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THE WHITE HOUSE
WASHINGTON

June 27, 1986

pgw

File
Thurmond bill

MEMORANDUM FOR JAY B. STEPHENS

FROM: ROBERT M. KRUGER

RMK

SUBJECT: Integrity in Post-Employment Act of 1986

I have attached copies of the packet of materials provided by Gary Davis on the above-referenced bill. Preliminarily, I would note the following features of this bill which, as you know, was adopted yesterday by the Senate Judiciary Committee:

- (1) The one-year "cooling-off period" of 18 U.S.C. § 207(c) would be expanded in two ways. Coverage under this provision would extend down to the GS-16 level, instead of the GS-17 level. For designated high-ranking officials (basically those paid at Executive Levels I, II and III), the cooling-off period would continue for 18 months and extend to all branches of the government.
- (2) The bill eliminates OGE's authority to designate components of an agency or department as "separate." Currently, OGE may limit the restrictions of § 207(c) to permit former employees who served in a separate office within a department or agency to communicate with persons in an unrelated office, within the same department or agency.
- (3) The bill would impose a three-year ban on employment by a foreign entity by designated high-ranking officials. Employees at the GS-16 level and above would be prohibited from lobbying their own agency on behalf of a foreign entity for two years. The bill narrows the definition of foreign entities significantly to mean only a foreign country, a foreign political party or a foreign organization, or a foreign organization substantially controlled by a foreign country or foreign political party.

Prohibits
employment,
representation &
advice

The remainder of the bill deals with strengthening registration and disclosure requirements and toughening penalties for violations. I am available to discuss the bill with you at your convenience.

Attachments

STATEMENT BY SENATOR STROM THURMOND (R-S.C.) BEFORE THE SENATE COMMITTEE ON THE JUDICIARY, REFERENCE S.2334, INTEGRITY IN POST GOVERNMENT EMPLOYMENT ACT OF 1986. 226 DIRKSEN SENATE OFFICE BUILDING, THURSDAY, JUNE 26, 1986, 10:00 A.M.

TODAY WE WILL CONSIDER AND VOTE ON S.2334.

I BELIEVE S.2334 WAS A STARTING PLACE FOR CONGRESS TO CONSIDER MUCH-NEEDED CHANGES TO THE CONFUSING AND OFTENTIMES CONFLICTING LAWS GOVERNING FORMER MEMBERS AND FEDERAL OFFICIALS WHO LOBBY THE GOVERNMENT OR WORK FOR A FOREIGN ENTITY. OVER THE LAST SEVERAL WEEKS, MANY SENATORS ON THIS COMMITTEE HAVE OFFERED AMENDMENTS AND PROPOSALS TO MY ORIGINAL BILL. AFTER INITIAL DEBATE ON THE S.2334 SUBSTITUTE AT THE LAST MEETING, I APPOINTED SENATOR HATCH TO CHAIR AN AD HOC COMMITTEE TO ATTEMPT TO REACH A CONSENSUS ON THE SEVERAL AMENDMENTS AND PROPOSALS. AFTER SUBSTANTIAL EFFORT AND MUCH HARD WORK, THE VARIOUS VIEWS WERE PULLED TOGETHER RESULTING IN THE SUBSTITUTE BEFORE THE COMMITTEE TODAY. SENATOR HATCH IS TO BE COMMENDED FOR HIS TIRELESS ENDEAVOR TO BRING ABOUT THIS IMPORTANT COMPROMISE LEGISLATION.

I BELIEVE WE MUST TAKE ACTION TO PREVENT IRREPARABLE DAMAGE TO OUR NATION AND TO RESTORE PUBLIC CONFIDENCE AND INTEGRITY IN OUR SYSTEM OF GOVERNMENT. IT IS TIME THAT PUBLIC SERVICE BE JUST THAT - NOT A STEPPING STONE FOR FUTURE EMPLOYMENT OR PROFIT. THIS LEGISLATION WILL HELP TO ENSURE THAT FUTURE FEDERAL OFFICIALS AND EMPLOYEES SERVE THEIR COUNTRY - NOT THEMSELVES OR FOREIGN INTERESTS.

I WILL VOTE IN FAVOR OF THIS SUBSTITUTE BILL AND STRONGLY URGE ITS PASSAGE. AT THIS TIME, I CALL ON SENATOR HATCH TO BRIEFLY EXPLAIN HIS SUBSTITUTE.

These are the employees covered under Section 5312, 5313, or 5314 of title 5 and section 105(a)(2)(A) of title 3, mentioned on page 5, lines 8 - 10 of the ad-hoc committee compromise substitute.

§ 5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Secretary of State.
 Secretary of the Treasury.
 Secretary of Defense.
 Attorney General.
 Secretary of the Interior.
 Secretary of Agriculture.
 Secretary of Commerce.
 Secretary of Labor.
 Secretary of Health and Human Services.
 Secretary of Housing and Urban Development.
 Secretary of Transportation.
 Special Representative for Trade Negotiations.
 Secretary of Energy.
 Secretary of Education.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 460; Pub.L. 89-670, § 10(d)(1), Oct. 15, 1966, 80 Stat. 948; Pub.L. 91-375, § 6(c)(12), Aug. 12, 1970, 84 Stat. 776; Pub.L. 93-618, Title I, § 141(b)(3)(A), Jan. 3, 1975, 88 Stat. 1999; Pub.L. 94-82, Title II, § 202(b)(1), Aug. 9, 1975, 89 Stat. 419; Pub.L. 95-91, Title VII, § 710(c), Aug. 4, 1977, 91 Stat. 609; Pub.L. 96-54, § 2(a)(25)(A), Aug. 14, 1979, 93 Stat. 382; Pub.L. 96-88, Title V, § 508(c), (g), Oct. 17, 1979, 93 Stat. 692.

1979 INCREASES IN SALARIES

Salaries of positions at Level I increased to \$74,500 per annum, effective in the first pay period beginning on or after Oct. 1, 1979, see Ex.Ord.No.12165, Oct. 9, 1979, 44 F.R. 58671, set out as a note under section 5332 of this title. Ex.Ord.No.12165, further provided that on Oct. 1, 1979 the limitation in Schedule 5 of Ex.Ord.No.12087, Oct. 7, 1978, changed and for the period Oct. 1, 1979 to the start of the first applicable pay period in fiscal 1980 the following rate of pay, \$69,600, was payable.

1978 INCREASES IN SALARIES

Salaries of positions at Level I increased to \$69,600 per annum, effective in the first pay period beginning on or after Oct. 1, 1978, see Ex.Ord.No.12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note under section 5332 of this title. Ex.Ord.No.12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was \$66,000.

-§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

- Deputy Secretary of Defense.
- Deputy Secretary of State.
- Administrator, Agency for International Development.
- Administrator of the National Aeronautics and Space Administration.
- Administrator of Veterans' Affairs.
- Deputy Secretary of the Treasury.
- Deputy Secretary of Transportation.
- Chairman, Nuclear Regulatory Commission.
- Chairman, Council of Economic Advisers.
- Chairman, Board of Governors of the Federal Reserve System.
- Director of the Bureau of the Budget.
- Director of the Office of Science and Technology.
- Director of the United States Arms Control and Disarmament Agency.
- Director of the United States Information Agency.
- Director of Central Intelligence.
- Secretary of the Air Force.
- Secretary of the Army.
- Secretary of the Navy.
- Administrator, Federal Aviation Administration.
- Director of the National Science Foundation.
- Deputy Attorney General.
- Deputy Secretary of Energy.
- Deputy Secretary of Agriculture.
- Director of the Office of Personnel Management.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 460; Pub.L. 89-670, § 10(d)(2), Oct. 15, 1966, 80 Stat. 948; Pub.L. 90-83, § 1(13), Sept. 11, 1967, 81 Stat. 198; Pub.L. 90-407, § 15(a)(1), July 18, 1968, 82 Stat. 366; Pub.L. 91-644, Title I, § 8(b), Jan. 2, 1971, 84 Stat. 1888; Pub.L. 92-255, Title II, § 212(a), Mar. 21, 1972, 86 Stat. 69; Pub.L. 92-302, § 2(a), May 18, 1972, 86 Stat. 149; Pub.L. 92-352, Title I, § 104(1), July 13, 1972, 86 Stat. 490; Pub.L. 92-596, § 6, Oct. 27, 1972, 86 Stat. 1318; Pub.L. 93-438, Title III, § 310(1), Oct. 11, 1974, 88

pointed to a position created or authorized by Pub.L. 92-302, not eligible to an increase in basic pay until Jan. 21, 1973. — see section 3(c) of Pub.L. 92-302, set out as a note under section 1004 of Title 31, Money and Finance.

Director of Federal Bureau of Investigation, Department of Justice. The Director of the Federal Bureau of Investigation, Department of Justice to receive compensation at the rate prescribed for level II of the Federal Executive Salary Schedule (this section), effective as of the day following the date on which the person holding such office on June 19, 1968 ceases to serve as Director, see section 1101 of Pub.L. 90-351, set out as a note under section 532 of Title 28, Judiciary and Judicial Procedure.

Legislative History. For legislative history and purpose of Pub.L. 89-670, see 1966 U.S.Code Cong. and Adm.News, p. 3362. See, also Pub.L. 90-83, 1967 U.S.

Code Cong. and Adm.News, p. 1538; Pub.L. 90-407, 1968 U.S.Code Cong. and Adm.News, p. 2644; Pub.L. 91-444, 1970 U.S.Code Cong. and Adm.News, p. 5904; Pub.L. 92-255, 1972 U.S.Code Cong. and Adm.News, p. 2045; Pub.L. 92-302, 1972 U.S.Code Cong. and Adm.News, p. 2301; Pub.L. 92-352, 1972 U.S.Code Cong. and Adm.News, p. 2961; Pub.L. 92-596, 1972 U.S.Code Cong. and Adm.News, p. 4938; Pub.L. 93-438, 1974 U.S.Code Cong. and Adm.News, p. 5470; Pub.L. 93-496, 1974 U.S.Code Cong. and Adm.News, p. 6154; Pub.L. 94-82, 1975 U.S.Code Cong. and Adm.News, p. 845; Pub.L. 94-237, 1976 U.S.Code Cong. and Adm.News, p. 375; Pub.L. 94-561, 1976 U.S.Code Cong. and Adm.News, p. 5916; Pub.L. 95-91, 1977 U.S.Code Cong. and Adm.News, p. 854; Pub.L. 95-140, 1977 U.S.Code Cong. and Adm.News, p. 3030; Pub.L. 95-454, 1978 U.S.Code Cong. and Adm.News, p. 2723; Pub.L. 96-54, 1979 U.S.Code Cong. and Adm.News, p. —.

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

Under Secretary of Commerce.

Under Secretary of Education.

Under Secretary of Health and Human Services.

Under Secretary of the Interior.

Under Secretary of Labor.

Under Secretary of State for Political Affairs and Under Secretary of State for Economic Affairs and an Under Secretary of State for Coordinating Security Assistance Programs and Under Secretary of State for Management.

Under Secretary of the Treasury (or Counselor).

Under Secretary of the Treasury for Monetary Affairs.

Administrator of General Services.

Administrator of the Small Business Administration.

Deputy Administrator of Veterans' Affairs.

Deputy Administrator, Agency for International Development.

Chairman, Civil Aeronautics Board.

Chairman of the Merit Systems Protection Board.

Chairman, Federal Communications Commission.

Chairman, Board of Directors, Federal Deposit Insurance Corporation.

Chairman of the Federal Home Loan Bank Board.

Chairman, Federal Energy Regulatory Commission.

Chairman, Federal Trade Commission.

Chairman, Interstate Commerce Commission.

Chairman, National Labor Relations Board.

Chairman, Securities and Exchange Commission.

Chairman, Board of Directors of the Tennessee Valley Authority.

Chairman, National Mediation Board.

Chairman, Railroad Retirement Board.

Chairman, Federal Maritime Commission.

Comptroller of the Currency.

Commissioner of Internal Revenue.

Under Secretaries of Defense (2).

Deputy Administrator of the National Aeronautics and Space Administration.

Deputy Director of the Bureau of the Budget.

Deputy Director of Central Intelligence.

Director of the Office of Emergency Planning.

Director of the Peace Corps.

Deputy Director, National Science Foundation.

President of the Export-Import Bank of Washington.

Members, Nuclear Regulatory Commission.

Members, Board of Governors of the Federal Reserve System.

Director of the Federal Bureau of Investigation, Department of Justice.

Administrator, Federal Highway Administration.

Administrator, Federal Railroad Administration.

Chairman, National Transportation Safety Board.

Chairman of the National Endowment for the Arts the incumbent of which also serves as Chairman of the National Council on the Arts.

Chairman of the National Endowment for the Humanities.

Director of the Federal Mediation and Conciliation Service.

Under Secretary of Housing and Urban Development.

Urban Mass Transportation Administrator.

President, Overseas Private Investment Corporation.

Chairman, Postal Rate Commission.

Administrator of Law Enforcement Assistance.
 Chairman, Occupational Safety and Health Review Commission.
 Governor of the Farm Credit Administration.
 Chairman, Equal Employment Opportunity Commission.
 Chairman, Consumer Product Safety Commission.
 Under Secretary, Department of Energy.
 Chairman, Commodity Futures Trading Commission.
 Deputy Special Representatives for Trade Negotiations (2).
 Chairman, United States International Trade Commission.
 Director of the Office of Drug Abuse Policy.
 Administrator, National Oceanic and Atmospheric Administration.
 Associate Attorney General.
 Chairman, Federal Mine Safety and Health Review Commission.
 Chairman, National Credit Union Administration Board.
 Deputy Director of the Office of Personnel Management.
 Under Secretary of Agriculture for International Affairs and Commodity Programs.
 Director, Institute for Scientific and Technological Cooperation.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 460; Pub.L. 89-670, § 10(d)(3), (e), Oct. 15, 1966, 80 Stat. 948; Pub.L. 90-83, § 1(14), Sept. 11, 1967, 81 Stat. 198; Pub.L. 90-206, Title II, § 215(a), Dec. 16, 1967, 81 Stat. 638; Pub.L. 90-351, Title I, § 505, June 19, 1968, 82 Stat. 205, as amended Pub.L. 91-644, Title I, § 7(1), Jan. 2, 1971, 84 Stat. 1887; Pub.L. 90-407, § 15(a)(2), July 18, 1968, 82 Stat. 367; Pub.L. 90-623, § 1(26), Oct. 22, 1968, 82 Stat. 1314; Pub.L. 91-175, Pt. V, § 503(1), Dec. 30, 1969, 83 Stat. 826; Pub.L. 91-375, § 6(c)(13), Aug. 12, 1970, 84 Stat. 776; Pub.L. 91-596, § 12(c)(1), Dec. 29, 1970, 84 Stat. 1604; Pub.L. 91-644, Title I, §§ 7(1), 8(a), Jan. 2, 1971, 84 Stat. 1887, 1888; Pub.L. 92-181, Title V, § 5.27(a), Dec. 10, 1971, 85 Stat. 625; Pub.L. 92-226, Pt. IV, § 403, Feb. 7, 1972, 86 Stat. 34; Pub.L. 92-261, § 9(a), Mar. 24, 1972, 86 Stat. 110; Pub.L. 92-302, § 2(b), May 18, 1972, 86 Stat. 149; Pub.L. 92-352, Title I, § 104(2), July 13, 1972, 86 Stat. 490; Pub.L. 92-573, § 4(h)(1), Oct. 27, 1972, 86 Stat. 1211; Pub.L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub.L. 93-438, Title III, § 310(2), Oct. 11, 1974, 88 Stat. 1252; Pub.L. 93-463, Title I, § 102(a), Oct. 23, 1974, 88 Stat. 1391; Pub.L. 93-618, Title I, §§ 141(b)(3)(B), 172(c)(1), Jan. 3, 1975, 88 Stat. 1999, 2010; Pub.L. 94-82, Title II, § 202(b)(3), Aug. 9, 1975, 89 Stat. 420; Pub.L. 94-123, § 2(c)(1), Oct. 22, 1975, 89 Stat. 670; Pub.L.

1, 1976, 41 F.R. 43899, as amended by Ex.Ord. set out as a note under section 5332 of Title 5, No. 11943, Oct. 25, 1976, 41 F.R. 47213, formerly Government Organization and Employees.

§ 105. Assistance and services for the President

(a) (1) Subject to the provisions¹ of paragraph (2) of this subsection, the President is authorized to appoint and fix the pay of employees in the White House Office without regard to any other provision of law regulating the employment or compensation of persons in the Government service. Employees so appointed shall perform such official duties as the President may prescribe.

(2) The President may, under paragraph (1) of this subsection, appoint and fix the pay of not more than—

(A) 25 employees at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5; and in addition

(B) 25 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

(C) 50 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and in addition

(D) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS-16 of the General Schedule of section 5332 of title 5.

(b) (1) Subject to the provisions of paragraph (2) of this subsection, the President is authorized to appoint and fix the pay of employees in the Executive Residence at the White House without regard to any other provision of law regulating the employment or compensation of persons in the Government service. Employees so appointed shall perform such official duties as the President may prescribe.

(2) The President may, under paragraph (1) of this subsection, appoint and fix the pay of not more than—

(A) 3 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and in addition

(B) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS-16 of the General Schedule of section 5332 of title 5.

(c) The President is authorized to procure for the White House Office and the Executive Residence at the White House, as provided in appropriation Acts, temporary or intermittent services of experts and consultants, as described in and in accordance with the first two sentences of section 3109(b) of title 5—

(1) in the case of the White House Office, at respective daily rates of pay for individuals which are not more than the daily equivalent of the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5; and

(2) in the case of the Executive Residence, at respective daily rates of pay for individuals which are not more than the daily equivalent of the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5.

Notwithstanding such section 3109(b), temporary services of any expert or consultant described in such section 3109(b) may be procured for a period in excess of one year if the President determines such procurement is necessary.

(d) There are authorized to be appropriated each fiscal year to the President such sums as may be necessary for—

(1) the care, maintenance, repair, alteration, refurbishing, improvement, air-conditioning, heating, and lighting (including electric power and fixtures) of the Executive Residence at the White House;

(2) the official expenses of the White House Office;

(3) the official entertainment expenses of the President;

(4) the official entertainment expenses for allocation within the Executive Office of the President; and

LOBBYING LEGISLATION COMPARISON OF CURRENT PROPOSALS

Thurmond Substitute

A. Domestic Lobbying Restrictions:

1. Prohibits Members for two years and those compensated at or above GS-15 for one year from lobbying anywhere in the government.
2. Prohibits those compensated between GS-11 and GS-14 from lobbying only the department or agency for which they worked for one year.

Ad Hoc Committee Recommendations

1. Strengthens 18 U.S.C. 207(c) to prohibit top three executive levels and Members of Congress from lobbying government-wide for 18 months.
2. Strengthens 18 U.S.C. 207(c) to prohibit lobbying own agency for GS-16 and above for one year.
3. Other Strengthening Provisions:
 - a. Retains 18 U.S.C. 207(a) and (b) and strengthens these protections with enhanced penalties for wilfull violation.
 - b. Eliminates office of Government Ethics' authority to designate components within same agency as "separate". This makes one year agency ban a total agency ban.
 - c. Permit forfeiture of gains due to violation of 18 U.S.C. 207.
 - d. Require all officials above GS-16 to file disclosure statements if intend to lobby the government.

Thurmond Substitute

B. Foreign Representation for Most Federal Employees:

1. Prohibits GS-11s and up from advising, assisting, or working for a "foreign entity" in any way, directly or indirectly for two years.
2. Defines "foreign entity" to include any foreign country, political party, corporation, partnership or individual and any domestic corporation controlled by a foreign entity.
3. Adds an exclusion to enable former government employees to go to work for charitable, religious, scholastic, academic, artistic, or scientific organizations, unless the organization is engaged in lobbying before Congress.

C. Foreign Representation by High Officials:

1. Imposes a ten year ban on specified high officials, five year ban for Members of Congress.
2. Prohibits working for or assisting a foreign entity, directly or indirectly with or without compensation.

Ad Hoc Committee Recommendations

1. Prohibits GS-16s and up from lobbying their own agency for "foreign government or political party" for two years.
 2. Defines "foreign entity" as foreign government, foreign political party or foreign organization controlled by foreign government.
 3. Strengthen Thurmond exclusion. Allow work with international organizations.
1. Imposes a three year ban on employment by foreign government, by those high officials covered by 207(c) and Members of Congress.
 2. Prohibits employment by foreign governments for compensation.
 3. Other Strengthening Provisions:
 - a. Strengthen Foreign Agents Registration Act to require disclosure of matters handled for foreign clients and to require affirmation that no confidential information be disclosed.

Thurmond Substitute

D. Effective Date:

1. Effective 6 months after date of enactment, and applies to everyone by the government on or after that date.

E. Members of Congress Coverage:

1. See above.

F. Simon Amendment

Ad Hoc Committee Recommendations

3. Continued...

- b. Add provisions to make disclosure of "international trade negotiations" a crime.
- c. Authorize forfeiture of gains from violations of these provisions.

1. Same as Thurmond Substitute

1. Identical to top 3 executive levels.

1. Provides a waiver process for former government employees from the restriction of the bill when it is in the general public interest or the government's interest.

AMENDMENT NO. ___

Calendar No. ___

Purpose: To insert the ccmpromise substitute.

IN THE SENATE OF THE UNITED STATES--99th Cong., 2d Sess.

S. 2334

To amend section 2Ø7 of title 18, United States Code, to prchibit Members of Congress and officers and employees of any branch of the United States Government from attempting to influence the United States Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

Amendment In the Nature of a Substitute intended to be propcsed by Mr. -----

Viz:

1 Strike all after the enacting clause and insert in lieu
2 thereof the following:

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the ``Integrity in Post
5 Employment Act of 1986``.

6 SEC. 2. STRENGTHENING THE CURRENT PROVISIONS OF SECTION 2Ø7
7 OF TITLE 18.

8 (a) Increased Penalty for Willful Violation.--The matter
9 after subsection (c) beginning ``shall be fined`` is amended
1Ø by inserting after the period at the end thereof the
11 following: ``Whoever willfully violates subsection (a), (b),

1 or (c) shall be fined not more than \$250,000 or imprisoned
2 not more than five years, or both.".

3 (b) Forfeiture of Illegal Proceeds.--The matter after
4 subsection (c) beginning with "shall be fined", as amended
5 by subsection (a) of this section, is further amended by
6 inserting at the end thereof the following: "Any proceeds
7 received in violation of the provisions of subsection (a),
8 (b), or (c) shall be subject to forfeiture to the United
9 States in a civil action brought by the Attorney General.".

10 (c) Removal of Office of Government Ethics Authority.--
11 (1) Section 207 of title 18, United States Code, is amended
12 by striking out subsection (e).

13 (2) Subsections (f) through (j) of section 207 of title
14 18, United States Code, are redesignated as subsections (e)
15 through (i), respectively.

16 (d) One-Year Prohibition on Contact with Federal
17 Government for High Level Officials and Inclusion of All
18 Officers or Employees of the Three Branches of Government
19 Employed at or Above GS-16 in Current Provisions.--(1)
20 Subsection (c) of section 207 of title 18, United States
21 Code, is amended to read as follows:

22 18, United States Code, is amended to read as follows:

23 "(c) Whoever, other than a special Government employee
24 who serves for less than 120 days in a period of 365
25 consecutive days--

1 “(1) having been so employed as specified in
2 paragraph (1) of subsection (d) of this section, within
3 one-year after such employment has ceased, knowingly acts
4 as agent or attorney for, or otherwise represents, anyone
5 other than the United States in any formal or informal
6 appearance before, or, with the intent to influence,
7 makes any oral or written communication on behalf of
8 anyone other than the United States, for compensation,
9 financial gain, or other remuneration to--

10 “(A)(i) the department, agency, or other entity
11 in which the person served as an officer or employee;

12 “(ii) the Congress if the person was employed by
13 the Congress; or

14 “(iii) the court if the person was employed by
15 the judicial branch, and

16 “(B) in connection with any judicial,
17 rulemaking, or other proceeding, application, request
18 for a ruling or other determination, contract, claim,
19 controversy, investigation, charge, accusation,
20 arrest, or other particular matter, and

21 “(C) which is pending before the department,
22 agency, entity, Congress, or court or in which the
23 department, agency, entity, Congress, or the court
24 has a direct and substantial interest, or

25 “(2) having been so employed as specified in

1 paragraph (2) of subsection (d) of this section, within
2 eighteen months after termination of employment, with the
3 intent to influence makes any oral or written
4 communication to any Member of Congress, officer or
5 employee of the United States, including a special
6 Government employee, in the executive, legislative, or
7 judicial branch of the Government, or in any independent
8 agency of the United States, or an officer or employee of
9 a Government corporation, Government controlled
10 corporation, or an independent establishment as defined
11 in section 104 of title 5, on behalf of another person
12 (other than the United States) for compensation,
13 financial gain, or other remuneration--''.

14 (2) Subsection (d) of section 207 of title 18, United
15 States Code, is amended by redesignating paragraph (2) and
16 paragraph (3) and striking out paragraph (1) and inserting in
17 lieu thereof the following:

18 ''(1) Subsection (c)(1) of this section shall apply to
19 any employee of the Congress, officer or employee of the
20 United States, including a special Government employee, in
21 the executive, legislative, or judicial branch of the
22 Government, or in any independent agency of the United
23 States, or an officer or employee of a Government
24 corporation, Government controlled corporation, or an
25 independent establishment as defined in section 104 of title

1 5--

2 “(A) employed at a basic rate of pay equal to or
3 greater than the basic rate of pay for GS-16 of the
4 General Schedule as prescribed by section 5332 of title
5 5; or

6 “(B) employed on active duty as a commissioned
7 officer of a uniformed service assigned to pay grade of
8 0-7 or above as described in section 201 of title 37.

9 “(2) Subsection (c)(2) of this section shall apply to
10 any person--

11 “(A) employed in a position listed in section 5312,
12 5313, or 5314 of title 5 or under section 105(a)(2)(A) of
13 title 3; or

14 “(B) who serves as a Member of Congress; or

15 “(C) who serves as a judge of the United States as
16 defined in section 451 of title 28.”.

17 (e) Power To Enjoin Violations of Section 207.--Section
18 207 of title 18, United States Code, is amended by inserting
19 at the end thereof the following new subsection:

20 “(j) A violation of this section may be enjoined at the
21 suit of the Attorney General.”.

22 SEC. 3. REPRESENTATION OF FOREIGN GOVERNMENTS.

23 (a) Inclusion of Activities in the Foreign Agents
24 Registration Act.--Section 2 of the Foreign Agents
25 Registration Act of 1938, as amended, is amended by inserting

1 at the end thereof the following:

2 “(g)(1) In addition to the registration requirements of
3 subsections (a) through (e) of this section, any officer or
4 employee of the United States as identified in subsection
5 (d)(2) of section 207 of title 18, United States Code, shall
6 be required in any statement filed under this section to--

7 “(A) disclose the identity and nature of any foreign
8 principal for which such officer or employee acts as an
9 agent, representative, employer, or servant;

10 “(B) disclose the frequency of contact with such
11 foreign principal;

12 “(C) disclose the actions taken or intended to be
13 undertaken to influence members of Congress or officers
14 or employees of the United States on behalf of such
15 foreign principal; and

16 “(D) include a declaration that the registrant has
17 not disclosed confidential Government information or
18 tactics.

19 “(2) Whoever knowingly and willfully falsifies, conceals
20 or covers up by any trick, scheme, or device any information
21 required by this subsection to be included in a registration
22 statement shall be fined not more than \$10,000 or imprisoned
23 not more than five years, or both.”.

24 (b) Disclosure of International Trade Negotiations.--This
25 subsection to be redrafted and included at a later date.

1 (c) Three-Year Ban on High Level Officials Representing
2 Foreign Entities and a Two-Year Ban for Officers and
3 Employees at or Above GS-16.--(1) Subsection (c) of section
4 207 of title 18, as amended by section 2(d) of this Act, is
5 further amended by--

6 (A) striking out the dash at the end of clause (2)
7 and inserting in lieu thereof `` , or ``; and

8 (B) inserting after clause (2) the following:

9 `` (3) having been so employed as specified in paragraph
10 (1) of subsection (d) of this section, within two-year after
11 such employment has ceased, knowingly acts as agent or
12 attorney for, or otherwise represents, anyone other than the
13 United States in any formal or informal appearance before,
14 or, with the intent to influence, makes any oral or written
15 communication on behalf of a foreign entity for compensation,
16 financial gain, or other remuneration to--

17 `` (A)(i) the department, agency, or other entity in
18 which the person served as an officer or employee;

19 `` (ii) the Congress if the person was employed by the
20 Congress; or

21 `` (iii) the court if the person was employed by the
22 judicial branch; and

23 `` (B) in connection with any judicial, rulemaking, or
24 other proceeding, application, request for a ruling or
25 other determination, contract, claim, controversy,

1 investigation, charge, accusation, arrest, or other
2 particular matter, and

3 `` (C) which is pending before the department, agency,
4 entity, Congress, or court or in which the department,
5 agency, entity, Congress, or the court has a direct and
6 substantial interest, or

7 `` (4) having been so employed as specified in paragraph
8 (2) of subsection (d) of this section within three years
9 after such employment has ceased is--

10 `` (A) employed by;

11 `` (B) represents; or

12 `` (C) advises,

13 a foreign entity for compensation, financial gain, or other
14 remuneration--''.

15 (2) Subsection (d) of section 2Ø7 of title 18, United
16 States Code, as amended by section 2(d)(2) of this Act, is
17 amended by adding at the end thereof the following:

18 `` (4) The prohibition provided in subsection (c) shall
19 not apply to a Member, officer, or employee engaging only
20 in--

21 `` (A) the soliciting or collecting of funds and
22 contributions within the United States to be used only
23 for medical aid and assistance, or for food and clothing
24 to relieve human suffering, if such solicitation or
25 collection of funds and contributions is in accordance

1 with and subject to the provisions of subchapter II of
2 chapter 9 of title 22, United States Code, and such rules
3 and regulations as may be prescribed thereunder;

4 "(B) activities in furtherance of bona fide
5 religious, charitable, scholastic, academic, or
6 scientific pursuits or of the fine arts; or

7 "(C) activities in furtherance of the purposes of an
8 international organization of which the United States is
9 a member."

10 (3) Section 207 of title 18, United States Code, as
11 amended by section 2(e) of this Act, is amended by adding at
12 the end thereof the following:

13 "(k) For purposes of this section the term 'foreign
14 entity' means--

15 "(1) a foreign country;

16 "(2) a foreign political party; or

17 "(3) a foreign organization substantially controlled
18 by a foreign country or foreign political party."

19 SEC. 4. DISCLOSURE OF DOMESTIC LOBBYING.

20 Section 207 of title 18, United States Code, as amended
21 by section 3(c)(3) of this Act, is amended by inserting at
22 the end thereof the following:

23 "(1)(1) No person having been employed as provided in
24 subsection (d)(2) of this section shall lobby the United
25 States on behalf of another person other than the United

1 States unless he has filed with the agency or department in
2 which such person served a true and complete registration
3 statement and supplements thereto as required by this
4 subsection. Except as provided in this subsection, every
5 person who agrees to lobby on behalf of another person other
6 than the United States shall, within ten days thereafter,
7 file with the agency or department in which such person
8 served, in duplicate, a registration statement, under oath on
9 a form prescribed by the agency or department in which such
10 person served. The obligation of a former Government official
11 or employee to file a registration statement shall, after the
12 tenth day after agreement to lobby, continue from day to day,
13 and termination of such status shall not relieve such officer
14 or employee from his obligation to file a registration
15 statement for the period during which he lobbys the United
16 States.

17 “(2) The registration statement required by paragraph
18 (1) shall include the following which shall be regarded as
19 material for the purposes of this section:

20 “(A) Registrant's name, former association with the
21 agency or department, principal business address, and all
22 other business addresses in the United States or
23 elsewhere, and all residence addresses, if any;

24 “(B) A comprehensive statement of the nature of
25 registrant's business and a list of all clients employing

1 the registrant to lobby; a complete list of registrant's
2 employees and a statement of the nature of the work of
3 each;

4 "(C) Copies of each written agreement and the terms
5 and conditions of each oral agreement, including all
6 modifications of such agreements, or, where no contract
7 exists, a full statement of all the circumstances, by
8 reason of which the registrant is employed to lobby the
9 United States; a comprehensive statement of the nature
10 and method of performance of each such contract, and of
11 the existing and proposed activity or activities engaged
12 in or to be engaged in by the registrant, including a
13 detailed statement of any such activity which is a
14 political activity;

15 "(D) The nature and amount of contributions, income,
16 money, or thing of value, if any, that the registrant has
17 received within the preceding sixty days from each person
18 the registrant, either as compensation or for
19 disbursement or otherwise, and the form and time of each
20 such payment and from whom received; and

21 "(E) Such further statements and such further copies
22 of documents as are necessary to make the statements made
23 in the registration statement and supplements thereto,
24 and the of documents furnished therewith, not misleading.

25 "(3) Every former Government employee or officer who has

1 filed a registration statement required by this subsection
2 shall, within thirty days after the expiration of each period
3 of six months succeeding such filing, file with the agency or
4 department in which such person served a supplement thereto
5 under oath, on a form prescribed by the agency or department
6 in which such person served, which shall set forth with
7 respect to such preceding six months' period such facts as
8 the agency or department in which such person served may deem
9 necessary to make the information required under paragraph
10 (1) accurate, complete, and current with respect to such
11 period. If the head of the agency or department in which such
12 person served determines that it is necessary to carry out
13 the purposes of this subsection, the head may, in any
14 particular case, require supplements to the registration
15 statement to be filed at more frequent intervals in respect
16 to all or particular items of information to be furnished.

17 “(4) The registration statement and supplements thereto
18 shall be executed under oath.

19 “(5) The fact that a registration statement or
20 supplement thereto has been filed shall not necessarily be
21 deemed a full compliance with this subsection and the
22 regulations thereunder on the part of the registrant; nor
23 shall it indicate that the agency or department in which such
24 person served has in any way passed upon the merits of such
25 registration statement or supplement thereto; nor shall it

1 preclude prosecution, as provided for in this subsection, for
2 a willful failure to file a registration statement or
3 supplement thereto when due or for willful false statement of
4 a material fact therein or the willful omission of a material
5 fact required to be stated therein or the willful omission of
6 a material fact or copy of a material document necessary to
7 make the statements made in a registration statement and
8 supplements thereto, and the copies of documents furnished
9 therewith, not misleading.

10 “(6) The obligation to file statements under this
11 subsection shall terminate five years after the registrant
12 terminates Federal employment.

13 “(7) Any violation of this subsection shall be reported
14 to the Attorney General by the Inspector General of the
15 agency or department which learns of such violation.”.

16 SEC. 5. EXCLUSION FOR ATTORNEYS APPEARING IN JUDICIAL
17 PROCEEDINGS.

18 Section 207 of title 18, United States Code, as amended
19 by section 4 of this Act, is amended by inserting at the end
20 thereof the following:

21 “(m) The prohibitions of subsections (b) and (c) shall
22 not apply to an attorney appearing in a judicial proceeding
23 before a court of the United States.”.

24 SEC. 6. EXEMPTION FROM PROHIBITIONS OF SECTION 207.

25 Section 207 of title 18, United States Code, as amended

1 by section 5 of this Act, is amended by inserting at the end
2 thereof the following:

3 “(n)(1) Notwithstanding any other provision of this
4 section, the Attorney General may grant an exemption from the
5 prohibitions of subsections (a), (b), and (c) of this section
6 to any individual for conduct occurring after the grant of
7 such exemption if the Attorney General determines that such
8 an exemption would--

9 “(A) serve the overriding public interest or general
10 public welfare; or

11 “(B) the interests of the Federal Government.

12 “(2) Any exemption granted under paragraph (1) shall be
13 published in the Federal Register--

14 “(A) prior to the grant of the exemption; and

15 “(B) at least once every six months while such
16 exemption is in effect.”.

17 SEC. 7. EFFECTIVE DATE.

18 The amendments made by this Act shall--

19 (1) be effective six months after the date of
20 enactment of this Act; and

21 (2) apply to any Member or employee of Congress,
22 judge of the United States, employee of the judicial
23 branch, or employee or officer of the Federal Government
24 employed by any agency, department, or entity of the
25 Federal Government on or after six months after the date

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15

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1 of enactment of this Act.

Historical Note

Codification. A prior section 206, Act June 25, 1948, c. 645, 62 Stat. 692, which related to an offer to a judge of judicial officer to influence him, was eliminated in the general amendment of this chapter by Pub.L. 87-849 and is substantially covered by revised section 201.

Effective Date. Section effective 90 days after Oct. 23, 1962, see section 4 of

Pub.L. 87-849, set out as a note under section 201 of this title.

Legislative History. For legislative history and purpose of Pub.L. 87-849, see 1962 U.S.Code Cong. and Adm.News, p. 3852.

Cross References

Definitions, see section 202 of this title.

Memorandum of Attorney General regarding conflict of interest provisions, see note under section 201 of this title.

Regional Action Planning Commissions, applicability of this section to Federal chairman and personnel, see section 3188 of Title 42, The Public Health and Welfare.

Library References

United States 52.

C.J.S. United States §§ 60, 61.

§ 207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility—

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both: *Provided*, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee.

(c) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

Shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia or of a present or former special Government employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsection (c) of this section.

Added Pub.L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1123.

Historical Note

Prior Provisions. Provisions similar to those comprising this section were contained in former section 284 of this title prior to the repeal of such section and the general amendment of this chapter by Pub.L. 87-849.

Codification. A prior section 207, Act June 25, 1948, c. 645, 62 Stat. 692, which related to the acceptance of a bribe by a judge, was eliminated by the general amendment of this chapter by Pub.L. 87-849 and is substantially covered by revised section 201.

Effective Date. Section effective 90 days after Oct. 23, 1962, see section 4 of Pub.L. 87-849, set out as a note under section 201 of this title.

Canal Zone. Applicability of section to Canal Zone, see section 14 of this title.

Legislative History. For legislative history and purpose of Pub.L. 87-849, see 1962 U.S.Code Cong. and Adm.News, p. 3852.

99TH CONGRESS
2D SESSION

S. 2334

To amend section 207 of title 18, United States Code, to prohibit Members of Congress and officers and employees of any branch of the United States Government from attempting to influence the United States Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 17 (legislative day, APRIL 8), 1986

Mr. THURMOND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend section 207 of title 18, United States Code, to prohibit Members of Congress and officers and employees of any branch of the United States Government from attempting to influence the United States Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Integrity in Post Em-
5 ployment Act of 1986".

1 **SEC. 2. DISQUALIFICATION OF FORMER MEMBERS, OFFICERS,**
2 **AND EMPLOYEES FROM ATTEMPTING TO IN-**
3 **FLUENCE THE UNITED STATES GOVERNMENT**
4 **OR REPRESENTING OR ADVISING A FOREIGN**
5 **ENTITY.**

6 (a) **PROHIBITION.**—(1) Section 207 of title 18, United
7 States Code, is amended by striking out subsections (b)
8 through (e) and inserting in lieu thereof the following:

9 “(b) Whoever, having been a Member of Congress, an
10 officer or employee of the United States, including a special
11 Government employee who has served in excess of sixty days
12 during any period of three hundred and sixty-five consecutive
13 days, in the executive, legislative, or judicial branch of the
14 Government, or in any independent agency of the United
15 States, or an officer or employee of a Government corpora-
16 tion, Government controlled corporation, or an independent
17 establishment as defined in section 104 of title 5—

18 “(1) within one year after termination of employ-
19 ment with the intent to influence makes any oral or
20 written communication to any Member of Congress, of-
21 ficer or employee of the United States, including a spe-
22 cial Government employee, in the executive, legisla-
23 tive, or judicial branch of the Government, or in any
24 independent agency of the United States on behalf of
25 another person (other than the United States) for com-
26 pensation, financial gain, or other remuneration; or

1 “(2) within two years after termination of employ-
2 ment—

3 “(A) is employed by, or advises, represents,
4 or assists any foreign entity for compensation, fi-
5 nancial gain, or other remuneration; or

6 “(B) with intent to influence makes any oral
7 or written communication to any Member of Con-
8 gress, officer or employee of the United States,
9 including a special Government employee, in the
10 executive, legislative, or judicial branch of the
11 Government, or in any independent agency of the
12 United States on behalf of any foreign entity for
13 compensation, financial gain, or other remunera-
14 tion,

15 shall be fined not more than \$250,000 or imprisoned
16 not more than two years, or both.

17 “(c) Whoever, having been employed in a position listed
18 in section 5312 or 5313 of title 5 or under section
19 105(a)(2)(A) of title 3, at any time after termination of
20 employment—

21 “(1) is employed by, or advises, represents, or as-
22 sists in any way, directly or indirectly, a foreign entity;
23 or

24 “(2) with intent to influence makes any oral or
25 written communication to any Member of Congress, of-

1 ficer, or employee of the United States, including a
2 special Government employee, in the executive, legisla-
3 tive, or judicial branch of the Government, or in any
4 independent agency of the United States on behalf of
5 any foreign entity,

6 shall be fined not more than \$250,000 or imprisoned not
7 more than two years, or both.

8 “(d)(1) The prohibitions of subsections (a) through (c)
9 shall not apply to a former Member, officer, or employee who
10 is acting in his official capacity as an elected official of a
11 Federal, State, or local government.

12 “(2) The prohibition of subsection (b)(1) shall not apply
13 to an attorney appearing in a judicial proceeding before a
14 court of the United States.”.

15 (2) Section 207 of title 18, United States Code, is fur-
16 ther amended—

17 (A) by striking out subsections (h) and (i);

18 (B) in subsection (f) by designating such subsec-
19 tion as subsection (e) and striking out “subsections (a),
20 (b), and (c)” and inserting in lieu thereof “subsection
21 (a)”;

22 (C) by redesignating subsection (g) as subsection
23 (f);

24 (D) in subsection (j) by redesignating such subsec-
25 tion as subsection (g) and striking out “subsection (a),

1 (b), or (c)” in the first sentence and inserting in lieu
2 thereof “subsection (a)”; and

3 (E) by inserting at the end thereof the following:

4 “(h) For purposes of this section the term ‘foreign
5 entity’ means—

6 “(1) a foreign country;

7 “(2) a foreign political party;

8 “(3) a person outside of the United States, unless
9 it is established that such person is an individual and a
10 citizen of the United States, or that such person is not
11 an individual and is organized under or created by the
12 laws of the United States or of any State or other
13 place subject to the jurisdiction of the United States
14 and has its principal place of business within the
15 United States; or

16 “(4) a partnership, association, corporation, orga-
17 nization, or other combination of persons organized
18 under the laws of or having its principal place of busi-
19 ness in a foreign country.”.

20 (3) Subsection (a) of section 207 of title 18, United
21 States Code, is amended by striking out “; or” at the end
22 thereof and inserting in lieu thereof a comma and the
23 following:

24 “shall be fined not more than \$250,000 or imprisoned not
25 more than two years, or both.”.

1 (b) AMENDMENT TO CAPTION.—(1) Section 207 of title
2 18, United States Code, is further amended by striking out
3 the caption for such section and inserting in lieu thereof the
4 following:

5 “§ 207. Disqualification of former Members and employees and offi-
6 cers of any branch of Government from attempting to
7 influence the United States Government or represent-
8 ing or advising a foreign entity”.

9 (2) The table of sections for chapter 11 of title 18,
10 United States Code, is amended by striking out the item
11 relating to section 207 and inserting in lieu thereof the
12 following:

“207. Disqualification of former Members and employees and officers of any branch
of Government from attempting to influence the United States
Government or representing or advising a foreign entity.”.

13 **SEC. 3. EFFECTIVE DATE.**

14 The amendments made by section 2 of this Act shall be
15 effective upon the date of enactment of this Act.

○

THE WHITE HOUSE
WASHINGTON

To Jay: FYI.

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MEMORANDUM

From: ACLU
To: Interested Parties
Subject: Constitutionality of the Restrictions in S. 2334

This memorandum takes issue with three aspects of the testimony of Professor John Banzhaf III regarding the constitutionality of S. 2334 - the integrity in Post-Employment Act of 1986. Mr. Banzhaf stated that "the bill would not prohibit persons from speaking, associating, or from petitioning for redress of grievances, but only from seeking to do so for profit." (Testimony before the Committee on the Judiciary, United States Senate, Wednesday, June 18, 1976). He cited Capital Broadcasting Co. v. Mitchell 333 F. Supp. 583, 584 (3. judge, D.C. Cir. 1971), affd., 405 U.S. 1000 (1972) to support the contention that under S. 2334, former employees "would not lose any First Amendment rights, since they would be free to express their own beliefs concerning even the issues of concern to a foreign country. The prohibition would apply only if

they sought to profit from making such statements; an interest which is not constitutionally protected."

(Testimony at 6)

Our first disagreement, expressed during the hearing by Senator Mathias, is that the bill does not, in fact, regulate only activity for which a person is remunerated (eg. paragraph 2 (d)(1)(A) concerning foreign entities). Professor Banzhaf appeared to concede that these sections were unconstitutional.

Even if S. 2334 was regulating only activity for which former government employees were paid, and to the degree that it does, Capital Broadcasting would still not be on point. That case involved commercial speech - broadcasters arguing "that their right of Free Speech was infringed because they could not be paid by cigarette manufactures to speak on their behalf" in radio and television advertisements (Testimony at 5). As we have already stated, S. 2334 regulates political expression. Speech which is otherwise protected (eg. political speech) does not lose that protection simply because one is paid to do it. To argue otherwise would be to say, for example, that newspapers circulated for profit are subject to less First Amendment protection than are pamphlets circulated for free. The definition of commercial speech is "expression related solely to the economic interests of the speaker and its audience." Central Hudson Gas v. Public Service Commission 447 U.S. 557 (1980) at 561. The definition thus turns on the content of the speech rather than on whether or not the speaker is paid.

Finally, even if it were assumed arguendo that the activity Congress seeks to regulate with S. 2334 is commercial speech, the

constitutional standard to be applied is in all pertinent respects the same as that suggested the ACLU testimony. In a recent case on commercial speech, the Supreme Court summarized the test it has established as follows.

"In commercial speech cases...a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we must ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest." 447 U.S. at 566.

(See, also Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748 (1976).

We conclude, for the above reasons, that the standard we originally brought to the attention of the Committee is the appropriate one by which to determine whether S. 2334 will pass constitutional muster.

Applying this test, S. 2334 contains numerous restrictions which fail to meet this test and is therefore subject to constitutional challenge.

6/19/86