reforms and restrictions require majority interests to submit their message to lawmakers and appointed government officials as prescribed by law. At question is whether current lobby and campaign finance reform are sufficient to prevent scandal and regulate the industry.
CHAPTER 1

RECENT - BUT NOT SUFFICIENT - REFORM

In 1995, the United States Congress enacted the Lobbying Disclosure Act. It provided for the disclosure of lobbying activities that influenced the Federal Government.\(^1\) After several hearings and markups of the issue, congress found that responsible representative government required public awareness of the efforts of paid lobbyists to influence the public decision making process\(^2\) and that existing lobbying disclosure statutes had not been effective because of unclear statutory language, weak administrative and enforcement provisions, and an absence of clear guidance as to who is required to register and what they are required to disclose.\(^3\) Congressional oversight also determined that the effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence federal officials in the conduct of government actions would


\(^2\) Ibid.

\(^3\) Ibid.
increase public confidence in the integrity of the United States government.\textsuperscript{4}

Although, the Lobbying Disclosure Act provided methods of disclosure for lobbyists’ client lists, general issue areas the lobbyist expects to engage in on behalf its clients, and any contact a lobbyist initiates with a covered executive or legislative branch official on behalf of a client, including specific issues to the maximum extent possible; it did not provide for disclosure methods as they relate to discussions between lobbyists and covered legislative and executive branch officials regarding appropriations earmarks and government contracts.\textsuperscript{5}

The Lobbying Disclosure Act of 1995 required lobbyists to register with the Secretary of the Senate and the Clerk of the House of Representatives when they first made a lobbying contact or were retained to make a lobbying contact, whichever came first.\textsuperscript{6} This general rule was exempted by a total income calculation. Simply stated, a person or entity whose total income for lobbying related

\textsuperscript{4}Lobbying Disclosure Act, §§ 4.

\textsuperscript{5}Ibid., §§ 4, 5.

\textsuperscript{6}Ibid., § 4.
activities did not exceed $5,000 for a particular client or $20,000 for the collective lobbying activities on behalf of all of his clients within a six month period was not required to register under the act.\textsuperscript{7} This exemption infers that constituents trust the conduct of government actions when covered executive and legislative branch officials communicate with lobbyists who have one client that pays them less than $5,000 within a six month period or multiple clients who, in the aggregate, have paid less than $20,000 within the same time frame. This inference and basis for drafting an exception to the general registration requirement has proven not to reach the issue of public confidence in the integrity of government. The Lobbying Disclosure Act left plenty of wiggle room for lobbyists to circumvent the Act. Federal Election Commission regulations were also circumvented by lobbyists who donated money to federal campaigns in violation of the Federal Election Campaign Act of 1971, as amended.\textsuperscript{8}

\textsuperscript{7}Lobbying Disclosure Act, §§ 4.

The Lobbying Disclosure Act required registered lobbyists, those with more than $5,000 semiannual income for an individual client or more than $20,000 semiannual income for multiple clients, to disclose the name, address, business telephone number, the principal place of business of the registrant, and a general description of its business or activities. The registrant was also required to divulge similar information regarding its clients and any other organization that contributed more than $10,000 toward the lobbying activities of the registrant in a semiannual period. Under the act, the registrant was also required to include a statement of general issue areas in which the registrant expected to engage in lobbying activities on behalf of his client and specific issues that had already been addressed or were likely to be addressed. The Act also mandated that the registration to the Secretary of the Senate and the Clerk of the House of Representatives must include a disclosure statement of any lobbyist who had served as a covered executive or legislative branch official.

---

9Lobbying Disclosure Act, § 4(b).
10Ibid.
11Ibid.
within the two years of the date on which the lobbyist first registered.¹²

The Lobbying Disclosure Act also required semiannual reports from all of its registered lobbyists. These reports were to include a list of specific legislative initiatives upon which a lobbyist employed by the registrant engaged in lobbying activities, including bill numbers and references to specific executive branch actions.¹³ Among other nuances, the report had to make a good faith estimate of the total amount of all income from the client, including payments made to the registrant by any other person for lobbying activities on behalf of the client, during the semiannual period.¹⁴ Also required in the semiannual report, was a good faith estimate of the total expenditures incurred in connection with lobbying efforts of the registrant and its employees when the registrant was engaging in lobbying activities on its own behalf.¹⁵ These reporting requirements were instituted to create greater

¹²Lobbying Disclosure Act, § 4(b).

¹³Ibid., § 5(b).

¹⁴Ibid.

¹⁵Ibid.
transparency into lobbyists’ activities with government officials.

Although the Lobbying Disclosure Act of 1995 created these clear guidelines as to who was required to register as a lobbyist with congress and what they were required to disclose, it failed to address such issues as appropriation earmarks, collective bargaining agreements with clients who paid outside public relations representatives fees that were later transferred to the lobbyist, and lobbyist use of donations from its employees or clients to federal campaigns under the guise that such funding would sway political votes for particular legislation or appropriations earmarks in the future.

On March 16, 2006, Representative Dreier introduced the Lobbying Accountability and Transparency Act of 2006, H.R. 4975. At the time, this was the Democratic House Leadership bill to provide greater accountability and transparency with respect to lobbying activities, to protect the institution of the legislative branch of government, and

to maintain First Amendment rights of all Americans to petition their government.\textsuperscript{17} Section 101 amended section 5 of the Lobbying Disclosure Act of 1995 (LDA) to provide for quarterly filing of reports under the Act, rather than the semiannual reporting requirement under the LDA.\textsuperscript{18} Section 102 and 103 governed electronic filing of lobbying registrations and disclosures. H.R. 4975 was introduced to modify the LDA and require that all registrations and reports be filed electronically in addition to any other forms required by the Secretary of the Senate and the Clerk of the House.\textsuperscript{19} The bill also mandated the Secretary and the Clerk maintain a searchable, and downloadable electronic database available to the public over the internet that included all required registration and reporting requirements of lobbyists and their clients pursuant to the LDA not later than 48 hours of their receipt by the Secretary or the Clerk.\textsuperscript{20} H.R. 4975 went another step further and required disclosure from each registrant, the employees affiliated with the registrant and amount of each

\textsuperscript{17}House Committee, \textit{Survey of Activities}, 33-34.
\textsuperscript{18}Ibid., 35.
\textsuperscript{19}Ibid., 35-37.
\textsuperscript{20}Ibid., 37.
contribution made to a federal candidate or official, a leadership political action committee, a political party committee or other political committee, so long as the contribution must have been reported to the Federal Election Commission.  

Section 202 of H.R. 4975 amended the Code of Official Conduct contained in rule XXIII of the Rules of the House of Representatives to require that at the onset of Member, Delegate, or Resident Commissioner negotiations of compensation for prospective employment, he or she must file a statement with the Committee on Standards of Official Conduct disclosing the negotiations within five days of commencing the negotiation and should refrain from voting on any legislative matters pending before the House or its committees if the negotiation possibly created a conflict of interest.  

This section was unclear whether it applied solely to the prospective employment of the Member, Delegate, or Resident Commissioner or if it included the negotiation of employment for his or her immediate family members. Upon

---

21 House Committee, Survey of Activities, 37.

22 Ibid., 38.
interpretation of the latter option, this provision would have prohibited legislative officials from obtaining prospective employment benefits for themselves or another that could indirectly benefit the official. This provision would have prohibited any notion of impropriety on behalf of legislative officials and lobbyists regarding future employment negotiations.

The Lobbying Accountability and Transparency Act of 2006, H.R. 4975, also prohibited the receipt of travel gifts by congressional employees except for in clearly proscribed situations. It provided that aside from the exceptions described in rule XXV of the Rules of the House, no Member, Delegate, Resident Commissioner, officer or employee of the House may accept a gift of travel from any private source.\textsuperscript{23} Also, Section 303 amended the LDA to prohibit a registered lobbyist from traveling as a passenger or crew member aboard a flight of an aircraft not licensed by the Federal Aviation Administration to operate for compensation or hire and which is owned by the client of a lobbyist or lobbying firm when a Member, officer, or employee of the House is also a

\textsuperscript{23}House Committee, \textit{Survey of Activities}, 38.
passenger or crew member on the same flight. These provisions were designed to alleviate uninterrupted access to House officials, its Members and employees through the provision of private airline accommodations and travel arrangements for individual legislators and their staff.

H.R. 4975 pressed on by authorizing oversight of lobbying registration by the Inspector General and vesting enforcement of violations of the bill with the Department of Justice. Section 401 authorized the Office of the Inspector General of the House of Representatives to have access to all registrations and reports received by the Clerk of the House under the LDA. The Inspector General was also directed to conduct random audits of the information in registrations and reports under the LDA as necessary to ensure compliance with the bill. Upon the Inspector General’s determination that registrants had violated the LDA, he or she was given the authority to refer violations of the LDA to the Department of Justice. Section 401 would have officially vested the Office of the Inspector

---

24 House Committee, Survey of Activities, 37.
25 Ibid.
26 Ibid.
27 Ibid.
General of the House of Representatives with oversight, audit authority, and requirements, thereby policing lobbyists’ registrations and reports on an ongoing basis. The LDA of 1995 did not have an oversight provision; it only included a referral power for the Clerk of the House to the Department of Justice for lobbyists’ failure to comply with the LDA registration requirement by lobbyists who received funds from their clients over a specific threshold amount.

HR 4975 also established concepts on earmark reform. Section 501 provided a special order of the House of Representatives and provided that it would not be in order to consider a general appropriations bill unless the bill included a list of earmarks in the bill or in the report to accompany the bill.\textsuperscript{28} The list of earmarks would have required the inclusion of the name of any Member who submitted a request to the Committee on Appropriations for an earmark included in the list.\textsuperscript{29} Also, the House would not be in order to consider the conference report accompanying a general appropriations bill unless the joint explanatory statement of managers accompanying the

\textsuperscript{28}House Committee, \textit{Survey of Activities}, 40.

\textsuperscript{29}Ibid.
conference report included a list of earmarks, which included the name of any Member who submitted a request to the Committee on Appropriations for an earmark in the underlying bill. These provisions would have prevented the House of Representatives from considering any general appropriations bill or conference report accompanying an subcommittee mark-up that did not include a list of earmarks and names of the Members who requested such earmarks from the Committee on Appropriations. The provision created more transparency in the earmarking process and put all Members of the House of Representatives on notice of which Members requested and/or obtained earmarks from a general appropriations bill. The one item that H.R. 4975 did not require was disclosure of the amount requested and/or the reason for the earmark.

H.R. 4975 also created mandatory ethics training for staff and employees in the House of Representatives. Section 502 amended rule XI of the Rules of the House to direct the Committee on Standards of Official Conduct (Standards Committee) to establish a mandatory program of

---

30House Committee, Survey of Activities, 40.
regular ethics training for employees of the House. The regulations provided that each employee must complete ethics training at least once during each Congress and employees hired after the adoption of the regulations would be required to complete the training within thirty days of being hired. Section 502 also directed the Standards Committee to establish a program of regular ethics training for Members, Delegates, and the Resident Commissioner similar to the program established for employees of the House of Representatives. An additional step this section took was that it amended rule II of the Rules of the House to prohibit the Chief Administrative Officer from paying compensation to an employee of the House when the Standards Committee had determined that the employee was not in compliance with the regulations regarding mandatory ethics training. This provision was devised as a reprimanding technique but was anticipated to be used rarely if at all, because the Standards Committee was encouraged to make every effort to bring an employee into compliance with ethics

---

31 House Committee, Survey of Activities, 41.
32 Ibid.
33 Ibid.
34 Ibid., 40.
training.\textsuperscript{35} The difference between Members and employees with regards to ethics compliance is only notable here. Members and House employees can both be found to have violated ethics rules through the course of their service or employment, respectively, and each can be reprimanded or admonished for such acts.

The bill recognized activities that would constitute an abuse of public trust by a Member and proscribed the loss of accrued pension benefits as a consequence conviction of certain acts. Section 701 amended section 8332 of title 5 of the United States Code to provide that a Member of Congress, if convicted of bribery or acting as an agent of a foreign government, including conspiracy charges, would lose all contributions made by the government to their Congressional pensions.\textsuperscript{36} This provision creates a pecuniary loss of retirement benefits upon the finding of criminal misconduct by a Member of Congress.

To respond to concerns about former Members who become registered lobbyists abusing their privileges as former

\textsuperscript{35}House Committee, \textit{Survey of Activities}, 40.

\textsuperscript{36}Ibid., 41.
Members, the House amended its rules on February 1, 2006 to prohibit former Members who are registered lobbyists from being on the floor of the House, or in the rooms adjacent to the floor, or in the Members gym.\textsuperscript{37} House Resolution 648 amended clause 4(a) of rule IV of the Rules of the House of Representatives.\textsuperscript{38} The amended rules also retained the current restrictions against access to the House floor if a person has a direct personal or pecuniary interest in pending legislation or is the employee of an entity attempting to influence the consideration of a legislative proposal.\textsuperscript{39}

Although the Lobbying Accountability and Transparency Act of 2006 moved to better the overall accountability of appropriations earmarking, and the bill was passed in the House of Representatives, H.R. 4975 never became law and scandals regarding congressional lawmakers' approval of certain congressional directed funding continued. The notion of impropriety in financing certain constituent businesses and not others raised the question of Member ethics. On


\textsuperscript{38}House Committee, Survey of Activities, 44.

\textsuperscript{39}Ibid.
October 30, 2009, Representative Paul W. Hodes (D-N.H.) called on House leadership to bring his bill, the CLEAR Act, to the floor for a vote.\textsuperscript{40} The Clean Law for Earmark Accountability Reform (CLEAR) Act would have banned Congressional campaigns from accepting campaign contributions from any senior executive or registered lobbyist representing an entity for which a Member of Congress had requested earmarked federal funding in that election cycle.\textsuperscript{41} Currently, there is no rule that prohibits a Member’s campaign from accepting campaign contributions from organizations for which the Member is making appropriations requests.\textsuperscript{42} The CLEAR Act was not adopted into law. As such, it placed an undue burden on Members and their campaign teams, which are required to be separate entities from the legislative staff, to produce a list of all organizations that the Member has requested appropriations on behalf of and cross-check that information with all donations of lobbyists and the organizations of which their clients have been affiliated. It was also


\textsuperscript{41}Ibid.

\textsuperscript{42}Ibid.
unclear whether the CLEAR Act, in practice would have diminished the appearance of impropriety regarding Members and appropriations.

The Federal Election Commission administers and enforces the Federal Election Campaign Act which, from time to time, has been violated by a number of lobbyists as it relates to campaign finance law. To completely comprehend the violations of these lobbyists, the provisions of the Federal Election Campaign Act must be highlighted.

Chapter 2 of the United States Code Section 441(b) governs contributions or expenditures made by national banks, corporations, or labor organizations to Presidential and Vice Presidential candidates, Members of Congress, Delegates or Resident Commissioners.\textsuperscript{43} This provision was instituted to prohibit a corporation, among other entities, from making a contribution or expenditure in connection with any election to any political office\textsuperscript{44} and made it unlawful for any candidate, political committee, or other person to

\textsuperscript{43}Federal Election Campaign Act of 1971, Public Law 93-443, codified at U.S. Code 2 (1972), § 441(b).

\textsuperscript{44}Ibid.
knowingly accept or receive any contribution prohibited by this section.\textsuperscript{45}

The purpose of this section was to prevent corporations, national banks, and/or labor unions from using their working capital to promote any candidate for federal office; however, the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, or membership organization, without capital stock is not unlawful.\textsuperscript{46} As a result, entities that wished to use their capital assets to promote or donate to the campaigns of a federal candidate for office simply transferred those assets to a separate segregated fund for use as campaign donations. While the separate segregated fund must not intermingle with the capital raised by the corporation in its ordinary course of business, the fund must be utilized for the sole purpose of political contributions by the corporation or organization. The determining factor is whether the funds used to promote a

\textsuperscript{45}\textit{Federal Election Campaign Act of 1971, § 441(b)}.  

\textsuperscript{46}Ibid. (emphasis added).
candidate by a corporation are separate from the capital stock of the corporation.

The Federal Election Campaign Act also contains a provision that makes the contributions by government contractors to political campaigns unlawful. In Chapter 2 of the United States Code Section 441(c), it is unlawful for a person who enters into a contract with the United States or an agency or department thereof to directly or indirectly make any contribution of money or things of value to any political party, committee, or candidate for public office or to any person for any political purpose or use.\(^47\) The purpose of this provision is to prevent government contractors from obtaining favor with certain candidates for office by donating to their campaigns and thereby receiving direct or indirect contracts from the government as a result of a candidate’s election into office. It was also instituted to prevent the notion of impropriety among government contractors and political officials running for office.

One more important provision of the Federal Election Campaign Act was the banning of contributions to a political campaign on the behalf of another person. Section 441(f) of the United States Code of Chapter 2 states that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person.\footnote{Federal Election Campaign Act of 1971, Public Law 93-443, codified at U.S. Code 2 (1972), § 441(f).} This provision clearly prevented an individual from making multiple donations through the use of several different individuals, as conduits, to increase his donation of funds to the political campaign of one candidate.

The provisions of the Federal Election Campaign Act of 1971, the Lobbying Accountability and Transparency Act of 2006 and the Lobbying Disclosure Act of 1995 were all drafted to regulate transparency of communications between lobbyists and Members of Congress and their staff, prevent the unlawful contribution of funds to campaigns to gain favor with certain Members upon election into office, and place clear mandates on appropriations earmarks within Congress. As we will see in later chapters, these attempts
at transparency and prevention did not thwart insatiable appetites of some lobbyists from circumventing the law.
CHAPTER 2

ABRAMOFF EMPIRE FALLS

Former Washington lobbyist Jack Abramoff was well connected, influential and exceptional when it came to fundraising for his political friends, or so it seemed. Abramoff acquired his start as a political activist at an early point in his life. He worked with Grover Norquist, who later became Newt Gingrich’s muse, to organize Massachusetts’s college campuses in the 1980 Presidential election as Young Turks of the Reagan revolution.¹ Abramoff and Norquist later moved to Washington, D.C. to take over and revitalize the College Republicans, at which time they were joined by Ralph Reed.² Shortly thereafter, Abramoff began running a conservative grassroots group known as Citizens for America while also working on behalf of the apartheid South African government, which secretly paid $1.5 million a year to the International Freedom Foundation, a nonprofit group


²Ibid.
that Abramoff operated out of a townhouse in the 1980s. And if that wasn’t a diverse enough start, the notorious lobbyist also spent time dabbling in Hollywood production.

Upon becoming a Washington lobbyist in 1994, when Republicans obtained control of the House from the Democrats, Abramoff relied on his relationship with Norquist to gain insight into the Republican Revolution and subsequently gain contacts. Soon Jack Abramoff forged political ties with Representative Tom DeLay, a conservative Republican from Texas whose future association with Abramoff would cause him to step down from his post as House Majority Leader.

In 2001, Jack Abramoff flaunted his ties with conservatives in the White House and Congress to persuade four newly wealthy Indian gaming tribes to pay his firm and public relations executive Michael Scanlon an excess

---

4 Ibid.
5 Ibid.
6 Ibid.
of $45 million over a three year period. The fees were described to Abramoff clients as necessary to block forces in Washington and Indian gaming tribes’ state governments that “have designs” on Indian gaming money. Critics of the exorbitant fees Indian gaming tribes were paying to Abramoff argued that there were no major political issues for gaming tribes on the horizon, but the tribes’ payments for lobbying and public affairs work was comparable to what large corporations pay for lobbying in Washington on pressing and relevant issues. The spending by tribal leaders later led to passionate battles within tribes regarding their overall need for expensive lobbying firms.

Under federal law, lobbying fees must be publicly reported; however, public relations executive revenue is largely hidden from public scrutiny. Public relations

---


8Ibid.

9Ibid.

10Ibid.

executives like Michael Scanlon are not required to disclose fees for public relations work or grass roots organization efforts.\(^\text{12}\) The ability for public relations executives to charge exorbitant fees without public disclosure facilitated Scanlon’s ability to obtain gross sums of money from Indian gaming tribes without oversight from campaign finance or ethics rules and lobbying regulations. Scanlon then split money he obtained from the Indian gaming tribes with Abramoff in a scheme they dubbed “Gimme Five”.\(^\text{13}\) Abramoff picked a great demographic to siphon money from. Tribal spending is seldom scrutinized by federal law enforcement authorities that regulate the gaming industry because they must be careful not to trample on tribal sovereignty.\(^\text{14}\)

These two limitations: the lack of requirement for public disclosure of fees charged by public relations executives and the inherent rights of tribal sovereignty, allowed Abramoff and Scanlon to continue obtaining monetary funding from politically imprudent Indian gaming

\(^{12}\)Ibid.


tribes. First, Abramoff preyed on tribe member ignorance regarding Congress’ overall legislative agenda in Washington and at local levels. His ability to target Indian gaming tribes and stoke their desires to keep their recent wealth from overreaching policies of government and obtain federal funding for several projects earmarked for the tribes, gave Abramoff bargaining power. He effectively presented a need to Indian gaming tribes that were arguably unnecessary. Tribal officials bought into the need to protect their wealth by investing in a lobbying firm and public relations representative, when in reality protection of their wealth was not at risk of encroachment by the federal government.

Second, the unlikelihood of scrutiny into tribal spending by federal law enforcement officials provided Abramoff with valuable cover from federal recognition that his clients were paying gross sums for lobbying services. Tribal sovereignty also provided an extra layer of cover from federal investigative bodies for Scanlon, because not only was he not required to publicly disclose his public relations fees, there was slim chance
that federal authorities would investigate expenditures of the tribe without prompting from a third party and substantiated evidence of questionable tactics by either Abramoff or Scanlon.

Third, public relations executives are free from public disclosure requirements of funds paid to them by their clients. This loophole made Scanlon the recipient of the majority of funds paid by Indian gaming tribes. Scanlon then divided his ‘earnings’ with his colleagues and effectively created a second payroll account for Abramoff for working with the Indian gaming tribes of which Abramoff was already obtaining payment.

The scandal became newsworthy in September 2003, when a Louisiana paper, The Town Talk of Alexandria reported that the Coushatta tribe paid Scanlon’s public relations firm $13.7 million.\(^\text{15}\) Around this time, a colleague of Abramoff, Kevin Ring, learned that Abramoff was secretly getting money from Scanlon.\(^\text{16}\) The Washington Post was also contacted in the fall of 2003 and launched

\(^{15}\text{Schmidt and Grimaldi, “The Fast Rise,” 2005.}\)

\(^{16}\text{Schmidt and Grimaldi, “The Fast Rise,” 2005.}\)
an investigation into Abramoff’s tribal lobbying.\textsuperscript{17} Not long thereafter, the FBI instituted a full investigation into the alleged spending irregularities by one of Abramoff’s clients, the Louisiana Coushatta Tribe.\textsuperscript{18}

The corruption with Abramoff partly stemmed from a lax in enforcing rules on gift giving and disclosure of travel arrangements.\textsuperscript{19} It also stemmed from a violation of ethics laws regarding the reporting of expenditures. In 2000 Abramoff charged an airline ticket for then House Majority Whip Tom DeLay to Abramoff’s personal American Express card, thereby paying for a Representatives travel arrangements.\textsuperscript{20} He also used the money he received from Scanlon to invest into personal and political projects.\textsuperscript{21} Abramoff also set up nonprofit financial vehicles to obtain money from financial clients that he did not want

\textsuperscript{17}Ibid.


\textsuperscript{19}Mike Dorning and Jeff Zeleny, “Democrats Put their Ethics Reform Package on the Table,” Chicago Tribune, January 19, 2006.


to represent.\textsuperscript{22} These actions were direct violations of ethics laws and disclosure requirements in place at the time of the Abramoff scandal. Abramoff blatantly broke the law by failing to disclose how he used fees associated with the representation of his clients (including those received from Scanlon), failing to disclose travel arrangements of House Majority Whip DeLay on a trip sponsored by Abramoff to Scotland for a golfing outing, and through providing favors for members that were banned by ethics rules and regulations.

While legislative initiatives to improve regulation on lobbying and campaign activity have resulted from these types of scandals, numerous efforts have come and gone without actually making into law. Representative Van Hollen (D-MD) took regulation one-step further when he introduced the DISCLOSE ACT onto the House Floor. It passed in the House of Representatives on June 24, 2010 and moved into the Senate, but did not move to the floor for vote. Van Hollen’s bill compelled new reporting requirements by the highest-ranking official of a corporation to the Federal Election Commission before

making any contribution for electioneering communication.\textsuperscript{23} The DISCLOSE Act also required any person making independent expenditures that advocate for the election or defeat of a candidate and exceeds $10,000 to file an electronic report within twenty-four hours of the contribution and file a new electronic report each time the person makes a contribution.\textsuperscript{24} The DISCLOSE ACT also required registered lobbyists to report information on independent expenditures or electioneering communications of a least $1,000 to the Secretary of the Senate and the Clerk of the House of Representatives.\textsuperscript{25} If it were enacted, the requirements of the DISCLOSE ACT would have made disclosure an imperative contribution to campaign finance. It seems that transparency is thought to lead to better policing and restraint on lobbyists’ expenditures.

No matter how much regulation is put into place over lobbyists and the interest groups they represent, someone somewhere is going to violate ethics rules and reporting

\textsuperscript{23}Disclose Act of 2010, HR 5175, 111th Cong., 2d sess., Congressional Record 1, no. 1 daily ed. (June 29, 2010): E 1231.

\textsuperscript{24}Ibid. (emphasis added).

\textsuperscript{25}Ibid.
requirements. We can police the profession, up until the point that the freedom to petition the government, which is explicitly given to the citizens of the United States becomes abridged; however, no amount of policing, regulating or expanding reporting requirements will prevent greedy individuals from breaking the law. It is arguable that after Abramoff, reform was indeed necessary. Abramoff explicitly broke ethics rules and regulations. Even though the laws and regulations in place at the time were enough to convict Abramoff for his crimes, improved campaign finance and lobby reform may have dissuaded him and his colleagues from even considering committing some of the acts that led to their downfall.
Earmarking is the term used for designating specific funds in an appropriations bill to benefit specific programs of interest to a Member of Congress. The implementation of earmarks by lawmakers into appropriations bills has become a hot topic in recent years and has often been stigmatized as an act by a Member of Congress that gives the Representative or Senator the authority to designate funds for the benefit of campaign contributors and entities they represent. While there is no rule explicitly forbidding earmarks that benefit campaign donors, depending on the circumstances, an earmark for a campaign donor might be an ethics violation, or even a federal crime. The criminal statute in question is the bribery statute. Under the bribery statute, it is a crime for a Member to seek or receive something of value “in return for being influenced in the performance of an official act.” Under this statute, the Member must have a


2Ibid.

3Ibid.
specific intent to be influenced in an official act.⁴ Criminal liability under the gratuity section of the bribery statute also forbids a Member from accepting something of value “for or because of any official act.”⁵ Within the gratuity section, it is enough if the Member knows he is given something because the Member will act or has acted in a desirable manner of the contributor.⁶ Member liability does not exist without a causal link between the gift of value and an official act.⁷ As of yet, there is not a clear ethics rule in the House of Representatives nor in the Senate that forbids earmarks for campaign donors. The law, as it stands, does not prohibit Members and campaign donors from having common interests. The earmark process is an important vehicle for obtaining appropriation funding for Member’s districts and projects they feel are important to the American taxpayer. As long as Members diligently avoid being swayed by constituents and those connected to the recipients of earmarked funding through gifts or pecuniary gain, earmarks will continually be used as a vehicle to fund

⁵Ibid.
⁶Ibid.
⁷Ibid.
essential projects to Member of Congress without restriction.

In recent years, there have been well publicized and documented cases where lobbyists have tried to use campaign donations, in violation of the Federal Election Campaign Act, to sway Member decisions regarding the earmarks they submit for inclusion to annual appropriations bills. Paul Magliocchetti and Associates (PMA) Group and MZM Incorporated were both lobbying firms that violated campaign finance law and subsequently caused Congress to adapt new laws regarding lobby disclosure reform. These are the stories that resulted in a miscarriage of public trust in transparency, campaign finance, and Congressional earmarks.

PMA Group, located in Arlington, VA, was founded by its president Paul Magliocchetti in 1989 and was once a thriving and influential defense appropriations lobbying firm with more than $13 million in total lobbying income in 2008.\(^8\) PMA Group terminated all lobbying registrations under the Lobbying Disclosure Act in March of 2009\(^9\) and its

---


\(^9\)Ibid.
dissolution finally came after months of reports that federal law enforcement authorities were investigating the firm and its founder, Paul Magliocchetti, on allegations of campaign finance violations and of improper links between campaign contributions from employees and clients of the firm to Congressional Members for defense appropriations earmarks sponsored by those members.\textsuperscript{10}

On May 29, 2009, Congressman Peter J. Visclosky (D-IN), confirmed that federal law enforcement officials who raided lobbyist Paul Magliocchetti’s PMA Group also obtained a grand jury subpoena to seize documents from his office on Capitol Hill as well as his campaign offices.\textsuperscript{11} Congressman Visclosky wielded major influence over federal spending as the Chairman of the House Appropriations Subcommittee for Energy and Water.\textsuperscript{12} He was a top recipient of campaign contributions by the PMA Group and earmarked millions of dollars to clients of the defunct group, where his former

\textsuperscript{10}Walker, “House Ethics Committee Investigates,” 2009.


\textsuperscript{12}Ibid.
chief of staff, Richard Kaelin, became a lobbyist.\textsuperscript{13} Both Congressman Visclosky and Magliocchetti were close allies with the House Appropriations Committee Chairman, Representative John P. Murtha (D-PA).\textsuperscript{14} According to Taxpayers for Common Sense, which tracks earmarks, Congressman Visclosky directed more than $33 million, nearly a quarter of the earmarked funds he received, to PMA clients between 2008 and 2009 while Chairman Murtha took in nearly half a million dollars in contributions from the PMA Group in the same period.\textsuperscript{15}

On June 3, 2009, the House Ethics Committee announced its review of PMA related allegations in response to extraordinary demand from the full House by a vote of 270 to 134, with 17 members voting present\textsuperscript{16} and as a result, the Standards Committee initiated an investigation of allegations related to the lobbying activities of PMA Group in the spring of 2009.\textsuperscript{17} On December 2, 2009, the Office of

\textsuperscript{13}Savage and Kirkpatrick, “Subpoena is Reported,” 2009.

\textsuperscript{14}Ibid.

\textsuperscript{15}Ibid.


\textsuperscript{17}Committee on Standards of Official Conduct, \textit{In the Matter of Allegations Relating to the Lobbying Activities of Paul Magliocchetti}--
Congressional Ethics (OCE) forwarded its reports and findings to the Standards Committee in seven separate matters involving alleged connections between Defense Subcommittee earmarks and campaign contributions to the Subcommittee’s Members.\textsuperscript{18} The evidence illustrated instances in which PMA Group threatened to withdraw financial support and encourage businesses to relocate out of a Member’s district if the Member did not reverse his or her policies opposing earmarks. In these instances, Members and their staff who were issued this ultimatum refused to change their positions and, in one case, notified the Standards Committee.\textsuperscript{19} There was widespread perception among corporations and lobbyists that campaign contributions provide enhanced access to Members or a greater chance of obtaining earmarks; however, evidence did not show that Members or their staff were included in discussions or correspondence about, coordinated with the PMA Group on, or knew of strategies of the PMA Group directing company executives to maximize personal or Political Action

\textsuperscript{18}Ibid., 2.

\textsuperscript{19}Ibid.
Committee (PAC) contributions while pursuing earmarks.\textsuperscript{20}

Therefore, the Standards Committee found no evidence that Members of Congress or their official staff considered campaign contributions as a factor when requesting earmarks.\textsuperscript{21} The Standards Committee determined that the evidence presented demonstrated that earmarks were evaluated based on criteria independent of campaign contributions, such as the number of jobs created in the Member’s district, the value of the earmarked project to the taxpayer, added value to capability gaps within the U.S. military, and were appropriated without Members or their staff linking, or having an awareness that companies may have intended to link contributions with the earmarks.\textsuperscript{22}

As a result of its findings, the Standards Committee, by a unanimous vote of its Members, closed its investigation relating to allegations of conduct between Congressional Members and the PMA Group and dismissed the findings and reports of the OCE regarding alleged potential misconduct.

\textsuperscript{20}Committee on Standards, Magliocchetti and Associates, 2-3.

\textsuperscript{21}Ibid.

\textsuperscript{22}Ibid., 3.
between the aforementioned parties.\textsuperscript{23} Once the investigation was closed, the House Ethics Committee cleared all parties involved in the Standards Committee probe that commenced in June 2009.\textsuperscript{24} Chairman Murtha had no knowledge of fundraising for his campaign that was handled entirely by his full-time campaign coordinator and campaign staff\textsuperscript{25} bolstering the fact that knowledge of a quid-pro-quo relationship by a legislative official is required in order to indict on bribery or ethics violations.

In a strong rebuke to the Standards Committee’s decision to dismiss the case, the OCE Board unanimously referred to the Justice department what it described as “evidence collected in the course of its investigation,” stating that the investigation did in fact prove that some PMA clients thought there was a connection between making campaign donations and receiving earmarks.\textsuperscript{26} As an example, the OCE board cited e-mails to Nevada based defense

\textsuperscript{23}Committee on Standards, Magliocchetti and Associates, 3.


\textsuperscript{25}Ibid.

\textsuperscript{26}Chuck Neubauer, “E-mails Lay Bare Firms Pay-to-Play Links to Lawmaker Earmarks Closely Follow Donations,” \textit{Washington Times}, June 22, 2010.
contractor Sierra Nevada Corporation executives from its in-house lobbyists showing their perception of a causal connection between the donation of campaign funds and the receipt of appropriations earmarks from Congressional Members. The referral of evidence from the OCE board to the Justice Department marked the beginning of a true investigation into the fraudulent acts of PMA Group.

On August 4, 2010 a federal grand jury indicted PMA Group president Paul Magliocchetti for allegedly causing donors to violate Federal Election Campaign Act limits on the amounts individuals can contribute to election campaigns and political action committees. Per the indictment, Magliocchetti violated the ban on corporate donations by having individuals donate funds to campaigns, but the donations were actually paid for by Magliocchetti or PMA Group, Inc., rather than the named donor. From 2003 through 2008, Magliocchetti issued personal checks and authorized the PMA Group to issue business checks, and make

---

27 Neubauer, “Pay-to-Play Links to Lawmaker Earmarks,” 2010.

28 Ibid.

29 Ibid.

30 Ibid.
salary and bonus payments to cover the costs of the contributions by individuals other than him.\textsuperscript{31} Magliocchetti also caused various federal campaign committees to unknowingly create and file false reports with the Federal Elections Commission (FEC) regarding the contributions they had received.\textsuperscript{32} These reports falsely stated that others made the contributions when in fact they were made by Magliocchetti and the PMA Group.\textsuperscript{33} The eleven-count indictment charged Magliocchetti with four counts of making illegal campaign contributions in the name of another; four counts of making illegal campaign contributions from a corporation; and three counts of causing federal campaigns to unwittingly make false statements.\textsuperscript{34}

On September 24, 2010, Magliocchetti pled guilty to one count of illegal campaign contributions in the name of another, one count of making campaign contributions from a corporation, and one count of causing federal campaigns to

\textsuperscript{31}Neubauer, “Pay-to-Play Links to Lawmaker Earmarks,” 2010.

\textsuperscript{32}Ibid.

\textsuperscript{33}Ibid.

\textsuperscript{34}Ibid.
unwittingly make false statements. Magliocchetti made hundreds of thousands of dollars in illegal campaign contributions and also made false statements to a federal agency.\textsuperscript{35} He admitted that he was aware of the strict limits on federal campaign contributions and the outright ban on corporate contributions and that contrary to this awareness he still instructed conduits to write checks out of their personal checking accounts to specific candidates for federal office whereby he reimbursed these individuals using personal and corporate funds.\textsuperscript{36} On Friday, January 7, 2011, Paul Magliocchetti was sentenced to twenty-seven months in prison for concocting a massive scheme to secretly funnel money to political campaigns that lasted for half of a decade.\textsuperscript{37}

On October 31, 2007, the Federal Election Commission (FEC) also subjected Michael J. Wade and MZM, INC. to numerous sanctions. The FEC reached a conciliation


\textsuperscript{36}Ibid.

agreement with Mitchell J. Wade and MZM Inc. for the second largest penalty ever paid in the history of the FEC at the time. Mr. Wade was the principal owner and Chief Executive Officer of MZM, Inc., a corporation registered in Nevada and headquartered in Washington, D.C., which sold equipment and services to the United States Department of Defense. Citizens for Responsibility and Ethics in Washington initiated the case concerning MZM, Inc. and Mr. Wade with the Federal Election Commission through a signed, sworn and notarized complaint. The FEC also obtained information regarding Mr. Wade and MZM Inc through its normal course of investigation and Mr. Wade’s criminal plea with the United States Department of Justice.

In March of 2003, two MZM, Inc. employees contributed funds to Goode for Congress, a campaign committee for


39 Ibid.

40 Ibid.


42 Ibid.
Representative Virgil Goode\(^4^3\) and were later reimbursed for their contributions by MZM, Inc., which subsequently gave other employees corporate funds to donate to the same campaign committee.\(^4^4\) These actions were in direct violation of Section 441(f) of Chapter 2 of the United States Code, which states in pertinent part that the Federal Election Campaign Act of 1971 prohibits any person from making a contribution in the name of another.\(^4^5\) MZM Inc. either reimbursed its employees or blatantly gave its employees corporate funds to donate to federal campaign committees. These contributions violated the mandates of the Federal Election Campaign Act of 1971 and are detailed in the chart on the following two pages:

<table>
<thead>
<tr>
<th>Date of</th>
<th>Straw Contributor</th>
<th>Contribution to</th>
</tr>
</thead>
</table>


\(^4^4\)Ibid.

\(^4^5\)Ibid.
<table>
<thead>
<tr>
<th>Contribution</th>
<th></th>
<th>Goode for Congress</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/26/03</td>
<td>Employee 4</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/26/03</td>
<td>Employee 4</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/26/03</td>
<td>Employee 5</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/26/03</td>
<td>Spouse 7</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/26/03</td>
<td>Spouse 7</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/2/05</td>
<td>Employee 1</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/4/05</td>
<td>Spouse 2</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/2/05</td>
<td>Employee 2</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/4/05</td>
<td>Spouse 3</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/2/05</td>
<td>Employee 3</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/4/05</td>
<td>Spouse 4</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/4/05</td>
<td>Employee 4</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/4/05</td>
<td>Spouse 7</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/5/05</td>
<td>Employee 6</td>
<td>$2,000</td>
</tr>
<tr>
<td>Date</td>
<td>Name</td>
<td>Amount</td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
<td>--------</td>
</tr>
<tr>
<td>3/2/05</td>
<td>Employee 7</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/4/05</td>
<td>Employee 12</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/2/05</td>
<td>Employee 9</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/2/05</td>
<td>Spouse 5</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/4/05</td>
<td>Spouse 6</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/2/05</td>
<td>Richard Berglund</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/4/05</td>
<td>Spouse 1</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/4/05</td>
<td>Employee 8</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/4/05</td>
<td>Employee 11</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/4/05</td>
<td>Employee 10</td>
<td>$2,000</td>
</tr>
</tbody>
</table>

In another instance in March of 2004, Mr. Wade instructed MZM employees and their spouses to give contributions to the campaign committee for Representative Katherine Harris. These contributions were given in the

---


amount of $2,000 each time and are shown on the chart over
the next two pages below.\textsuperscript{48}

<table>
<thead>
<tr>
<th>Date of Contribution</th>
<th>Straw Contributor</th>
<th>Contribution to Friends of Katherine Harris</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/23/04</td>
<td>Employee 1</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Employee 1</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Spouse 2</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Spouse 2</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Employee 3</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Employee 3</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Spouse 4</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Spouse 4</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Employee 4</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Employee 4</td>
<td>$2,000</td>
</tr>
</tbody>
</table>

\textsuperscript{48}Ibid.
<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/23/04</td>
<td>Spouse 7</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Spouse 7</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Employee 6</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Employee 6</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Employee 12</td>
<td>$2,000</td>
</tr>
<tr>
<td>3/23/04</td>
<td>Employee 12</td>
<td>$2,000</td>
</tr>
</tbody>
</table>

MZM employees and their spouses were reimbursed for a total of $48,000 in contributions to Goode for Congress and $32,000 for contributions made to Friends of Katherine Harris.\textsuperscript{50} These contributions both violated Section 441(f) of Chapter 2 of the United States Code and Michael J. Wade’s MZM, Inc. was sanctioned by the FEC and required to pay a subsequent substantial penalty. The actions of Paul Maggliochetti, the PMA Group, Michael J. Wade, and MZM, Inc. led to national questions about the ethics of party leaders in Congress. Democrats capitalized on voter dissatisfaction of ethics in Congress and vowed to clean up Washington.


\textsuperscript{50}Ibid.
During the 2006 mid-term elections, their campaign promises led to Democratic victories in both the Senate and the House of Representatives and gave them majority control of the legislative branch during a Republican administration.
CHAPTER 4

21st CENTURY REFORM ENACTED

During the 2006 midterm elections, democrats focused their agenda on reform in Congress. The scandals involving Abramoff, PMA Group and MZM Inc., the guilty plea of Representative Randy “Duke” Cunningham, R-CA, on bribery charges prompted the Democratic Party to push Washington corruption and ethics reform as their major campaign issues in the 2006 midterm elections. Democrats capitalized on these scandals to win the majority in the 110th Congress.

Following these scandals, Democrats offered a more comprehensive proposal to clean up government, which included tighter restrictions on lobbyists and their interactions with Congress.¹ In 2006, former Senator Barack Obama openly stressed the importance of lobby reform, including the banning of gifts from lobbyists, the disclosure of Member and congressional employee negotiations of future employment upon conclusion of congressional service and the banning of lobbyist funded travel.² Critics


²Ibid.
of the reform, however, stated it was not the lobbyists on K Street who needed to be regulated; it was the broken legislative process that allowed Members to insert legislation benefitting companies or private entities into key bills, called earmarks, that needed repair. Following critics’ remarks closely, both Republicans and Democrats vowed to pursue lobby and campaign finance reform, a process that proved difficult at best.

Legislators could not agree on whether to ban gifts and corporate travel or whether ethics investigations should be conducted by outside committees or members of congress. The House Republican leadership of the 109th Congress was badly split regarding gift and travel bans or restrictions, with then House Speaker Dennis Hastert, R-IL, and Majority Leader John A. Boehner, R-OH, at opposite ends of the spectrum regarding the issue. During this time, Democrats were hammering an election-year theme around “Republican

---


2Ibid.


4Ibid.
Culture of Corruption” and seemed more inclined to let the legislative debate over reform drag out into the campaign season. During the beginning of 2006, Republicans could not agree over the necessity of earmark regulation and whether or not use of them by Congressional Members should be adjusted at all.

This lack of conformity among Republicans, their inability to curtail stigma of impropriety among Congressional Members, and their failure to draft legislation that would diminish the appearance of corruption via a ban on certain benefits or perks of Lobbyist-to-Member relationships, such as the receipt of gifts or travel as a requisite for meetings, led to a Democratic capitalization of Congressional seats in the 110th Congress. Constituents wanted reform and Republicans did not act fast enough.

In 2007, after winning the majority in the House of Representatives and the Senate, the newly elected Democratic majority installed their leadership and the House of Representatives voted to ban lawmakers from flying on corporate jets and accepting gifts and meals from lobbyists.

altogether. The House passed 430-1, a package of rules aimed at demonstrating Democrats' commitment to cleaning up Congress and Washington altogether. Although, this was a rules package and not an actual bill, it was adopted in stark contrast to the House’s inability to pass any type of resolution, bill, or rules package just one year earlier under a republican led legislative body immediately following numerous corruption scandals. Following the rules package, House Speaker Nancy Pelosi, D-CA, and Minority Leader John Boehner, R-OH, formed a task force created to determine whether an outside ethics committee would enforce the new rules package passed in the House. The House rules banned lobbyists and the organizations they retained from arranging overnight trips for Members; however, non-profit foundations affiliated with lobbying groups could continue to pay for trips approved in advance by the House ethics committee and lobbyists and their firms could still sponsor daylong trips to factories or forums for legislators


9Ibid.

10Ibid.
and their staffs.\textsuperscript{11} This rules package, although great in theory, did not curtail many, if any, actions of lobbyists and their influence with Members. It seemed to be a Democratic ploy to show the American people that House Democrats were swift in restraining interactions between lobbyists and Members.

In response to the House of Representatives adoption of a new rules package, Democratic Senators Russell Feingold, D-WI, and then Senator Barack Obama, D-IL, said they would propose adopting the House restrictions imposed in the Senate.\textsuperscript{12} The first bill passed by the 110\textsuperscript{th} Congress was the Honest Leadership and Open Government Act of 2007.\textsuperscript{13} Former Chairman of the House Judiciary Committee, John Conyers, D-MI, authored the House Report on the new legislation and explained that “lobbying is a multi-billion dollar industry, and spending to influence Members of Congress has continued to increase” between 1995 and 2007.\textsuperscript{14} The Honest Leadership and Open Government Act was meant to


\textsuperscript{12}Ibid.


\textsuperscript{14}Ibid.
address loopholes in the Lobbying Disclosure Act of 1995 that allowed lobbyists to fund private travel for Members, purchase meals for Members and their staff, and shower Members of Congress, their congressional staff, and some Executive Branch officials with lavish entertainment in exchange for favorable treatment of lobbyists’ clients with specific interests before Government.\textsuperscript{15}

The Honest Leadership and Open Government Act of 2007, H.R. 2316, was introduced in the House of Representatives on May 15, 2007 by then Congressman John Conyers, D-MI.\textsuperscript{16} The legislation expanded reporting requirements and increased disclosure for lobbyists and Members of Congress and prohibited lobbyists from financing travel for Members or Congressional staff and prevented lobbyists from making gifts to covered officials in the legislative and executive branches.\textsuperscript{17} H.R. 2316 also required the Secretary of the Senate and the Clerk of the House of Representatives to provide free Internet access to information in lobbying

\textsuperscript{15}Honest Leadership and Open Government Act of 2007, Public Law 81, 110th Cong., 1st sess. (September 14, 2007).

\textsuperscript{16}Ibid.

\textsuperscript{17}Ibid.
reports and registrations filed with Congress.\textsuperscript{18} The increased measures required in H.R. 2316 included additional quarterly disclosure filings by lobbyists; disclosures of the names of federal candidates and office holders, their leadership political action committees, or political committees for whom fundraising events are hosted by lobbyists; disclosures of information regarding payments for events honoring Members; disclosures of payments to entities named for Members; disclosures of payments made to entities established, financed, maintained and controlled by Members; and disclosures of payments for retreats and conferences for the benefit of Members.\textsuperscript{19} H.R. 2316 also contained an amendment that prohibited private lawyers who entered into contracts with congressional committees from lobbying Congress while under contract and the ban continued for one year after the expiration of the contract.\textsuperscript{20} H.R. 2316 also required Members to post travel and financial disclosure reports on a searchable Internet website of the Clerk of the

\textsuperscript{18}Honest Leadership and Open Government Act of 2007, Public Law 81, 110th Cong., 1st sess. (September 14, 2007).

\textsuperscript{19}\textit{Ibid.}

\textsuperscript{20}\textit{Ibid.}
House of Representatives that may be accessed by the general public.\textsuperscript{21}

The Senate version of the Honest Leadership and Open Government Act of 2007, S. 1, was sponsored by Senate Majority Leader Harry Reid with seventeen other cosponsors and was introduced in the Senate on January 4, 2007.\textsuperscript{22} Upon its passing in the Senate, and in the House of Representatives, and the completion of the resolutions between the differences of H.R. 2316 and S. 1 and before it was sent to the White House for signature by former President George Bush, the bill underwent substantial changes. The final version included some provisions introduced by the House and some provisions introduced by the Senate and had many different sections all of which improved some aspect of accountability and transparency for lobby and campaign finance reform.

The final version of the Honest Leadership and Open Government Act of 2007 submitted to the President provided sufficient coverage to close the loopholes that allowed

\textsuperscript{21}Honest Leadership and Open Government Act of 2007, Public Law 81, 110th Cong., 1st sess. (September 14, 2007).

\textsuperscript{22}Ibid.
firms like the PMA Group, MZM Inc. and lobbyists like Jack Abramoff and Michael J. Wade to get them into trouble. Title I closed the revolving door of access to Members of Congress by recent former congressional employees and former Members.

Section 101 of Title I amended the federal criminal code and made it a federal offense for a former senior/top-level executive staff member for any Member of Congress to make lobby contacts within two years of the termination of his or her tenure in that office.\textsuperscript{23} This section also continued the one-year ban on: lobbying contacts by former Members of the House of Representatives with any Member, officer, or employee of either chamber or legislative office; lobbying contacts by former elected officers of the House with any House Member, officer or employee; and lobbying contacts by former Senate officers, or Senate employee with any Senator or Senate officer or employee.\textsuperscript{24}

Section 102 subjects a Member of Congress or a congressional employee who, with the intent to influence an employment decision or employment practice of a private entity, takes


\textsuperscript{24}\textit{Ibid.}
or withholds, or offers or threatens to take or withhold or influences any official act, to a fine or imprisonment of up to fifteen years.25

Title II mandated the full public disclosure of lobbying techniques. Section 201 amended the Lobbying Disclosure Act of 1995 to require quarterly filing, instead of semiannual filing, of lobbying disclosure reports.26 Section 201 also required identification after each client listing on a disclosure report whether the client was a state or local government entity and a disclosure of semiannual reports on registered lobbyists’ federal election-related political contributions.27

Section 204 amended the Federal Election Campaign Act of 1971 and required an authorized committee of a candidate to include a separate schedule setting forth the name, address and employer of each person reasonably known by the committee to be a registered lobbyist who provided two or more bundled contributions to the committee in an aggregate amount greater than $15,000 and the total amount provided by


26 Ibid.

27 Ibid.
each registered lobbyist during a covered period.\textsuperscript{28} It also required the Federal Election Commission ensure information about any bundled contributions containing Lobbying Disclosure Act reports and filings are publicly available through their website and linked electronically to the websites maintained by the Secretary of the Senate and the Clerk of the House.\textsuperscript{29} Section 204 also redefined “leadership political action committee”, but excluded a political committee of a political party from that definition.\textsuperscript{30}

Section 205 of Title II required mandatory lobbyist reports to be filed electronically with the Secretary of the Senate or the Clerk of the House.\textsuperscript{31} Section 206 amended the Lobbying Disclosure Act of 1995 to prohibit a registered lobbyist from making a gift or providing travel to a covered legislative branch official, if the lobbyist has knowledge that it may not be accepted under the rules of the House or

\textsuperscript{28}Honest Leadership and Open Government Act of 2007, Public Law 81, 110th Cong., 1st sess. (September 14, 2007).

\textsuperscript{29}Ibid.

\textsuperscript{30}Ibid.

\textsuperscript{31}Ibid.
the Senate.\textsuperscript{32} Section 207 required a lobbyist registration to now include the identity of any organization, other than the client, that contributes over $5,000 to the lobbyist or the client of the lobbyist in a quarterly period to fund the lobbying activities and participates in the active planning or control of lobbying activities.

Section 208 amended the requirements for the registration of a lobbyist to extend from two years to twenty years the “look-back” period to reveal whether a lobbyist or employee may have served as a covered executive or legislative branch official.\textsuperscript{33} Title II also increased the civil penalty for failure to comply with the Lobbying Disclosure Act of 1995 from $50,000 to $200,000.\textsuperscript{34}

Title III covered all matters relating to the House of Representatives and amended the rules of the House to add a new rule and amend two others. Section 301 added Rule XXVII to the Rules of the House of Representatives to prohibit a Member of the House from directly negotiating or having an


\textsuperscript{33}\textit{Ibid.}

\textsuperscript{34}\textit{Ibid.}
agreement of future employment or compensation until after the election of his or her successor. A Staff member, House officer or employee earning over 75 percent of the salary paid to a Member may file a statement regarding employment negotiations or agreements with the Standards Committee within three business days after the commencement of employment negotiations. The rule also requires a Member, officer or employee to recuse himself from any matter in which there is, or appears to be, a conflict of interest under the Rule. Section 302 amended Rule XXV and required a Member of the House to prohibit his staff from making lobbying contact to the Member’s spouse if the spouse is a registered lobbyist. Section 303 amended Rule XXVIII of the House and subjects members of a firm or business organization to the same lobbying restrictions that apply to an employee acting under contract as a consultant to a House committee; the new rule treats any individual under contract


36 Ibid.

37 Ibid.

38 Ibid.
with a House committee as a House employee for the purposes of this act.\textsuperscript{39}

Title IV of the Honest Leadership and Open Government Act of 2007 amended the federal civil service law regarding the Civil Service Retirement System and the Federal Employees’ Retirement System.\textsuperscript{40} Section 401 excluded from retirement accounting any service as a Member of Congress of an individual convicted of a felony involving bribery, one who acted as an agent of a foreign principal while a federal public official, and one who committed fraud. Anyone who received monetary transactions derived from unlawful activity, tampered with a witness, victim, or an informant, and committed perjury, or subornation of perjury (the act of persuading another to commit perjury) also fell under this section.\textsuperscript{41} For the elements of the offense(s) to be satisfied, every act or commission of the Member must

\textsuperscript{39}Honest Leadership and Open Government Act of 2007, Public Law 81, 110th Cong., 1st sess. (September 14, 2007).

\textsuperscript{40}Ibid.

\textsuperscript{41}Ibid.
directly relate to the performance of the individual’s official duties as a Member of the House or Senate.\footnote{Honest Leadership and Open Government Act of 2007, Public Law 81, 110th Cong., 1st sess. (September 14, 2007).}

Title V of the act governs Senate legislative transparency and accountability. Section 511 amended Rule XXVII of the Standing Rules of the Senate and made it out of order to vote on any adoption of a conference report unless it was made available to all Congressional Members and the general public at least forty-eight hours before the scheduled vote.\footnote{Ibid.} Section 513 amended Rule XXVI of committee procedures and required each committee and subcommittee to make video and audio recordings or transcripts of any meeting publicly available via the Internet, except for certain closed meetings.\footnote{Ibid.}

Section 521 of Title V is focused on earmark reform and added Rule XLIV to the Standing Rules of the Senate. Rule XLIV made it out of order to vote on a motion to consider a bill or joint resolution unless the Chairman of the committee of jurisdiction, the Majority Leader or his designee certifies that each congressionally directed
spending item, limited tax benefit and limited tariff benefit in the legislation or in its committee report has been identified in a list or chart or other means and the list must include the name of the Senator requesting the earmark.\textsuperscript{45} The Committee Chairman, Majority Leader or his designee must also certify that the information identified has been made publicly available on a congressional website within forty-eight hours prior to the vote on a motion to proceed.\textsuperscript{46} The foregoing restrictions also apply to a vote on the adoption of a conference report that includes an earmark.\textsuperscript{47} The rule also requires a committee reporting on a bill or joint resolution that includes congressionally directed spending items, limited tax benefits or limited tariff benefits to identify the item and publish it publicly as soon as practicable.\textsuperscript{48} In addition, the rule requires Senators requesting earmarks to provide written statements to the Chairman and Ranking Member of the committee of jurisdiction which include the name and location of the intended recipient or activity, the identification of the

\textsuperscript{45} Honest Leadership and Open Government Act of 2007, Public Law 81, 110th Cong., 1st sess. (September 14, 2007).

\textsuperscript{46} Ibid.

\textsuperscript{47} Ibid.

\textsuperscript{48} Ibid.
entities reasonably expected to benefit, the purpose of the congressionally directed spending item and a certification that neither the Senator nor the Senator’s immediate family has a pecuniary interest in the item.\textsuperscript{49} An example of such a certification is seen on the following page in a May 2007 letter from Senator Hutchison to then Senate Appropriations Committee Chairman and Ranking Member respectively, Senators Robert Byrd and Thad Cochran, stating that neither her, nor her spouse, had a pecuniary interest in her earmarks requested in the Fiscal Year 2008 Senate Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies bill:

\textsuperscript{49}Honest Leadership and Open Government Act of 2007, Public Law 81, 110th Cong., 1st sess. (September 14, 2007).
May 17, 2007

The Honorable Robert Byrd  
Chairman  
Senate Appropriations Committee  
United States Senate  
Washington, D.C. 20510

The Honorable Thad Cochran  
Ranking Member  
Senate Appropriations Committee  
United States Senate  
Washington, D.C. 20510

Dear Chairman and Ranking Member:

This letter concerns my request for earmarks for FY2008 appropriations bills or reports contained in my letter dated:

May 9, 2007 (Subcommittee on Military Construction, Veterans Affairs, and Related Agencies).

I certify that neither I nor my spouse has a pecuniary interest in any such earmarks that I requested, consistent with Senate Rule XXXVII(4).

Sincerely,

Kay Bailey Hutchison  
United States Senator

---

Rule XLIV also required the committee of jurisdiction for a bill, joint resolution or conference report that contains an earmark in a classified portion of a report to include a general program description in unclassified language, funding level and the name of the sponsor consistent with the need to protect national security. The rule also prohibits a congressional employee or Member of the Senate from knowingly using his official position to aid the progress of an earmark to benefit the pecuniary interest of the individual, his immediate family or a limited class of people or enterprises when the foregoing will be benefitted by the congressionally directed spending item, tax benefit or tariff benefit.

Section 531 amended Rule XXXVII and prohibits a former Member who is employed by an entity that retains registered lobbyists from lobbying Members, officers or employees of the Senate for two years after leaving office. It also prohibits a Member’s staff from lobbying the Member for whom he worked for or his former colleagues for one year after

---

52 Ibid.
53 Ibid.
leaving the position in the Senate.\textsuperscript{54} The rule also pertains to the lobbying of a Member’s committee or the committee staff by a former committee staff employee for one year after leaving his position.\textsuperscript{55} Such a letter to a Senate staff member restricting him from lobbying activities to his former office of employment is seen on the following page:


\textsuperscript{55}\textit{Ibid.}
Figure 2.
Lobby Restriction Letter

United States Senate
OFFICE OF THE SECRETARY

Colby H. Miller
4883 Amanohr Drive
Fairfax, VA 22030

TO: Colby H. Miller

FROM: Nancy Erickson, Secretary of the Senate

The Honest Leadership and Open Government Act of 2007 (Public Law 110-81) requires the Secretary of the Senate to notify employees separating from the Senate who are subject to post Senate employment restrictions concerning lobbying contacts with the Senate.

You are subject to a one-year restriction (starting from your separation date) from lobbying activities and contacts under Senate Rule 37.9.

The dates of the post-employment restriction that apply to you are:

<table>
<thead>
<tr>
<th>Employing Office</th>
<th>Beginning Date of Restriction</th>
<th>End Date of Restriction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senator Hutchison</td>
<td>5/2/2009</td>
<td>5/1/2010</td>
</tr>
</tbody>
</table>

If either you were on the payroll of more than one Senate office or took on substantive responsibilities for more than one Senate office in the year before separation, your one year period of post-employment restriction may apply differently for each office in which you worked.

For information about the scope and substance of your Senate post-employment restrictions, you should contact the Senate Select Committee on Ethics at (202) 224-2981, review Chapter 3 of the Senate Ethics Manual, and/or obtain your own counsel.

During periods of post employment and pay rates can be confirmed by contacting the Senate Disbursing Office at (202) 224-3207.

This notice reflects that, based on Senate payroll records, you appear to be covered by post-employment restrictions under Senate rule. Further examination may reveal that your individual situation differs. You should not rely on this notice for legal advice or as a definitive statement of your coverage by post-employment restrictions, nor does the Secretary of the Senate provide legal advice or guidance in regard to post-employment restrictions.

In Title V’s Section 532, a Member of the Senate is prohibited from negotiating or having an arrangement concerning future employment until after the election of his successor has been held unless he files a statement with the Secretary of the Senate regarding such prospective employment.\(^{57}\) Upon filing of a statement with the Secretary of the Senate, the Member must recuse himself from any contact or communication with the prospective employer on issues of legislative interest to the prospective employer and notify the Ethics Committee of the recusal.\(^{58}\)

Title V also deals with gift and travel reform. Section 541 amended Rule XXXV pertaining to gifts and prevents Members, officers or employees from knowingly accepting gifts from lobbyists, agents of foreign principals or private entities that retain such individuals, except in specified circumstances.\(^{59}\) It proscribes that the market value of a ticket to an entertainment or sporting event be paid in full and details the conditions under which Members, officers or employees of the Senate may accept reimbursement


\(^{58}\)Ibid. (emphasis added).

\(^{59}\)Ibid.
from the Senate for transportation, lodging and related expenses of travel from individuals other than registered lobbyists or agents of a foreign principal.\textsuperscript{60} Section 544 provides that a reimbursement is not a prohibited gift if it is for attendance at a one-day event or sponsored by a nonprofit tax-exempt organization.\textsuperscript{61} It also prohibits the reimbursement for transportation, lodging or related expenses for a trip that was planned, organized or arranged by, or at the request of, a registered lobbyist or agent of a foreign principal.\textsuperscript{62} A trip that is accompanied by a lobbyist on any segment of the trip or at any point throughout the trip is not available for reimbursement for travel expenses.\textsuperscript{63}

Section 545 allows a Member, officer or employee to accept free attendance at a conference, panel discussion, dinner event, reception or similar event provided by an event sponsor in the Member’s home state or district if the cost of all of the meals provided is less than fifty

\textsuperscript{60} \textit{Honest Leadership and Open Government Act of 2007}, Public Law 81, 110th Cong., 1st sess. (September 14, 2007).

\textsuperscript{61} Ibid.

\textsuperscript{62} Ibid.

\textsuperscript{63} Ibid.
dollars, the event is primarily sponsored by a Member’s constituency, the event will be attended by a group of five or more constituents that are not registered lobbyists, and the Member, officer or employee must participate as a speaker, panel participant, or perform a ceremonial function appropriate to his official position.\footnote{64}

Title V also requires Members to ban its staff from having any official contact with the Member’s spouse or immediate family member that would constitute a lobbying contact if that family member is a registered lobbyist.\footnote{65} This restriction is proscribed by Section 552 and limits the ban preventing contact if the Member’s registered lobbyist spouse was registered at least one year before the Member’s most recent election or one year before the Member exchanged vows with his spouse.\footnote{66}

Title VI of the Honest Leadership and Open Government Act of 2007 prohibits the use of a private aircraft under the Federal Election Campaign Act of 1971 by a federal election candidate or authorized committee of the candidate

\footnote{64}{\textit{Honest Leadership and Open Government Act of 2007, Public Law 81, 110th Cong., 1st sess. (September 14, 2007).}}

\footnote{65}{Ibid.}

\footnote{66}{Ibid.}
unless the carrier or commercial operator is certified by the FAA or the candidate or its authorized committee pays the person providing the airplane the fair market value of the flight.\textsuperscript{67}

The Honest Leadership and Open Government Act of 2007 was the first piece of legislation that passed both the Senate and the House in the 110\textsuperscript{th} Congress. It was signed into law by former President George W. Bush on September 14, 2007 and was not without its critics. Even former President Bush stated that the bill holds legislative and executive branch employees to a much higher standard of conduct than previous legislation and that it would have a negative impact on the recruitment and retention of federal employees.\textsuperscript{68} In its ability to prevent scandal, the legislation as drafted and passed governs full public disclosure of lobbying and requires the disclosure of the identity of any organization that contributes over $5,000 to

\textsuperscript{67}Honest Leadership and Open Government Act of 2007, Public Law 81, 110th Cong., 1st sess. (September 14, 2007).

\textsuperscript{68}President, Proclamation, "Signing the Honest Leadership and Open Government Act," Federal Register 43, no. 37 (September 14, 2007):1209-10 (September 14).
a registrant or a client in a quarterly period.\textsuperscript{69} This provision was crafted to prevent the type of monetary exchange that Jack Abramoff and Michael Scanlon participated in that made the two rich at the detriment of their Native American clients. If in place prior to the scandal, this provision would have required Abramoff to disclose the identity of Scanlon and his organization because of Scanlon’s contributions to Abramoff and his active participation in the planning of lobbying activities thus averting their criminal activity.

The gift and travel reform provisions of Title V are quite restrictive. If in place at the time of the Abramoff scandals, the provision would have prohibited Members from receiving reimbursement for the transportation, lodging or related expenses for a trip that was planned by a registered lobbyist or a trip upon which a lobbyist accompanies the individual at any point during the trip. Specifically, this provision would have prevented Abramoff from planning and attending a golfing weekend that he took with Congressman DeLay. Even though the golf trip produced no evidence of

\textsuperscript{69}Honest Leadership and Open Government Act of 2007, Public Law 81, 110th Cong., 1st sess. (September 14, 2007).
impropriety on the part of Congressman DeLay, the provision was included to prevent even the appearance of impropriety between Members and registered lobbyists. The Honest Leadership and Open Government Act of 2007 requires full disclosure and transparency of the interpersonal relationships between registered lobbyists and Members of Congress, their staff or officers of Congress. While the legislation may overreach the First Amendment right to petition the government, it does not reach the heart of the issue of whether all lobbying contacts actually influence earmarked proposals submitted by Congressional Members and if that influence is reasonable albeit constitutional.

The 110th Congress was not the only branch of government that took issue with multiple scandals in campaign finance law and transparency in government. During his campaign for presidential office, then Senator Barack Obama promised to run a different type of campaign.\(^7\) President Obama promised to curb lobbyists’ influence from his first day as president and ban political appointees in

his administration from lobbying the executive branch after leaving their jobs.\textsuperscript{71} He also claimed that people who joined his administration would not be allowed to work on issues related to their former employers for at least two years.\textsuperscript{72} He believed these restrictions would prevent his appointees from serving the direct interests of their former or future employers and focus on serving the constituents of America.\textsuperscript{73} This stance was a stark contrast from President Obama’s policy toward accepting lobbyist donations during his federal Senate race of 2004 and while serving in the Illinois State Legislature.\textsuperscript{74} An Obama aid said the President realized the deeply rooted influence of lobbyists in Washington once he was elected to the United States Senate and as a result shifted his policy to try and curb their power.\textsuperscript{75}

As a Senator in 2007, Obama supported House restrictions on travel and proposed that the Senate adopt

\textsuperscript{71}Kornblut, “Obama Promises Campaign Above Political Fray,” 2007.

\textsuperscript{72}Ibid.

\textsuperscript{73}Ibid.


\textsuperscript{75}Ibid.
them with the support of his colleague, Senator Feingold.\textsuperscript{76} The Feingold-Obama plan was designed to make lawmakers reimburse corporations for use of their jets at the cost of a charter flight instead of the price of a first-class ticket and would have created an independent policing committee to oversee travel reforms.\textsuperscript{77} The Feingold-Obama bill would have required lobbyists to disclose earmarks they were seeking for their clients, instead of the disclosure required by Members in the Senate prior to a vote on a motion to proceed under the Honest Leadership and Open Government Act of 2007, and would have required lobbyists to disclose any collecting and passing on of campaign contributions otherwise known as bundling.\textsuperscript{78} The House and Senate bills both subjected individuals who knowingly and corruptly fail to comply with the provisions of the bill, as amended, to criminal penalties and required registered lobbyists to certify that they had not provided, requested


\textsuperscript{78} Ibid.
or directed a gift in violation of the House and Senate ethics rules.\textsuperscript{79}

The Democratic drive to clean up Washington and prevent further corruption by lobbyists was felt by all Members, officers, employees and lobbyists alike. While President Obama continued to promote transparency and accountability throughout his Presidential campaign; he could not change his stance within one year of his efforts to create more transparency in lobbying and campaign finance reform. Some critics expressed concern over lobbyist participation in Barack Obama’s campaign efforts and Obama was criticized by former New Hampshire Democratic Party Chairwoman, Kathy Sullivan, for having lobbyist Jim Demers as a leader of his New Hampshire campaign effort.\textsuperscript{80} A spokesman for the Obama campaign discounted the criticism by stating that Demers was a state registered lobbyist and not a federal lobbyist, thus did not fall under Obama’s proposal to ban campaign


contributions from lobbyists or prevent lobbyists from working in the White House.\textsuperscript{81}

After the presidential election, President-elect Obama signed an executive order that prohibited executive branch employees from accepting gifts from lobbyists, closed the revolving door that allowed government officials to move to and from private sector jobs which gave the private sector undue influence over government, and required that government hiring be based upon qualifications, not political contacts.\textsuperscript{82} As President-elect, he imposed a stricter conflict of interest restriction on his White House transition team.\textsuperscript{83} He imposed rules that barred officials on his transition team from handling any policy issues that they had lobbied twelve months prior to and twelve months after their participation with the transition team.\textsuperscript{84} These rules were instituted to prevent an appearance of conflict


\textsuperscript{84}Ibid.
and in cases where the pretense of conflict may have presented itself. The rules were not an all out bar, they permitted individuals who had lobbying contacts to join the transition team if their participation was in an area that was distinctive from their prior lobbying issue areas. President-elect Obama also prevented political appointees from lobbying the executive branch for the remainder of his administration if they vacated their government posts.

President Obama’s lobbying bar proved to create glitches in his attempt to appoint officials to administrative agencies later in his administration. The president’s choice of Deputy Defense Secretary William Lynn was a former lobbyist for defense contractor Raytheon within the year preceding his appointment to the Pentagon. Mr. Lynn was in charge of the Pentagon’s chaotic finances under former President Clinton and was described by an Obama

---


spokesman as “uniquely qualified” for the job.\textsuperscript{88} To constitute a waiver of the ban on lobbyists serving in his administration, Obama stated that the interest to public security or to the economy must be outweighed by the need to block the revolving door between lobbying and government.\textsuperscript{89} In this instance, it seemed that the need for a qualified Deputy Secretary of Defense was an important public security interest and as a result, Mr. Lynn was issued a waiver by White House Office of Management and Budget Director Peter Orszag and appointed Deputy Secretary of Defense.

Prior to the 2010 mid-term elections, Democrats pushed for a new rule that would forbid earmarked expenditures to private, for-profit contractors for at least one year.\textsuperscript{90} House democrats were pushing earmark reform as one way to rebut allegations that they had been soft on ethics issues since the 110\textsuperscript{th} Congress and passage of the Honest


\textsuperscript{89}Ibid.

Leadership and Open Government Act of 2007.\textsuperscript{91} However, Democrats were not without their own scandals. Representative Rangel (D-NY) was admonished for accepting corporate-financed trips and Representative Massa (D-NY), resigned after allegations of sexual harassment in his office.\textsuperscript{92} These scandals facilitated the suffocation of political goodwill that occurred when the democrats took the majority in 2006. Then Speaker of the House, Nancy Pelosi, and her legislative team considered calling for a one-year moratorium on all earmarks, but they later asked rank-and-file lawmakers to accept a one-year ban on earmarks distributed to for-profit companies only instead.\textsuperscript{93} The plan was to steer six and seven figure grants to local nonprofits and municipalities, but the measure proved to be too little too late.\textsuperscript{94} Even though democrats had reduced the amount of earmarks since 2007, the House ethics investigation into Members of its Appropriations Subcommittee on Defense resultant of alleged activity with

\textsuperscript{91}Kane, “House Democrats Seek to Limit Earmarks,” 2010.

\textsuperscript{92}Ibid.

\textsuperscript{93}Ibid.

\textsuperscript{94}Ibid.
the PMA Group skewed public views regarding Democratic competency within the House.\textsuperscript{95}

As the House ethics investigation came into public light from the scandals with the PMA Group and although the ethics panel found no direct or indirect link in the earmarks-for-contributions allegations that prompted the investigation, the stigma attached to the investigation portrayed Democrats as equally immoral to their Republican counterparts.\textsuperscript{96} As such, Republicans capitalized on this negative public view and coupled it with voter animosity towards the new democrat led Health Care Reform legislation and the President’s leery Stimulus package of the 111\textsuperscript{th} Congress to bolster the idea that Democrats spent too many taxpayer dollars, did not promote earmark reform, and did not curtail the overall deficit of the United States. These platforms led to a landslide victory for Republicans in the 2010 midterm elections where they gained a net of 63 seats from Democrats and won control of the House of Representatives, making it the largest victory for any party

\textsuperscript{95}Kane, “House Democrats Seek to Limit Earmarks,” 2010.

\textsuperscript{96}Ibid.
in a midterm election since 1938.\textsuperscript{97} Upon Republican control of the House in January 2011, Republicans promised a moratorium on all earmarks.\textsuperscript{98} Senate Republican Leader, Mitch McConnell (R-KY), quickly followed suit.\textsuperscript{99} Earmarks have become a symbol of government excess and backroom dealing and the American people sent another message during the 2010 midterm elections that this type of activity and unnecessary spending not only have to stop, but will no longer be tolerated.\textsuperscript{100}


\textsuperscript{100}Ibid.
Earmark and campaign finance reform have become a hot topic in the discussion of federal spending limits and the United States deficit; however, the amount of money directed toward them is relatively small.¹ For the fiscal year that ended in September of 2010, earmarks made up $15.9 billion of a $3.5 trillion federal budget.² The only compelling reason that earmarks have become a focus for restraining federal spending is because they have been painted as a vehicle for congressional waste. Earmarks are hardly waste; they are defined by Clause 9 of rule XXI of the Rules of the House of Representatives as a “provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for an expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or


²Ibid.
competitive award process."³ The process of earmarking has evolved into a mechanism for Members to request and obtain appropriations for the benefit of their constituents as well as projects they feel are essential to the common good without the requirement of introducing legislation focused on the appropriation itself.

Constituents who elected Tea Party backed Republicans in the 2010 mid-term elections believed that a moratorium on earmarks was unnecessary and did little to solve the deficit problem. Steve Axinn, a constituent in the 19th Congressional District of New York, a district that elected a Tea Party-backed Republican to replace its former Democratic Representative, said that not all earmarks are identical. Mr. Axinn explained that “there are some that are good and some that are clearly abusive. It is the responsibility of our elected representatives to know the difference.”⁴ House Republicans were the first to institute an all out moratorium on earmarks. Once the proposal of the


House leadership was approved by the House general assembly, President Obama promised to veto any bill that contained spending for pork-barrel projects. Initially, Senate Democratic leaders opposed the Republican-led initiative to ban earmarks within the House of Representatives. Senate Appropriations Committee Chairman Daniel K. Inouye (D-Hawaii) has long argued that Congress has a constitutional imperative to direct spending as lawmakers deem necessary. Chairman Inouye contends that the Congressional surrender of its spending power would only strengthen the Executive branch of government. Chairman Inouye makes a valid constitutional argument that is supported by the fore founders of our United States government.

Chairman Buck McKeon (R-CA) of the House Armed Services Committee (HASC) went so far to publish a memorandum for HASC Members governing the guidelines for Member legislative proposals for the National Defense Authorization Act for fiscal year 2012 (NDAA) on March 25, 2011. In his


7Ibid.
memorandum he emphasized that he would not permit any congressional earmarks in the NDAA. McKeon did however explain that he was committed to allowing Armed Services Committee members to fulfill their Article I, Section 8 constitutional mandate, but would be interpreting the definition of congressional earmark conservatively. The Chairman will force the legislative proposals, or earmark requests, of Members to stand on national security merits in order to be adopted, thereby preventing the use of appropriations for constituent services that are directed to a specific entity or within a specific locality. The guidelines for legislative proposals prevent members from requesting earmarks solely for constituent need and require that projects submitted in the NDAA be included via merit-based selection procedures, not individual requests from Members. This new internal policy weakens constituents’ first amendment right to petition the government by hindering the process by which they appeal to their

---

9 Ibid.
10 Ibid.
11 Ibid.
Representative regarding the needs of the district he or she represents.

In Federalist 38, authored by either James Madison or Alexander Hamilton, the Publius writer explains that the House of Representatives has the power to refuse the supplies requisite for the support of the government; but it also is the only branch of government that can propose the supplies requisite for the support of government.\(^\text{12}\) Publius explained that “Congress holds the purse and this power over the purse may be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.”\(^\text{13}\) The United States Congress has the power of the purse as laid out in Article I, Section 8 of the Constitution.\(^\text{14}\) Removing the earmark process prevents Members from obtaining necessary federal funds for their constituencies. Requiring Members to propose new legislation each time they request funds for their


\(^{13}\)Ibid., 236.

\(^{14}\)U.S. Constitution, art. 1, sec. 8, cl. 1, 2.
constituency would slow an already incredibly intensive process and would require Members to spend a majority of their time introducing directives for funding instead of legislating on initiatives for the furtherance of the protection of the will of the American people.

By removing the process of earmarks from congressional disposal, Congressional Members are giving up a mechanism by which they may obtain grievances for the constituents they represent and a method to provide just advantages to constituents for their complaints within a district or state. The banning of earmarks creates a question of interest. In circumstances where the Legislative branch has forbidden earmarking, is the power of the Executive branch extended to allow it to allocate agency-appropriated funds to individual programs and initiatives without participation in a formula-driven or competitive awarding process? In other words, would this moratorium allow the Executive branch to participate in earmarking funds that have been allocated to its agencies? House Republican leaders are infringing upon their own enumerated rights by championing an earmark ban to prove they are fiscally prudent and better political representatives for the people; but this message
to constituents erodes the very purpose for which they were conceived by our nation’s founding fathers, to provide for national security and prosperity though the power of the purse.

Over the past sixteen years, scandals have led to a number of reform and transparency efforts within campaign finance laws and lobbying disclosure requirements. Current lobbyist reporting requirements have become more stringent and the prohibition on gifts and travel from lobbyists to the Members and their staff they petition has extensively evolved. The Honest Leadership and Open Government Act of 2007 closed loopholes that allowed Jack Abramoff and lobbying firms like the PMA Group and MZM, Inc. to entertain Members to promote lobbyist client’s causes. The legislation regulated lobbying contacts between former employees and the Member whose staff they worked on by making any such lobbying contacts between these two classes of individuals a federal offense if the contact took place within two years of the lobbyist’s previous employment. The Honest Leadership and Open Government Act also amended the Federal Election Campaign Act of 1971 to require disclosure of campaign committee knowledge that a lobbyist was donating
funds in excess of $15,000 or bundled contributions to the campaign within a covered period. While these provisions clarified several grey areas in the Lobbying Disclosure Act of 1995, no matter how much regulation is instituted to govern the acts of lobbyists, there will always be those who circumvent the law for personal gain.

Continued policing of the lobbyist profession will inevitably infringe upon the first amendment freedom to petition the government. When lobbyists abridge the trust of their clients and invade our institution of government for their own financial gain, they are no longer acting upon the right of the people they represent. These actions also violate the inherent right of their clients to petition the government for collective needs. The institution of lobbying itself cannot be abolished without contravening the purpose of the First Amendment.

Inexplicably, James Madison and Alexander Hamilton both anticipated that a republic would deal with the very issues that have caused controversy in our government today. Madison explained that people have always complained that measures are often decided based on the superior force of an
overbearing majority.\textsuperscript{15} He described a faction as a number of citizens who were united by a common impulse of passion or interest that is adverse to the rights of other citizens or the aggregate interests of the community.\textsuperscript{16} He warned that liberty cannot exist without factions as they are conduits that are necessary to the survival of the other; they form a symbiotic relationship much like the relationship between air and fire.\textsuperscript{17} Madison explained that regardless of the harm that is associated with factions, destroying them would be similar to abolishing liberty and the republic would have to find a way to deal with the clashing interests of its citizens.\textsuperscript{18} Madison explained that the most powerful faction must be expected to prevail.\textsuperscript{19} He also explained that when a faction does not have enough members to constitute a majority, the republic can defeat its sinister views by regular vote; however, when a majority is included in a faction, the form of popular government enables the faction to either fall victim to its

\textsuperscript{15}Padover, The Complete Madison, 50-51.

\textsuperscript{16}Ibid., 51.

\textsuperscript{17}Ibid.

\textsuperscript{18}Ibid., 51, 53.

\textsuperscript{19}Ibid.
ruling passion or interest the public and the rights of all citizens.\textsuperscript{20}

Madison systematically described the process by which lobbyist moguls Jack Abramoff, Paul Magliocchetti, and Mitchell J. Wade were defeated. Each of these men owned lobbying firms and represented clients. They also used their contacts within the federal government to try and sway Member opinion regarding their various client issue areas; however, not one of these lobbying firms had enough members to constitute a majority. Our republic, led by a Republican Congress, could have defeated any subsequent occurrence of an Abramoff-type scandal, but it failed to pass legislation swiftly to clarify requirements of the Lobbying Disclosure Act of 1995. As a result, the public’s executive administration defeated these lobbyists and their infringement of federal lobbying disclosure laws and campaign finance laws through prosecution.

During the 2006 mid-term elections, the Democratic Party effectually became a majority-led faction or lobbying entity of the American people. The Democrats capitalized on the scandals of lobbyists and Members and promoted a

\textsuperscript{20}Padover, The Complete Madison, 53-54.
platform to clean up Washington. They created a ‘form of popular government’ by championing the interest of a displeased American public to obtain votes. Once in office, they passed the Honest Leadership and Open Government Act of 2007 to protect the rights of all citizens from dishonest lobbyists and corrupt Members of Congress. The American public then grew discontent with the Democratic led Congress after spending measures like the American Recovery and Reinvestment Act of 2009 and the Health Care and Education Reconciliation Act of 2010 led to more out-of-control government spending instead of curtailing the record deficits of the Obama administration. Consequently, the Republicans became the popular faction by championing fiscal conservatism during the 2010 mid-term elections. Their efforts gained them sixty-three total seats in Congress.

As long as the United States has a republic form of government, factions or lobbyists will exist to represent the views of their clients and constituencies. Lobbyists are essential to a republic form of government. Lobbying is as essential to liberty as oxygen is to fire.\textsuperscript{21} The art of lobbying will never be diminished or dismantled so long as

\footnote{Padover, \textit{The Complete Madison}, 51.}
this nation abides by its constitution. Furthermore, lobbying reform is indeed sufficient in its current state, so much so that legislators currently have to initiate new policies to ensure their inherent right to appropriate funds for the country is not lost altogether. Direct government spending will never vanish, because it is inherent in our Constitution. Earmarks are not the crux of corruption within our government; they are necessary vehicles for directing appropriations important to Members of Congress and the American taxpayer. Since earmarks make up only a small percentage of government spending, it is unnecessary to infringe further on the Legislative branche’s power of the purse for fear of backroom dealing. At the heart of lobbyist and campaign finance corruption is the selfish desire of a few individuals at the cost of their clients and the trust of the American people. Current legislation went a long way to create transparency in relationships between lobbyists and Members of Congress and is beyond adequate to prevent reoccurring scandals similar to those committed by Jack Abramoff, the PMA Group and MZM Incorporated. Further legislation and regulation in this area would constitute a gross miscarriage of justice and an erosion of the First
Amendment right to the freedom of assembly and right to petition the government. Our legislative branch must not continue to abridge its inherent constitutional powers each time the questionable behavior of a few arises. When it does so, it allows the hasty and angry will of the majority to put at risk the long-range common good and national interest of our country. Madison warned us all about that danger. We should heed his guidance.
BIBLIOGRAPHY


