The Constitutionality of Lobby Reform: Implicating Associational Privacy and the Right to Petition the Government

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THE CONSTITUTIONALITY OF LOBBY REFORM:
IMPLICATING ASSOCIATIONAL PRIVACY AND THE RIGHT
TO PETITION THE GOVERNMENT

Lobbyists currently are required to register and report to the United States Congress under the Federal Regulation of Lobbying Act of 1946. Because of poor draftsmanship, the 1946 Act actually covers few lobbyists and is not enforced by the federal government. One recent federal bill attempts to reform lobbying registration by addressing the inadequacies of the current law. If enacted, this bill might be challenged as an impediment to First Amendment rights. Any attempt at lobby reform implicates the First Amendment right to petition the government and the right of associational privacy. These issues have been analyzed by state and federal courts in cases representing challenges to lobbying regulations. An analytical framework can be extracted from these cases which offers the most desirable method of balancing individual liberties with the need for lobbying regulation. The recent federal bill is analyzed under this framework and practical solutions are offered to help ensure the constitutionality of future attempts at lobby reform.

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Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to help prevent.

The Supreme Court thus described the purpose of the Federal Regulation of Lobbying Act of 1946. Ironically, the Supreme Court's interpretation of the Act resulted in a law with little efficacy. Ostensibly requiring lobbyists to register with the Clerk of the House of Representatives and the Secretary of the Senate, the Act is little more than a guideline for voluntary compliance. Although Congress occasionally has endeavored to revise the debili-

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3 See infra notes 37-45 and accompanying text.
tated Act, no proposal to revise federal lobbying disclosure has yet been enacted.

In the final days of the 103rd Congress, a bill failed to pass that would have reformed federal regulation of lobbying activities. Because a similar bill could pass in the 104th Congress, the constitutional implications of regulation of lobbyists should be examined. This Note will address only the freedom of association and right to petition the government issues raised by such a bill.

The Note first will discuss the history and contents of Senate Bill 1060, including the justification for lobby reform. Next, the Note will analyze two constitutional issues that would be implicated by passage of Senate Bill 1060 or a similar lobbying reform bill. The first issue is the explicit First Amendment right to petition the government. The second issue is the freedom of association, implicit in the First Amendment. The analysis will include an examination of challenges to both state and federal statutes and regulations that affect lobbyists. The Note then will examine the policy considerations underlying lobby reform. These considerations involve balancing the need to prevent undue legislative influences and the appearance of impropriety with the individual's right to petition the government. The Note also will recommend the best ways to ensure a lobby reform bill's constitutionality while preserving its purpose. Finally, the possibility of a new judicial test for the First Amendment right to petition the government in the context of lobby reform will be addressed.

52 (1986) [hereinafter S. REP. NO. 161]. The Department of Justice, charged with enforcing the Act, has "shifted the focus of its principal efforts from prosecution to promoting voluntary compliance by bringing the act to the attention of those to whom it is potentially applicable." Id.

See id. at 46-50.


Other constitutional issues implicated by the bill may include the Establishment Clause, Free Exercise Clause, privacy, and vagueness. See Letter from Laura Murphy Lee, Director, American Civil Liberties Union, to Members of the United States Senate 1-4 (Oct. 5, 1994) (on file with author).

U.S. CONST. amend. I ("Congress shall make no law ... abridging ... the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.").

I. LOBBYING DISCLOSURE ACT OF 1995

A. Existing Law

1. Federal Regulation of Lobbying Act of 1946

Before examining the need for lobby reform, one must understand how the existing law applies to lobbyists. Congress and the states recognized the need for lobby reform as early as the nineteenth century, although comprehensive federal lobby reform legislation did not pass until 1946. The Federal Regulation of Lobbying Act of 1946 (the Act) is a poorly considered law based on little prior debate. The legislation's inferior draftsmanship and subsequent interpretation by the Supreme Court resulted in an ineffective law.

The language of the Act fails to cover a wide range of persons who might be considered lobbyists. The Act defines a lobbyist as:

any person . . . who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid in, . . . [t]he passage or defeat of any legislation by the Congress of the United States . . . [or t]o influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

The first gap in coverage is the Act's failure to cover grassroots lobbyists. The Act also only covers persons who attempt to influence congres-
sional legislation. This limitation permits lobbyists who attempt to influence executive branch and administrative decisions to avoid registration requirements. The scope of the Act is further narrowed by the requirement that the lobbyist's "principal purpose" be to influence legislation. This language permits lobbyists to use creative time-accounting techniques to argue that influencing legislation is not their "principal purpose," thus permitting most lobbyists to avoid the Act's coverage.

Lobbyists covered by the Act are required to comply with the registration requirements. Lobbyists must register with the Secretary of the Senate and the Clerk of the House of Representatives. The information that must be disclosed in the registration includes:

representatives. The definition of grassroots lobbying given in the original Senate Bill 349 and the accompanying report clearly intends the bill to cover only the former activity. See S. 349, 103d Cong., 2d Sess. § 3(8) (1994); S. REP. NO. 37, supra note 15, at 3.

The Senate report accompanying Senate Bill 349 suggests that the Act's failure to cover grassroots lobbying is attributable to the statutory language requiring those covered by the Act to lobby for compensation. S. REP. NO. 37, supra note 15, at 4 n.3. Few, however, could argue that lobbyists who initiate letter campaigns receive or solicit funds for their services. A better explanation of the Act's failure to cover grassroots lobbyists is the Supreme Court's interpretation of the Act. See infra note 32 and accompanying text. Regardless of the reason, most commentators agree that grassroots lobbyists are excluded from the Act's coverage. LELAND J. BADGER, FEDERAL LOBBYING 6 (Jerald A. Jacobs ed., 1989).

Grassroots lobbying, as defined in Senate Bill 349, is a significant component of a modern lobbying campaign. See Lobbying Disclosure Legislation: Hearings Before the Subcomm. on the Constitution of the House Comm. on the Judiciary, 104th Cong., 1st Sess. (1995), available in 1995 WL 331868 [hereinafter Hearings] (statement of Joan Claybrook, President, Public Citizen). Campaigns & Elections magazine estimated that nearly $800 million was spent on grassroots lobbying at the federal, state, and local levels during 1993 and 1994. Id. The magazine listed over 100 private companies that offer grassroots lobbying services. Id.

18 2 U.S.C. § 266.
19 S. REP. NO. 37, supra note 15, at 3.
20 2 U.S.C. § 266.
21 Recent statistics show that only 6000 lobbyists out of 60,000 to 80,000 working in the Washington, D.C. area registered under the Act. William P. Fuller, Congressional Lobbying Disclosure Laws: Much Needed Reforms on the Horizon, 17 SETON HALL LEGIS. J. 419, 427 (1993). Some entities charged with enforcing the Act take the cynical view that compliance with the Act is completely discretionary. The Clerk of the House of Representatives testified that because "he had no power to enforce the [A]ct, his office was merely a depository for information for anyone who wanted to file." S. REP. NO. 161, supra note 5, at 51. The Department of Justice focuses not on prosecution under the Act, but on promoting voluntary compliance. Id. at 52.
his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included.

Additionally, lobbyists must file quarterly reports with the Clerk of the House and the Secretary of the Senate. These reports must include:

- a detailed report under oath of all money received and expended by him... in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose.

The Act requires an additional report to be filed quarterly with the Clerk of the House of Representatives. This report must include: (1) the name and address of contributors of more than $500 to the lobbyist; (2) the amount of the contributions; and (3) a detailed account of expenditures made on behalf of contributors.

2. The Supreme Court's Interpretation of the Act

The Supreme Court, in United States v. Harriss, examined the constitutionality of the Federal Regulation of Lobbying Act. In Harriss, the defendants were charged with criminally violating the Act by failing to register as lobbyists and report contributions and expenditures. Determining the validity of the Act on its face, the Court first examined whether it was unconstitutionally vague. In examining the vagueness issue, the Court held that the Act, by its terms, covered only persons “who solicit, collect, or receive contributions of money or other thing[s] of value, and then only if ‘the principal purpose’ of either the persons or the contributions” is to influence
legislation. Thus, the Act’s coverage was limited to those who lobby for compensation.

Next, the Court examined whether the type of activity covered by the Act made the Act unconstitutionally vague. The Court read the Act’s coverage as to apply only to “lobbying in its commonly accepted sense . . . [namely,] direct communication with members of Congress on pending or proposed federal legislation.” The Court thus restricted the coverage of the Act to lobbyists who communicate directly with members of Congress—a requirement not found in the Act’s language.

Finally, the Court addressed whether the meaning of “principal purpose” rendered the Act unconstitutionally vague. The Court stated that “principal” means “in substantial part.” To interpret the Act as only covering lobbyists who spend most of their time lobbying would, in the words of the Court, “seriously impair the effectiveness of the Act in coping with the problem it was designed to alleviate.” The Court, therefore, essentially rewrote the Act so that it applied to persons who solicit, collect, or receive contributions with a substantial purpose to influence legislation through direct communication with congressional members.

30 Id. at 619.
31 Id. at 620.
32 It is interesting to note that the Court considered an “artificially stimulated letter campaign” to be direct communication with members of Congress. Id. at 620. Such a letter campaign could be considered grassroots lobbying—an activity declared by many to be outside the scope of the Act. See S. Rep. No. 37, supra note 15, at 4 n.3.

The contention that grassroots lobbying is not covered by the Act is a weapon used by both sides of the lobby reform debate. Those in favor of reform cite the lack of coverage of grassroots lobbying as a glaring omission that should be corrected. See id. The Republican-led filibuster that killed Senate Bill 349 was ostensibly for the purpose of protecting grassroots lobbying from onerous reporting requirements. See Michael Weisskopf, Senate Republicans Block Lobbyist Reform Measure, WASH. POST, Oct. 6, 1994, at A1. If, as the Supreme Court suggested, the current statute covers grassroots lobbying activities, then the justification for lobby reform as well as the grounds for opposition to reform fall on weak footing. The apparent inconsistency probably can be explained by the fact that not all grassroots lobbying can be described as an “artificially stimulated letter campaign.” See Hearings, supra note 17. Furthermore, Republican opposition to Senate Bill 349 might be better interpreted as a political ploy to defeat a Democratic initiative in the face of upcoming elections. See Weisskopf, supra, at A1.

33 Harriss, 347 U.S. at 620-23
34 Id. at 622.
35 Id. at 623. Again, the justifications sometimes advanced for lobby reform do not coincide with the Supreme Court’s ruling in Harriss. The Committee Report accompanying Senate Bill 349 states that the gaps in the Act could be interpreted to mean that only those people who spend a majority of their time lobbying are covered. S. Rep. No. 37, supra note 15, at 4. This interpretation, of course, was explicitly rejected by the Court in Harriss. Harriss, 347 U.S. at 623.
36 Harriss, 347 U.S. at 623.
Proponents of lobby reform claim that the Act, as interpreted by the Supreme Court, leaves several loopholes that impair the effectiveness of the Act. The Act fails to cover lobbying of executive branch officials. The Act purportedly covers only efforts "to influence the passage or defeat of legislation in Congress—not other activities of Members and staff." The Act also does not apply to lobbying of congressional staff, instead covering only direct contacts with members of Congress. Furthermore, the Act has been interpreted to cover only those persons whose principal purpose is lobbying. Finally, proponents of lobby reform claim that the Act does not cover grassroots lobbying.

These gaps in coverage enable numerous lobbyists to avoid registration requirements. Consequently, many people who engage in activities commonly acknowledged as lobbying do not register under the Act. The failure of these lobbyists to register is a result of the narrow coverage of the Act, not of the lobbyists' disregard for the law. Other problems with the Act in-

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37 S. REP. NO. 37, supra note 15, at 3.
38 Id. The Act, however, broadly defines legislation as including "bills, resolutions, amendments, nominations, and other matters pending or proposed" in Congress. 2 U.S.C. § 261(e) (1994).
39 S. REP. NO. 37, supra note 15, at 3. One commentator has argued that this interpretation is incorrect because the Act, the context of the limiting language in Harriss, and subsequent case law, do not distinguish between staff and members. Stanley M. Brand et al., Disclosing "Lobbying" Activities: A Critical Examination of the Federal Regulation of Lobbying Act and the Byrd Amendment, 45 ADMIN. L. REV. 343, 348-49 (1993). Regardless of whether interpreting the Act to exclude contacts with committees and staff is logical, it is so construed by the government and lobbyists. Thus, this justification for lobby reform remains valid as long as the Act remains in its present form.
40 See supra note 32.
41 S. REP. NO. 37, supra note 15, at 4. The General Accounting Office found that 10,000 of the 13,500 individuals and organizations listed in the book Washington Representatives were not registered. Id. A survey of those unregistered individuals found that three quarters of those were engaged in activities similar to those ostensibly covered by the Act. Id. The law has been criticized by lawmakers, lobbyists, and commentators as meaningless. See Fuller, supra note 21, at 427. But see James M. Demarco, Note, Lobbying the Legislature in the Republic: Why Lobby Reform is Unimportant, 8 NOTRE DAME J.L. ETHICS & PUB. POL’Y 599, 624 (1994) (arguing that "the Senate has offered no indication that enforcement [of the 1946 Act] has been lax in the past"). Demarco never discusses the bold testimony of a representative of the Department of Justice that "[t]he Department has not changed its opinion that the 1946 Lobbying Act is ineffective, inadequate, and unenforceable." S. REP. NO. 161, supra note 5, at 53.
42 S. REP. NO. 37, supra note 15, at 4. This conclusion is questionable considering that the Supreme Court explicitly rejected interpretations of the Act that result in several of these "loopholes." See supra notes 37-45 and accompanying text.
clude the accuracy of the disclosed contribution figures,\textsuperscript{43} ineffective administration,\textsuperscript{44} and ineffective enforcement of the Act.\textsuperscript{45}

Congress soon recognized the problems with the Act.\textsuperscript{46} Despite several attempts, however, the Act was never reformed.\textsuperscript{47} Lobbyists’ concerns over their First Amendment rights helped to defeat reform attempts in the 1970s.\textsuperscript{48}

**B. Recent Attempts at Lobby Reform**

The most recent attempt at overhauling the lobbying regulation system was the failed Senate Bill 349\textsuperscript{49} and its successor in the 104th Congress, Senate Bill 1060.\textsuperscript{50} Senate Bill 1060 had its origins in the Senate Subcommittee on Oversight of Government Management during its investigation of the Wedtech scandal.\textsuperscript{51} In 1987, the Subcommittee investigated “improper activities in the award of federal contracts to the Wedtech Corporation.”\textsuperscript{52} The Subcommittee noted that Wedtech had hired numerous lobbyists “to assist it in obtaining favored treatment from the federal government.”\textsuperscript{53} The Subcommittee’s 1988 report “affirmed the importance of public disclosure of lobbying activities as a means of discouraging such questionable activi-

\textsuperscript{43} Lobby-reform proponents argue that expenses actually reported by lobbyists are well below actual figures. S. REP. No. 37, \textit{supra} note 15, at 5. This discrepancy is a result of failure to comply with the Act’s disclosure requirements. In addition, the narrow scope of the Act leads to deflated numbers even when there is full compliance. \textit{Id.} at 5-6.

\textsuperscript{44} There is no governmental body with the power to interpret the requirements of the Act and give guidance to registrants. \textit{Id.} at 6-7. Consequently, lobbyists are free to interpret the Act themselves, exacerbating the already narrow coverage. \textit{See id.} at 7.

\textsuperscript{45} The Department of Justice views the Act as “ineffective, inadequate, and unenforceable.” \textit{Id.} Consequently, criminal prosecutions are all but nonexistent, and civil penalties are not authorized under the Act. \textit{Id.}

\textsuperscript{46} Congress established hearings in 1950 to examine the weaknesses of the Act. S. REP. No. 161, \textit{supra} note 5, at 44. These hearings, known as the Buchanan Hearings, documented the weaknesses resulting from the poor draftsmanship of the Act. \textit{Id.} at 44-45.

\textsuperscript{47} \textit{Id.} at 46-50.

\textsuperscript{48} \textit{Id.} at 48-49.

\textsuperscript{49} S. 349, 103d Cong., 2d Sess. (1994).


\textsuperscript{51} S. REP. No. 37, \textit{supra} note 15, at 19.

\textsuperscript{52} \textit{Id.}

\textsuperscript{53} \textit{Id.}
ties." The Subcommittee proceeded to review the existing lobbying laws, and held hearings on them in 1991.

Senator Carl Levin (D-MI) introduced the first version of the Lobbying Disclosure Act on February 27, 1992. It was revised and re-introduced as Senate Bill 2766 on May 21, 1992. On June 25, 1992, the Committee on Governmental Affairs reported favorably on Senate Bill 2766, adding only three amendments. Nevertheless, the Senate did not consider the bill in the 102nd Congress.

The bill re-introduced as Senate Bill 349 in the 103rd Congress was passed on May 6, 1993, by a vote of 95-2. The House passed the bill, with amendments, on March 24, 1994, by a vote of 315-110. The Senate disagreed with the House amendments and agreed to a conference. The House passed the conference report on September 29, 1994 by a vote of 306-112. Subsequently, the Senate could not end a filibuster before a vote on the conference report, and the bill failed to pass before the end of the 103rd Congress. The bill has been reintroduced in the 104th Congress by Senator Levin as Senate Bill 1060.

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54 Id. The report stated:

The Subcommittee is troubled by the possible impropriety both in appearance and reality that can result from the undue influence friends can bring to bear on a current federal employee. Public awareness of the identification of lobbyists and the matters on which they are lobbying may help limit the abuses in this area. Id.

55 Id. at 20.
57 S. REP. NO. 37, supra note 15, at 20.
59 Id. at 21.
60 Id. at 22.
61 Id.
62 139 CONG. REC. S5579 (daily ed. May 6, 1993).
64 Id. S5592 (daily ed. May 11, 1994).
65 Id. H10,296 (daily ed. Sept. 29, 1994).
66 Weisskopf, supra note 32, at A1. Senator Levin stated that the bill was defeated for purely political reasons: "If [Representative Newt] Gingrich [R-GA] can stop this from passing, it fits his political agenda." Id. This assertion is supported by the fact that the same Senate that filibustered the bill in October 1994 passed the bill by a 95-2 vote in May 1993. Id. The bill has been introduced into the 104th Congress as Senate Bill 1060. This version has a better chance of passage because the Republicans now control a majority in both houses of Congress and thus have less need for embarrassing the Democrats. Furthermore, Senator Levin has indicated a propensity to compromise by deleting controversial provisions regarding grassroots lobbying. 141 CONG. REC. S331 (daily ed. Jan. 5, 1995) (statement of Sen. Levin).
C. Contents

1. General Definitions

Senate Bill 1060 would require lobbyists to register with the Secretary of the Senate and the Clerk of the House of Representatives. Under Senate Bill 1060, a lobbyist is defined as an:

individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than [twenty] percent of the time engaged in the services provided by such individual to that client over a six month period.

“Lobbying activities” are defined in the bill as “lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.”

Furthermore, a “lobbying contact” includes “any oral or written communication . . . to a covered [executive or legislative] branch official that is made on behalf of a client with regard to . . . the formulation, modification, or adoption of” federal legislation, rules, regulations, executive orders, or “any other program, policy, or position of the United States Government.” Covered executive and legislative branch officials include staff members and lower level employees of members of Congress and congressional committees.

These definitions eliminate many of the shortcomings of the 1946 Act. First, the broad definition of lobbying activities ensures that lobbyists consider a more realistic version of their total time spent lobbying when deciding if they have to report. Currently, lobbyists only have to report direct communications with members of Congress. Under Senate Bill 1060, lob-

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68 Id. § 4(a)(1)
69 Id. § 3(10).
70 Id. § 3(7).
71 Id. § 3(8).
72 Id. § 3(3-4).
73 See United States v. Harriss, 347 U.S. 612, 620 (1954); see also supra notes 31-32 and accompanying text.
byists would have to consider all activities in support of lobbying contacts.\textsuperscript{74}

Another loophole addressed by the bill is the requirement under the Act that a person's "principal purpose" be to lobby.\textsuperscript{75} Senate Bill 1060 excludes from coverage anyone whose lobbying activities constitute less than twenty percent of the time engaged in the services provided to a particular client.\textsuperscript{76}

The bill also deals with the narrow definition of covered officials. Under current law, only direct communications with members of Congress are considered lobbying.\textsuperscript{77} This interpretation excludes a large number of lobbyists because the majority of congressional lobbying activity focuses on congressional staff.\textsuperscript{78} The bill covers all contacts with congressional staff and certain executive branch officials.\textsuperscript{79}

2. Registration and Reporting Requirements

The centerpiece of Senate Bill 1060 is its disclosure and reporting requirements. If the bill were enacted, a lobbyist would be required to register with the Secretary of the Senate and the Clerk of the House of Representatives.\textsuperscript{80} A de minimis test was established to allow lobbyists to avoid registration with regard to a particular client if total income from that client related to lobbying activities does not exceed $5000 semi-annually; or, for a lobbyist lobbying on its own behalf, if total expenses related to lobbying activities does not exceed $20,000 semi-annually.\textsuperscript{81} The registrant must disclose the name, address, and place of business of (1) itself; (2) its client; (3) any organization that contributes more than $10,000 to the lobbying activities of the registrant semi-annually and participates significantly in the planning, supervision, or control of such lobbying activities; and (4) any foreign entity that owns twenty percent of the registrant or participates in lobbying activities.\textsuperscript{82} Additionally, the registrant must disclose the general issue areas in which the registrant expects to engage in lobbying activities on behalf of the client, specific issues that have been addressed already, or will be addressed, and the name of each employee the registrant expects will work as a lobbyist for the particular client.\textsuperscript{83}

\textsuperscript{74} S. 1060 § 3(7).
\textsuperscript{75} 2 U.S.C. § 266 (1994). A narrow interpretation, however, of "principal purpose" was rejected by the Supreme Court. See supra notes 33-35 and accompanying text.
\textsuperscript{76} S. 1060 § 3(10).
\textsuperscript{77} See supra notes 31-32 and accompanying text.
\textsuperscript{78} S. REP. NO. 37, supra note 15, at 29.
\textsuperscript{79} S. 1060 § 3(3)-(4).
\textsuperscript{80} Id. § 4(a)(1).
\textsuperscript{81} Id. § 4(a)(3).
\textsuperscript{82} Id. § 4(b).
\textsuperscript{83} Id.
In addition to the initial registration, lobbyists under Senate Bill 1060 would be required to file a semi-annual report for each client. This report would contain the name of the registrant, the name of the client, and an update of information on the initial registration form. The report also would contain: (1) "specific issues upon which a lobbyist . . . engaged in lobbying activities, including . . . bill numbers and references to specific executive branch actions"; (2) "a statement of the Houses of Congress and the Federal agencies contacted . . . on behalf of the client"; (3) "a list of the employees of the registrant who acted as lobbyists on behalf of the client"; and (4) "a description of the interest . . . of any foreign entity . . . in the specific issues listed" previously. An estimate of the total income received by or on behalf of a client related to lobbying activities also would be included in the report. The bill that failed passage in the 103rd Congress would have required lobbyists to disclose the names and addresses of persons or entities who paid the lobbyist on behalf of the client.

D. The Future of Lobby Reform

The Republican victories in both houses of Congress leave the bill in an uncertain position. Although the filibuster that prevented passage of Senate Bill 349 was Republican-led, the bill enjoyed bipartisan support prior to the last days of the 103rd Congress. Consequently, the Republican opposition to Senate Bill 349 is probably better understood as a political maneuver designed to prevent a democratic "achievement" on the eve of the 1994 election rather than as true opposition to the contents of the bill. Senate Bill 1060 passed the Senate by a vote of 98-0 on July 25, 1995. Because the bill received bipartisan support prior to the election and in the current Congress, the future of lobby reform is somewhat promising.

84 Id. § 5(a).
85 Id. § 5(b).
86 Id.
87 Id.
88 S. 349, 103d Cong., 2d Sess. § 105(a)(5) (1994). This provision was deleted from Senate Bill 1060 because of First Amendment concerns. See infra note 220 and accompanying text. Whether the final version of the bill will require disclosure of persons who pay lobbyists on behalf of a client remains to be seen.
89 See supra notes 61-67 and accompanying text.
90 See Weisskopf, supra note 32, at A1; see also supra note 66.
92 Furthermore, the most recent version omits provisions regarding grassroots lobbying and disclosure of contributors. See 141 CONG. REC. S331 (daily ed. Jan. 5, 1995) (statement of Sen. Levin). Because reinterpretation of these provisions was purportedly the reason for the bill's failure in the 103d Congress, the earlier widespread support of the bill could reemerge.
II. ANALYSIS

Senate Bill 1060 implicates the constitutional right to petition the government for a redress of grievances and the freedom of association implicit in the First Amendment. Because both rights fall under the First Amendment, the judicial analysis of laws affecting these rights is similar. Unfortunately, many of the court decisions addressing state lobby laws have failed to differentiate between the two distinct constitutional rights, with the result being unsatisfactory. The Supreme Court must clarify the issue by re-examining lobby reform laws and declaring which rights are implicated and which tests are to be applied.

A. Right to Petition Government

1. Supreme Court Analysis

At first glance, the activities of lobbyists would appear to be protected explicitly by the First Amendment’s guarantee of the right to petition the government for redress of grievances. The Supreme Court, however, has not yet recognized a constitutional right to lobby. An important symbol of bipartisan support of lobby reform in general occurred when Democratic President Bill Clinton and Republican Speaker of the House of Representatives Newt Gingrich met in New Hampshire on June 11, 1995. See Ann Devroy, Clinton, Gingrich Play Down Disputes: Air of Civility Marks Historic Meeting, WASH. POST, June 12, 1995, at A1. During this meeting, the two political leaders agreed to appoint a panel to propose reform of lobbying rules. Id. Meanwhile, Senate Bill 1060 received unanimous support while passing the Senate. The Bill’s prospects in the House are unclear, as at least one House leader expressed doubt that the Bill could be passed this year. Dewar & Weisskopf, supra note 8, at A4.

93 See U.S. CONST. amend. I.
94 Id. One commentator has argued that lobbying is simply a means of petitioning the government and is thus clearly protected by the Constitution. See Andrew P. Thomas, Easing the Pressure on Pressure Groups: Toward a Constitutional Right to Lobby, 16 HARV. J.L. & PUB. POL’Y 149 (1993). A petition, however, was originally a specific procedure by which a citizen formally asked for and received legislative consideration of an issue. Stephen A. Higginson, A Short History of the Right to Petition Government for the Redress of Grievances, 96 YALE L.J. 142, 142-43 (1986); Julie M. Spanbauer, The First Amendment Right to Petition Government for a Redress of Grievances: Cut from a Different Cloth, 21 HASTINGS CONST. L.Q. 15, 26-34 (1993). Under an original intent analysis of the right to petition clause, it is by no means clear that lobbying in its current form is explicitly covered by the First Amendment.
95 See Thomas, supra note 94, at 191-93.
The Court first had the opportunity to address constitutional rights involved with lobbyists in *United States v. Rumely*. The defendant was convicted of failing to answer questions before a congressional committee investigating lobbying and the 1946 Act. The issue before the Court was whether the congressional committee had exceeded its authority by requiring a publisher to disclose the names of those who made bulk purchases of books. The Court held that the resolution empowering the committee did not authorize investigation into all activities of anyone intending to influence legislation.

*Rumely* has been hailed as "an important advancement toward a fully refined conception of lobbyists' First Amendment rights." One commentator argues that "*Rumely* was the Court's first... acknowledgment that lobbying is entitled to some [form of] protection [under the] First Amendment." Nevertheless, any reference to First Amendment rights clearly was to the freedoms of speech and the press. The Court referred to Rumely's activities as attempting to "influence private opinion through books and periodicals." Indeed, the fact that the Court overturned Rumely's conviction meant that his activities were not "lobbying activities." Thus, *Rumely* hardly can be described as a decision involving lobbyists' rights or the right to petition the government.

The Court next addressed the constitutionality of the Federal Regulation of Lobbying Act of 1946 in *United States v. Harriss*. The defendants were charged with violating the Act's reporting provisions. They attacked the statute on three grounds. First, the defendants alleged that the Act was "too vague and indefinite to meet the requirements of due process." Initially, the Court stated that it had a duty to read the statute in a manner to make it constitutionally definite. The problem was that the Act applied to a

person... who... directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is

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96 345 U.S. 41 (1953).
97 *Id.* at 42.
98 *Id.*
99 *Id.* at 47-48.
100 Thomas, *supra* note 94, at 161.
101 *Id.*
102 See *Rumely*, 345 U.S. at 57-58 (Douglas, J., concurring).
103 *Id.* at 46.
104 *Id.* at 44-45.
106 *Id.* at 617.
107 *Id.* at 618.
to aid, in the accomplishment of . . . [t]he passage or defeat of any legislation by the Congress of the United States.  

The Court read this section to refer to lobbying only as "direct communication with members of Congress on pending or proposed federal legislation." Construed in this manner, the Court found the Act to be constitutionally definite.  

The defendants' second and third arguments were generally that the reporting and registration requirements of the Act violated freedoms guaranteed by the First Amendment—freedom to speak, publish, and to petition the government. The Court first described the vital public purpose of the Act as preventing the "evil" of "special interest groups seeking favored treatment while masquerading as proponents of the public weal." The Court then explained that the Act did not prohibit special interest group activities, but only collected information. Thus, Congress used its power "in a manner restricted to its appropriate end."  

The Court's cursory treatment of the First Amendment did little to explain the constitutional standing of the right to lobby. The Court rejected the proposition that the Act deterred exercise of First Amendment rights because such restraint was "at most an indirect one resulting from self-censorship, comparable in many ways to the restraint resulting from criminal libel laws." The Court's decision focused on vagueness and only barely addressed the issue of the right to petition the government. When it addressed the First Amendment, it lumped together for purposes of analysis the freedoms of speech, press, and petition. The Court used a relaxed scrutiny test in that it emphasized the fact that Congress was not prohibiting lobbying, but was merely collecting information. The Court accepted the government's asserted interest of maintaining the integrity of a basic governmental process as vital.  

Although the decision in Harriss confirmed Congress's right to require disclosure of lobbying activities, its precedential value was limited. The Court recited a vital public interest for the Act, and declared that the Act narrowly achieved that purpose, but the Court did not apply strict scrutiny to

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108 Id. at 618-19 (quoting 2 U.S.C. § 266 (1994)).
109 Id. at 620.
110 Id. at 624.
111 Id. at 625.
112 Id. at 625-26.
113 Id. at 625.
114 Id. at 626.
115 Id.
116 Id. at 625.
117 Id.
118 Id. at 625-26.
the Act. Instead, the Court appeared to examine the Act as a time, place, and manner restriction. Furthermore, the Court's cursory treatment of the implicated First Amendment rights did little to elucidate the constitutional protection of lobbying.

In *Regan v. Taxation With Representation*, the Court considered a statute that denied tax exempt status to organizations that engage in substantial lobbying activities. The Court rejected the argument that the statute infringed on any First Amendment rights because the government is not required to subsidize constitutional rights. Because no First Amendment rights were found to be implicated by the statute, the Court applied a rational basis test to uphold the statute's validity. Although the majority did not address the constitutional right to petition the government, Justice Blackmun did so in his concurrence. Justice Blackmun briefly stated that "lobbying is protected by the First Amendment." This was the first explicit recognition by the Supreme Court of a constitutional right to lobby. Justice Blackmun failed to expand on his statement, leaving its precedential value in question.

Despite Justice Blackmun's statement in *Regan*, the Court never has expressly created a constitutional right to lobby based on the First Amendment's guarantee of the right to petition the government. The Court's only extensive treatment of lobbying, *Harriss*, confirmed Congress's power to require registration of lobbyists. The lack of a clear analytical framework for cases involving lobbying has led to numerous lower court decisions addressing the issue.

2. Lower Courts' Analyses

Every state has some form of law regulating lobbyists. Consequently, there have been several lower court challenges to state laws regulating

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119 The Court stated that Congress had not sought to prohibit lobbying; instead, "[i]t has merely provided a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose." *Id.* at 625. By characterizing the Act as having a minimal effect on lobbyists' First Amendment rights, the Court was able to hold that the Act did not violate the First Amendment.


121 *Id.* at 542.

122 *Id.* at 546.

123 *Id.* at 547-48.

124 *Id.* at 552 (Blackmun, J., concurring).

125 Thomas, *supra* note 94, at 176. Thomas stated that Delaware did not have a law regarding lobbyists. *Id.* Subsequent to Thomas's article, Delaware passed a law requiring lobbyist registration and reporting. DEL. CODE ANN. tit. 29, §§ 5831-5837 (Supp. 1994) (effective Jan. 15, 1996).
lobbyists. Many of these cases directly address the constitutional right to lobby or the right to petition the government for redress of grievances.

Because the Supreme Court never has clarified the constitutional standing of lobbying, the level of scrutiny that will be applied to laws that affect lobbying is unclear. One alternative is to apply strict scrutiny to any law affecting lobbying. At the other extreme is to subject such laws to rational basis review. Neither alternative is logical or sound as a policy matter. The lack of public confidence in the federal government and the scandals involving lobbyists demonstrate the clear need for regulation of lobbyists. Judicial declaration of a strict scrutiny test for laws affecting lobbying would severely hamper much-needed reforms. On the other hand, the right to petition the government is a fundamental element of the First Amendment. Allowing Congress to restrict the right to petition without the possibility of probing judicial scrutiny could lead to the curtailment of individual liberties. Arising out of the lower court decisions is a test that provides a sound analytical framework for the constitutional analysis of lobbying disclosure laws.

The California Supreme Court enunciated its test for examining the constitutionality of laws affecting lobbying in *Fair Political Practices Commission v. Superior Court*.

This case involved a challenge to California's Political Reform Act of 1974. In examining the lobbyist registration and reporting provisions, the court first considered which constitutional test it would apply. It stated that the right to petition the government for a redress of grievances is a fundamental right. Nevertheless, the court recognized that "not every limitation or incidental burden on a fundamental right is subject to the strict scrutiny standard. When the regulation merely has an incidental effect on exercise of protected rights, strict scrutiny is not applied." This case is significant in that it lays the analytic groundwork for considering the constitutionality of lobby laws. According to the California Supreme Court, if the law does not significantly interfere with the right to petition the government, then the law is subjected to a rational basis test. By comparison, if a law has an appreciable impact on the right to petition, the law is subjected to strict scrutiny.

128 *Fair Political Practices Comm'n*, 599 P.2d at 53. The court noted that "the lobbyist's function obviously is to exercise [the right to petition the government for a redress of grievances] on behalf of his employer." Id. It is far from obvious, however, that lobbying is the exercise of the right to petition in its original form. See supra note 94. The natural tendency of courts and commentators, though, appears to be to analyze lobbying under the petition clause—thus necessitating discussion of the issue.
129 *Id.* at 53.
130 *Id.* at 53-54.
131 See *id.* at 54.
The lower court decisions examining statutes that affect lobbying vary in their outcomes. *Fair Political Practices Commission* is important because it was the only case to strike down a lobbying reporting requirement based on the First Amendment right to petition the government. The statute at issue required lobbyists to register and report all payments for lobbying activities, the names of those who supplied the funds, disbursements from the funds received, and any transactions with government officials.\(^{132}\) The statute required lobbyists to report "any transaction totalling [more than $500]... with business entities in which the lobbyist kn[ew] or ha[d] reason to know a [government official was] a proprietor, partner, director, officer, or manager."\(^{133}\) The court first sustained the registration and reporting of expenditures requirements, stating that these requirements did not substantially interfere with the lobbyist's ability to petition the government.\(^{134}\)

Turning to the requirement that lobbyists report transactions that involve business with government officials, the court held that the onerous reporting requirements could lead to deterrence of lobbying.\(^{135}\) The reporting requirements were onerous because they required reporting of transactions wholly unrelated to lobbying activities.\(^{136}\) Because the reporting requirements significantly burdened the right to petition, the court applied strict scrutiny and struck them.\(^{137}\) Thus, according to *Fair Political Practices Commission*, a reporting requirement for any transactions with businesses in which government officials have an interest interferes impermissibly with the lobbyist's right to petition.

The Washington Supreme Court upheld lobbyist registration and reporting requirements in *Fritz v. Gorton*.\(^{138}\) The court first discussed the right to petition the government, noting that the right is "one of the cornerstones of our constitutional democracy."\(^{139}\) The court stated, "the role of the lobbyist in openly and appropriately communicating with government in regard to legislation and other related functions of government is clearly assured and protected by the [F]irst [A]mendment right to petition government."\(^{140}\) Nevertheless, the court upheld registration and reporting requirements similar to those upheld in *Fair Political Practices Commission*.\(^{141}\) Although the

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\(^{132}\) *Id.*

\(^{133}\) *Id.*

\(^{134}\) *Id.* at 54. The court stated that "requiring a person engaged in a business to describe it and to report its receipts and expenses may not be viewed in our commercial society as a substantial impediment to engaging in that business." *Id.*

\(^{135}\) *Id.* at 54-55.

\(^{136}\) *Id.* at 54.

\(^{137}\) *Id.* at 55.


\(^{139}\) *Id.* at 929.

\(^{140}\) *Id.*

\(^{141}\) *Id.* at 931. The Washington law required, among other things, disclosure of the
court never explicitly stated which constitutional test it had used, it clearly
applied a minimal rational basis review.142

Another case that examined registration and reporting requirements for
lobbyists was ACLU v. New Jersey Election Law Enforcement Commissi-
on.143 The federal district court first considered New Jersey’s registration
and reporting requirements together in determining their impact on freedom
of speech and the right to petition.144 The court stated: “Freedom of speech
and the right to petition for the redress of grievances are ‘among the most
precious of the liberties safeguarded by the Bill of Rights.’” Consequently,
the state was required to show that it had chosen the least restrict-
tive means to further a compelling interest.146 The court recited three state
interests behind the law. The first interest is the need for public officials to
understand and evaluate the positions of particular constituencies on particu-
lar issues.147 Second, the electorate is served by regulation of lobbying by
allowing it to evaluate the performance of elected officials.148 Finally, the
state has an interest in “promoting openness in the system by which its laws
are created.”149

The court then turned to the means used to reach those ends, and noted
that “disclosure requirements are probably the least restrictive means of
serving those interests.”150 According to the court, the outcome would have
been different if the statute was read literally so that activities unrelated to
lobbying were required to be reported.151 Thus, the court followed the
ruling in Fair Political Practices Commission by asserting that reporting re-
quirements that cover activities unrelated to lobbying will be struck, but
other registration and reporting requirements will be upheld.

name and address of the lobbyist’s employer; the lobbyist’s compensation; the general
subject of the lobbyist’s legislative interest; if the lobbyist’s employer was an entity, the
name and address of each member of such entity whose payments to the entity exceed
$500 annually, and itemized expenditures. Id. at 927 n.4.
142 The court stated that “there is a rational nexus between a legitimate societal pur-
pose of the electorate and the requirements of [the reporting provisions].” Id. at 931.
Furthermore, the court never discussed whether the provisions were narrowly tailored or
whether they were overbroad—the infirmity that doomed some of the reporting require-
ments in Fair Political Practices Commission.
144 Id. at 1128.
145 Id. (citing District 12, UMW v. Illinois State Bar Ass’n, 389 U.S. 217, 222
(1967)).
146 Id. at 1129.
147 Id.
148 Id.
149 Id.
150 Id. at 1130.
151 Id. at 1130 n.18.
Finally, another case that examined registration and reporting requirements was *Commission on Independent Colleges & Universities v. New York Temporary State Commission on Regulation of Lobbying*. In this case, the court held that the New York Lobbying Act, which required lobbyists to register annually and report quarterly, was not unconstitutionally vague. This case is particularly muddled in its reasoning because it combined many of the First Amendment rights together in its analysis. The court first stated that under overbreadth analysis, laws that have an incidental impact on speech are not subjected to strict scrutiny. Furthermore, "lobby disclosure laws are traditionally subject to less scrutiny than laws that sanction "pure speech.""

Applying the reduced scrutiny test, the court first found that the public interest in the lobby law was to "apprise the public of the sources of pressure on government officials." The plaintiffs then claimed the law was overbroad in several respects. Their argument was that the law reached indirect, as well as direct, lobbying. The court held that the lobby law was to be read to cover the same activities as those defined in *Harriss*, and was thus confined to direct lobbying.

This case differed from the others that examined registration and reporting requirements for lobbyists in that it did not even profess to apply heightened scrutiny. The basis for the court's use of a lower standard of review was the distinction between laws which regulate the content of speech and those which only have an incidental impact on First Amendment rights. Once strict scrutiny was rejected, the court was free to discard the plaintiffs' arguments. This case supports the analysis of *Fair Political Practices Commission* in that lobby laws will be subject to strict scrutiny only if they interfere substantially with the right to petition the government. Mere regis-

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153 N.Y. LEGIS. LAW §§ 1-16 (Consol. 1979).
154 *Commission on Indep. Colleges & Univs.*, 534 F. Supp. at 503. The court also examined whether the law had a chilling effect on First Amendment rights. *Id.* The court stated that any chilling effect described by the plaintiff fell "largely into the category of self-censorship as outlined in *United States v. Harriss*." *Id.* at 498. There was no factual indication of economic reprisals, loss of employment, threats, or other manifestations of hostility, as was found in *NAACP v. Alabama.* *Id.*; *see infra* notes 162-68 and accompanying text.
156 *Id.* at 494 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)).
157 *Id.* at 494-95.
158 *See id.* at 495-96.
159 *Id.* at 497.
160 *Id.*
161 *Id.* at 493.
tation and reporting requirements do not interfere substantially with any First Amendment rights.

From these cases, one can determine that lobbyist registration and reporting laws will be subjected to minimal scrutiny if they do not significantly burden the lobbyist's right to petition. On the one hand, requiring reporting of transactions with government officials does not burden lobbyists, and will be subjected to minimal scrutiny. On the other hand, reporting requirements of transactions with non-governmental entities will be considered overbroad and burdensome. These provisions will be subjected to strict scrutiny, and likely stricken.

B. **Right of Association**

Another analytical framework that is pertinent to lobby laws is the judicial treatment of laws affecting the right to freedom of association. This analysis has not been applied to lobby laws by the Supreme Court. Nevertheless, the rationale and logic is applicable in the context of laws that regulate lobbying. Accordingly, several lower courts that have examined lobby laws based their decisions in whole or in part on the freedom of association.

1. **The Supreme Court's Analysis of Freedom of Association**

In the landmark case of *NAACP v. Alabama*, the Court first recognized the right of freedom of association. The issue before the Court was whether the state could compel the NAACP to disclose its membership lists to the Alabama Attorney General without regard to the position or function of the members in the NAACP. Turning to the merits, the Court declared: "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the . . . Fourteenth Amendment, which embraces freedom of speech." Thus, "state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny."

The Court stated that compelled disclosure of membership in groups could be an effective restraint on freedom of association. Here, the NAACP demonstrated that disclosure of the identity of its members had "exposed [them] to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." The Court

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163 Id. at 451.
164 Id. at 460.
165 Id. at 460-61.
166 Id. at 462.
167 Id.
then found that compelled disclosure acted as a restraint on the effectiveness of the group’s ability to advocate.\textsuperscript{168}

This case was important because of its broad language describing the dangers of mandatory disclosure. At the most, the Court held that forced disclosure of any kind could interfere with the freedom of association. Read narrowly, however, the holding seems to require a factual showing that disclosure would have a deterrent effect on the freedom of association.

The next major case in the associational privacy line was \textit{Buckley v. Valeo},\textsuperscript{169} which presented an extensive challenge to the Federal Election Campaign Act of 1971. The Act required political committees to keep records of contributions, including the names and addresses of contributors.\textsuperscript{170} The political committees also were required to file reports with the Federal Election Commission that identified the source of contributions greater than $100.\textsuperscript{171}

As a preliminary matter, the Court reaffirmed that “compelled disclosure ... can seriously infringe on privacy of association.”\textsuperscript{172} The Court explained that disclosure of contributors can invade privacy of belief as much as disclosure of membership lists.\textsuperscript{173} The Court then examined the state interests in the disclosure of contributors. First, disclosures aid the voters in evaluating the candidates.\textsuperscript{174} Second, disclosure deters actual and perceived corruption.\textsuperscript{175} Finally, reporting and disclosure requirements are necessary to detect violations of contribution limits.\textsuperscript{176}

The Court then considered whether the purported public interests outweighed any actual harm to First Amendment rights. The Court described \textit{NAACP v. Alabama} as requiring a requisite factual showing of harm to members of an organization that sought to protect its membership lists.\textsuperscript{177} Here, the appellants offered no such proof, and any infringement on First

\textsuperscript{168} Id. at 463.
\textsuperscript{169} 424 U.S. 1 (1976).
\textsuperscript{170} Id. at 61.
\textsuperscript{171} Id. at 63.
\textsuperscript{172} Id. at 64.
\textsuperscript{173} Id. at 66.
\textsuperscript{174} Id. at 66-67.
\textsuperscript{175} Id. at 67.
\textsuperscript{176} Id. at 68.
\textsuperscript{177} Id. at 69 (citing NAACP v. Alabama, 357 U.S. 449, 462 (1958)). The Court reaffirmed the rule that a challenger to disclosure provisions must show actual harm in \textit{Brown v. Socialist Workers ’74 Campaign Committee}, 459 U.S. 87 (1982). The Socialist Workers Party was exempted from campaign disclosure requirements that would have forced disclosure of the names of each contributor and each recipient of campaign funds. \textit{Id.} at 89. The Court held that the First Amendment prohibits the government from compelling disclosures by a party that can show a reasonable probability that the compelled disclosures will subject those identified to threats, harassment, or reprisals. \textit{Id.} at 101.
Amendment rights was highly speculative. Consequently, the disclosure and reporting provisions were upheld.\(^{178}\)

The *Buckley* decision is also uncertain in its applicability to lobbying. This case held that the state had a compelling interest in requiring disclosure, preventing corruption, detecting corruption, and facilitating a public evaluation of candidates. These interests, of course, are similar to those implicated in lobby reform.\(^{180}\) *Buckley* also stands for the proposition that encroachment into the freedom of association must be proven with factual evidence.\(^{181}\) If an organization is able to prove that disclosure of its membership/contributor lists would have a chilling effect on its advocacy, then the law will be subject to strict scrutiny.\(^{182}\)

\(^{178}\) *Buckley*, 424 U.S. at 70.

\(^{179}\) *Id.* at 84.


The Court recently reaffirmed the rule that disclosure achieves the compelling state interest of deterring corruption. In *McIntyre v. Ohio Elections Commission*, 115 S. Ct. 1511 (1995), the Court held unconstitutional an Ohio law that prohibited distribution of campaign literature that does not contain the name and address of the person issuing the literature. In holding that the Ohio law’s interest in preventing fraud and libel was not compelling, the Court cited *Harriss* and *Buckley* as cases in which the state interest of deterring corruption or the appearance of corruption was compelling. *Id.* at 1523 & n.20. The Court also implied that disclosure of campaign expenditures and lobbying activities achieved the permissible goal of deterring corruption. *Id.*

\(^{181}\) The Court emphasized that a party must be afforded flexibility in proving the requisite harm. *Buckley*, 424 U.S. at 74. "The evidence . . . need show only a reasonable probability that the compelled disclosure of a party’s contributors’ names will subject them to threats, harassment, or reprisals from either [g]overnment officials or private parties.” *Id.* Some parties have been able to successfully argue that they would be exposed to threat by compelled disclosure. David K. Neidert, *Comment, Campaign Reform: Fifteen Years After Buckley v. Valeo*, 17 J. CONTEMP. L. 289, 300 (1991). These parties, however, are still required to disclose expenditures. *Id.*

\(^{182}\) At least one commentator has argued that lobby reform measures would fail a facial challenge based on associational privacy. *See* David E. Landau, *Public Disclosure of Lobbying: Congress and Associational Privacy After Buckley v. Valeo*, 22 HOW. L.J. 27, 43-44 (1979). The argument is that lobby reform serves no compelling government interest because Congress has failed to establish a factual record of abuses that would call for lobby reform. *Id.* at 43-44. However, the proponents of Senate Bill 1060 have compiled such a record of abuses, as well as an examination of the ineffectiveness of current lobby law. S. REP. No. 37, *supra* note 15, at 2-6.
2. Lower Courts

The state court decisions that examine lobbying disclosure laws in light of freedom of association rights tend to be more severe in their treatment of the laws than federal court decisions. One such decision is *Montana Automobile Ass'n v. Greely.*\(^{183}\) One part of this decision dealt with a statutory provision that required reporting of any contributor who contributed more than $250 per year "regardless of whether [the money was] solely for the purposes of lobbying."\(^{184}\) The court stated that compelled disclosure affected associational privacy, and that the provision was written so broadly as to violate that freedom.\(^{185}\) The disclosure of contributors, regardless of whether the money was earmarked for lobbying, compelled disclosure of information unrelated to the ends that the lobbying statute sought to achieve.\(^{186}\) The court thus struck the language that required reporting regardless of whether the money was used for lobbying.\(^{187}\) This decision was important because it went beyond the scope of *Buckley* to hold that disclosure of contributors violates the freedom of association, even though no chilling effect on constitutional rights was shown by the plaintiffs.

A similar case was *Pletz v. Austin,\(^ {188}\)* which dealt with a challenge to Michigan's lobby law. One provision of the law required disclosure of the identities of contributors to lobbying organizations.\(^ {189}\) The court upheld the trial court's determination that this provision was unconstitutional, applying strict scrutiny to the provision because of its impact on the freedom of association.\(^ {190}\) Curiously, the court never addressed the state interests in the provision, and observed simply that the disclosure "potentially would discourage individuals from associating with organizations devoted to lobbying."\(^ {191}\) This case stands for the proposition that strict scrutiny sometimes will be applied to lobbying disclosure provisions. The plaintiffs in *Pletz* did not show the requisite chilling effect on their associational rights.

Another case demonstrated a willingness to require a factual showing of a chilling effect consistent with *Buckley.* *Minnesota State Ethical Practices Board v. National Rifle Ass'n\(^ {192}\)* involved a challenge to state law provi-
sions requiring registration of lobbyists and disclosure of contributors.\textsuperscript{193} The court failed to differentiate between the different First Amendment rights in its analysis, so whether the analysis focused on freedom of association or the right to petition the government is unclear.\textsuperscript{194}

Relying on Harriss, the court found that the state had a compelling interest in requiring lobbyists to register,\textsuperscript{195} and that the state interest outweighed any infringement on First Amendment rights because the provision paralleled the one upheld in Buckley.\textsuperscript{196} Furthermore, the state law provided an exemption for the lobbyists who could “demonstrate[] by clear and convincing evidence that disclosure would expose them to economic reprisals, loss of employment, or threat of physical coercion.”\textsuperscript{197}

National Rifle Ass’n is probably the most loyal to Buckley in requiring a factual determination of a chilling effect on associational rights before a strict scrutiny standard will be applied. This case also is useful for its clear application of Buckley to lobby registration laws. By describing lobby registration requirements as paralleling the disclosure requirements examined in Buckley, the court left an unambiguous precedent for other courts to follow in applying associational privacy analysis to lobby registration laws.

Another court applied associational analysis to a law prohibiting lobbyists from helping in campaigns. In Barker v. Wisconsin Ethics Board,\textsuperscript{198} the law at issue prohibited lobbyists from furnishing personal services to a campaign.\textsuperscript{199} The court first addressed the appropriate standard of review, concluding that the appropriate test was the “rigorous standard of review” from Buckley.\textsuperscript{200} The court rejected a lesser time, place, and manner restriction test because the provision directly prohibited protected activity.\textsuperscript{201}

The court accepted that preventing government corruption was a compelling interest.\textsuperscript{202} Framing the issue as whether “lobbyists have greater potential to corrupt the political process than do ordinary citizens,”\textsuperscript{203} the court predictably found the provision invalid.\textsuperscript{204} The court stated that the prohibition against services did not further the state interest in preventing

\begin{itemize}
\item \textsuperscript{193} Id. at 511.
\item \textsuperscript{194} Id.
\item \textsuperscript{195} Id. at 512 (citing United States v. Harriss, 347 U.S. 612, 625 (1954)).
\item \textsuperscript{196} Id. (citing Buckley v. Valeo, 424 U.S. 1, 64 (1976)).
\item \textsuperscript{197} Id.
\item \textsuperscript{198} 841 F. Supp. 255 (W.D. Wis. 1993).
\item \textsuperscript{199} Id. at 257.
\item \textsuperscript{200} Id. at 259.
\item \textsuperscript{201} Id.
\item \textsuperscript{202} Id.
\item \textsuperscript{203} Id. at 260.
\item \textsuperscript{204} Id.
\end{itemize}
the appearance of corruption because lobbyists could still use their names in support of candidates.\textsuperscript{205}

The court applied strict scrutiny because the law prohibited an activity associated with the First Amendment, and it was not a mere regulation that required disclosure of information.\textsuperscript{206} Although the decision discussed freedom of association, the rights described resembled the right to petition the government, namely, influencing government. Thus, \textit{Barker} demonstrated a willingness to strike a law under the guise of associational privacy when the right implicated by the law is more akin to petitioning the government.

These cases generally stand for the proposition that lobbyist registration requirements which compel disclosure of members and clients could violate associational privacy. Nevertheless, a lobbyist most likely would have to demonstrate an actual injury, as \textit{NAACP} and \textit{Buckley} arguably require.\textsuperscript{207} Reporting provisions that require disclosure of all contributors, regardless of whether the contributions are for lobbying purposes, are probably overbroad. Consequently, reporting provisions should be tailored to require disclosure of only contributors to lobbying activities.

\textbf{C. Application to Senate Bill 1060}

1. \textit{Registration Requirements}

Senate Bill 1060 requires lobbyists to register with the Secretary of the Senate and the Clerk of the House of Representatives.\textsuperscript{208} The requirement may be challenged as a violation of the right to petition the government for redress of grievances guaranteed under the First Amendment. Consequently, some would hold that any law affecting that right must be subject to strict scrutiny. Some would argue that this argument is tenuous at best. The Court never has stated that there is a constitutional right to lobby. Only Justice Blackmun, concurring in \textit{Regan}, made such a statement.\textsuperscript{209} The Court’s holding in \textit{Harriss}, that Congress may require registration of lobbyists, is still good law.

\begin{itemize}
  \item \textsuperscript{205} \textit{Id.}
  \item \textsuperscript{206} \textit{Id.} at 260-61.
  \item \textsuperscript{207} Some commentators discussing associational privacy issues with regards to lobby disclosure fail to acknowledge the requirement of a requisite showing of injury. See Landau, \textit{supra} note 182, at 43-44 (arguing that “the first issue is whether the proposed statute on its face complies with [exacting scrutiny]”); Thomas, \textit{supra} note 94, at 166-72 (stating that “\textit{NAACP} and later cases illustrate the exacting scrutiny that courts must now apply to any mandated disclosure, viewing all such requirements as ‘constitutionally suspect’”).
  \item \textsuperscript{208} S. 1060, 104th Cong., 1st Sess. § 4(a)(1) (1995).
  \item \textsuperscript{209} \textit{See supra} note 124 and accompanying text.
\end{itemize}
More support for the proposition that lobbying is constitutionally protected can be found in the decisions of the lower courts following Harriss. Moffett v. Killian stated explicitly that lobbyists were protected by the First Amendment. The court applied strict scrutiny to a tax associated with registration fees. Montanta Automobile Ass’n v. Greely struck a contingent fee ban as being violative of the lobbyists’ First Amendment rights. These cases went beyond the Supreme Court’s decisions by holding that lobbyists are entitled to protection under the First Amendment’s guarantee of the right to petition. They did not address directly, however, registration requirements.

The lower court decisions that do address registration requirements for lobbyists consistently have upheld such laws. It is only either when a state prohibits affirmative action by a lobbyist, such as campaign contributions, or when an actual effect on the exercise of the right to petition is shown, that the courts will apply a higher standard of review to lobbying laws.

In the Senate bill, the registration requirements do not include a fee, as they did in Moffett. Furthermore, the registration is related to the purposes of the bill. The committee report stated that the registration requirements would ensure that the public is aware of the pressures that are put on elected officials. The registration requirements are also tailored to give more pertinent information than is currently collected. In addition, the new registration requirements are less burdensome than those currently in place and upheld in Harriss. In fact, the registration requirements are no more than an analogous version of time, place, and manner restrictions on

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211 Id. at 231.
212 Id. at 232.
214 S. REP. NO. 37, supra note 15, at 23.
215 Id. at 30.
216 The lobbyist would be required to disclose "only meaningful information." Id. Such information includes "the names of lobbyists and their clients; the issues that are lobbied; the overall amount spent on lobbying; and a list of the federal agencies and congressional committees contacted." Id.; see also infra note 226. Requiring a business to provide receipts and expenses is not a substantial burden. See Fair Political Practices Comm’n v. Superior Court, 599 P.2d 46, 54 (Cal. 1979), cert. denied, 444 U.S. 1049 (1980). Opponents of lobby reform, of course, argue the opposite: "The extensive paperwork and reporting requirements may cause some groups not to participate in lobbying merely because they are likely to reach the reporting threshold sooner by virtue of their geographic location." Letter from Laura Murphy Lee to Members of the United States Senate, supra note 9, at 1.
speech.\textsuperscript{217} Despite recent calls to the contrary,\textsuperscript{218} the registration requirements should not be seriously challenged as a burden on the right to petition the government.

2. Disclosure Requirements

A more serious challenge to Senate Bill 1060 is its possible impact on the freedom of association. The ACLU, in a letter to members of Congress, claimed that the reporting provisions would unconstitutionally require disclosure of the names of contributors.\textsuperscript{219} In its original form, the bill required a lobbyist to report the names of contributors in addition to the client, but it has since omitted this requirement.\textsuperscript{220} Furthermore, the registration and reporting provisions do not apply to clients who account for less than $5000 of the lobbyist's semi-annual income.\textsuperscript{221} Under the original bill, an interpretation requiring disclosure of all members of an organization who con-

\textsuperscript{217} A time, place, and manner restriction would be upheld if it passes a three part test: (1) the regulation is content-neutral; (2) the regulation is "narrowly tailored to serve a significant government [purpose];" and (3) the regulation does "not unnecessarily burden the ability to communicate." See 4 RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW § 20.54 (2d ed. 1992). Lobby registration is analogous to a time, place, and manner restriction on speech because it does not seek to regulate the substance of lobbying activities, but the manner of lobbying activities. The significance of this analogy is that a strict scrutiny test is not applied to the registration requirements because the substance of the lobbying efforts is not being regulat-

\textsuperscript{218} See Thomas, supra note 94, at 189-90.

\textsuperscript{219} Letter from Laura Murphy Lee to Members of the United States Senate, supra note 9, at 3.

\textsuperscript{220} Compare S. 349, 103d Cong., 2d Sess. § 105(b) (1994) with S. 1060, 104th Cong., 1st Sess. § 5(b) (1995). The original bill required a semi-annual report to contain the name of the lobbyist and the name of the client. S. 349 § 105(b)(1). The bill also required the report to contain "the name, address, and principal place of business of any person or entity other than the client who paid the registrant to lobby on behalf of the client." Id. § 105(b)(5).

The most recent version of the bill omits the language requiring disclosure of those who have paid the registrant to lobby on behalf of the client. S. 1060, 104th Cong., 1st Sess. § 5(b) (1995). This omission goes farther than necessary to protect constitutional rights. There is a need to require the names of organizations that contribute to lobbying coalitions. See Hearings, supra note 17. This need results because corporations or other organizations occasionally hide their identities behind a coalition for the purpose of preventing the public from learning of their efforts to influence legislation. S. REP. NO. 37, supra note 15, at 31. It would be simple to draft a clause requiring disclosure of coalition members without infringing upon constitutional liberties. Because Senate Bill 1060's change in the reporting requirement is unnecessary and antithetical to the goal of public disclosure, the bill should be restored to its original form.

\textsuperscript{221} S. 1060 § 4(a)(3)(A)(i).
tribute to its lobbying cause would make a challenge to the law based on associational privacy more tenable.

The first hurdle that any challenge to the reporting provisions would have to meet is the requirement of a factual showing of harm to the right of association. This requirement, originating from *Buckley* and *NAACP*,222 would prevent a lobbyist from making a facial challenge to the reporting provisions. If the reporting provisions are shown to substantially violate a lobbyist's freedom of association, the court will have to decide on the standard of review. The standard of review for violations of the freedom of association is normally strict scrutiny. The first step in determining whether Senate Bill 1060's disclosure requirements violate constitutional freedom of association is an evaluation of the state interest involved. The state interests in the reporting provision include the disclosure of the pressures on the political process and the deterrence of corruption.223 Both of these interests have been upheld repeatedly as compelling.224 Thus, the first part of the test should be satisfied.

As to injury, a lobbyist might claim that the registration and reporting requirements could impose a substantial burden on their lobbying activities.225 This argument does not take into account the fact that the reporting provisions of Senate Bill 1060 are less burdensome than those in the current Act.226 Because the more onerous reporting requirements were upheld in

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222 See *supra* notes 177-78 and accompanying text.
224 See *supra* notes 118, 147-49, 174-76, 202 and accompanying text.
225 This is the argument of the ACLU. In a letter to members of Congress, the ACLU stated that the bill's extensive paperwork and reporting requirements may cause some groups not to participate in lobbying. Letter from Laura Murphy Lee to Members of the United States Senate, *supra* note 9, at 1.
226 The current Act requires reports to contain the names and addresses of contributors, the amount of the contributions, and the names and addresses of persons to whom an expenditure has been made. 2 U.S.C. § 264 (1994). Current law also requires quarterly reports containing an accounting of all money received and spent by the lobbyist, to whom money was paid, for what purposes, the names of any publication in which the lobbyist has caused to be published any articles or editorials (regardless of the content of the articles or editorials), and the proposed legislation the lobbyist is employed to support or oppose. *Id.* § 267. Senate Bill 1060, however, requires the lobbyist to report only the names of the clients, a list of issues lobbied, an estimate of income from a client, and an estimate of expense related to lobbying, and then only if lobbyist lobbies on own behalf—not on a client's behalf. S. 1060, 104th Cong., 1st Sess. § 5(b) (1995). The original bill also required reporting of those who paid the lobbyist on behalf of a client. S. 349, 103d Cong., 2d Sess. § 105(b)(5) (1994). Significantly, Senate Bill 1060 omits reporting of publications. It also does not require detailed accounting of expenditures or income. S. 1060 § 5(c). Instead, the report must include an estimate of expenses rounded to the nearest $20,000. *Id.* Obviously, these reporting requirements are less burdensome than current law because they do not require detailed accounts of expendi-
Harriss, a lobbyist would be hard-pressed to show an injury from Senate Bill 1060's reporting requirements.

If the challenge of showing injury is met, the reporting provision will be examined to see if it is narrowly tailored to meet the compelling state interest. The provisions in Senate Bill 1060 are narrowly tailored because they seek only the aggregate amount of lobbying expenditures. Lobbyists whose clients account for less than $5000 in income are exempt with respect to that client—thus preventing overbroad application of the requirements to small clients who are not as likely to corrupt the political process.

One major concern with the original form of the bill was whether lobbyists should be required to disclose membership lists of clients. As written, the original bill would only require disclosure of contributions from individual members of associations who separately finance lobbying activities on their own. The individual members would then be subject to the $2500 de minimis test. Thus, in effect, only an organization’s members who separately contribute more than $2500 semi-annually for lobbying would be identified. As a result, the disclosure requirements avoided the overbreadth problems that plagued the reporting provisions in Greely. Furthermore, it would be difficult for such a member to show a factual injury to freedom of association, although demonstration of such an injury would bring the case closer to NAACP and would subject the law to stricter scrutiny. If a similar requirement is returned to Senate Bill 1060, attention must be given to ensure the bill’s constitutionality.

The state has valid interests in preventing corruption and exposing pressures on the legislature. The reporting requirement of the original bill pertaining to individual contributors appeared narrowly tailored because it only applied to the largest contributors who earmark the money for lobbying. In short, the reporting provisions of Senate Bill 1060 should be able to survive a challenge based on freedom of association.

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228 S. 1060 § 5(b)(3).
229 See Letter from Laura Murphy Lee to Members of the United States Senate, supra note 9, at 3. Such a required disclosure arguably could violate freedom of association. See NAACP v. Alabama, 357 U.S. 449, 462 (1958).
230 S. 349 § 103(2).
231 Id. § 105(b)(3).
232 See supra notes 183-87 and accompanying text.
233 See supra notes 118, 147-49, 174-76, 202 and accompanying text.
III. POLICY CONSIDERATIONS

A. The Need for Lobby Reform

The need for reform of the current lobby law is obvious. The poor draftsmanship of the 1946 Act leaves loopholes that allow most lobbyists to evade registration. The Supreme Court's interpretation of the statute means that it only covers persons who solicit contributions, whose substantial purpose is the defeat or passage of legislation in the United States Congress, and who achieve this end only through direct communication with members of Congress.

As a result of these loopholes, the Act is of little use. The GAO found that 10,000 of the 13,500 individuals and organizations listed in the book Washington Representatives were not registered under the Act. The failure of these lobbyists to register is a result of the loopholes in the Act. Furthermore, even the lobbyists that registered under the Act failed to supply much useful information. The Act does not require disclosure of the specific bills lobbied, nor does it require disclosure of the aggregate amount of money spent on lobbying activities. These two types of information are the "most basic" facts needed on lobbying.

In general, the 1946 Act does not achieve its purpose of revealing the efforts of lobbyists to influence the government. The facts gleaned from the Act provide a distorted picture of the influence of lobbyists. Some reform is needed to provide a clear picture of the influence that lobbyists have on the government. The drafters of Senate Bill 1060 intend the disclosure provisions to further the goal of ensuring "that the public, federal officials, and other interested parties are aware of the pressures that are brought to bear on public policy." This public enlightenment would give interested parties an opportunity to provide their views to decision makers. It would also discourage lobbyists and officials from activities that might lead the "public to believe that improper influence had been exercised," a policy endorsed by the Supreme Court in Harriss.

234 See supra notes 16-21, 27-40, and accompanying text.
237 Id.
238 Id. at 5.
239 Id. at 23.
240 Id.
241 Id.
B. Implications for Individual Rights

At odds with many of the justifications for lobby reform is the consideration of an individual's right to petition the government. The reporting and registration requirements may have a chilling effect on the exercise of citizens' rights. In particular, the reporting requirements may be so onerous as to discourage some individuals from contacting members of Congress. Nevertheless, the de minimis test of Senate Bill 1060 mitigates this fear. A lobbyist need not register or report with regards to a particular client if that client accounts for less than $5000 in semi-annual income for the lobbyist. This de minimis exception allows the average citizen to contact members of Congress without having to register or file a report. In addition, only those lobbyists with the ability to register and file reports are required to do so. Furthermore, the reporting requirements for Senate Bill 1060 are less onerous than the reporting required under current law.

A more vexing policy issue is presented when contributors are required to be identified. The fact that one's contribution to an unpopular lobby will be made public can have the effect of discouraging such contributions. Because many of the unpopular lobbies are small and underfunded, discouraging even a few donors may have significant effects. Under the original bill, this problem was alleviated somewhat by the de minimis test.


244 Because the reporting and registration provisions only apply to lobbyists with significant income and expenditures, they cannot be heard to complain of the burden involved in the requirements. The California Supreme Court noted this fact when deciding that the registration and reporting requirements did not amount to a significant burden:

While the burden of disclosure might be substantial for those engaged in extensive lobbying activities, the burden is not great when viewed in the context of the total activities engaged in. Requiring a person engaged in a business to describe it and to report its receipts and expenses may not be viewed in our commercial society as a substantial impediment to engaging in that business. Fair Political Practices Comm'n v. Superior Court, 599 P.2d 46, 54 (1979), cert. denied, 444 U.S. 1049 (1980).

245 Senate Bill 349 would have "significantly streamline[d] disclosure requirements to ensure that only meaningful information [was] required and needless paperwork [was] avoided." S. REP. NO. 37, supra note 15, at 30. Additionally, Senate Bill 1060 requires only two reports per year, compared with the currently required four reports. Compare S. 1060 § 5 with 2 U.S.C. § 267 (1994); see also supra note 226.

246 Senate Bill 349 required disclosure of contributors. S. 349, 103d Cong., 2d Sess. § 105(b)(5) (1994). The most recent version of Senate Bill 1060 eliminates this requirement.
IV. RECOMMENDATIONS

A. Provisions of Current Bill

Several means are available to ensure that a lobby reform bill does not run into constitutional difficulties. Some of these are already incorporated into Senate Bill 1060. First, the vagueness problem that plagued the 1946 Act is not present in Senate Bill 1060. The Court in Harriss was troubled that the Act failed to adequately define who was covered and for what activities. Senate Bill 1060 explicitly defines lobbying contacts as communications with government officials with regard to “the formulation, modification, or adoption of” federal legislation, rules, regulations, executive orders, “or any other program, policy, or position of the United States government.” The definitions in the bill clearly define the coverage of its provisions, thereby eliminating any constitutional vagueness concerns. Another constitutional infirmity avoided by Senate Bill 1060 is overbreadth. The de minimis test exempts from reporting and registration requirements lobbyists whose clients account for less than $5000 in semi-annual income. This provision helps ensure that the reporting requirements are narrowly tailored. By focusing on the major lobbyists, Congress has avoided the overbreadth problems associated with attempts to prevent the appearance of impropriety by those in the least likely position to commit it.

One problem likely to be encountered by Senate Bill 1060 is the relationship between the bill’s purpose and its method of achieving that purpose. If the bill is to be subjected to some form of heightened scrutiny, a close fit must be established between the state interest and the means used to achieve that purpose. Senate Bill 1060 is more narrowly tailored to the state interest of revealing the pressures on the legislative process than is the 1946 Act. This is because current law requires disclosure of unimportant information, whereas Senate Bill 1060 requires disclosure of more pertinent information.

248 S. 1060 § 3(8).
249 Id. § 4(a)(3).
250 This test, however, is unlikely to be applied unless a challenger first proves an actual injury. See supra notes 177-79 and accompanying text.
251 For instance, a lobbyist must itemize all moneys expended. 2 U.S.C. § 267 (1994). This has led to the reporting of $6 cab fares and $16 messenger fees—information not likely to further the public’s understanding of the pressures brought on the government. See S. REP. NO. 37, supra note 15, at 4-5.
252 For instance, Senate Bill 1060 does not require itemization of expenditures, but only a total of such expenditures. S. 1060 § 5(b)(4). Also required to be disclosed is a list of the specific issues lobbied and the committees contacted. Id. § 5(b)(2). This in-
One method that has not been considered under any form of the bill is to provide an administrative procedure for a registrant to be exempted from the reporting requirements if the registrant is able to prove that the reporting would infringe upon any First Amendment rights. Such a provision would make overturning the statute more difficult because a registrant would have an administrative remedy to arguably the most serious of the bill's possible infirmities. Another advantage of such a provision is that it would allow Congress to define the type of injury required in order to be exempted—thus eliminating uncertainty over judicial determination of injury. One drawback to the provision would be its implicit acknowledgement that the reporting requirements may constitute a burden on protected rights. Furthermore, a possible loophole would be created through which lobbyists could avoid disclosure of their activities.

B. Right to Petition Government

Despite recent calls for a constitutionally protected right to lobby, the Court should not take such an extreme stance. First, the First Amendment right to petition does not explicitly cover lobbying. Furthermore, such a declaration could lead to the overturning of lobbying laws and regulations that are found in every state. The concerns of the advocates of a constitutionally protected right to lobby are met by existing jurisprudence. The right to address the government will not be violated, as demonstrated by Fair Political Practices Commission and Moffett. Furthermore, the right to anonymously contribute to lobbyists will be protected by an associational privacy right. The excesses of certain lobbyists clearly show that more regulation of lobbying, not less, is needed.

formation is certainly useful in evaluating how much total money was spent by a lobbyist on a particular issue.

253 Such a provision was cited as a significant factor in upholding a state lobby reform law in Minnesota. Minnesota State Ethical Practices Bd. v. National Rifle Ass'n, 761 F.2d 509, 512 (8th Cir. 1985), cert. denied, 474 U.S. 1082 (1986). The provision at issue in that case provided an exemption from reporting requirements for any individual who "demonstrate[d] by clear and convincing evidence that disclosure would expose him to economic reprisals, loss of employment or threat of physical coercion." Id.

254 Such a loophole would be difficult to use, however, because the injury would then have to be proved to the satisfaction of an administrative body.

255 See Thomas, supra note 94.

256 See supra notes 135-37, 210-11 and accompanying text.
C. Freedom of Association

The Court should extend the right of association to cover lobbyists' membership lists. It would be logically inconsistent for the Court to apply associational privacy analysis to the disclosure of campaign contributors, but not to the disclosure of lobbying contributors. Nevertheless, this would not spell the end of the disclosure requirements found in the original Senate Bill 349. A court should continue to require a showing of an actual chilling effect on the freedom of association. If this hurdle is overcome, disclosure provisions should not be automatically overturned by strict scrutiny. Rather, if the provisions are narrowly drawn to achieve the compelling state interests, the provisions should survive. As stated above, the $5000 de minimis exception and the type of information required to be disclosed help achieve the goal of narrowly tailoring the reporting provisions.

V. CONCLUSION

Senate Bill 1060 represents a much-needed attempt to reform the regulation of lobbyists at the federal level. The provisions of the bill which call for registration and reporting requirements are likely to be challenged in the courts if the bill passes in some form next year. The courts will be able to use one of two analytical frameworks when evaluating the constitutionality of the bill. The first would analyze the law under the First Amendment right to petition the government. Such an analysis might recognize a fundamental right to lobby in the First Amendment. This analytical framework is unlikely to be used because of existing jurisprudence. Furthermore, it is undesirable because of the need for lobby reform and the superfluous nature of such a judicially created right.

More appropriately, the second framework would use a freedom of association analysis based on NAACP and Buckley. This framework should be narrowly construed to require the challenger to show an actual injury. If this is done, the provisions of Senate Bill 1060 requiring disclosure of clients should be upheld because of their narrow application.257 The drafters of Senate Bill 1060 took many steps to ensure that the bill would survive a judicial challenge. Their efforts have resulted in a bill that achieves the important purpose of lobby reform without being constitutionally infirm.

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257 The provisions in the original Senate Bill 349 requiring disclosure of contributors would probably be sustained for similar reasons.