July 18, 2006

Senny Boone, Esquire
Executive Director
DMA Nonprofit Federation
1111 19th Street, NW
Suite 1180
Washington, DC 20036

Re: Inaccurate Information on Grassroots Legislation

Dear Senny:

A tragic amount of misinformation has been published about the true scope of the grassroots provisions of the Senate-passed lobbying reform bill (S. 2349). Regardless of whether one favors quarterly registration and disclosure of grassroots efforts, the nonprofit community deserves at least accurate information about a bill that creates unprecedented federal regulation for many nonprofits. Many descriptions of the grassroots legislation circulated by proponents of the legislation and even some analysts such as law firms are simply inaccurate. Nonprofits, which play an important role in national grassroots advocacy, would suffer the most by the failure to know what this legislation really does.

My enclosed detailed summary disproves much of the misreported information, and shows that even small, community based organizations that operate no more than blogs may be required to register -- even those that do not retain professional agencies. In fact, nonprofits that *lose* money on prospect communications would be hit the hardest because they must incur costs of reporting even when they run in the red.

Myth No. 1: ***Section 220 of S. 2349 would require disclosure of only "paid" grassroots lobbying firms.***

Let me be very adamant about this: nonprofits themselves do not need to meet the $25,000 threshold -- or any threshold but one dollar, for that matter -- to be required to register and disclose their grassroots activities. Section 220(b)(1) of S. 2349 ***expressly*** removes grassroots lobbying from the low-dollar exemptions applicable to registration of direct lobbying, so grassroots lobbying expenditures of as little as one dollar could trigger the quarterly reporting and disclosure requirements for the nonprofit.

Section 220(b)(1) *serves no other purpose than to ensure that grassroots lobbying efforts must be reported to Congress regardless of the dollar amount*, even though K Street lobbyists and other direct lobbyists employed in-house by corporations and trade associations are eligible for a low-dollar exemption from reporting.

By redefining lobbying "activity" to include communications to as few as 500 people, S. 2349 would amend the existing lobbying disclosure law in such a way that it

does not matter whether nonprofits use professional agencies or not. The rules and definitions that trigger reporting for corporations done by in-house employees apply to nonprofits. Those rules and definitions still apply, except that S. 2349 would have communications to 500+ people count as lobbying activity, and that means that many nonprofits which don't spend $25,000 in a quarter on professional firms will still be required to register and report quarterly. See Section II of my summary.

S. 2349 does create a new definition of "grassroots lobbying firm" under the lobbying law, and $25,000 paid or spent per quarter does trigger ***separate*** registration for ***those*** paid professionals. But nonprofits would still need to register and disclose quarterly their grassroots efforts even if they do not retain grassroots lobbying firms and spend less than $25,000 per quarter.

Myth No. 2: ***The grassroots lobbying provisions require registration of just traditional grassroots lobbying.***

Direct mail and television "ads" are not all that fit under the definition of what will be regulated. S. 2349 would apply to communications to more than 500 people where the communications influence people to contact Washington. Therefore, books, blogs and broadcasts would now constitute lobbying activity in many cases. Literally, time spent on writing a book or in a C-SPAN, other television or radio interview, must be tracked and would count towards the 20% requirement of lobbying activity that must be reported.

Organizations under the 20% threshold for grassroots "activity" using direct mail and other fundraising communications may cross the 20% threshold simply by advocating in these other broadcast and print media. And those nonprofits that are already past the 20% threshold will still need to track and disclose the time spent on researching, preparing and engaging in such communications. People would actually need to log their time spent engaging in advocacy much like lawyers track their billable hours. That is just one reason why I called this legislation the most expansive regulation of political and faith-based speech in history.

Myth No. 3: The grassroots provisions "level the playing field" between 501(c)(3)s and corporate or industry grassroots.

Some 501(c)(3)s and their umbrella groups support the bill because S. 2349 would allow them to file with Congress their IRS reports under their 501(h) election. Also, communications to "members" need not be disclosed. S. 2349 exempts communications to "***members, employees, officers and shareholders***." Apparently, these groups believe that corporate grassroots would now need to meet the same reporting burdens as charities that make the 501(h) lobbying election. Thus, they claim, S. 2349 would "level the playing field." There are several major flaws with that approach.

1. I don't know the percentages, but many charities are not membership organizations, and therefore the exemption for communications to "members" is irrelevant to them;

2. even membership charities prospect, so their prospect communications to non-members are not eligible for the exemption;

3. membership charities can file their IRS reports in lieu of the lobbying disclosure reports. Such charities would therefore "over-report" grassroots activities since their IRS reports include costs and other data about "exempted" communications to members. Alternatively, they could separately track, record and report just their prospect communications, which adds a whole layer of new recording costs. Either way, there is still a downside for membership charities;

4. many 501(c)(3)s have sister 501(c)(4)s created expressly for the purpose of being able to engage in grassroots lobbying, and those (c)(4)s would now face a new set or tracking and disclosure requirements;

5. advocacy organizations are often critical of Congress, and prefer to communicate and associate with citizens "under the radar," as has been a right since colonial days. Mandatory disclosure to Congress itself will tend to chill First Amendment rights.

The exemption for communications to shareholders and employees is easily exploited by corporations. The five biggest oil companies – or the five biggest corporations in any industry or the five biggest unions – (1) don't need to prospect, and (2) they could spend literally hundreds of millions of dollars organizing millions of their associates on any issue, yet still not report. So there is no leveling of the playing field.

So-called Astroturf lobbying efforts are usually well financed and already retain lobbyists that report, so the added costs to them won't be much burden at all. Nonprofits on the financial margin, however, may be prohibited from communicating by the costs of new tracking and disclosure. And the bill provides fines up to $100,000 for knowing violators.

So 501(c)(3) supporters of this legislation gain no protection or real benefit, but many other elements of the nonprofit community would be burdened.

I understand your own membership is diverse, and some may support disclosure. However, many nonprofits probably would not support this bill, and many would actively oppose it, but for the misinformation being circulated. Nonprofits, which play an important role in American public policy, would bear the brunt of miscalculating such a burdensome and unconstitutional law. The legislation targets no identifiable harm, but instead expressly targets the rights of nonprofits to speak, to

publish, to make new associations with citizens, and to encourage people merely to contact policymakers in Washington.

So I urge the DMANF (and others with nonprofit constituents and members) to look more closely at this bill, and I really urge you to start that process by reading my enclosed summary. Of the many descriptions I have seen, it is the most accurate portrayal of the grassroots lobbying legislation. The bill is much worse than even I thought, and regardless of preferences about grassroots disclosure, nonprofits deserve to at least know what they would be facing so that they can either support or oppose this very expansive regulation before the House/Senate conference committee takes it up.

With kind regards, I am

Very truly yours,

Mark J. Fitzgibbons
President of Corporate and Legal Affairs

Enclosures

cc: Carolyn Emigh
Ray Grace
Geoff Peters
Bob Tigner