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TESTIMONY ON PROPOSED REGULATIONS UNDER THE LOBBYING DISCLOSURE ACT

FEBRUARY 25, 1999

ROOM 60, EAST WING

HARRISBURG

Good morning. My name is Travis Tu, and I am here today as a representative of the American Civil Liberties Union (ACLU) of Pennsylvania to comment on the regulations drafted to implement the recently enacted Lobbying Disclosure Act. I am thankful for the opportunity to present testimony this morning.

The ACLU shares in the desire to eliminate the real or perceived corruption in the legislative process. Certainly in a time of such public distrust of government, it is worthwhile to regulate those individuals and organizations who are furthering an agenda of special interest while "masquerading as proponents of the public weal."[1]

We are concerned, however, that the enactment of the Lobbying Disclosure Act through these regulations will impose far-reaching and substantial burdens on public policy advocacy that will make participation by grassroots organizations costly, complicated and, thus, less likely. Although we believe the regulations contain problematic implications for lobbyists as well, I will assume that there are plenty of lobbyists in this room who can take care of themselves. My statement will be limited primarily to discussing the potential impact on grassroots and small non-profit organizations treated as principals under the draft regulations. I concede that some of our objections call into question the statute itself rather than the regulations, and I can only suggest that these concerns may warrant a reexamination and amendment of the Lobbying Disclosure Act itself.

We at the ACLU are fortunate to have the funding to support a full-time lobbyist and salaried bookkeeper; but, we consider ourselves unusual amongst non-profit issue advocacy organizations. For many of the smaller non-profit organizations throughout our state, compliance with these regulations will be a significant burden. The burden imposed by these regulations is implicitly recognized by the exemption of religious organizations from the registration and reporting requirements. However, this burden does not singularly affect religious organizations; it puts constraints on a wide variety of groups, especially the under-resourced.

Before detailing our objections, let me also suggest that the statute's religious exemption (Section 1306) may unfairly favor religious groups, thereby violating the Establishment Clause of the U.S. Constitution as well as Section 3, Article I of the Pennsylvania Constitution that states that "no preference shall ever be given by law to any religious establishments or modes of worship." Concerted effort should be made to resolve the potential for a constitutional challenge to the Act. If religious organizations are exempted because the restrictions may violate the First Amendment right to "free exercise of religion," it stands to reason that the First Amendment right of grassroots and non-profit principals "to petition the government" may also be infringed. If the Act is not amended to remove the exemption for religious groups, then at the very least the regulations should be drafted to ensure that small non-profit groups and grassroots principals share the same favored status of religious organizations. In *Walz v. Tax Commission*[2] (1970), the Supreme Court upheld property tax exemptions for church property *only* because the same tax exemptions were available as part of a general taxation scheme exempting all non-profit or

[1] United States v. Harriss, 347 U.S. 612, 625 (1954)
[2] 397 U.S. 664

socially beneficial organizations.[3] The exclusive exemption for religious organizations in this bill may, therefore, be deemed unconstitutional.

These regulations will unreasonably hinder access to the legislative process for grassroots and non-profit organizations. Our concerns stem from our belief that the participation of grassroots and non-profit organizations is a valuable asset to the legislative process. These organizations often have particular expertise regarding policy issues that is helpful in drafting effective legislation. These organizations, commonly under-funded and over-burdened, may choose to withhold their expertise for fear of reaching the threshold for reporting requirements and becoming subject to the regulations and punishments for non-compliance.

To draw attention to particularly burdensome lobbying disincentives for grassroots organizations, let me point to the ambiguous definitions of "indirect communication" and "anything of value." If these regulations are supposed to flesh out the provisions of the Lobbying Disclosure Act, it stands to reason that they should make clear and specific the intent and jurisdiction of the law. However, the regulations not only fail to narrow the definition of "indirect communication" provided in the statute, they go on to create even greater confusion by not limiting what shall be considered under the law as "anything of value." Now, non-profit organizations are vulnerable to inadvertently meeting the expenditure threshold and subsequently responsible for complying with the record keeping and reporting demands. This may cause many over-burdened non-profits to abstain from contributing to the legislative process altogether.

For organizations that do meet the threshold of reporting, an even greater burden is created by the requirement to maintain electronic records in a manner to enable the Commission or Attorney General access. While there is ambiguity in this regulation as well, it automatically necessitates greater technical support and computerized security measures that may be difficult

[3] Taken from an ACLU correspondence from Laura Murphy Lee, Director of the ACLU's Washington, D.C. office, to U.S. Senators opposing the Lobby Disclosure Act of 1994

to finance. Besides this requirement's burden, we hold firm to our assertion that the requirement potentially infringes on rights of privacy and attorney/client privilege.

Question 14 of the Regulatory Analysis Form asks: "Describe who will be adversely affected by the regulation." The response was "Unknown." The ACLU fears that there will be a clear adverse effect on non-profit, social advocacy organizations that engage in grassroots lobbying. When faced with the biennial registration fees, detailed reporting requirements, and ambiguous definitions outlined in the statute and restated in the regulations, many of these grassroots organizations may just turn their back on the legislative process, leaving only those lobbyists and principals that can afford to be heard, alongside religious groups, to influence public policy through organized lobbying.

Thank you for your consideration, and I would be happy to respond to any questions you may have.