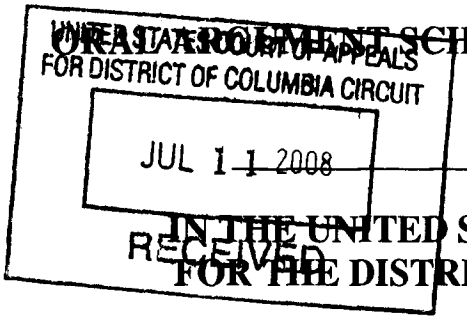

ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 12, 2008

No. 08-5085

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JUL 11 2008

NATIONAL ASSOCIATION OF MANUFACTURERS,

Plaintiff-Appellant,

v.

HONORABLE JEFFREY A. TAYLOR, *et al.*,

Defendants-Appellees.

ON APPEAL FROM THE U.S. DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR PLAINTIFF-APPELLANT THE NATIONAL ASSOCIATION OF MANUFACTURERS

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July 11, 2008

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

The undersigned attorney of record, in accordance with Circuit Rule 28(a)(1), hereby certifies as follows:

(A)(i) Parties Before This Court

- Appellant: The National Association of Manufacturers.
- Appellees: The Honorable Jeffrey A. Taylor, U.S. Attorney for the District of Columbia; The Honorable Nancy Erickson, Secretary of the United States Senate; The Honorable Lorraine C. Miller, Clerk of the House of Representatives of the United States.
- Amici Supporting the Plaintiff-Appellant: Wisconsin Manufacturers and Commerce; WMC Issues Mobilization Council; the Iowa Association of Business and Industry; The National Paint & Coatings Association.
- Amici Supporting the Defendants-Appellees: Campaign Legal Center; Democracy 21; Public Citizen.

(A)(ii) Parties and Amici Before the District Court

- Plaintiff: The National Association of Manufacturers.
- Defendants: The Honorable Jeffrey A. Taylor, U.S. Attorney for the District of Columbia; The Honorable Nancy Erickson, Secretary of

the United States Senate; The Honorable Lorraine C. Miller, Clerk of the House of Representatives of the United States.

- Amici: Campaign Legal Center; Democracy 21; Public Citizen; Citizens for Responsibility and Ethics in Washington.

(A)(iii) Corporate Disclosure Statement

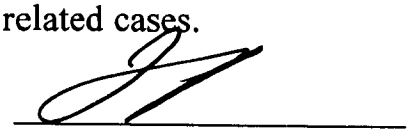
The National Association of Manufacturers ("NAM") is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM is a non-profit organization headquartered in Washington, D.C., with 10 additional offices across the country. Its membership list is confidential. It has no parent corporation and no publicly-traded stock.

(B) Ruling Under Review

On April 11, 2008, the district court (Judge Colleen Kollar-Kotelly) issued an Order and Memorandum Opinion on April 11, 2008, dismissing with prejudice, which can be found in the Appendix at 64. The case may be cited as *National Association of Manufacturers v. Taylor*, 549 F. Supp. 2d 33 (D.D.C. 2008).

(C) Related Cases

Undersigned counsel are aware of no related cases.



Thomas W. Kirby

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GLOSSARY OF ABBREVIATED TERMS

App.	Appendix
DOJ	Department of Justice
Guidance document	Lobbying Disclosure Act Guidance, (revised May 29, 2008) at http://www.senate.gov/legislative/resources/pdf/S1guidance.pdf
HLOGA	Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81, 121 Stat. 735
LDA	Lobbying Disclosure Act of 1995, Pub. L. No. 104-65, 109 Stat. 691
Legislative Defendants	Clerk of the House of Representatives and Secretary of the Senate
NAM	National Association of Manufacturers
Section 207 or § 207	Section 207 of the Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81, 121 Stat. 735
U.S. Attorney	United States Attorney for the District of Columbia

Plaintiff-Appellant National Association of Manufacturers ("NAM") submits this Reply to the Brief for Appellee Jeffrey A. Taylor ("DOJ Brief") and to the Brief for the Legislative Defendants Nancy Erickson and Lorraine C. Miller ("Legislative Brief").[1]

SUMMARY OF ARGUMENT

Section 207 of the Honest Leadership and Open Government Act of 2007, Pub. L. 110-81, is directly and substantially impairing the core First Amendment rights of the NAM, its members, and other similar associations to speak freely about how we are governed, to petition the Government, and to associate for those purposes. Applying § 207's vague standards, the NAM already has been forced to file an initial report publicly identifying NAM members who, in the first quarter of 2008, both (i) contributed over $5,000 and (ii) "actively participated" in NAM projects that they "intended" at the time to advance policy-related contacts with any one of over 15,000 personnel in the Legislative or Executive Branches. Before this case is argued, the NAM will have to make a second such filing. As the NAM's undisputed evidence established, many of the NAM's members are gravely concerned by this ongoing and unprecedented disclosure of associational

---

[1] As an initial procedural matter, the DOJ Brief (at 6) and the Legislative Brief (at 6) differ in stating the nature of the NAM motion decided by the district court. The NAM agrees with the DOJ. *See* Minute Order of February 8, 2008. But since all Briefs seek final judgment on the merits and no party claims it lacked notice and opportunity to present its full case, this issue is unimportant.

confidences that the NAM has preserved over the decades. Only prompt invalidation of § 207 can avert serious curtailment of participation and support for core First Amendment activities.[2]

Incredibly, Defendants' Briefs provide no substantial justification for this First Amendment violation. They cannot show that § 207 compels any disclosures by stealth coalitions not already required by prior law, they cannot show any need for further disclosures about established groups like the NAM, they cannot demonstrate that § 207 is narrowly tailored, and they cannot refute the law's vagueness. The NAM is not the only one to notice that § 207 imposes pointless burdens. As the attached article from *Politico* reports:

> The much touted new lobbying disclosure reports are now available. But beware: they do little to make it easier to track the nation's influence class. In fact, they seem to simply create a new level of complication.

Jeanne Cummings, *New Disclosure Reports Lack Clarity*, Politico, Apr. 29, 2008.

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[2] The Amicus Brief filed by Wisconsin Manufacturers & Commerce *et al.* further explains why many corporations refrain from participating in expressive association where they may be identified. Recent news reports confirm that business corporations belonging to a group taking controversial positions may be penalized. Mark Pitsch, *EPIC Won't Deal with WMC Backers*, Wisc. State Journal, June 27, 2008 (attached). *See also* Tory Newmyer, *Doggett Shines a Light on Stealth Coalitions*, Roll Call, Feb. 26, 2007 (noting an NAM-affiliated group that "initially posted its membership list on its Web site [was later forced to remove] it when labor groups and other activists began staging protests outside [member] offices"). Contrary to Defendants' assertions, this Court may consider such materials to assess so-called legislative facts bearing on what the law is. *See* Fed. R. Evid. 201 advisory committee note (discussing legislative facts).

Rather than impairing First Amendment rights reluctantly and as a last resort, compelled by empirical evidence and careful analysis, Congress hastily cobbled § 207 together simply to show it was "doing something" without acknowledging either the burdens it was imposing or the lack of resulting benefit. A decent regard for the First Amendment requires that § 207 be declared unconstitutional, on its face and as applied to established membership groups like the NAM.

ARGUMENT

I. DEFENDANTS FAIL TO JUSTIFY § 207.

A. The Very Limited Disclosure Sustained in *Harriss* Does Not Justify the Sweeping Coverage of § 207.

Lacking a factual record, Defendants assert that *United States v. Harriss*, 347 U.S. 612 (1954), "establishes the constitutionality" of § 207. Legislative Brief at 21. Defendants admonish this Court that, although First Amendment doctrine has evolved substantially since *Harriss*, a holding based "on reasons rejected in some other line of decisions" remains binding. *Id.* at 26 (citing *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)); DOJ Brief at 39 (same). But the statute sustained by *Harriss* differs sharply from § 207.

The lynchpin of *Harriss* was its conclusion that "legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected." 437 U.S. at 625.

Accordingly, Members of Congress were held entitled to require a narrowly-defined "modicum of information" pursuant to their "power of self-protection." *Id.*

As narrowed by the Court, the statute required disclosures only for "direct communication with [the 531] members of Congress." *Id.* at 623 (emphasis added). By contrast, § 207 covers direct or indirect communications with over 15,000 officials and employees in the Executive and Legislative branches, including receptionists and summer interns. 2 U.S.C. § 1602(3), (4).[3]

Harriss also narrowed the covered communications to those promoting or opposing "pending or proposed federal legislation." 347 U.S. at 620. More general discussions – legislative concepts, strategies, policies – were not covered, even if directed to Members themselves. By contrast, with certain exceptions, § 207 extends to "any oral or written communication . . . with regard to" any of the following:

> (i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);
>
> (ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other

---

[3] In 2001, there were approximately 13,000 legislative branch employees. Norman Ornstein *et al.*, VITAL STATISTICS ON CONGRESS, 2001-2002 126 (2002). The 2004 Plum Book lists over 1,500 Schedule C employees in the executive branch. And 10 U.S.C. § 526(a) authorizes 877 general officers in the U.S. military.

> program, policy, or position of the United States Government;
>
> (iii) the administration or execution of a federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or
>
> (iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

2 U.S.C. § 1602(8)(A).

Finally, the narrowed *Harriss* statute required disclosure only of entities that made contributions directly financing such narrowly-defined lobbying, and called for no disclosure of active participation in expressive association. By contrast, § 207 probes support for a wide range of "lobbying activities" related to its extremely broad definition of lobbying, as well as disclosure of historically confidential participation in expressive association.

Defendants assert *Harriss* narrowed the statute only to avoid vagueness, so the statute's limited scope had no bearing on the Court's substantive First Amendment ruling.[4] *Harriss* said otherwise. After summarizing how it had narrowed the statute, *Harriss* said in the very next paragraph: "Thus construed [the statute] do[es] not violate the freedoms guaranteed by the First

---

[4] Legislative Brief at 24-25. The vagueness holding of *Harriss* is discussed *infra* at 24-26.

Amendment . . . ." 347 U.S. at 625 (emphasis added). Then, stressing it had construed the statute to require only "a modicum of information," *Harriss* ruled that "within the bounds of the Act as we have construed it," disclosure was justified by Congress's "power of self-protection." *Id.* at 625. *See also McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 356 n.20 (1995) (*Harriss* "upheld limited disclosure requirements").

This case does not challenge the ability of Congress to require the "modicum" of information about direct Member communication allowed by *Harriss*. It challenges massively-broader and more intrusive requirements that chill core rights in ways the Supreme Court has never approved.

B. Defendants Fail to Carry Their Heavy Burden of Justification.

1. Defendants' Attempts to Minimize Their Burden Are Unsuccessful.

Because § 207 directly targets and burdens core First Amendment rights, the Government bears the burden of justification. *See AFL-CIO v. FEC*, 333 F.3d 168, 175-76 (D.C. Cir. 2003). Defendants assert that they need only satisfy "exacting" scrutiny, which they describe as a low burden easily met by assertion. DOJ Brief at 13-17, 25-26.

In reality, "exacting" and "strict" scrutiny are one and the same. *See, e.g.*, *McConnell v. FEC*, 251 F. Supp. 2d 176, 358 n.139 (D.D.C. 2003), *aff'd in part*, 540 U.S. 93 (2003) (Henderson, J.) ("In no case of which I am aware does the

[Supreme] Court hold that exacting scrutiny is any *less* rigorous than strict scrutiny.") (emphasis in original). *See also Republican Nat'l Comm. v. FEC*, 76 F.3d 400, 403 (D.C. Cir. 1996) (*Buckley*'s "exacting" scrutiny required a "least restrictive means" analysis); *Cal. Pro-Life Council v. Getman*, 328 F.3d 1088, 1101 (9th Cir. 2003) (subjecting disclosure requirements on multi-purpose organizations to strict scrutiny). But under any heightened standard of review, Defendants have failed to satisfy their constitutionally-mandated burden.

The DOJ Brief (at 9, 18) says *Washington State Grange v. Washington State Republican Party*, 128 S. Ct. 1184, 1190 (2008), means § 207 may not be held facially invalid unless it is "unconstitutional in all its applications" or lacks a "plainly legitimate sweep." In fact, *Washington Grange* says a statute also is facially invalid under the First Amendment where a "substantial number of its applications are unconstitutional [when] judged in relation to the statute's plainly legitimate sweep." *Id.* at 1190 n.6 (internal citations and quotations omitted). Given § 207's clear lack of justification, tailoring, and precision, it has no "plainly legitimate sweep." Moreover, the burden it imposes on many established groups like the NAM demonstrates substantial unconstitutionality, doubly so given its vagueness. In addition, the NAM has challenged § 207 as applied to it and similar

long-established groups that engage in a variety of activities with extensive participation by organizational members.[5]

Defendants also claim the right of association protects "privacy" interests that corporations supposedly lack. Actually, corporations have strong and protectable privacy rights, *United States v. Hubbard*, 650 F.2d 293, 303-06 (D.C. Cir. 1980), though fewer than individuals, *United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950). Corporations lack some "purely personal" rights whose "historic function" has been limited to individuals. *See First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 778 n.14 (1977). "Intimate association" may be such a right. But the NAM and its members claim the right of "expressive association," e.g., associating for the purpose of exercising their settled rights of free speech and petitioning. Brief of Appellants at 23. No history limits that right to individuals. Moreover, the burdens § 207 imposes on speech and petitioning demand stringent scrutiny.

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[5] The NAM submitted undisputed evidence describing its membership organization and operations and explaining how § 207 would infringe on its core First Amendment rights. App. 51-55. Thus, a predicate for as-applied relief was provided. However, since the NAM's evidence also attested – and Defendants do not dispute – that its essential characteristics and injuries are shared by many established associations, that evidence also supports facial invalidity.

2. Defendants Mischaracterize *Buckley*'s Test for Compelled Disclosures.

In seeking to minimize Defendants' burden, the DOJ Brief (at 13-15, 23-24) distorts what *Buckley v. Valeo* said. *Buckley* discussed a statute requiring disclosures by political candidates and committees. 424 U.S. 1, 63-64 (1976). It found that "any deterrent effect on the exercise of First Amendment rights" would be caused "indirectly as an unintended but inevitable result of . . . requiring disclosure." *Id.* at 65. There was no evidence that specific and concrete harm was imminent. Nevertheless, *Buckley* subjected the disclosure requirement to "exacting scrutiny," ruling this "strict test" was necessary because compelled disclosure has the potential for substantially infringing the exercise of First Amendment rights. *Id.* at 64-65. Concluding the disclosure requirements at issue were "the least restrictive means" of meeting the needs "that Congress found to exist," *Buckley* held the statute facially valid. *Id.* at 68.

Buckley then considered whether the facially-valid disclosure requirements could "constitutionally be applied" to "minor parties and independents." *Id.* at 71. Since the most the minor parties claimed was "that one or two persons refused to

make contributions because of the possibility of disclosure," *Buckley* rejected the as-applied challenge. *Id.* at 72.[6]

Buckley was explicitly reaffirmed in *Davis v. FEC*, ___ U.S. ___, 2008 WL 2520527 (June 26, 2008). *Davis* applied "exacting scrutiny" to hold a reporting provision facially invalid – even though there was no evidence that wealthy, self-funding candidates faced specific injury – because "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Id.* at *12 (quoting *Buckley*, 424 U.S. at 64) (emphasis added).[7]

The NAM's uncontroverted evidence shows that § 207 disclosures impair long-standing guarantees of associational confidentiality that are important to the support and participation of many NAM members. App. 52-55. The district court correctly ruled the NAM had established a "substantial burden" on its rights. App. 88. The disclosures mandated by § 207 also inflict burden by (i) destroying

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[6] The DOJ Brief (at 18-19) cites *Washington Grange*. However, this case concerns "election regulations." 128 S. Ct. at 1191-92. Since substantial regulation is essential to structure a meaningful election, there is less reason for judicial skepticism unless the "election regulations" are extreme. By contrast, there is no inherent need for the Government to regulate the internal affairs of associations like the NAM.

[7] On the same day, *District of Columbia v. Heller*, __ U.S. __, 2008 WL 2520816 (June 26, 2008), ruled that the "core protection" of a constitutional provision, such as the First Amendment, cannot be "subjected to a freestanding 'interest balancing' approach. The very enumeration of the right takes it out of the hands of [the courts] to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Id.* at *32 (emphasis in original).

anonymous speech, and (ii) publicly branding members as lobbyists, a term that (unfairly) has become a new dirty word, as presidential and other candidates compete to distance themselves from its perceived taint. For all these reasons, strict scrutiny is required.[8]

3. The Few "Factual Findings" Cobbled Together by the Defendants Do Not Demonstrate Any Need for § 207.

The DOJ's Brief asserts (at 27) that *United States v. Lopez*, 514 U.S. 549 (1995), excuses Congress from articulating a factual basis for enacting § 207. In fact, *Lopez* held that Congress need not make specific findings that legislation is within the affirmative authority granted by the Commerce Clause.[9] The situation is

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[8] Even intermediate scrutiny, such as is applied to restrictions on commercial speech, places substantial burdens on the Government. *See Edenfield v. Fane*, 507 U.S. 761, 770 (1993). "[S]peculation and conjecture" will not do. *Id.* The Government "must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree," *id.* at 771, that "the cost [has been] carefully calculated," and that the burdens, if not "absolutely the least severe," are at least "narrowly tailored to achieve the desired objective." *Bd. of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989).

[9] *See* 514 U.S. at 562-63. The remaining portion of the two sentences excerpted – but not quoted – by DOJ makes this point quite clearly:

> We agree with the Government that Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce. . . . But to the extent that congressional findings would enable us to evaluate the legislative judgment that the activity in question substantially affected interstate commerce, . . . they are lacking here.

Id. at 562-63 (emphasis added). *Lopez* held that congressional findings remain relevant in evaluating whether Congress made appropriate judgments based on

very different where, as here, Congress relies on supposed factual necessity to overcome an apparent First Amendment prohibition. *See Bellotti*, 435 U.S. at 789-90 (demanding "record or legislative findings"); *Republican Party of Minn. v. Pauly*, 63 F. Supp. 2d 1008, 1016 (D. Minn. 1999) (noting the "government's lack of convincing evidence or findings that the [reporting] statute is necessary") (internal quotation omitted). Findings help assure Congress recognized and evaluated the need to set aside a constitutional command, and their absence is significant.

Certainly where core First Amendment rights are involved, a law must be "supported by substantial evidence in the record before Congress." *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 211 (1997). Conclusory statements, self-evident generalities, anecdotes and supposition are not sufficient; "[t]he question is whether an actual problem has been proved" by Congress. *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 822 (2000) (emphasis added).[10]

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available information. *See also United States v. Lopez*, 2 F.3d 1342, 1362 n.41 (5th Cir. 1993), *aff'd on appeal*, 514 U.S. 549 (1995).

[10] Importantly, this "court is required to conduct its own examination of the evidence [and] cannot simply substitute legislative judgment for judicial judgment" when "the exercise of First Amendment rights is at stake." *Bellsouth Corp. v. United States*, 868 F. Supp. 1335, 1343-44 (N.D. Ala. 1994) (citing *Turner Broad. Sys. v. FCC*, 512 U.S. 622 (1994)). *See also Sable Commc'ns v. FCC*, 492 U.S. 115, 129 (1989).

The Legislative Brief (at 29) asserts that *Blount v. SEC*, 61 F.3d 938, 945 (D.C. Cir. 1995), holds otherwise. However, it omits the first part of the paragraph, which holds that burdens on core First Amendment rights must be justified – at a minimum – by "findings . . . as to the facts" and "substantial evidence." *See id.* at 945 n.3.

Ironically, although Defendants stress that the 1995 Act contained findings, 2 U.S.C. § 1601, they fail to demonstrate how those findings support § 207. DOJ Brief at 27-28. The first and third findings say that disclosing "the efforts of paid lobbyists" would be beneficial. That says nothing about disclosing the internal activities of members of associations. The second finding says existing laws "have been ineffective because of unclear statutory language, weak administrative and enforcement provisions, and absence of clear guidance as to who is required to register . . . ." None of those findings would justify § 207, even if they applied after the 1995 legislation.

Defendants fail to cite studies, statistics, or empirical evidence explaining why established organizations like the NAM should be required to file disclosure statements. Grasping at straws, Defendants point to two brief and conclusory statements made by a pair of witnesses at a 1992 committee hearing describing circumstances that existed *before* the 1995 Lobbying Disclosure Act. In addition, the witnesses' testimony supported – and deemed adequate – the more limited

legislative proposal before the committee at the time. Snippets of old, conclusory assertions supporting a different and more limited bill that were not relied upon by the enacting Congress cannot sustain § 207.

Moreover, the examples of "stealth coalitions" cited by the 1992 witnesses were all short-lived, *ad hoc* groups rather than established associations like the NAM. *Compare The Lobbying Disclosure Act of 1992: Hearing on S. 2279 Before the Subcomm. on Oversight and Gov't Mgmt. of the S. Comm. on Governmental Affairs*, 102nd Cong. 110-11 (1992) (statement of Ann McBride, Senior Vice President, Common Cause) (discussing the lobbying activities conducted by the "Information Council for the Environment (ICE)") *with* David Helvarg, *The Greenhouse Spin: Energy Companies Try the 'Tobacco' Approach to Evidence of Global Warming*, The Nation, Dec. 16, 1996 ("The I.C.E. campaign lasted six months, and then was terminated"). Washington is full of established groups like the NAM, and these witnesses identified none of them as a problem.

4. Defendants Fail to Prove Any Need for Further Disclosures by Long-Standing Associations Like the NAM.

Although every legislator to address the purpose of § 207 said it was needed to force "stealth coalitions" to disclose the interests they represent, Defendants assert that Representative Lloyd Doggett called for more disclosure about all lobbyists. *See* DOJ Brief at 28, 33, 35 n.8; Legislative Brief at 27 ("When deep-pocketed interests spend big money to influence public policy, the public has a

right to know. Even a little light can do a lot of good."). DOJ's Brief (at 32-33) says that Representative Doggett's comments on May 24, 2007, show the NAM is "precisely the sort" of group § 207 targeted. But Congressman Doggett was referring to the House-backed version of lobbying reform, which contained an explicit exemption for many 501(c) organizations like the NAM. *See* H.R. 2316, 110th Cong. § 206 (2007) (as passed by the House).[11] *See also* Tory Newmyer, *Associations Say Sunshine Too Bright*, Roll Call, Nov. 7, 2007 ("Rep. Lloyd Doggett . . . left established groups out" of his bill) (emphasis added). Thus, he was not advocating more disclosure from established associations generally.

The DOJ Brief attempts (at 5) to morph § 207 into a general-purpose statute to close a "loophole." But the sentence DOJ quotes from the sponsors says "[t]he bill closes a loophole that has allowed so-called 'stealth coalitions,' often with innocuous-sounding names, to operate without identifying the interests engaged in the lobbying activities." 153 Cong. Rec. S10709 (daily ed. Aug. 2, 2007) (emphasis added). The problem being identified was stealth coalitions.

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[11] Specifically, the bill contained an exception for 501(c)(3) organizations and any other 501(c) organization "exempt from tax under section 501(a) of [the Internal Revenue Code] and which has substantial exempt activities other than lobbying with respect to the specific issue for which it engaged the person filing the registration statement." H.R. 2316, 110th Cong. § 206 (2007) (as passed by the House).

Defendants say Congress must have intended to regulate more than "stealth coalitions" because § 207's title refers to "certain coalitions and associations." DOJ Brief at 35. But, the phrase "certain coalitions and associations" aptly describes various "stealth coalitions." Moreover, there is "customary reluctance to give great weight to statutory headings." *Holland v. Williams Mountain Coal Co.*, 256 F.3d 819, 822 (D.C. Cir. 2001). Section 207's title is also a legislative "hand-me-down" that has been recycled in various lobbying disclosure bills, including proposals containing an exemption for many established 501(c) "associations." *See, e.g.*, Stealth Lobbyist Disclosure Act of 2005, H.R. 1302, 109th Cong. § 2.

The general interests the NAM represents are widely-reported and well-known to members of the executive and legislative branches.[12] Congress routinely seeks the NAM's views on issues of concern to the manufacturing community, recognizes the NAM's leadership for their work on behalf of America's manufacturers, and relies on the NAM's research and analysis in crafting bi-

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[12] *See, e.g., U.S.-China Strategic Economic Dialogue: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 110th Cong. (Jan. 31, 2007) (statement of Sen. Shelby, Ranking Member, S. Comm. on Banking, Housing, and Urban Affairs) ("[Y]ou represent the National Association of Manufacturers. We know what that trade association is."); *OSHA Rules Impact on Small Business: Hearing Before the H. Comm. on Small Bus.*, 105th Cong. (Sept. 17, 1997) (statement of Gregory Watchman, Acting Assistant Sec'y of Labor) (noting that the NAM is a "well-known trade association").

partisan legislation.[13] The NAM even works to provide information about the association directly to members of the general public – many of whom are employed by an NAM member – through a wide variety of outreach activities and other publicly-disclosed documents like IRS filings.[14] Defendants' assertion that the NAM or similar established groups are stealth coalitions is baseless.[15]

5. Section 207 Fails to Address the Asserted Interests in a Meaningful Way.

Defendants' Briefs also fail to show how § 207's patchy and almost random disclosure requirements – *see* Appellant's Brief at 11-13 – accomplish anything important.

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[13] *See, e.g., U.S. Export Promotion Strategy: Hearing Before the Subcomm. On Terrorism, Nonproliferation, and Trade of the H. Comm. on Foreign Affairs*, 110th Cong. (Apr. 24, 2008) (statement of Franklin Vargo, Vice President for Int'l Econ. Affairs, NAM); H. Res. 783, 108th Cong. (2004); S. Res. 162, 108th Cong. (2003).

[14] *See, e.g., What the Scribes Want to Know of NAM*, Mfg. & Tech. News (Feb. 22, 2005) (NAM President "went before a live national audience" and answered questions about the NAM and its issues); *NAM Leader Urges Involvement*, Ass'n Mgmt. (Jan. 1, 2000) (describing how former NAM-president led "initiative to raise awareness about NAM throughout the United States by conducting [over 300] meetings with members of Congress in their own congressional districts"). Of course, the NAM preserved its long-standing protection of member privacy.

[15] It is particularly ironic for organizations like "Public Citizen," "Democracy 21," and the "Campaign Legal Center" – whose "mom and pop, apple pie" names most Washington insiders have trouble keeping straight – to complain that the public would have difficulty understanding that an organization called the "National Association of Manufacturers" represents American manufacturing interests.

First, Defendants fail to explain how § 207 furthers the Government's allegedly "compelling" interest in avoiding corruption when the new disclosure requirement fails to specify any linkage between a member corporation's "active participation" in the NAM's lobbying activities and specific bills/regulations or meetings with a particular covered official or employee.[16] Although third parties often may be able to connect the dots, the statute is not well-adapted to identifying such linkages. Moreover, Congress has enacted various laws limiting gifts, contributions, assistance, and the like, and Defendants do not show the vigorous enforcement of those laws is not sufficient.[17]

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[16] Under the disclosure requirements, a reporting association provides two separate lists, one of the issues on which the association has lobbied and one of the members who have funded and actively participated with respect to one or more such activities. *See* Lobbying Report (LD-2DS) Sample Form, *available at* http://lobbyingdisclosure.house.gov/help/WordDocuments/lobbyingreportld2dssampleform.htm.

[17] Aside from the Court's general reluctance to extend the corruption rationale outside the campaign finance sphere in *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007) ("*WRTL*"), Defendants fail to fully explain their theory of corruption. (Contrary to the Legislative Defendants' assertion (at 30, 35), *FEC v. Nat'l Right to Work Committee* does not support their case. *See* 459 U.S. 197, 210 n.7 (1982) (citing *Bellotti* for the proposition that the corruption rationale did not even extend to all areas of campaign finance law, much less lobbying).) Unlike with candidate contributions, disclosure of the general fact that a corporation made a disbursement to a trade association provides neither Congress nor the public with information about whether a particular official is "too compliant" with that corporation's wishes.

Notwithstanding this difficulty, the DOJ boldly asserts (at 31) that compelled disclosure of an organization's *confidential* membership information is permissible simply because it will simply "add to the pool of information available to governmental officials and to the public." If accepted, that "add-to-the-pool" rationale would herald a frightening expansion in Government intrusiveness. *See Shaw v. Hunt*, 517 U.S. 899, 915 (1996) (the Supreme Court has "always expected that the legislative action would substantially address, if not achieve, the avowed purpose").[18]

Second, Defendants overlook the significance of § 207's underinclusiveness. *See Gonzales v. O Centro Espirita Beneficente*, 546 U.S. 418, 433 (2006) ("a law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited") (internal citations and quotation omitted); *Chaker v. Crogan*, 428 F.3d 1215, 1227 (9th Cir. 2005) ("[t]he Supreme Court has looked skeptically on statutes that exempt certain speech from regulation, where the exempted speech implicates the very same

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[18] A thought experiment helps to test the DOJ's position. The institutional press has at least as much effect on Congress as do lobbyists. Suppose Congress enacted a law requiring all press entities to file quarterly reports identifying all sources for all stories concerning any subjects and persons covered by § 207. Could DOJ plausibly defend this as a minimal and facially valid burden because it contributes to the pool of knowledge on important topics, most news sources do not object to being identified, and most of those that do object cannot prove they face specific and concrete harm? Of course not.

concerns as the regulated speech"). Individuals are not disclosed even though Congressman Doggett repeatedly cited the problems posed by front groups acting on behalf of individuals. *See Doggett Shines a Light on Stealth Coalitions* (noting Congressman Doggett's concerns that the 877 Coalition, which was funded by members of a single family, lobbied his committee anonymously by setting up a "paper" coalition). But even if excluding individuals could be justified, the otherwise patchy and almost random nature of the disclosures required by § 207 undermine any claim that the disclosures it happens to require are important.

Third, the NAM's Brief demonstrated (at 36) that § 207 does not compel stealth coalitions to provide any greater disclosure than under prior law since they do not have to report unless they actually hire a lobbyist. Instead, the actual lobbying can be and often is carried out by lobbyists employed by one or more members, and the reports of those members will not mention the stealth coalition, its funding, membership, or activities.

The DOJ Brief responds (at 30) that, if a stealth coalition collects and transfers money to a member to retain special purpose lobbyists, "it is not at all clear" that § 207 would not require some additional reporting. But the NAM never suggested such a money transfer. Much of the cost of a lobbying campaign goes for research, strategy, development of supporting materials, etc. The NAM suggested that most coalition members would bear those costs and burdens, while

one or two members would use their employees for lobbying contacts as their contribution. Defendants' Briefs do not deny this approach is feasible, common, and clearly avoids any disclosures of the stealth coalition or its members.

The DOJ Brief has merely identified a second way stealth coalitions can avoid the disclosures that § 207 was intended to compel – one involving a money transfer. The DOJ says it is not "clear" that such a transfer would avoid liability. But DOJ cannot carry Defendants' burden to demonstrate § 207 will be effective by saying that one reason it may fail may or may not be forbidden. *Id.* That is doubly so since an ambiguous criminal provision burdening core First Amendment rights must receive a narrow construction with uncertainty resolved against liability. *See United States v. Nofziger*, 878 F.2d 442, 454 (D.C. Cir. 1989); *Watts v. United States*, 394 U.S. 705, 708 (1969).

The DOJ Brief claims legal uncertainty may deter some stealth coalition members from using a funds-transfer approach. This makes the point that vague statutes may easily deter First Amendment activity. But given the special motivations of stealth coalition members, DOJ's speculation rings hollow. In any event, the common and unquestionably lawful approach outlined by the NAM shows that § 207 does not compel additional disclosures by stealth coalitions.

In sum, Defendants fail to show that § 207 can be factually justified.

6. Defendants' Briefs Fail to Show That No Less Restrictive Means Are Possible.

Buckley's "exacting" scrutiny standard upheld a disclosure requirement that "appear[ed] to be the least restrictive means of curbing the evils" Congress found to exist. *Republican Nat'l Comm.*, 76 F.3d at 403 (emphasis added) (internal quotation omitted). Defendants mistakenly present this as a holding that any disclosure requirement is narrowly-tailored. That is not the law. *See, e.g., Am. Constitutional Law Found. v. Meyer*, 120 F.3d 1092, 1105 (10th Cir. 1997) (finding disclosure requirement unconstitutional under exacting scrutiny's narrow tailoring requirement because, in part, there were other adequate disclosure statutes); *Levine v. Fair Political Practices Comm'n*, 222 F. Supp.2d 1182, 1191 (E.D. Cal. 2002).

Defendants do not prove that a disclosure requirement for short-term groups (e.g., those in existence three years or less) would not be adequate. They do not prove that stealth coalitions lack any distinctive features that would permit a narrower statute. Nor do they prove that vigorous enforcement of existing laws would have been inadequate. *See* Campaign Legal Center *et al.* Amicus Brief at 21 (explaining that "DOJ has received 'thousands' of LDA referrals from Capitol Hill but has never pursued court action against an LDA violator in the law's 12-year history") (internal quotation omitted). In sum, Defendants have not met their burden of proving that § 207 is tailored to avoid unnecessary constitutional burden.

II. SECTION 207 IS UNCONSTITUTIONALLY VAGUE.

Defendants also are unable to overcome the simple fact that § 207 is unconstitutionally vague. It requires the NAM and similar associations exercising core First Amendment rights to judge the "intent" and level of "activity" of third-party corporations, a difficult task, threatening serious punishment if regulators later disagree.[19]

A. The "Intent" Standard Is Vague.

Defendants cannot deny that *Buckley*, 424 U.S. at 41-43, and *WRTL*, 127 S. Ct. at 2665-66, condemned a standard requiring those engaged in core First Amendment rights to predict, on pain of punishment, how regulators will view intent. *See also Ctr. for Individual Freedom v. Corbett*, No. 07-2792, 2008 WL 2190957, at *4 (E.D. Pa. May 5, 2008). They parrot the district court's implausible speculation that the corporate intent behind the association work of its employees will be objectively clearer than the intent behind a corporate advertisement. But they do not meet the NAM's challenge to show why that is so factually. Appellant's Brief at 44. It remains true that this intent standard will "open[] the door to a trial on every [undisclosed participant] on the theory that the

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[19] As an initial matter, both Defendants suggest that any statutory vagueness is cured by § 207's scienter requirement. DOJ Brief at 37; Legislative Brief at 49. As the district court correctly held, however, "the cases discussing the impact of a scienter requirement on the vagueness inquiry do not involve regulation of First Amendment activity." App. 115.

[member] actually intended to affect" the association's lobbying activities. *WRTL*, 127 S. Ct. at 2665-66.

Unable to justify their position factually, Defendants observe the narrowing construction adopted in *Harriss* required "a purpose to influence the passage or defeat of legislation . . . through direct communication with members of Congress." 347 U.S. at 623. They argue that this establishes that the § 207 intent standard is not vague as a matter of law. In this regard, Defendants overread *Harriss*.

Harriss considered whether the statute at issue there was "too vague and indefinite to meet the requirements of due process." 347 U.S. at 617 (emphasis added). It applied the basic due process requirement of "fair notice" applicable to any criminal statute. *Id.* at 617 & n.5 (collecting authority). *Harriss* made the statute "at least as definite as many other criminal statutes." *Id.* at 624 n.15. It did not apply a First Amendment vagueness standard. Thus, *Harriss* did not hold that its "purpose" standard avoided First Amendment vagueness, and it certainly did not apply current First Amendment doctrine.

Seeking to avoid this difficulty, the DOJ Brief notes (at 38) the Supreme Court's recent comment that the vagueness doctrine has its roots in due process. But that statement was in a case regulating the pandering of child pornography, an area far removed from the First Amendment core. *See United States v. Williams*,

128 S. Ct. 1830, 1845-46 (2008).[20] It did not overturn settled precedent that, when core First Amendment rights may be chilled, a statute may be unconstitutionally vague "for purposes of the First Amendment" "[r]egardless of whether [it] violates the Fifth Amendment" due process clause. *Reno v. ACLU*, 521 U.S. 844, 871-72 (1997) (collecting authority).

Moreover, Defendants fail to show that *Harriss* used "purpose" in the sense of subjective "intent." The Court may have meant an objective purpose demonstrated by explicit and express statements in solicitation or contribution materials. *Cf. Buckley*, 424 U.S. at 43-44 (a standard turning on express and explicit statements is not vague).[21] Because § 207 clearly speaks of "intent," which is a subjective state of mind, *Harriss*'s use of "purpose" is not controlling.

That is doubly so because the necessary "purpose" in *Harriss* was very narrow and precise – to communicate directly to a Member about pending or proposed legislation. By contrast, § 207 turns on the intent of a third-party

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[20] The other cases relied upon by the Defendants similarly involve the application of an intent standard to conduct outside the First Amendment's protection. *See Gonzales v. Carhart*, 127 S. Ct. 1610, 1628 (2007) (upholding the federal partial birth abortion statute); *Ward v. Utah*, 398 F.3d 1239, 1249-54 (10th Cir. 2005) (statute was "aimed at conduct unprotected by the First Amendment").

[21] Courts regularly distinguish between "subjective intent" and "objective purpose" in other contexts. *See, e.g., Greenfield Mills, Inc. v. Macklin*, 361 F.3d 934, 950 (2004); *Edwards v. Aguillard*, 482 U.S. 578, 636-37 (1987) (Scalia, J. dissent) (a collective body's "objective purpose" is much easier to determine than its "subjective motivation").

corporation to facilitate – through association activity – communications with over 15,000 persons about any of a wide range of subjects. That is a very different kettle of fish. Member representatives working on the very same NAM project often have differing intents. Some representatives may seek to encourage lobbying, some to discourage it, and others still may want to include or exclude certain information or positions, regardless of use. "[D]iscerning the 'intent' of an organization . . . can [also] be problematic, even if some in the organization 'admit' their intent." *Perry v. Bartlett*, 231 F.3d 155, 161 (4th Cir. 2000). *See also Slatky v. Amoco Oil Co.*, 830 F.2d 476, 485 (3rd Cir. 1987) ("intentions are always difficult to discern, especially when we deal not with the intentions of individuals but of organizations").

B. "Actively Participates" Is Vague.

Section 207 also requires the NAM and similar organizations to determine whether, during each calendar quarter, any of its members have "actively participate[d]" in the association's lobbying efforts. Unable to provide a clear meaning for the "actively participates" standard based on anything in § 207's legislative history, Defendants assert this term – as it appears in the Hatch Act and implementing regulations – was upheld against a vagueness challenge in *U.S. Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548 (1973). *See* Legislative Brief at 53; DOJ Brief at 40. That misreads *Letter*

Carriers. As *Biller v. U.S. Merit System Protection Board*, 863 F.2d 1079, 1086 (2d Cir. 1988), made clear "[t]he 3,000 administrative decisions construing the Hatch Act" also are important in refuting the vagueness challenge since "Congress implicitly adopted the holdings of these cases when it defined the Hatch Act's prohibitions in terms of prior Civil Service Commission rulings." (Internal quotation omitted.) *See also* Henry Rose, *A Critical Look at the Hatch Act*, 75 Harv. L. Rev. 510, 512-14 (1962) (noting "convincing evidence of a congressional purpose to adopt . . . the individual pre-Hatch Act Commission determinations"); William Magness, *"Un-Hatching" Federal Employee Political Endorsements*, 134 U. Pa. L. Rev. 1497, 1503 (1986) ("by defining the [Hatch Act's] prohibitions in terms of prior Civil Service Commission rulings, Congress adopted the restrictions that the Commission has placed [on] employees through its adjudication of Civil Service Rule I") (emphasis added).[22] No such clarifying body of precedent exists here.

The Legislative Brief (at 52-53) asserts "actively participates" was clarified by a single remark in the legislative history that provides two examples from

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[22] The Government also had greater leeway in *Letter Carriers* because it was acting in its role as an employer. *See Engquist v. Or. Dept. of Ag.*, 128 S. Ct. 2146, 2151-52 (2008). Indeed, *Letter Carriers* relied on that principle to sustain the substantive restrictions of the Hatch Act. 413 U.S. at 564. In such special circumstances – which are not present here – greater vagueness may be permitted. *See Parker v. Levy*, 417 U.S. 733, 756 (1974).

among the thousands of possible scenarios organizations like the NAM will face each year under the new law. The DOJ Brief, to its credit, does not pretend that the remark provides meaningful clarity.

The NAM's evidence describes the many roles played by its members through their employees. Attempting to apply § 207's "actively participates" standard to the myriad of fact patterns that occur cannot provide the high degree of precision essential when core First Amendment activity may lead to punishment.

C. The Guidance Document Does Not Cure the Statutory Vagueness.

The DOJ Brief (at 37) cautiously says that the Guidance document published by the Legislative Defendants may alleviate the vagueness of § 207. The amicus brief supporting Defendants is more enthusiastic, suggesting (at 21) that the law grants "substantial enforcement-related authority . . . to the Secretary and the Clerk." However, the DOJ Brief acknowledges (at 37) that the "Guidance does not have the force of law." Indeed, the Guidance document's first page cautions that it does not "have any binding effect on the United States Attorney for the District of Columbia or any other part of the Executive Branch." Clerk of the House of Representatives and Secretary of the Senate, *Lobbying Disclosure Act Guidance*, 2 (revised May 29, 2008) *at* http://www.senate.gov/legislative/resources/pdf/S1guidance.pdf. Moreover, giving

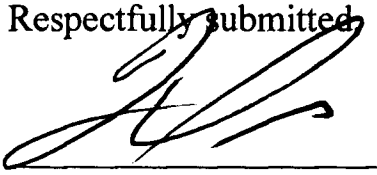
it interpretive weight would create a fatal "separation of powers" violation. *See, e.g., Bowsher v. Synar*, 478 U.S. 714 (1986).

But the Guidance document would not provide sufficient clarity even if it were binding law. It does not and cannot provide any precise and objective test for assessing subjective corporate intent, much less the point at which member participation becomes active.

CONCLUSION

Core First Amendment rights are precious, but easily chilled. Legislation burdening such rights must be a last resort, adopted only where careful factual analysis demonstrates a clear necessity, only to the extent of this necessity, and only with extreme precision. In enacting § 207, Congress acted hastily, without evidence, analysis, or precision, seeking to create the perception it was doing something about a problem – stealth coalitions – that § 207 does not materially address. This is precisely the situation in which the courts, as ultimate guardians of our constitutional liberties, must intervene. Section 207 should be declared unconstitutional, on its face and as applied to established membership organizations like the NAM.

Respectfully submitted,



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Certificate of Compliance

In accordance with Fed. R. App. P. 32(a)(7) and D.C. Cir. R. 29(c)(5), 29(d), and 32(a), the undersigned counsel of record certifies that this brief was prepared in 14-point, proportionally spaced, serif font (Times New Roman), using Microsoft Office Word 2003 and that the brief contains 6,995 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii) and Circuit Rule 32(a)(2). Accordingly, the brief complies with the requirements of Fed. R. App. P. 32(a)(7).

Thomas W. Kirby

CERTIFICATE OF SERVICE

I certify that on July 11, 2008, a copy of the Plaintiff-appellant NAM's Reply Brief was delivered by electronic mail and U.S. mail or courier to each of the following:

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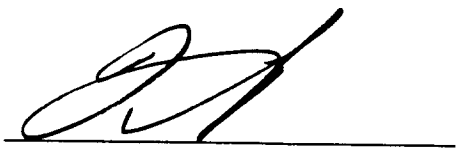

Thomas W. Kirby

Wisconsin State Journal
Friday, June 27, 2008
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Epic won't deal with WMC backers

The Verona company is upset with the business group's conduct in this year's state Supreme Court race.

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Epic Systems Corp., the Verona-based electronic medical records company, is threatening to pull its business from local vendors who support the state's largest business lobby over a political disagreement with the group.

In a statement to the State Journal, the company cited concern over Wisconsin Manufacturers and Commerce's spending this year on behalf of state Supreme Court candidate Michael Gableman, estimated at $1.8 million, as a reason for working only with vendors whose officials oppose WMC's agenda.

"We believe that what we tolerate is what we stand for, and as corporate citizens, we stand for the preservation of the foundation of the judicial system," said the statement, attributed to the Epic Management Team. "... After careful consideration, we made a decision to try to work only with vendors that do not support WMC with its current management. This was not a decision we made lightly, but believe it is the right thing to do."

James Buchen, vice president of government relations for WMC, praised Epic as a "great Wisconsin success story" and said the company's leaders have a right to participate in the political process however they choose.

"The business community is not monolithic," Buchen said. "There are some liberal business leaders and some conservative business leaders and the

Please see EPIC, Page A7

Epic

Continued from Page A1

beauty of the system is everyone gets to express their point of view. Certainly the management team at Epic has a different take on politics and policy from the WMC leadership. That's their perspective and however they want to act on it is their business."

Howard Schweber, a professor of law and political science at UW-Madison, said he's never heard of another situation in which a business threatens not to work with another company based on an election campaign.

"The bitterness of the election and the bare-knuckle, anything-goes attitude has seeped past the election cycle," Schweber said.

Schweber said while he shares Epic's views of WMC's role in the judicial campaign, he disagrees with the company's "secondary boycott" of vendors who may support the business group.

"Putting pressure on a person or business not to associate with another person or business is ethically dubious in my mind," he said. "If people have the power to coerce others to remain silent or change their views, that's a threat to personal liberty."

Schweber also said it's possible some Epic vendors who may be members of WMC also opposed the role the group played in the state Supreme Court campaign but still want to remain a part of the business group.

CEO's donations

The Epic statement was drafted by company founder and chief executive officer Judy Faulkner, executive vice president Carl Dvorak and chief administrative officer Steve Dickmann.

Each declined to be interviewed.

The statement says Epic has never belonged to WMC, and the company is politically neutral.

But Faulkner has contributed heavily to Democrats, including Gov. Jim Doyle and Dane County Executive Kathleen Falk, according to the Wisconsin Democracy Campaign's online campaign donor file. WMC funded ads opposing Falk in 2006 when she ran for attorney general.

The democracy campaign's donor file doesn't show contributions for Dvorak or Dickmann.

Faulkner also donated $24,000 to One Wisconsin Now Action, a liberal political group that is now essentially defunct, according to its 2006 tax filing.

OWN Action is affiliated with the liberal advocacy organization One Wisconsin Now, which monitors the business group's lobbying and political activities under the banner WMC Watch.

Gableman, a Burnett County judge, won a narrow election victory in April over Justice Louis Butler, who was appointed to the state's high court by Gov. Jim Doyle in 2004 and was seeking re-election.

The democracy campaign has estimated that outside groups such as WMC, the Greater Wisconsin Committee, Club for Growth Wisconsin and Coalition for America's Families spent $4.3 million on television ads in the race.

Of the third-parties that paid for ads, WMC spent the most, the democracy campaign said, all on behalf of Gableman. Buchen called the figure "a reasonable estimate."

The liberal Greater Wisconsin Committee spent $1.5 million on behalf of Butler, the democracy campaign said.

Leaders consulted

The Epic statement said it believes judicial elections "should be of the highest integrity" and that various media reported the campaign "was a travesty of ethics and many analyses pointed to WMC as a responsible party."

Epic's officials then consulted with a politically diverse group of industry leaders around Dane County to assess the accuracy of the reports before deciding to work only with vendors that don't support WMC, the statement said.

The statement didn't identify the leaders consulted or say whether the company had dropped any vendors yet.

Buchen disputed the characterization that WMC was at the center of ad spending in the Supreme Court race. But he defended ads by outside groups such as his, saying they are constitutionally protected, provide information to voters campaigns sometimes don't and can lead to higher voter turnout.

WMC is the state's largest business lobby, representing nearly 4,000 companies. The group's agenda focuses on lowering taxes and reducing business regulation and liabilities through reform of the legal system.

It has become increasingly active in political campaigns in recent years by purchasing unregulated political ads in the weeks leading up to elections. The ads don't urge a vote for or against a particular candidate, but they are designed to inform voters on issues related to a candidate.

WMC's ads on behalf of Gableman touted him as a tough-on-crime judge and prosecutor, and criticized Butler as supporting decisions benefiting criminal defendants.

POLITICO

New disclosure reports lack clarity

By: Jeanne Cummings

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The much-touted new lobbying disclosure reports are now available. But beware: They do little to make it easier to track the nation's influence class.

In fact, they seem to simply create a new level of complication.

Confusing shortcuts are already being mapped and loopholes mined. In addition, advocacy groups aren't complying in the same way, or with the same diligence. The National Association of Manufacturers report will have to be amended soon, since the association spent much of the spring engaged in a lawsuit trying to avoid any new requirements.

"Happy hunting" was the delightful sign-off from Jan Baran, a campaign finance and lobbying legal expert, in an e-mail explaining the fuzzy provisions of the new disclosure law.

To be sure, some of the most aggressive reforms won't kick in until this summer's mid-year reports, and other new rules will take effect even later. For instance, the public accounting of fundraising by lobbyists for candidates can't be enforced until the appointee-challenged Federal Election Commission is operational again and can develop a reporting procedure.

But this first round of reports, which does include some of the more modest new disclosure requirements, represents an inauspicious beginning to what was supposed to be a new age of enlightenment about K Street and Congress.

Among the information that is supposed to be available to the public now is a listing of the financial backers of the shadowy coalitions with apple-pie-sounding names that crop up around major policy debates, running advertising campaigns and making the rounds of Congress.

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According to the new law, members of these coalitions that donate $5,000 to fund lobbying efforts and/or those that participate in plotting Capitol Hill strategy are supposed to be named in the quarterly reports.

But a review of the environment sector offered scant clarity about who backed the fine-named coalitions active during Congress' debate last year over new gas mileage standards and those that will be active in this summer's showdown over new regulations to reduce greenhouse gases.

Among them: Driving America's Future, Americans for American Energy, Americans for

Balanced Energy Choices, Farmers for Clean Air and Water, Clean and Safe Energy Coalition, Consumer Alliance for Energy Security, Americans for Prosperity and The Greening Earth Society.

After running all the names through the House and Senate disclosure databases last week, only two popped up, and neither of them list the paying members of their coalition.

Americans for American Energy, which is based in Colorado, shows a list of lobbyists but nothing about its financial patrons. Driving America's Future pops up as a client of Patton Boggs, with former Clinton Transportation Secretary Rodney Slater listed as its man on Capitol Hill. But again, its financial muscle remains a mystery on the form.

The dearth of information on the government disclosure forms about the other business-backed coalitions comes in stark contrast to the data about them culled from media reports, websites, press releases and Internal Revenue Service documents and posted by SourceWatch, a website that tracks advocacy groups.

The Greening Earth Society, based in Alexandria, Va., is funded by the Western Fuels Association and advocates that greenhouse gases have a positive effect on the economy because they help plants grow, according to SourceWatch.

The Farmers for Clean Air and Water are financed by agricultural companies with the aim of exempting large farming operations from Superfund rules, according to SourceWatch.

Americans for Balanced Energy Choices, formed in 2000, is largely financed by mining companies, coal transporters and electricity producers, according to SourceWatch. The National Journal reported this year that the group's advertising and grass-roots organizing jumped from $8 million last year to $30 million this year.

It would seem such a large grass-roots effort bent on influencing Capitol Hill would certainly trigger disclosure under the new lobbying law. But it doesn't.

Congress, in deference to groups ranging from labor to anti-taxers, exempted the financing of grass-roots lobbying from the law. That created a giant loophole for all advocacy organizations to exploit.

Another fine-reading of the requirements by lawyers has led to some less-than-illuminating shortcuts.

The Alliance for Energy and Economic Growth is a coalition of businesses and trade groups led by NAM and the U.S. Chamber of Commerce seeking to influence the final drafts of environmental and energy bills.

But the alliance's name gets no hits in the congressional lobbying disclosure database, and, at first blush, it doesn't seem to be on the Chamber's report.

But after a couple of hours of digging — and some guidance from the Chamber's attorney — the group and its primary backers are actually disclosed on the forms, albeit obliquely.

Here's the way to find them:

Go to page 93 of the Chamber's 99-page report, and you'll find a link to a web page called "Committee of 100," uschamber.com/associations/c100.

From there, you'll find a page talking up the coalitions the Chamber works with and inviting new members. Click on the energy issue, scroll down, and you'll finally find the alliance's name.

But a click on the alliance's home page still won't get you to its major donors.

So where are they? Pit Boss was told they are among the members listed on the Chamber's Committee of 100, a who's who of Washington trade groups posted on the Chamber's page.

A blatant attempt to bury the ties between the alliance and interested industries? Maybe, but one must give the Chamber some credit. It at least includes a path, murky as it may be, back to the alliance.

The Nuclear Energy Institute, another member of the Chamber's Committee of 100 with clear interest in energy and environmental laws, doesn't include a link to the alliance on its disclosure reports.

Is that a violation? Nope. The NEI is a member of the alliance, but it hasn't contributed to its lobbying fund this year, so it's not obligated to report its membership, said its finance director, Robert Dubrow.

So the NEI report that doesn't mention the Alliance for Energy and Economic Growth is just as accurate as the Chamber's report that does, even though both the NEI and the Chamber are members of it.

Confused? Well, one thing is clear:

Nothing in the law requires the lobbying group or the affiliated coalition to use plain English when explaining their relationships, financial or strategic.

Fred Wertheimer, founder of Democracy21, a reform advocacy organization that pressed for passage of the new disclosure law, said he had not sorted through the new records to see how the system is working, or to check the rate of compliance.

"When you find out, we will act accordingly," he said.