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February 11, 2002

Background for AOR 2002-02

Jonathan Levin
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
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Dear Mr. Levin:

I am writing in response to our recent phone conversation and correspondence from Bradley Litchfield of your office. I understand that the Federal Election Commission has received a request for advice from an individual who is a registered lobbyist under the lobbying provisions of the Maryland Public Ethics Law (Md. Code Ann., State Gov't, Title 15, Subtitle 7 (Supp. 2001)).

The question posed is whether the individual, as a regulated lobbyist, may solicit campaign contributions for the benefit of a candidate for the United States Congress who is currently a member of the Maryland General Assembly. The Maryland Public Ethics Commission is the board created by the Public Ethics Law to administer the law. Among the programs administered by the Commission are: (1) State official and employee annual financial disclosure; (2) Enforcement of official's and employees conflict of interest provisions; (3) Lobbyist registration and activities reporting; (4) Enforcement of lobbyist standards of conduct and campaign contribution restrictions; and (5) other general advice and training activities related to persons subject to the law.

Section 15-714 of the lobbying provisions of the law provides in part that regulated lobbyist, or a person acting on behalf of the regulated lobbyist may not, for the benefit of the Governor, Lieutenant Governor, Attorney General, Comptroller, or a member of the General Assembly or a candidate for election to one of these offices, solicit or transmit a political contribution from any person including a political committee. This section of the law does not prohibit the making of personal political contributions, informing any entity of a position taken by a candidate or official, or engaging in any other activities not specifically prohibited by the law.

The State Ethics Commission informally considered the question posed to the Federal Election Commission at its meeting on February 6, 2002. It was the Commissioners' view that the provision prohibiting a regulated lobbyist from "soliciting or transmitting" campaign contributions on behalf of the four Statewide executive officers and the members of the General Assembly or candidates for those positions applies to a regulated lobbyist proposing to solicit funds on behalf of a member of the General Assembly who is a candidate for the United States Congress. The Commission determined that the prohibition applies regardless of the office sought.

I have enclosed for your information a copy of a Memorandum Opinion of Judge Joseph H. Young in a civil action brought in the United States District Court for the District of Maryland in 1997 (Maryland Right to Life State Political Action Committee et al. v. Weathersbee, et al., Civil Action Y-97-565) regarding this section of the law. Judge Young concluded that the State had a compelling interest supporting its enactment. Also enclosed is a portion of the State's Memorandum in Support of Defendants' Motion to Dismiss or in the Alternative for Summary Judgment and in Opposition to Plaintiffs' Motion for Preliminary Judgment filed in that proceeding which outlines the legislative history on the restriction related to soliciting and transmitting contributions. Finally, I have enclosed a portion of the recent final report (October, 2000) of the Study Commission on Lobbyist Ethics that we discussed over the phone on February 8, 2002.

The Ethics Commission views the current restriction on regulated lobbyists in Maryland as the result of lobbyists' involvement in campaign fundraising for members of the General Assembly and the consequent undermining of the public's confidence in the integrity of the legislative process. The compelling interest of the State is to prevent the corruption of the legislative process by improper influence of lobbyists appearing before legislators while at the same time soliciting and transmitting campaign contributions on their behalf. The legislative process is no less corrupted when a current State legislator is running for a federal office.

Should you or the Federal Election Commission have any other questions, do not hesitate to call me.

Sincerely,

Robert A. Hahn

Robert A. Hahn
General Counsel

cc: Robert A. Zarnoch, Assistant Attorney General
William G. Somerville, Ethics Counsel

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

MARYLAND RIGHT TO LIFE POLITICAL ACTION COMMITTEE, et al.,	*	
Plaintiffs,	*	
v.	*	Civil Action No. Y-97-565
FRANK WEATHERSBEE, et al.,	*	
Defendants.	*	

* * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Attachments to
Background for AOR 2002-02

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* * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Defendants, the five members of the State Ethics Commission and the State's Attorney for Anne Arundel County, by their attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, Lawrence P. Fletcher-Hill and Robert A. Zarnoch, Assistant Attorneys General, and Margaret Witherup Tindall, Staff Attorney, submit this memorandum in support of their Motion to Dismiss or for Summary Judgment and in opposition to plaintiffs' Motion for Preliminary Injunction.

In 1991, the Maryland General Assembly amended the Maryland Public Ethics Law to promote the integrity of the legislative process by protecting legislators from both the actuality and appearance of improper influences. One of those amendments, now codified at MD. CODE ANN., STATE GOV'T ART. § 15-707 (1995 Repl. Vol.), separates the activities of certain regulated lobbyists from leadership roles in political committees that contribute money to members of or candidates for the General Assembly. Plaintiffs David Lam and Cathy Hammer would straddle that divide by simultaneously serving as an officer or treasurer of plaintiff Maryland Right to Life State Political Action Committee ("MRLSPAC"

or "the PAC") of and pursuing lobbying activities at the same time. Amendment to Verified Complaint for Declaratory and Injunctive Relief ("Amended Complaint") ¶¶ 17, 21. To avoid § 15-707's prohibition on these dual roles, plaintiffs claim that § 15-707 violates their First Amendment rights and ask this Court to declare the statute unconstitutional and to enjoin enforcement of the law, both during the pendency of this case and permanently. Amended Complaint at 11, 13.[1]

There is no need for the Court to decide plaintiffs' motion for preliminary injunctive relief. Instead, the Court should proceed to the merits on defendants' alternative motion to dismiss or for summary judgment. As demonstrated here, § 15-707 of the State Government Article is a reasonable restriction on professional lobbying activities and is narrowly tailored to advance the State's and the public's compelling interests in preventing actual, as well as the appearance of, corruption and undue influence in the State legislative process. Section 15-707 thus does not violate the First Amendment. If this Court were to entertain plaintiffs' motion for a preliminary injunction, the motion should be denied because plaintiffs have not shown that any of them will sustain irreparable injury absent such an injunction, that the likelihood of injury to plaintiffs outweighs the likelihood of harm to defendants, that they are likely to succeed on the merits of the case, or that the public interest favors granting a preliminary injunction.

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[1]Throughout their Amended Complaint and motion papers, plaintiffs mistakenly cite the statute they challenge as Maryland Annotated Code, *Article 33*, § 15-707. There is no such section in the Maryland Code. The section which plaintiffs challenge is actually located in the State Government Article.

STATEMENT OF FACTS

A. The History of Plaintiffs' Lobbying Efforts.

Maryland Right to Life, Inc. ("MRL") is a tax-exempt, nonprofit organization incorporated in 1990, which lobbies for State "right-to-life" legislation.[2] Between 1991 and 1997, MRL employed four different lobbyists. *See* Affidavit of John O'Donnell ¶ 4, attached as Exhibit A.[3] These lobbyists were compensated for their activities during Maryland legislative sessions in amounts ranging from $673 to $6,000. O'Donnell Aff. ¶ 4.[4] Between legislative sessions (specifically, for the May 1 to October 31 reporting period, *see* ST. GOV'T ART. § 15-704(a)(1)), MRL lobbyists reported no activity. O'Donnell Aff. ¶ 6.

In June 1990, MRL established plaintiff MRLSPAC as a state political committee

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[2]Although its directors, officers, and address are the same, MRL appears to be legally distinct from Maryland Right to Life Foundation, Inc., an organization which is tax-exempt under 26 U.S.C. § 501(c)(3). *See* Cumulative List of Organizations, at 145 (Rev. Sept. 30, 1996). Although MRL characterizes itself in its personal property returns as an "exempt charitable organization," it is in fact a "social welfare" organization which is tax-exempt under 26 U.S.C. § 501(c)(4), and free to lobby under federal law. *See* Certified Records of the State Department of Assessments and Taxation ("SDAT Records"), attached as Exhibit B. *See also Regan v. Taxation with Representation*, 461 U.S. 540 (1983). However, under 26 C.F.R. § 1-501(c)(4)-1(a)(2)(ii), a social welfare organization cannot engage in "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." If an organization is tax-exempt under federal law, it is also tax-exempt under Maryland law. *See* MD. CODE ANN., TAX-GEN. ART. §§ 10-104 and 10-107.

[3]Plaintiff Lam's name does not appear on a lobbying registration form until December 1996. *See* Attachment 20 to O'Donnell Aff.

[4]During this time, MRL's lobbyists completed and filed the registration and reporting forms with the State Ethics Commission. For this reason, the entity itself claimed an exemption from filing. *See* O'Donnell Aff. ¶ 5. Each registration form, however, bore the signature of an MRL officer or official authorizing the individual lobbyist to act on the entity's behalf. O'Donnell Aff. ¶ 5.

whose primary purpose is "to support or oppose candidates or political parties and/or to influence or attempt to influence the results of elections." Amended Complaint ¶ 18; Affidavit of Rebecca Wicklund ¶ 4, attached as Exhibit C. MRLSPAC "accepts political contributions from the general public and makes political contributions to state candidates for the General Assembly and members of the General Assembly." Amended Complaint ¶ 18. MRLSPAC's "Statement of Purpose" form indicates that the PAC is "sponsored by or affiliated with" Maryland Right to Life, Inc., Wicklund Aff. ¶ 4, and in fact, one of MRLSPAC's first transactions was the receipt of an interest-free $6,000 loan from MRL. *See* Wicklund Aff. ¶ 5[5] Since its creation, MRLSPAC has had two chairmen and three different treasurers. Wicklund Aff. ¶ 6.[6]

According to campaign fund reports filed with the State Administrative Board of Election Laws, MRLSPAC has traditionally engaged in little or no fundraising or political spending in years when there was no race for seats in the General Assembly. Wicklund Aff. ¶ 7. In election years, MRLSPAC has raised substantial sums of money without having MRL's lobbyist serve as chairman or treasurer of MRLSPAC. For example, in 1990,

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[5]This was just one of a number of transactions between MRL and MRLSPAC. In August 1990, for example, MRL made a $100 contribution to the PAC, which was subsequently returned. Wicklund Aff. ¶ 5. Later that month, MRL made an "in kind" contribution of copying services. *Id.* In 1991, MRLSPAC purchased a contributor mailing list from MRL for $3,200. *Id.* Then, in November 1994, MRLSPAC reimbursed MRL for a $250 contribution mistakenly made to a candidate for the House of Delegates. *Id.*

[6]MRLSPAC's first chairman was elected to the House of Delegates in 1994. Before that election, he received a $500 contribution from the PAC. Wicklund Aff. ¶ 6.

MRLSPAC raised more than $61,000 and spent more than $55,000.[7] *Id.* Of that amount, the PAC transferred $10,750 in contributions to General Assembly candidates, with contributions as high as $1,000 for incumbent State Senators. Wicklund Aff. ¶ 7. MRLSPAC also reported in-kind candidate contributions of more than $675 and expenditures of more than $24,000 on direct mail and campaign materials. *Id.*

In October-November 1994, MRLSPAC reported raising more than $10,000 in contributions, most of them in a single month, with more than $6,500 in non-reportable individual contributions of under $51. Wicklund Aff. ¶ 8. The PAC reported spending $16,600: more than $11,000 on direct mail and campaign materials and $950 in contributions to General Assembly candidates. *Id.* Once again, this fundraising and spending occurred without the involvement of a lobbyist serving as a PAC official.

B. The Allegations of the Amended Complaint.

Plaintiff David Lam is the Associate Executive Director of MRL and is a regulated lobbyist. Amended Complaint ¶ 6. Lam "intended and would like to serve on MRLSPAC . . . in the capacity of an officer or treasurer." Amended Complaint ¶ 17. Plaintiff Cathy Hammer is an administrative assistant with MRL who intends to register as a regulated lobbyist, and who would also like to serve on MRLSPAC in the capacity of an officer or treasurer. Amended Complaint ¶¶ 7, 21. On or about February 25, 1997, plaintiffs filed this action challenging the constitutionality of § 15-707 of the State Government Article. Amended Complaint at 11, 13.

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[7]Although many of the contributions were for sums under $50, MRLSPAC also received contributions from corporations and businesses. Wicklund Aff. ¶ 9.

Under § 15-707(d), certain regulated lobbyists may not:

> . . . for the benefit of a member of or candidate for election to the General Assembly:
>
> (i) solicit or transmit a political contribution from any person, including a political committee;
>
> (ii) serve on a fund-raising committee or a political committee; or
>
> (iii) act as a treasurer or chairman of a political committee.

MD. CODE ANN., ST. GOV'T ART. § 15-707(d)(1) (1995 Repl. Vol.). Section 15-707(a) incorporates the definitions of "candidate" and "political committee" provided in the Maryland election law. A "political committee" is "any combination of two or more persons appointed by a candidate or any other person or formed in any other manner which assists or attempts to assist in any manner the promotion of the success or defeat of any candidate, candidates, political party, principle or proposition submitted to a vote at any election." MD. CODE ANN. ART. 33, § 1-1(a)(14) (1997 Repl. Vol.).

Not every lobbyist is restricted by § 15-707. First, the Public Ethics Law in general applies only to "regulated lobbyists". A "regulated lobbyist" is defined according to five alternative criteria specified in § 15-701 of the State Government Article involving various types of contact with government officials and compensation or spending levels. MD. CODE ANN., STATE GOV'T ART. § 15-701(a). Section 15-701(b) exempts various activities from regulation, even if they otherwise satisfy one of the criteria for regulation. Second, § 15-707 only applies to "regulated lobbyists" meeting one of the first three criteria for regulation: Lobbyists who (1) communicate with a legislative or executive official in the official's presence for the purposes of influencing legislative action, and incur expenses of at least $100 exclusive of personal travel or subsistence expenses or earn at least $500 as compensation; (2) spend a cumulative value of at least $100 for meals, beverages, special

events, or gifts on executive branch officials for the purpose of influencing executive action; or (3) are employed to influence executive action on a procurement contract that exceeds $100,000. *Id.* §§ 15-707(b) and 15-701(a)(1) to (3). Third, the reach of § 15-707 is specifically limited to regulated lobbyists operating in the sphere of the General Assembly; those who, "for the purpose of influencing legislative action, communicate [] with a member of or candidate for election to the General Assembly." *Id.* § 15-707(b).[8] Section 15-707(d)(2) expressly preserves a regulated lobbyist's right to make independent, personal political contributions and to inform any entity, including the lobbyist's employer, of a position taken by a candidate for election to the General Assembly. *Id.* § 15-707(d)(2).

Plaintiffs contend that § 15-707(d)'s prohibition on certain regulated lobbyists serving as an officer or treasurer of a political committee which solicits and contributes to members of or candidates for the General Assembly unconstitutionally infringes on their First Amendment rights of speech and association. Plaintiffs also allege that § 15-707(d) "forces . . . Plaintiffs Lam and Hammer[] to choose between exercising one constitutional right at the expense of another." Amended Complaint ¶ 45. Plaintiffs request that the Court declare § 15-707 unconstitutional on its face and enjoin its enforcement "by way of preliminary and

[8]At its 1997 session, the General Assembly amended § 15-707 to restrict lobbyists from engaging in the specified fundraising activities for the Governor, Lieutenant Governor, Comptroller, and the Attorney General and candidates to those offices. *See* H.B. 1 (1997); S.B. 127 (1997). If signed into law, this legislation will not take effect until October 1, 1997. In any event, these changes are irrelevant to the present case because both in the past and presently, the plaintiff PAC has neither contributed nor expressed an interest in contributing to candidates for these offices.

permanent injunction." Amended Complaint at 11, 13.[9]

C. Legislative History of § 15-707.

Although plaintiffs characterize their complaint as challenging "recent" amendments to the Maryland Public Ethics Law, in reality the law which plaintiffs challenge was first enacted in 1991, effective July 1, 1991. *See* 1991 Md. Laws ch. 618; H.B. 1049 (1991). When the statute at issue was enacted, it was contained in Article 40A of the Maryland Annotated Code (1993 Repl. Vol.). Section 15-707 of the State Government Article was derived without substantive change from former MD. CODE ANN. ART. 40A, § 5-104.1 (1993 Repl. Vol). *See* Revisor's Note to ST. GOV'T ART. § 15-707.

In enacting the Maryland Public Ethics Law in 1979, the Maryland Legislature adopted legislative findings and policy statements. The General Assembly expressly recognized "that our system of representative government is dependent upon the people maintaining the highest trust in their government officials and employees," and declared that "the people have a right to be assured that the impartiality and independent judgment of those officials and employees will be maintained." ST. GOV'T ART. § 15-101(a)(1). The Legislature also recognized that "this confidence and trust is eroded when the conduct of the State's business is subject to improper influence or even the appearance of improper

[9]Plaintiffs allege that the defendants are officials charged with enforcing § 15-707. Amended Complaint ¶¶ 8, 14. The members of the State Ethics Commission certainly have and exercise this authority. It is unlikely, however, that the State's Attorney for Anne Arundel County would enforce § 15-707. Such prosecutions may be within the jurisdiction of the State's Attorney, but they are more likely to be pursued by the State Prosecutor, who has specific authority to prosecute criminal offenses under the State Public Ethics Law. MD. CODE ANN. ART. 10, § 33B(b)(2). The Attorney General also is authorized to prosecute such offenses. MD. CONST. Art. V, § 3(a)(2).

influence." *Id.* § 15-101(a)(2). The Public Ethics Law was intended "guard[] against improper influence" and "to set minimum ethical standards for [public officials'] conduct of State and local business." *Id.* § 15-101(b).[18]

When former Art. 40A, § 5-104.1 was enacted, the legislature was particularly concerned with the increasing influence of PAC money on General Assembly members and candidates. For example, the legislative record of House Bill 1049 reflects that, in the 1990 election, PACs contributed $2.36 million to winning General Assembly candidates, *a 71% increase* over the amount given in the four-year election cycle preceding 1986. Common Cause/Maryland, *Campaign Money in Maryland November 19, 1986-November 20, 1990*, at 1 (1991). *See also* George A. Nilson, Chairman, *Report of the Governor's Commission to Review the Election Laws*, at 46-47 (Jan. 15, 1987) ("[T]he practices [of lobbyists involved in campaign fundraising] which have occurred in the past undermine the level of public confidence in the integrity of the legislative process and cause an unhealthy cynicism that is harmful to everyone involved, and ultimately to the process itself.").

The legislature's concern with the influence of PAC money on General Assembly members stemmed in part from revelations that, between November 1986 and November 1989, a majority of the 188 General Assembly members received contributions from PACs controlled by lobbyist Bruce Bereano. Common Cause/Maryland, Press Release, *Bereano-Controlled PACs Finance Over Half of General Assembly* (March 20, 1990), [hereinafter "*Bereano-Controlled PACs*"], attached as Exhibit D. The study showed that 35 of the 47 Senate members and 81 of the 141 House members received contributions from at least one

[18]The language of ST. GOV'T ART. § 15-101 was derived without substantive change from former Art. 40A, § 1-102 (1993 Repl. Vol.).

of eight PACs controlled by Bereano, totaling more than $74,000. *Id.* At the same time that he was the highest paid lobbyist in Annapolis (receiving more than $1 million from clients for his lobbying services), Bereano simultaneously served as the treasurer for five PACs, and directed the contributions of three other PACs. *Id.* The study observed that Bereano-controlled PACs had contributed to 9 of 11 members of the Senate Finance and Senate Judicial Proceedings Committees, 14 of 23 members of the House Economic Matters Committee, 18 of 23 members of the House Environmental Matters Committee, and 15 of 23 members of the House Ways and Means Committee. *Id.* The study also noted that on March 17, 1990, the House Constitutional and Administrative Law Committee killed, by an 8-8 vote with two abstentions, a bill opposed by Bereano which would have required registered lobbyists to disclose fundraising activities on behalf of candidates. *Id.* Bereano had previously helped to kill bills that would have limited PAC contributions, arguing (ironically) that full disclosure was sufficient. *Id.* Subsequently, Bereano was found guilty of having tricked his lobbying clients into paying for more than $16,000 in illegal campaign contributions. Marina Sarris, *Top Lobbyist Bruce Bereano Convicted of Mail Fraud*, The Baltimore Sun (Dec. 12, 1994); C. Fraser Smith, *Toppled from the Lofty Heights of Political Excess in Annapolis*, The Baltimore Sun (Dec. 12, 1994), attached as Exhibit E.

In direct response to these troubling revelations and other information about lobbyists' involvement in fundraising, the legislature enacted former Art. 40A, § 5-104.1 as a means of limiting actual, as well as the appearance of, undue lobbyist influence on General Assembly members and to diminish the possibility of the creation of political debts. *See* Letter from J. Joseph Curran, Jr., Attorney General, to the Honorable Michael J. Collins, at 3 (March 5, 1991) (reviewing H.B. 1049's Senate counterpart, S.B. 693 and related

legislation, S.B. 695), attached as Exhibit F. Over a period of two months, the legislature carefully evaluated the types of lobbying restrictions it was proposing and, accordingly, House Bill 1049 underwent a number of amendments before it was finally enacted.

As initially proposed, House Bill 1049 would have additionally prohibited a lobbyist from "arrang[ing] for" a political contribution for the benefit of a member or candidate for election to the General Assembly, and would have also prohibited lobbyists from engaging in certain campaign finance activities with respect to local candidates in addition to candidates for the General Assembly and other Statewide offices. *See* H.B. 1049 (1991). In a bill review letter on House Bill 1049's Senate counterpart and a related bill (S.B. 693 & 695 (1991)), Attorney General Curran distinguished *Institute of Governmental Advocates v. Younger*, 139 Cal. Rptr. 233 (Cal. Ct. App. 1977), on the ground that, in Maryland, the words "arrange for" would be given their ordinary meaning and would not prevent a lobbyist's act of advising or making a recommendation to a client with regard to making a political contribution. Letter from J. Joseph Curran, Jr., Attorney General, to the Honorable Michael J. Collins, at 4 (March 5, 1991).[11] The Attorney General also recommended that the bill be amended to make it clear that lobbying at the State level would not prohibit campaign finance activity at the local level. *Id.* at 5.

Subsequently, the legislature decided to delete the term "arrange for" altogether and further amended the bill to limit its application only to members or candidates for election

[11]The California statute at issue in *Younger* provided that it was unlawful for a lobbyist "to make a contribution, or to act as an agent or intermediary in the making of any contribution, or *to arrange for* the making of any contribution." *Younger*, 139 Cal. Rptr. at 234 (emphasis added). The court held that the statute was unconstitutional because the term "arrange for" was interpreted to encompass a lobbyist's act of merely advising or making a recommendation to a client with regard to making a political contribution. *Id.* at 235-36.

to the General Assembly. The Attorney General advised the Governor that these amendments further bolstered the constitutionality of the bill. *See* Letter from J. Joseph Curran, Jr. to Governor William Donald Schaefer, at 2 (April 20, 1991), attached as Exhibit G. The bill was signed into law and became effective July 1, 1991. 1991 Md. Laws ch. 618.[12]

ARGUMENT

I. SECTION 15-707's LIMITED EFFECTS ON FIRST AMENDMENT RIGHTS ARE JUSTIFIED BY THE COMPELLING GOVERNMENTAL NEED TO SEPARATE LOBBYING AND POLITICAL FUNDRAISING.

Lobbying and fundraising activities in the political arena may implicate First Amendment rights. *Buckley v. Valeo*, 424 U.S. 1, 24-25 (1976) (per curiam); *United States v. Harriss*, 347 U.S. 612, 625 (1954).[13] But, "neither the right to associate nor the right to participate in political activities is absolute." *Buckley*, 424 U.S. at 25 (quoting *U.S. Civil Serv. Comm'n v. National Ass'n of Letter Carriers*, 413 U.S. 548, 567 (1973)); *see also Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984) ("The right to associate for expressive purposes is not . . . absolute."). "Even a 'significant interference with protected

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[12]In 1991, the General Assembly also enacted § 26-3(a)(4) of Article 33 which prevents a lobbyist from organizing or establishing a PAC to solicit or transmit contributions to members of the General Assembly or candidates for State legislative office. 1991 Md. Laws ch. 509. As with § 15-707, Article 33, § 26-3(a)(4) was similarly amended in 1997 to encompass political committees formed for the purpose of contributing to the Governor, Lieutenant Governor, Comptroller, or Attorney General, or to candidates for those offices. *See* H.B. 1 (1997); S.B. 127 (1997).

[13]At least one legal scholar commenting on *Harriss* and *United States v. Rumely*, 345 U.S. 41 (1953), has noted that under these Supreme Court cases, "it is by no means clear that lobbying in its current form is explicitly covered by the First Amendment." Note, *The Constitutionality of Lobby Reform: Implicating Associational Privacy and the Right to Petition the Government*, 4 WM. & MARY BILL OF RTS. J. 717, 729 n.94 (1995).

rights of political association' may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms." *Buckley*, 424 U.S. at 25 (quoting *Cousins v. Wigoda*, 419 U.S. 477, 488 (1975)) (some internal quotations and citations omitted).

Even under this high level of scrutiny, § 15-707 passes constitutional muster. The State (and the public for whom it acts) has a compelling interest in preventing the potentially corrosive mixture of professional lobbying and political fundraising. Section 15-707 specifically and narrowly focuses on the potential damage to the integrity of the legislative process which arises when the paid advocacy of lobbyists is intermingled and coupled with influence derived from campaign fundraising and contributions.

A. The State Has A Compelling Interest In Preventing The Corruption Of Legislators By Improper Influences Of Lobbyists.

The Maryland Court of Appeals has recognized that the government "has a compelling interest, on behalf of its citizens, in ensuring that its public officials and employees act with honesty, integrity, and impartiality in all their dealings," and that there be "no conflict of interest between the public trust and private interests." *Montgomery County v. Walsh*, 274 Md. 502, 514-15 (1975) (upholding constitutionality of county ordinance requiring financial disclosures by county officials), *app. dismissed*, 424 U.S. 901 (1976). Preventing corruption or the appearance of corruption, protecting the integrity of the electoral process, and preserving the individual citizen's confidence in his or her government are legitimate and compelling governmental interests which may justify campaign finance restrictions on lobbyists. *FEC v. National Conservative Political Action Committee*, 470 U.S. 480, 496-97 (1985) ("*NCPAC*"); *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 297

(1981); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 788-89 (1978); *Buckley*, 424 U.S. at 25-26. "[W]here corruption is the evil feared," the court will not "second-guess a legislative determination as to the need for prophylactic measures." *FEC v. National Right to Work Comm'n*, 459 U.S. 197, 210 (1982).

Because lobbying activities, in particular, provide a greater potential for actual and apparent corruption of the legislative process, the Supreme Court has recognized a legitimate government interest in regulating lobbyists. *See McIntyre v. Ohio Elections Comm'n*, 115 S. Ct. 1511, 1523 n.20 (1995) ("The activities of lobbyists who have direct access to elected representatives, if undisclosed, may well present the appearance of corruption."); *Harriss*, 347 U.S. at 625 (Federal Regulation of Lobbying Act was designed to prevent special interest groups from wielding undue influence over legislators); *United States v. Rumely*, 345 U.S. 41, 46-47 (1953) (Congress has power to confer on congressional committee the authority to investigate lobbying activities). Many courts have had little difficulty finding a compelling interest to justify restrictions regulating or monitoring lobbyists in the political arena. *See, e.g., Harriss*, 347 U.S. 612 (Lobbying Act does not violate lobbyists' constitutional guarantees of freedom of speech and petitioning the government); *Florida League of Professional Lobbyists v. Meggs*, 87 F.3d 457, 460-61 (11th Cir.), *cert. denied*, 117 S. Ct. 516 (1996) (state has legitimate interest in voters being able to assess accurately the influence of lobbyists on the integrity and performance of officeholders and candidates); *Associated Indus. of Kentucky v. Commonwealth*, 912 S.W.2d 947, 952 (Ky. 1995) (regulation of lobbying activities is directed at "what was essentially deemed to be corruption"); *Montana Automobile Ass'n v. Greely*, 632 P.2d 300, 303 (Mont. 1981) (court may take judicial notice of the compelling need for lobbyist disclosure laws which are

intended to deter actual corruption as well as the appearance of corruption in the political process) (citing *Buckley*, 424 U.S. at 67).

Where a lobbyist also contributes money to a candidate for elective office, the risk of harm to the legislative process is compounded. There is a potential conflict of interest between the lobbyist and the legislator who may be influenced to vote in particular manner on the basis of the benefit to his or her campaign fund rather than the public interest or even the interest of the legislator's particular constituents:

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

Harriss, 347 U.S. at 625. "Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns. The hallmark of corruption is the *quid pro quo*: dollars for political favors." *NCPAC*, 470 U.S. at 497. "The importance of the governmental interest in preventing [the corruption of elected representatives through the creation of political debts] has never been doubted." *Bellotti*, 435 U.S. at 788 n.26 (1978). The State has a compelling interest in preventing the actual trading of "dollars for political favors" as well as the appearance of such conduct. *NCPAC*, 470 U.S. at 497.

Both houses of Congress, numerous state legislatures, and political scientists have recognized the same compelling interest in ensuring the independence of legislators and

preventing the appearance or reality of quid pro quo arrangements by which lobbyists leverage their influence through the promise of political contributions.

For example, in 1992, both houses of Congress passed the Congressional Campaign Spending Limit and Election Reform Act of 1992 (S.3), which would have restricted lobbyists from serving as conduits and intermediaries for political contributions to congressional candidates and barred independent expenditures by political committees affiliated with an organization ro person registered as a lobbyist. *See 1992 Congressional Quarterly Almanac*, at 68. The purpose of the "anti-bundling" regulation was "to ensure that lobbyists are not able to evade their contribution limits and use large sums of money beyond that which they are otherwise permitted to contribute to obtain influence with government officials. Conference Report at S.3, Report 102-487, 102 Cong. 2d Sess., at 78 (Apr. 8, 1992). The rationale for the independent expenditure provision was explained at length in a report the following year by the Committee on House Administration:

> Independent expenditures by lobbyists and groups which lobby are suspect based on the continuous communications and relationships maintained on a day-to-day basis between lobbyists and officeholders. Such relationships simply vitiate the ability to make expenditures which are truly independent. Expenditures by lobbyists do not constitute the kind of grassroots citizens efforts envisioned and protected by the Supreme Court. Rather, it is reasonable to assume that activities by such organizations or persons are likely to reflect sophisticated political strategizing which it strains credibility to imagine are not coordinated, in however indirect or subtle a fashion, with a candidate's organization or agents.

Committee on House Administration Report on H.R. 3, Rept. 103-375, 103d Cong., 1st Sess., at 51 (Nov. 17, 1993).

Although the 1992 federal legislation was vetoed by President Bush because it contained campaign spending limits and public financing of elections, *see 1992*

Congressional Quarterly Almanac, at 65, bills passed in 1993 in the House or Senate which also would have restricted a lobbyist's political fundraising activities. *See* 73 *Congressional Digest*, at 107-08 (April 1994). Even a Republican substitute for the House measure attacked the bundling of contributions by lobbyists. *See 1993 Congressional Quarterly Almanac*, at 148-H.

Long before Congress recognized the dangers of allowing lobbyists to leverage their influence through political contributions, the Internal Revenue Service determined that tax-exempt lobbying organizations, such as the employer of plaintiffs Lam and Hammer, may not directly or indirectly participate or intervene in political campaigns involving candidates. 26 C.F.R. § 1-501(c)(4)-1(a)(2)(ii). Such a restriction raises no First Amendment questions because neither the federal government nor the State of Maryland (which implicitly incorporates the same restrictions in its tax laws) is required to subsidize the exercise of political activities by tax-exempt entities.

A number of states too have recognized the problems created by the political fundraising activities of lobbyists and have sought to remedy them. Some, like Maryland, in keeping with the recommendations embodied in § 314 of the Model Act of the Council on Governmental Ethics Laws, prevent lobbyists from serving as treasurer or other official of a political committee. *See* ALASKA STAT. § 24.45.121 ("A lobbyist may not . . . (8) serve as campaign manager or director, serve as a campaign treasurer or deputy campaign treasurer on a finance or fund-raising committee, host a fundraising event, directly or indirectly collect contributions for, or deliver contributions to, a candidate or otherwise engage in the fundraising activity of a legislative campaign or campaign for governor or lieutenant governor . . . ."); KY. REV. STAT. ANN. § 6.811(5) (legislative lobbyist "shall not serve as a

campaign treasurer, or as a fundraiser . . . for a candidate or legislator."); N.M. STAT. ANN. § 2-11-8.1(A) ("No lobbyist may serve as a campaign chairman, treasurer, or fundraising chairman for a candidate for the legislature or a statewide office."); S.C. CODE ANN. § 2-17-110(C) ("A lobbyist may not serve as a treasurer for a candidate . . . ."); VA. CODE ANN. § 2.1-794 (state political party chairman or immediate family member "shall not be employed as a lobbyist by any principal"). More states go even further in prohibiting political contributions by lobbyists either generally or during a legislative session. *See* A. Rosenthal, *Drawing the Line: Legislative Ethics in the States*, at 170 (1996).

Political scientists and researchers have extensively documented the harm to the public interest of unrestricted lobbyist fundraising. For example, professor Alan Rosenthal, in his 1996 study of state legislative ethics, has observed that:

> Special interest money is not given without regard to how it can influence recipients. This is the way in which lobbyists, PACs, and state governmental relations executives justify their budgets. Their employers are not charitable institutions. A contribution to a legislator who chairs a committee that has jurisdiction over legislation affecting a group's interests, and especially to a legislator who has opposed the group's legislative program, is designed to exercise influence. It may not succeed, but there can be little question as to its intention.
>
> Campaign contributions are not routed on a one-way street. To some extent they are offered voluntarily, but to some extent also they are offered involuntarily. Special interests give in part to acquire influence but also to avoid losing influence. The solicitation of funds from lobbyists and PACs by legislators has become a high-pressure activity. No special interest contributor is certain of what message legislators are sending when they solicit funds, but most interpret it to mean that giving is the better part of valor. The implication is that those interests that command money have to pay to play. A contribution is like an ante in a poker game -- sweetening of the electoral pot is required before one can be dealt a hand.

Rosenthal, at 149.

Rosenthal goes on to note that "[m]oney in politics has an unsavory appearance."

Although appearance should not dominate as the standard of measure, "we ignore it at our peril." When legislators act in the interests of groups that have made large contributions to their campaigns, regardless of whether the legislator's judgment is actually influenced, the question of improper influence is nonetheless raised in the public's mind. Thus, [w]e are compelled to deal with the problem of money, if only for the sake of appearance." *Id.* at 159.

> But more than appearance is involved. . . . John Saxon writes that the harm flows not from money itself but from the likelihood that the influence is disproportionate to that which it should have. He also maintains that while other forces may also have disproportionate influence, "the *least defensible* influence which can compromise autonomous legislative judgment is money." I would agree that money is distinctive, because legislators' principal obligations should be to their own values, their districts, their supporters, their colleagues, and the institutions which they serve. They should not be the funders of their reelection drives. In this way, the ethical standard of responsibility will be furthered. So will that of fairness, since there is no good reason why monied interests should have marked advantages. The number of people, the merits of the case, dedication, resourcefulness, and the like ought to have free play in a democratic system. Money is also a form of participation, but its play ought to be limited.

Rosenthal, at 159.

The public's view of the issue is well expressed in a report on a focus group study, *Citizens and Politics: A View from Main Street*, prepared for the Kettering Foundation by the Harwood Group, at v. (June 1991):

> People believe two forces have corrupted democracy. The first is that lobbyists have replaced representatives as the primary political actors. The other force, seen as more pernicious, is that campaign contributions seem to determine political outcomes more than voting. No accusation cuts deeper because when money and privilege replace votes, the social contract underlying the political system is abrogated. Influenced by this widespread perception, people decide that voting doesn't really count anymore -- so why bother?

Id. These authorities only reinforce the fact that the State of Maryland has an especially compelling justification in enacting legislation such as § 15-707.

The Supreme Court has recognized that preventing actual conflicts of interests, as well as the appearance of such conflicts, justifies reasonable restrictions on active participation in political campaigns. In *National Ass'n of Letter Carriers*, 413 U.S. 548, the Supreme Court upheld a provision of the Hatch Act which prohibited federal employees from taking "an active part in political management or in political campaigns," 5 U.S.C. § 7324(a)(2). The Civil Service Commission interpreted the challenged section to prohibit federal employees from, *inter alia*, (1) serving as an officer of a political party or partisan political club; (2) "[d]irectly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;" (3) "[t]aking an active part in managing the political campaign of a partisan candidate for public office or political party office;" (4) becoming a partisan candidate or campaigning for an elective public office; and (5) soliciting votes in support of or in opposition to a partisan political candidate. 413 U.S. at 576-77 n.21. The Court held that these restrictions on federal employees' First Amendment rights were justified by the government's interests in operating effectively and fairly, maintaining the integrity of elections, and keeping employees free from improper influences. *Id.* at 564, 581. *See also Wachsman v. Dallas*, 704 F.2d 160 (5th Cir.) (upholding ban on contributions to city councilmen from municipal employees and organizations), *cert. denied*, 464 U.S. 1012 (1983); *Cranston Teachers Alliance v. Miele*, 495 A.2d 233 (R.I. 1985) (government's interest in preventing potential conflicts of interest outweighed an individual's interest in serving as a school committee member while simultaneously being employed in another position with the city); *Pollard v. Board of Police Comm'rs*, 665 S.W.2d 333 (Mo. 1984) (sustaining prohibition on all contributions by police employees), *cert. denied*, 473 U.S. 907 (1985).

Even outside the public employment context, courts have found a compelling interest in preventing the corruption of public officials by contributions from those who are or may be directly affected by the officials' actions. In *Blount v. SEC*, 61 F.3d 938 (D.C. Cir. 1995), *cert. denied*, 116 S. Ct. 1351 (1996), for example, the U.S. Court of Appeals for the District of Columbia Circuit upheld a regulation of the Securities and Exchange Commission which restricted the ability of municipal securities professionals to contribute and solicit contributions to the political campaigns of state officials from whom they obtain business. The court recognized the SEC's compelling interests in avoiding "a conflict of interest in state and local officials who have the power over municipal securities contracts and a risk that they will award the contracts on the basis of benefit to their campaign chests rather than to the governmental entity." *Id.* at 944. The court also held that the regulation was narrowly tailored to avoid unnecessarily infringing First Amendment rights by constraining relations only between the two potential parties to a potential *quid pro quo* arrangement. *Id.* at 947.

Similarly, in *Petition of Soto*, 565 A.2d 1088 (N.J. Super. App. Div. 1989), *certif. denied*, 583 A.2d 310 (N.J.), *cert. denied*, 496 U.S. 937 (1990), the court rejected a constitutional attack on a statute which prohibited key employees of casinos from making political contributions to public officials or candidates. The court held that the compelling state interest in protecting the integrity of political parties "from undue influence by those individuals who, by the very nature of their employment, play a pivotal role in the [regulated] industry." *Id.* at 1098. In *Gwinn v. State Ethics Comm'n*, 426 S.E.2d 890 (Ga. 1993), the Supreme Court of Georgia upheld a law which prohibited insurers from contributing to or on behalf of the Commissioner of Insurance, a candidate for the office, or to the candidate's campaign committee. The court held that the State had a compelling interest "in preserving

the integrity of the democratic process by forbidding a regulated entity from contributing to the holder of the office which oversees the regulation of the entity or a candidate for that office." *Id.* at 892. *See also Schiller Park Colonial Inn, Inc. v. Berz*, 349 N.E.2d 61 (Ill. 1976) (upholding law that made it illegal for liquor licensees, or officers, associates, representatives, or employees of the licensee, to contribute directly or indirectly to a political party or candidate).

As in *National Association of Letter Carriers*, *Blount*, *Soto*, and *Gwinn*, any limitation of plaintiffs' political or associational freedoms is far outweighed by the government's compelling purpose in avoiding actual, as well as the appearance of, conflicts of interest where there is the potential for a party to be subjected to improper influences. A lobbyist who also holds the purse strings of a political committee which donates money to a legislative candidate has the potential to exert tremendous influence over that legislator. Permitting a person to wear the hats of both lobbyist and political committee officer or treasurer increases markedly the likelihood that money will be traded for political favors. The State has a compelling interest in preventing legislators from being unduly influenced by the prospect of financial gain to their campaign officers, contrary to the obligations of their offices. The State also has a compelling governmental interest in protecting the integrity of the electoral and legislative processes, and thereby preserving the public's confidence in its government.[14] Section 15-707 of the State Government Article promotes

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[14]If MRL's past dealings with its PAC are considered, *see* Note 5, *supra*, and accompanying text, § 15-707 also acts to prevent conflicts of interest by officials and employees of a tax-exempt lobbying group. If the lobbyist were also permitted to serve as an official on the PAC, the dangers of less-than-arms-length transactions and loans, as well as the making of questionable or inadvertent contributions, would be apparent.

these substantial and compelling governmental interests.

The State's interests in support of § 15-707 and substantial harms targeted by the statute are not only "inherently persuasive and supported by court precedents as enunciated in *United States v. Harriss*, [347 U.S. 612]; and *Buckley v. Valeo*, [424 U.S. 1]." *Commission on Independent Colleges and Universities v. N.Y. Temporary State Comm'n on Regulation of Lobbying*, 534 F. Supp. 489, 500 (N.D.N.Y. 1982). Those vital interests also are amply supported by the legislative record. *Cf. Shrink Missouri Gov't PAC v. Maupin*, 922 F. Supp. 1413, 1420-23 (E.D. Mo. 1996) (state failed to adduce evidence of actual corruption to justify temporal ban on political contributions); *Barker v. State of Wisconsin Ethics Bd.*, 841 F. Supp. 255, 260 (W.D. Wisc. 1993) (state failed to show any evidence of actual improprieties to justify restriction on lobbyists). The State's concerns that lobbyists could exert-- or at the very least appear to exert-- undue influence over legislators, by possessing financial and decision-making control of PACs which contribute to the legislators, were confirmed by the activities of Bruce Bereano. *See Bereano-Controlled PACs*, Exhibit D, at 2-3; Sun articles, Exhibit E. Between November 1986 and November 1989, a majority of the General Assembly received contributions from PACs controlled by Bereano. During this same time, Bereano helped to convince the legislature to reject bills which would have limited PAC contributions, arguing that full disclosure was sufficient, yet in 1990, Bereano convinced legislators to reject a bill that would have required lobbyists to disclose fundraising activities on behalf of candidates. *Bereano-Controlled PACs*, at 3. Even if this were an isolated occurrence, this is precisely the situation where the Court should accept the Maryland legislature's reasoned judgment that the *potential* for corruption or undue influence demands regulation. *See Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 661

(1990).

B. Section 15-707 Directly And Materially Advances The State's Interests And Is Narrowly Drawn To Avoid Unnecessary Abridgement Of Associational Freedoms.

Maryland's prohibition against lobbyists serving as officers and/or treasurers of political committees directly and materially advances the State's interests by ensuring that individuals who are directly attempting to influence a General Assembly member or candidate do not also control either the finances or the final decision-making power of a political committee which contributes money to that candidate. Section 15-707 is narrowly tailored to advance those interests because it targets only those parties to a potential *quid pro quo* arrangement and does not unduly burden a lobbyist's rights of association.[13]

First, § 15-707 limits relations only between the legislative member or candidate on one hand, and the lobbyist who is attempting to influence the legislator's vote on the other. *See Blount*, 61 F.3d at 947-48 (securities rule was narrowly tailored by restricting only relations between securities professionals and the state officials from whom they solicit or obtain business); *Gwinn*, 426 S.E.2d at 892 (statute prohibiting insurers from contributing to Insurance Commissioner or candidates was narrowly tailored by restricting only contributions by the regulated entity). Persons who engage in soliciting or transmitting

[13]It is interesting to note that plaintiffs do not challenge other provisions of § 15-707, such as (d)(i), which prohibits a regulated lobbyist from soliciting or transmitting a contribution from a person or political committee for the benefit of a member or candidate for the General Assembly, or Article 33, § 26-3(a)(4), which prohibits a lobbyist from establishing a political committee for the purpose of soliciting or transmitting contributions to General Assembly members or candidates. The challenged sections of § 15-707 are really no different than other Code provisions which plaintiffs do not challenge in that they all target the same harm: lobbyists' attempts to exert improper influence over a legislator through the prospect of financial gain.

contributions, or who make the decision to whom and how much to contribute, should not be lobbyists, or under the direction, supervision, or control of a lobbyist. Attachment 1 to O'Donnell Aff., General Guideline 1.

Second, the law does not limit all relations between a lobbyist and a political committee, but merely limits the roles in which a lobbyist may serve on a political committee. *Cf. Barker*, 841 F. Supp. 255 (absolute ban on lobbyists volunteering services for candidates was unconstitutional). Plaintiffs' contention that they are "forced to choose" between two constitutional rights" is based on the erroneous assumption that they must relinquish their right to associate with political committees if they wish to become lobbyists. Section 15-707 only prohibits a lobbyist from participating to such degree that the candidate may be improperly influenced to trade political favors in return for financial support. For example, plaintiffs are permitted to perform limited ministerial tasks for any political committee, as long as those activities do not amount to solicitation or transmittal of contributions. *See* Attachment 1 to O'Donnell Aff., General Guideline 3. In addition, Lam and Hammer can serve as officials of PACs organized and operated to make "independent expenditures" to General Assembly candidates, and can serve on a "ballot issue" PAC or a federal PAC. Section 15-707(d)(iii) merely prohibits plaintiffs from heading a fundraising committee or serving as chairman or treasurer of the committee if it contributes to candidates for seats in the General Assembly. *See* Attachment 1 to O'Donnell Aff., General Guideline 10.

Section 15-707 does not require a lobbyist to forego all associational activity with a PAC, but requires only that the PAC organize its internal structure so that persons who lobby the General Assembly do not have control over the decisions to contribute money to a

General Assembly member or candidate or over the finances of the PAC. *See, e.g.*, Attachment 2 to O'Donnell Aff. For example the State Ethics Commission has offered general guidelines for regulating a lobbyist's activities under the law: (1) the lobbyists's director should not be involved in solicitation or transmittal of contributions to General Assembly candidates; (2) the lobbyist should not direct the staff in campaign finance activities; rather, this should be done by a board member or other appropriate person; and (3) the lobbyist's name should not appear on contribution or solicitation letters or related contribution transmittal documents. Attachment 1 to O'Donnell Aff., General Guideline 19.

Third, § 15-707 does not prohibit a lobbyist from making independent political contributions or from advising any entity, including the lobbyist's employer, of a position taken by the candidate. ST. GOV'T § 15-707(d)(2). *Cf. Fair Political Practices Comm'n v. Superior Court*, 599 P.2d 46, 52-53 (Cal. 1979) (en banc) (law prohibiting lobbyists, defined broadly to include persons appearing before administrative agencies, from making any contribution to any state official or candidate); *Younger*, 139 Cal. Rptr. at 235-36 (law interpretcd to prohibit lobbyists from advising their employers with respect to making political contributions). Nor does the law limit independent expenditures, either by certain nonprofit organizations such as MRLSPAC or by the individual plaintiffs. *Cf. Federal Election Comm'n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) (law prohibiting corporations from making independent expenditures was unconstitutional as applied to nonprofit corporation which distributed "voter guides" urging readers to vote "pro-life"); *New Hampshire Right to Life Political Action Committee v. Gardner*, 99 F.3d 8 (1st Cir. 1996) ($1,000 cap on independent expenditures by a political committee was unconstitutional); *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994), *cert. denied*, 115 S. Ct. 936

(1995) (statute prohibiting corporations from making independent expenditures was unconstitutional as applied to nonprofit corporation which engaged in minor business activities incidental to its political purpose). Lam and Hammer are free to contribute to MRLSPAC and to the candidates whom the PAC favors; they can advise MRLSPAC on candidate expenditure issues if requested; and can perform a variety of ministerial tasks for the PAC. The law merely requires that someone else in the PAC -- someone who does not directly attempt to influence General Assembly members or candidates -- have control over the committee's political contributions.

The fact that the law applies to contributions to candidates for state legislative office, as well as to members, does not render § 15-707 unconstitutionally overbroad. *See Gwinn*, 426 S.E.2d at 892; *Schiller Park*, 349 N.E.2d at 66-67; *Soto*, 565 A.2d at 1100. Nonincumbent candidates may be just as readily susceptible to improper influences as incumbents. *But see Shrink Missouri Gov't PAC*, 922 F. Supp. at 1422 (dicta). It is obvious that a nonincumbent candidate's whole purpose in running for election is so that he or she can become a member of the State legislature, thereby gaining the power to influence the legislative process. There is no danger that § 15-707 will give incumbents an unfair advantage as opposed to nonincumbents; rather, the law merely prevents lobbyists from creating political debts (on the part of either incumbent or new legislators) by serving as conduits for campaign contributions. *Cf. Emison v. Catalano*, 951 F. Supp. 714 (E.D. Tenn. 1996) (blackout period on contributions to state legislature candidates while legislature was in session was unconstitutional as applied to nonincumbents); *State v. Dodd*, 561 So.2d 263 (Fla. 1990) (law prohibiting candidates for all statewide offices from soliciting or accepting contributions during the legislative session was not narrowly tailored to stop corruption; law

unduly burdened nonincumbent candidates).

The inherent conflict of interest in lobbyists who also hold positions of financial and/or decision-making responsibility in political committees who benefit members or candidates for the legislature justifies restrictions on the types of positions the lobbyist may hold in those organizations. Section 15-707 is narrowly tailored to prevent actual corruption and the appearance of corruption, without unnecessarily infringing a lobbyist's or a PAC's associational freedoms. Accordingly, the complaint fails to state a claim or, in the alternative, defendants are entitled to summary judgment as a matter of law.

II. PLAINTIFFS ARE NOT ENTITLED TO A PRELIMINARY INJUNCTION BECAUSE THEY CANNOT SATISFY ANY OF THE FOUR FACTORS TO SUPPORT GRANTING SUCH EXTRAORDINARY RELIEF.

If this Court should decide to entertain plaintiffs' motion for preliminary injunction, the motion should be denied because plaintiffs are not entitled to a preliminary injunction enjoining the enforcement of § 15-707 during the pendency of the case. A preliminary injunction is an "extraordinary remedy involving the exercise of a very far-reaching power which is to be applied 'only in [the] limited circumstances' which clearly demand it." *Direx Israel, Ltd. v. Breakthrough Medical Corp.*, 952 F.2d 802, 811 (4th Cir. 1991) (quoting *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 800 (3d Cir. 1989)). Preliminary injunctions of legislative enactments are granted with particular reluctance "because they interfere with the democratic process" by overruling the decisions of the people's duly elected representatives. *Northeastern Florida Chapter v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990), *rev'd on other grounds*, 113 S. Ct. 2297 (1993).

In order to justify a preliminary injunction, plaintiffs must first show that they will suffer irreparable injury if the injunction is denied. *Multi-Channel TV Cable Co. v.*

Charlottesville Quality Cable Operating Co., 22 F.3d 546, 551 (4th Cir. 1994); *Hughes Network Sys., Inc. v. Interdigital Communications Corp.*, 17 F.3d 691, 693 (4th Cir. 1994). Then, the court must balance the likelihood of harm to plaintiffs if an injunction is not granted against the likelihood of harm to defendants if the injunction is granted. *Id.* If the balance tips "decidedly" in favor of plaintiffs, the injunction will be granted if plaintiffs have raised "serious, substantial, difficult & doubtful" questions going to the merits. *Id.*; *Blackwelder Furniture Co. v. Seiling Mfg. Co.*, 550 F.2d 189 (4th Cir. 1977). If, on the other hand, the balance does not tip "decidedly" in favor of plaintiffs, plaintiffs must show a strong probability of success on the merits. *Multi-Channel TV Cable Co.*, 22 F.3d at 551. Finally, plaintiffs must show that the public interest favors granting preliminary injunctive relief. *Id.* The burden is on plaintiffs to show that each of the four factors supports their entitlement to a preliminary injunction. *Direx Israel*, 952 F.2d at 812. *See also Acierno v. New Castle County*, 40 F.3d 645, 653 (3d Cir. 1994) (party seeking mandatory preliminary injunction to alter the status quo bears a "particularly heavy burden").

A. Plaintiffs Will Not Suffer Irreparable Injury Absent An Injunction.

Plaintiffs cannot satisfy the very first factor for granting a preliminary injunction because they have not demonstrated that they will suffer irreparable injury absent an injunction. Although the loss of First Amendment freedoms may, in some circumstances, constitute irreparable injury per se, *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976), the fact that plaintiffs assert a First Amendment right does not automatically require a finding of irreparable injury. *See Hohe v. Casey*, 868 F.2d 69, 72-73 (3d Cir.), *cert. denied*, 493 U.S. 848 (1989). "[S]tate action should not be set at naught, even temporarily, without a showing that the plaintiff's legal rights have probably been infringed." *Illinois Psychological Ass'n*

v. Falk, 818 F.2d 1337, 1340 (7th Cir. 1987). If there is no constitutional violation, "then no harm has been shown." *Doe by Doe v. Shenandoah County School Bd.*, 737 F. Supp. 913, 917 (W.D. Va. 1990).

In this case, plaintiffs' associational rights are not infringed by Lam's and Hammer's inability to serve as officers or treasurers of MRLSPAC at the same time they are registered lobbyists. Congress has specifically recognized that certain types of entities are not entitled to First Amendment protection for associating with political candidates. Under 26 C.F.R. § 1.501(c)(4)-1(a)(ii), a social welfare organization that is tax-exempt under 26 U.S.C. § 501(c)(4) may not engage in "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." MRL is a § 501(c)(4) organization and, therefore, is also prohibited from contributing to or opposing specific candidates or their campaigns. Accordingly, plaintiffs Lam and Hammer, as lobbyists for MRL, have no First Amendment right to associate with the MRL-sponsored PAC. Such a right would be inconsistent with federal tax requirements imposed on MRL as an organization exempt from taxes under 26 U.S.C. § 501(c)(4) tax-exempt organization.[16]

[16]As MRL employees, plaintiffs Lam and Hammer have asserted no *individual* right to lobby and associate with MRLSPAC. Indeed, they could not lobby without the express written authority of their employer. *See* ST. GOV'T ART. § 15-702. Nor, in light of MRL's extensive control over the PAC, could they serve on this political committee without the approval of that organization. In addition, to the extent these employees seek the right to serve on the PAC for additional pay or for the economic benefit of their employer for a change in their employment duties, the First Amendment right to association is not implicated. *See Okla. Ed. Ass'n v. Alcoholic Beverages Law Enforcement Comm'n*, 889 F.2d 929, 936 (10th Cir. 1989) (right to associate does not confer the right to choose one's fellow employees); *Metropolitan Rehabilitation Servs. v. Westberg*, 386 N.W.2d 698, 700 (Minn. 1986) (If the sole purpose of association is for financial gain, it does not come under the umbrella of the First Amendment.).

Even if § 15-707 implicated lobbyists' associational rights in general, these plaintiffs have not shown any *facts* to indicate that they will suffer irreparable injury in the period of time that it takes this Court to decide the case. In *West Virginians For Life, Inc. v. Smith*, 919 F. Supp. 954 (S.D.W.Va. 1996), the plaintiffs alleged that they would like to distribute "voter guides" within 60 days of an upcoming primary election, which West Virginia law presumed to constitute engaging in express advocacy or opposition of a candidate, as opposed to merely "issue advocacy." The court held that the plaintiffs' failure to engage in free speech immediately preceding the "impending" election constituted "irreparable harm of significant magnitude." *Id.* at 958. *See also New Hampshire Right to Life PAC*, 99 F.3d at 16 (1st Cir. 1996) (PAC alleged that it would make certain expenditures in a particular month and sought a preliminary injunction to allow it to make those expenditures).

In contrast to the harm alleged in *West Virginians For Life* and *New Hampshire Right to Life PAC*, none of the plaintiffs have identified *any* specific, immediate harm that they will suffer if Lam and Hammer are not permitted to serve as officers or treasurers of MRLSPAC and to lobby the General Assembly at the same time. First, the PAC plaintiff is not injured in any way by § 15-707. MRLSPAC is not civilly or criminally liable for violation of § 15-707's restriction on political fundraising. *See* ST. GOV'T ART. § 15-707 (section applies only to regulated lobbyists). In addition, MRLSPAC has had no difficulty raising and spending substantial sums of money without having a lobbyist serve as a PAC officer or treasurer, Wicklund Aff. ¶¶ 7,8, and the PAC is still free to ask lobbyists for recommendations about fundraising decisions. In any event, MRLSPAC is not immediately harmed by the statute because it raises and spends money only every four years, when General Assembly elections

are held.[17] Wicklund Aff. ¶¶ 7, 8.

Although not named as a plaintiff in these proceedings, MRL, Lam's and Hammer's employer, is also not harmed by § 15-707. Again, only lobbyists are liable for violating § 15-707 and, therefore, MRL would not be civilly or criminally liable for such a violation. In addition, since 1990, MRL has not suffered any lack of lobbying personnel and, in any event, does not lobby between sessions. O'Donnell Aff. ¶ 6. The General Assembly has ended its session for 1997 and will not reconvene until 1998. *See* MD. CONST. art. III, §§ 14, 15 (General Assembly meets on the second Wednesday of January, for a period of 90 days). Thus, MRL is not in any danger of sustaining any immediate injury as a result of § 15-707's restriction on political fundraising by lobbyists.

Nor are the individual plaintiffs injured by § 15-707. Contrary to plaintiffs' conclusory allegations, § 15-707 does not force plaintiffs Lam and Hammer "to give up their right of association [with a PAC] in order to exercise their right to [lobby]." Amended Complaint ¶ 44. As explained in Part I.B, above, § 15-707 leaves plenty of room for Lam and Hammer to exercise their right to associate with a PAC and to make independent political contributions.

In sum, none of the plaintiffs has demonstrated that their associational rights are in

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[17]Furthermore, MRLSPAC delay of almost six years in filing this lawsuit undercuts any claim of urgent circumstances justifying a preliminary injunction to avoid any alleged irreparable injury. *See Quince Orchard Valley Citizens Ass'n v. Hodel*, 872 F.2d 75, 80 (4th Cir. 1989) ("Although a particular period of delay may not rise to the level of laches and thereby bar a permanent injunction, it may still indicate an absence of the kind of irreparable harm required to support a preliminary injunction."); *Plessey Co v. PLC General Elec. Co.*, 628 F. Supp. 477, 500 (D. Del. 1986) (a plaintiff's "lack of diligence, standing alone, may preclude granting preliminary injunctive relief because it goes to the issue of irreparable harm").

danger of being infringed prior to a decision on the merits of the case. Absent such a showing, plaintiffs are not entitled to the extraordinary relief of a preliminary injunction.

B. The Balance Of Hardships Favors The State.

In contrast to plaintiffs' complete failure to identify any irreparable harm which they will suffer if their request for a preliminary injunction is denied, defendants will suffer grave injury if the injunction is granted. A preliminary injunction would not only interfere with the duly enacted law of elected representatives of the State of Maryland, but it would allow lobbyists to control the campaign contributions to the very people whom they are trying to influence.

Even if the law were enjoined only temporarily, the effect on the State legislative process would be extremely harmful. Other lobbyists besides plaintiffs may attempt to exert improper influence over General Assembly members or candidates when the legislature is not in session, and well before the next election. *See Shrink Missouri Government*, 922 F. Supp. at 1422 ("corruption can take place anytime, even outside the banned time period [during the legislative session]"); *State v. Dodd*, 561 So.2d 263, 265-66 (Fla. 1990) ("corrupt campaign practices just as easily can occur some other time of the year [than the legislative session]"). Accordingly, defendants, and the citizens of Maryland, could suffer grave injury if they are enjoined from enforcing § 15-707.

Plaintiffs' citation to *West Virginians For Life, Inc.*, 919 F. Supp. at 958-59, Plaintiffs' Memorandum in Support of Preliminary Injunction, at 22, is unpersuasive because it presupposes that § 15-707 is not a legitimate manner of regulating lobbyists' activities. As explained in Part I, above, State Government article § 15-707 does not unconstitutionally infringe plaintiffs' associational rights. On the contrary, § 15-707 is a narrowly-tailored

limitation on lobbyists' activities which limits only those associational activities which are most likely to lead to the corruption and undue influence of the State electoral and legislative processes.

C. Plaintiffs Are Not Likely To Succeed On The Merits Because Maryland's Limitation On Lobbyists' Roles In Political Committees Directly Advances The State's Compelling Interests And Is Narrowly Tailored To Serve Those Interests.

Because plaintiffs cannot demonstrate that they will suffer irreparable injury if enforcement of § 15-707 is not enjoined, the balance of hardships does not "decidedly" tip in favor of them and, therefore, plaintiffs must show a strong likelihood of success on the merits. *Multi-Channel TV Cable Co.*, 22 F.3d at 551. A court should be "reluctant to grant a preliminary injunction against state regulation . . . unless persuaded that the plaintiff has a good chance, not merely a nonnegligible one, of winning when the case is fully tried." *Illinois Psychological Ass'n*, 818 F.2d at 1340.

For the reasons discussed in Part I, above, § 15-707 serves the State's compelling interests in preventing lobbyists from corrupting the electoral and legislative processes, and is narrowly tailored to advance those interests without unduly burdening lobbyists' First Amendment rights. Therefore, plaintiffs are not likely to succeed on the merits of the action.

D. The Public Interest Favors Denying Preliminary Injunctive Relief.

The public interest in this litigation also favors denying plaintiffs' request for preliminary injunctive relief. Even if plaintiffs could show any injury that they will suffer in the time that it would take this Court to decide the merits of the case, which they cannot, that injury is greatly outweighed by the public's interest in regulating lobbyists' ability to exert improper influence over State legislators and candidates. In this case, the public's

interests in preventing other lobbyists besides plaintiffs from attempting to exert improper influence over General Assembly members or candidates is for all practical purposes identical to defendants' interests. For the reasons discussed in Part II.B, above, the public interest does not favor enjoining the enforcement of § 15-707 and plaintiffs are not entitled to a preliminary injunction.

CONCLUSION

For the foregoing reasons, defendants respectfully request that this Court dismiss the complaint or, in the alternative, grant summary judgment in favor of defendants. If this Court should reach plaintiffs' motion for preliminary injunction, defendants respectfully request that the Court deny the motion.

Respectfully submitted,

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MARYLAND RIGHT TO LIFE STATE POLITICAL ACTION COMMITTEE, et al.,
v.
Frank WEATHERSBEE, et al.

Civ. No. Y-97-565.

Aug. 20, 1997.

Political Action Committee (PAC) and PAC personnel brought declaratory judgment action, seeking determination that law which limited the involvement of certain regulated lobbyists in the affairs of certain political committees was unconstitutional. On motions to strike and for summary judgment, the District Court, Joseph H. Young, Senior District Judge, held that: (1) lobbyist had standing; (2) dispute was ripe; (3) statute implicated First Amendment; (4) compelling state interest supported statute; and (5) statute was narrowly tailored.

Motions granted in part and denied in part.

West Headnotes

[1] Federal Civil Procedure ⇐103.2
170Ak103.2

"Standing " addresses whether plaintiff has adequate interest to be entitled to judicial determination.

[2] Federal Courts ⇐12.1
170Bk12.1

"Ripeness" is concerned with determining if dispute is sufficiently mature to require judicial determination and in particular whether injury that has not taken place is likely to occur.

[3] Federal Civil Procedure ⇐103.2
170Ak103.2

[3] Federal Civil Procedure ⇐103.3
170Ak103.3

To satisfy standing requirement, plaintiff must show distinct and palpable injury, causal connection between injury and challenged activity, and redressability of injury by remedy court is prepared to give.

[4] Declaratory Judgment ⇐300
118Ak300

Lobbyist had standing to challenge law which limited involvement of certain regulated lobbyists in affairs of certain political committees, as if lobbyist accepted position as officer or treasurer of political action committee (PAC) he would have violated law. Md.Code, State Government, § 15-703.

[5] Associations ⇐20(1)
41k20(1)

Organization has standing to sue for injuries that it suffers itself.

[6] Associations ⇐20(1)
41k20(1)

Organization has standing to bring suit on behalf of its members when: its members would otherwise have standing to sue in their own right; interests it seeks to protect are germane to organization's purpose; and neither claim asserted nor relief requested requires participation of individual members in lawsuit.

[7] Federal Courts ⇐12.1
170Bk12.1

Ripeness is generally determined by considering fitness of issues for judicial decision and hardship to parties of withholding court consideration.

[8] Declaratory Judgment ⇐124.1
118Ak124.1

Lobbyist's challenge to law which limited involvement of certain regulated lobbyists in affairs of certain political committees was ripe, as there was no indication challenged law would not be enforced if lobbyist violated it by assuming position of officer or treasurer of political action committee (PAC) as he desired. Md.Code, State Government, § 15-703.

[9] Constitutional Law ⇐47
92k47

Compelling governmental interest supporting statute on First Amendment challenge can be established from evidence beyond explicit legislative findings. U.S.C.A. Const.Amend. 1.

[10] Federal Civil Procedure ⇐2545

170Ak2545

Press release regarding political action committee (PAC) was admissible on motion for summary judgment, in action challenging constitutionality of law which limited the involvement of certain regulated lobbyists in the affairs of certain political committees, as it was attached to affidavit. U.S.C.A. Const.Amend. 1; Md.Code, State Government, § 15-703.

[11] Federal Civil Procedure ⇐2545
170Ak2545

Newspaper articles and other written materials were inadmissible on motion for summary judgment, in action challenging constitutionality of law which limited the involvement of certain regulated lobbyists in the affairs of certain political committees, as they were written after enactment of law. U.S.C.A. Const.Amend. 1; Md.Code, State Government, § 15-703.

[12] Federal Civil Procedure ⇐2545
170Ak2545

Official government report written prior to enactment of law which limited the involvement of certain regulated lobbyists in affairs of certain political committees was admissible on motion for summary judgment, in action challenging constitutionality of law. U.S.C.A. Const.Amend. 1; Md.Code, State Government, § 15-703.

[13] Federal Civil Procedure ⇐2545
170Ak2545

Report regarding campaign money was admissible on motion for summary judgment, in action challenging constitutionality of law which limited the involvement of certain regulated lobbyists in the affairs of certain political committees, as it was part of legislative committee file on law, and thus became part of legislative history. U.S.C.A. Const.Amend. 1; Md.Code, State Government, § 15-703.

[14] Constitutional Law ⇐82(8)
92k82(8)

[14] Constitutional Law ⇐91
92k91

Neither right to associate nor right to participate in political activities is absolute. U.S.C.A. Const.Amend. 1.

[15] Constitutional Law ⇐82(3)
92k82(3)

Statute which implicates First Amendment will survive constitutional challenge if Court determines that it is narrowly tailored to advance a compelling state interest. U.S.C.A. Const.Amend. 1.

[16] Constitutional Law ⇐82(8)
92k82(8)

[16] Statutes ⇐24
361k24

Statute which prohibited lobbyists from serving as officers or treasurer of certain political committees implicated First Amendment. U.S.C.A. Const.Amend. 1.

[17] Constitutional Law ⇐82(8)
92k82(8)

[17] Statutes ⇐24
361k24

Compelling state interest, concerns about corruption, supported law which limited the involvement of certain regulated lobbyists in the affairs of certain political committees, for purposes of First Amendment challenge. U.S.C.A. Const.Amend. 1.

[18] Constitutional Law ⇐82(8)
92k82(8)

[18] Constitutional Law ⇐91
92k91

[18] Statutes ⇐24
361k24

Law which limited the involvement of certain regulated lobbyists in the affairs of certain political committees was narrowly tailored to accomplish the compelling state interest or preventing corruption, for purposes of First Amendment challenge, as statute only affected relationship between legislative members and candidates and lobbyists who were attempting to influence legislators, statute was not absolute ban on lobbyists' participation in political committees, and statute only applied to certain regulated lobbyists and did not apply to all individuals who "petition the Government for a redress of grievances." U.S.C.A. Const.Amend. 1.

*793 James Bopp, Jr., Terre Haute, Indiana; Dale L. Wilcox, Terre Haute, Indiana; Ben Dennis, Rockville, Maryland, counsel for Plaintiffs.

J. Joseph Curran, Jr., Attorney General, Baltimore, Maryland; Lawrence P. Fletcher-Hill, Assistant Attorney General, Baltimore, Maryland; Margaret Witherup Tindall, Staff Attorney, Baltimore, Maryland; Robert Z. Zarnoch, Assistant Attorney General, Annapolis, Maryland, counsel for Defendants.

MEMORANDUM OPINION

JOSEPH H. YOUNG, Senior District Judge.

This civil action challenges a Maryland public ethics law [FN1] that limits the involvement of certain regulated lobbyists in the affairs of certain political committees as impinging on protected political speech and association in violation of the First and Fourteenth Amendments to the United States Constitution. Plaintiffs seek a declaratory judgment that the challenged statute is unconstitutional and an injunction prohibiting its enforcement.

FN1. Plaintiffs, in their initial pleadings, cite the challenged statute as Section 15-707 of Article 33 of the Maryland Annotated Code. The challenged statute is codified in the State Government Article and cited as: Md.Code Ann., State Gov't § 15-707 (1995).

I. *Facts*

Plaintiffs are Maryland Right to Life State Political Action Committee ("MRLSPAC"), a registered state political committee established by Maryland Right to Life, Inc. ("MRL") under the laws of the State of Maryland; David Lam ("Lam"), associate executive director of MRL and a registered lobbyist for MRL who would like to be an officer or treasurer of MRLSPAC; and Cathy Hammer ("Hammer"), administrative assistant with MRL who intends to register as a lobbyist and who also would like to be an officer or treasurer of MRLSPAC.

Defendants are Frank Weathersbee in his official capacity as State's Attorney for Anne Arundel County, [FN2] Michael L. May in his official capacity as chairman and member of the State Ethics Commission, Mark C. Medairy, Jr., in his official capacity as a member of the State Ethics Commission, Charles O. Monk, II, in his official capacity as a member of the State Ethics Commission, Robert J. Romadka in his official capacity as a member of the State Ethics Commission, and April E. Sapulveda in her official capacity as a member of the State Ethics Commission.

FN2. Defendants indicate that although enforcement of Section 15- 707 is technically within the jurisdiction of the State's Attorney for Anne Arundel County, he is unlikely to pursue criminal enforcement actions. Instead, enforcement is more likely to be pursued by either the State Prosecutor, who has specific authority for prosecuting criminal offenses under Maryland's public ethics laws, Md.Ann.Code art. 10, § 33B(b)(2), or the Maryland Attorney General, who is generally authorized to prosecute such offenses, Md. Const. art. V, § 3(a)(2). (Defs.' Mem. in Supp. of Mot. for Summ.J. at 8 n. 9).

Plaintiffs filed a Complaint seeking a declaratory judgment that the Section 15-707 of the State Government Article is unconstitutional. Plaintiffs also sought both a preliminary and a permanent injunction prohibiting enforcement of the challenged statute. Because the 1997 session of the Maryland General Assembly is completed and the 1998 session does not begin until January 1998, Plaintiffs' Motion for a Preliminary Injunction is moot. The parties also filed cross Motions for Summary Judgment. In addition, Plaintiffs filed a Motion to Strike Certain Exhibits in Support of Defendants' Motion for Summary Judgment. The motions have been fully briefed, and a hearing has been held.

II. *Standing and Ripeness*

[1][2] As an initial matter, the Court must determine whether the pending action is justiciable. The relevant areas for judicial inquiry are standing and ripeness. Standing addresses whether a plaintiff has an adequate interest to be entitled to a judicial determination; ripeness is concerned with determining if a dispute is sufficiently mature to require a judicial determination and in particular whether an injury that has not taken place is likely to occur. 13, 13A Wright, Miller & Cooper, FEDERAL PRACTICE & PROCEDURE §§ 3531, 3532 (1984).

*794 A. *Standing*

[3] The doctrine of standing developed from a blending of the "case or controversy" requirement of Article III of the Constitution and concerns of judicial self-restraint. To satisfy the standing requirement, a plaintiff must show a distinct and palpable injury, a causal connection between the injury and the

challenged activity, and the redressability of the injury by a remedy the court is prepared to give. 13 Wright, Miller & Cooper, FEDERAL PRACTICE & PROCEDURE § 3531.3.

Of particular relevance to the pending action is the decision of the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), in which candidates for federal elective office sued to enjoin the enforcement of provisions of federal election law limiting campaign spending as unconstitutional. While noting that the interests of the plaintiffs were prospective, the Supreme Court concluded that the interests of at least some of the plaintiffs were sufficient to present "a real and substantial controversy admitting of specific relief ... as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *Id.* at 12, 96 S.Ct. at 631 (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241, 57 S.Ct. 461, 464, 81 L.Ed. 617 (1937)).

1. *Lam*

[4] Plaintiff Lam is currently a regulated lobbyist for MRL. He filed a Lobbying Registration Form with the State Ethics Commission in December 1996 for his activities on behalf of MRL as required under Section 15-703 of the State Government Article of the Annotated Code of Maryland. Md.Code Ann., State Gov't § 15-703 (1995). In addition, he has indicated that he would like to serve as an officer or treasurer of MRLSPAC.

Lam is not required to violate state law to challenge it as violative of the Constitution, he need only face "a credible threat of prosecution." *International Soc'y for Krishna Consciousness v. Eaves*, 601 F.2d 809, 819 (5th Cir.1979). As a regulated lobbyist, Lam would be in violation of Section 15-707 and subject to civil and criminal penalties if he were to assume the position of officer or treasurer of MRLSPAC. Accordingly, the Court finds that he has standing to challenge the constitutionality of Section 15-707.

2. *Hammer*

The issue of standing as it relates to Defendant Hammer is more tenuous She works as an administrative assistant with MRL. At present, she is neither a regulated lobbyist for MRL nor is she an officer or treasurer of MRLSPAC. She does, however, indicate that she wishes to hold both positions simultaneously and is prevented from doing so by Section 15-707. While the Court has concerns about Hammer's standing, it need not address its concerns in detail because, as discussed above, Plaintiff Lam has standing.

3. *MRLSPAC*

[5][6] The issue of standing as it relates to MRLSPAC raises the specter of organizational standing. In *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972), the Supreme Court held that an organization does not have standing to represent its conception of the public interest. *Id.* at 739, 92 S.Ct. at 1368. However, an organization does have standing to sue for injuries that it suffers itself. *Id.* at 740, 92 S.Ct. at 1368. Additionally, an organization has "standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 2441, 53 L.Ed.2d 383 (1977).

In the pending action, the origin of MRLSPAC's standing, if any, is unclear. It may be that MRLSPAC is attempting to sue for its own injuries suffered because it is effectively being deprived of the services of and association with lobbyists, such as Lam and Hammer. The difficulty with MRLSPAC's standing is that Section 15-707 does not impose any civil or criminal penalties *795 on organizations or political committees; Section 15-707 applies only to individuals who are registered lobbyists. The Court need not address the issue of MRLSPAC's standing because, as discussed above, Plaintiff Lam has standing.

B. *Ripeness*

[7] The doctrine of ripeness is designed to implement the constitutional prohibition against advisory opinions. [FN3] The focus of ripeness is on the timing of an action. Ripeness is generally determined by considering "the fitness of the issues for judicial decision" and "the hardship to the parties of withholding court consideration." *Abbott Labs. v. Gardner*, 387 U.S. 136, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967). With respect to challenging the enforcement of a statute, the Supreme Court has established that such a dispute is ripe for judicial review when the party challenging the statute is faced with the dilemma of incurring the disadvantage of complying with the statute or risking penalties for non-compliance. *Doe v.*

Bolton, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973).

FN3. In 1789, President George Washington submitted twenty-nine questions relating to international law, neutrality, and the construction of treaties to the United States Supreme Court. Chief Judge John Jay responded that the Supreme Court would not issue advisory opinions on the questions. 3 CORRESPONDENCE & PUBLIC PAPERS OF JOHN JAY at 486.

[8] Applying the ripeness doctrine to the pending action, the Court notes that Plaintiff Lam is a registered lobbyist subject to the provisions of Section 15-707. There is no indication that the challenged statute would not be enforced if Lam violated it by assuming the position of officer or treasurer of MRLSPAC. In fact, Defendants admit that members of the State Ethics Committee enforce Section 15-707. (Defs.' Mem. in Supp. of Mot. to Dismiss, at 8 n. 9). Accordingly, the Court concludes that the pending action is ripe for judicial review.

III. *Motion to Strike*

Plaintiffs filed a Motion to Strike Certain Exhibits in Support of Defendants' Motion for Summary Judgment as inadmissible hearsay. *See Greensboro Prof'l Fire Fighters Ass'n v. City of Greensboro*, 64 F.3d 962, 967 (4th Cir.1995) (involving affidavits containing inadmissible hearsay and primarily unattributed rumors that are neither admissible at trial nor supportive of an opposition to a motion for summary judgment); *Maryland Highways Contractors v. State of Maryland*, 933 F.2d 1246, 1251 (4th Cir.1991) ("[S]everal circuits, including the Fourth Circuit, have stated that hearsay evidence, which is inadmissible at trial can not be considered on a motion for summary judgment."). In particular, Plaintiffs object to the following items:

1. Common Cause/Maryland, Press Release, *Bereano-Controlled PACs Finance Over Half of General Assembly* (Mar. 20, 1990) [Defs.' Mem.Ex. D, Defs.' Reply Ex. C].
2. Marina Sarris, *Top Lobbyist Bruce Bereano Convicted of Mail Fraud*, BALTIMORE SUN (Dec. 1, 1994) [Defs.' Mem.Ex. E].
3. C. Fraser Smith, *Toppled from the Lofty Heights of Political Excess in Annapolis*, BALTIMORE SUN (Dec. 1, 1994) [Defs.' Mem.Ex. E].
4. "Op-Ed", BALTIMORE SUN (Dec. 1, 1994) [Defs.' Mem.Ex. E].
5. Common Cause/Maryland, *Campaign Money in Maryland November 19, 1986-- November 20, 1990* (1991) [Defs.' Reply Ex. A].
6. George Nilson, *Report of Governor's Commission to Review the Election Laws* (Jan. 15, 1987) [Defs.' Reply Ex. B].
7. A. Rosenthal, *Drawing the Line: Legislative Ethics in the States* (1996). [FN4]

FN4. Defendants did not include a copy of this item because it is of substantial length and is available in the Legislative Reference Library in Annapolis, Maryland.

8. Harwood Group for Kettering Foundation, *Citizens and Politics: A View *796 from Main Street* (June 1991). [FN5]

FN5. Defendants did not include a copy of this item because it is of substantial length and is available in the Legislative Reference Library in Annapolis, Maryland.

Through their Motion to Strike, Plaintiffs essentially argue that Defendants can only establish a compelling governmental interest from the explicit legislative findings in the statute. Md.Code Ann., State Gov't § 15-101.

Defendants argue that all of the challenged items are admissible because they are "legislative facts" rather than "adjudicative facts". *See generally* DAVIS & PIERCE, ADMINISTRATIVE LAW TREATISE §§ 1.8, 7.5 (3d ed.1994); 2 MCCORMICK ON EVIDENCE § 331 (4th ed.1992). In particular, items 1 through 6 describe the political climate in Maryland in the late 1980's that led to the enactment of Section 15-707 in 1991. Defendants note that item 5 was part of the Legislative Committee File for House Bill 1049 (1991), which ultimately became Section 15-707. Finally, Defendants argue that items 7 and 8 provide additional secondary authority to support Maryland's compelling interests.

[9] With respect to Plaintiffs' underlying argument that a compelling governmental interest can only be established from the explicit legislative findings, the Court must reject this argument. Courts regularly go beyond explicit legislative findings to determine the governmental interest underlying a piece of legislation. *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 567-68, 111 S.Ct. 2456, 2460-62, 115 L.Ed.2d 504 (1991) (upholding a state statute against First Amendment challenge despite an absence of explicit statement of purpose and any legislative history) (*cited in 23 West Washington Street, Inc. v. City of Hagerstown*, 972

F.2d 342, 1992 WL 183688, at *2 (4th Cir.1992).

[10][11][12][13] With respect to the admissibility of each of the challenged items, the Court finds: (1) The Common Cause/Maryland Press Release entitled *Bereano-Controlled PACs Finance Over Half of General Assembly* from March 20, 1990 is admissible because it is attached to an Affidavit from the executive director of Common Cause/Maryland; (Defs.' Reply Ex. C), (2-4) the articles from the BALTIMORE SUN on Bruce Bereano are not admissible because they were written after enactment of Section 15-707; nevertheless, the Court takes judicial notice of Bereano's conviction for mail fraud in the United States District Court for the District of Maryland; (5) the Common Cause/Maryland report entitled *Campaign Money in Maryland November 19, 1986– November 20, 1990* is admissible because it is part of the Legislative Committee File for House Bill 1049, which became Section 15-707 and, thus, is part of the legislative history; (6) the *Report of Governor's Commission to Review the Election Laws* is admissible because it is an official government report written prior to enactment of Section 15-707 that makes formal recommendations for legislative action; (7-8) the materials written by A. Rosenthal and the Harwood Group for Kettering Foundation are not admissible because they were written after enactment of Section 15-707. Accordingly, Plaintiffs' Motion to Strike will be denied in part and granted in part.

IV. *Constitutionality of Challenged Statute*

Plaintiffs argue that Section 15-707 violates their First Amendment rights of speech and association and puts them in the untenable position of choosing between two constitutionally protected rights--freedom of speech in the form of lobbying and freedom of association. They assert that "there is no compelling interest to support such a prohibition on such association ..." (Pls.' Mem. in Supp. of Prelim.Inj. at 25).

Defendants, on the other hand, maintain that the challenged statute is narrowly tailored to advance the State's compelling interest in preventing corruption and the appearance of corruption by lobbyists in the electoral and legislative processes, protecting the integrity of the electoral process, and preserving the confidence of individual citizens in their government.

[14][15] In examining the merits of this case, the Court must determine whether the challenged statute implicates the First Amendment. This does not end the inquiry, *797 however, because while lobbying and fundraising activities in the political arena may implicate First Amendment rights, "neither the right to associate nor the right to participate in political activities is absolute." *Buckley v. Valeo*, 424 U.S. 1, 25, 96 S.Ct. 612, 637, 46 L.Ed.2d 659 (1976). If the First Amendment is implicated, the challenged statute will nevertheless be constitutional if the Court determines that it is narrowly tailored to advance a compelling state interest. *Id.*

[16][17] Section 15-707 prohibits lobbyists from serving as officers or treasurer of certain political committees and, thus, implicates the protections of the First Amendment. Consequently, the Court must examine what, if any, compelling state interest underlies the statute.

The Supreme Court has acknowledged that governments have a legitimate interest in regulating lobbyists. *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 356 n. 20, 115 S.Ct. 1511, 1523 n. 20, 131 L.Ed.2d 426 (1995) ("The activities of lobbyists who have direct access to elected representatives, if undisclosed, may well present the appearance of corruption."). In fact, courts have upheld laws regulating and monitoring the activities of lobbyists. *See, e.g., United States v. Harriss*, 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed. 989, (1954) (holding that federal lobbying act does not violate lobbyists' constitutional guarantees of freedom of speech and petitioning the government).

The Supreme Court also has recognized that governments have a compelling interest in preventing political corruption, i.e., trading of "dollars for political favors," and the appearance of corruption. *FEC v. National Conservative Political Action Comm.*, 470 U.S. 480, 496-97, 105 S.Ct. 1459, 1468, 84 L.Ed.2d 455 (1985) ("We [the Supreme Court] held in *Buckley* and reaffirmed in *Citizens Against Rent Control [v. Berkeley*, 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981)] that preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances."). Toward this end, courts have upheld restrictions on the ability of certain groups of individuals to make political contributions to certain elected officials and candidates. *See United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers*, 413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973) (ruling that Hatch Act provision which prohibits federal employees from certain partisan political activities and positions is constitutional); *Blount v.*

SEC, 61 F.3d 938 (D.C.Cir.1995) (upholding SEC regulation prohibiting certain municipal securities professionals from contributing or soliciting contributions to the political campaigns of state officials from whom they obtained business), *cert. denied*, 517 U.S. 1119, 116 S.Ct. 1351, 134 L.Ed.2d 520 (1996); *Gwinn v. State Ethics Comm'n*, 262 Ga. 855, 426 S.E.2d 890 (1993) (upholding state law prohibiting insurers from contributing to or on behalf of the insurance commissioner or candidates for that office); *Petition of Soto*, 236 N.J.Super. 303, 565 A.2d 1088 (App.Div.1989) (rejecting constitutional attack on a statute which prohibited key employees of casinos from making political contributions to public officials and candidates), *certif. denied*, 121 N.J. 608, 583 A.2d 310 (1990), *cert. denied*, 496 U.S. 937, 110 S.Ct. 3216, 110 L.Ed.2d 664 (1990).

In the present case, Defendants assert:

> A lobbyist who also holds the purse strings of a political committee which donates money to a legislative candidate has the potential to exert tremendous influence over that legislator. Permitting a person to wear the hats of both lobbyist and political committee officer or treasurer increases markedly the likelihood that money will be traded for political favors.

(Defs.' Mem. in Supp. of Mot. for Summ.J. at 22). Beyond these hypothetical concerns over corruption, Defendants point to an actual influence peddling scandal involving lobbyist Bruce Bereano and donations from several political committees he controlled that sparked the General Assembly to enact Section 15-707. Accordingly, the Court concludes that Defendants have articulated a compelling state interest supporting the enactment of Section 15-707.

[18] Finally, the Court must consider whether Section 15-707 is narrowly tailored to accomplish the compelling state interest. *798 The Court holds that the statute is narrowly tailored. First, the statute only effects the relationship between legislative members and candidates and the lobbyists who are attempting to influence legislators. Second, the challenged statute is not an absolute ban on lobbyists participation in political committees; lobbyists may perform ministerial tasks for political committees. Third, lobbyists are not prevented from serving on political committees organized to make "independent expenditures" to General Assembly candidates or to support "ballot issues." The statute applies only to political committees that contribute to candidates for the General Assembly. [FN6] Fourth, lobbyists are not prohibited from making their own independent political contributions. Fifth, lobbyists may advise any organization including their employer or a political committee of the positions taken by candidates and even make recommendations upon request as to who should receive contributions. Finally, the statute only applies to certain regulated lobbyists [FN7] and does not apply to all individuals who "petition the Government for a redress of grievances." U.S. CONST. amend. I.

FN6. During the 1997 legislative session, Section 15-707 was expanded to include not just candidates for the General Assembly, but also candidates for Governor, Lieutenant Governor, Attorney General, and Comptroller. 1997 Md. Laws ch. 562. This amendment, which becomes effective October 1, 1997, has not been challenged in this action.

FN7. Under Maryland's public ethics laws, "regulated lobbyists" are defined as an entity that during a reporting period:

(1) for the purpose of influencing legislative action:

(i) communicates with an official or employee of the Legislative Branch or Executive Branch in the presence of that official or employee; and

(ii) exclusive of the personal travel or subsistence expenses of the entity or a representative of the entity, incurs expenses of at least $100 or earns at least $500 as compensation; (2) in connection with or for the purpose of influencing executive action, spends a cumulative value of at least $100 for meals, beverages, special events, or gifts on one or more officials or employees of the Executive branch;

(3) is employed to influence executive action on a procurement contract that exceeds $100,000;

(4) spends at least $2,000, including postage, for the express purpose of soliciting others to communicate with an official to influence legislative action or executive action; or

(5) spends at least $500 to provide compensation to one or more entities required to register under this subsection.

Md.Code Ann., State Gov't § 15-701(a). The challenged restrictions in Section 15-707 only apply to regulated lobbyists who meet the definition of Section 15-701(a)(1), (2), or (3). Regulated lobbyists as defined in Section 15-701(a)(4) or (5) are excluded. Md.Code Ann., State Gov't § 15-707(b).

Based on the foregoing analysis, the Court finds that Section 15-707 of the State Government Article of the Maryland Annotated Code does not violate the United States Constitution; the statute is narrowly tailored to advance a compelling governmental interest. Accordingly, the Court will deny Plaintiffs' Motion for Summary Judgment and grant Defendant's Motion for Summary Judgment.

ORDER

In accordance with the attached Memorandum, it is this 20th day of August 1997, by the United States District Court for the District of Maryland, ORDERED:

1. That Plaintiffs' Motion for Summary Judgment BE, and the same IS, hereby DENIED; and

2. That Defendants' Motion for Summary Judgment BE, and the same IS, hereby GRANTED; and

3. That Plaintiffs' Motion to Strike BE, and the same IS, hereby DENIED in part and GRANTED in part; and

4. That Plaintiffs' Motion for Preliminary Injunction BE, and the same IS, hereby DENIED as moot; and

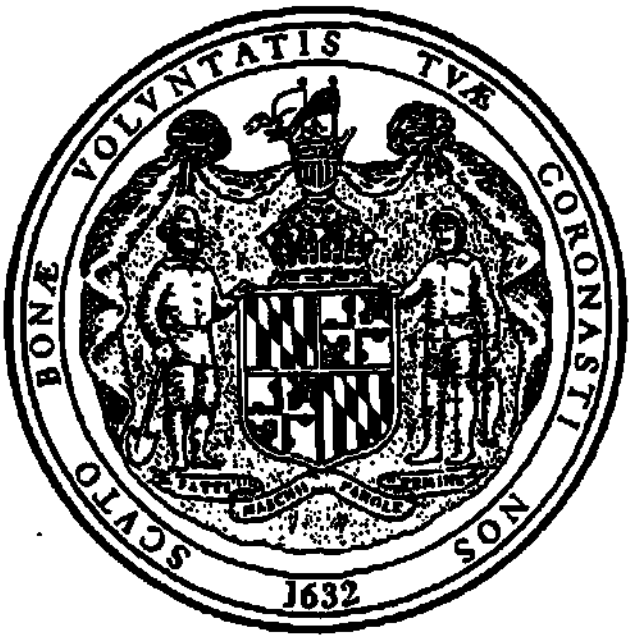
5. That Judgment BE, and the same IS, hereby ENTERED on behalf of Defendants; and

6. That a copy of this Memorandum and Order be mailed to counsel for the parties.

END OF DOCUMENT

STUDY COMMISSION ON LOBBYIST ETHICS

Final Report



ANNAPOLIS, MARYLAND
OCTOBER 2000

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Study Commission on Lobbyist Ethics

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William G. Somerville

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ould

[1/] Appointed on July 25, 2000, to replace James J. Doyle, Jr., who resigned on April 18, 2000.

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Proposal: Prohibit committing a criminal offense arising from lobbying activity.

Criminal convictions arising out of lobbying activity seriously erode the public trust and confidence in the governmental process. A lobbyist who commits a criminal offense arising from lobbying activities is subject to criminal penalties upon conviction but may not be subject to penalties under the Ethics Law, such as suspension or revocation. The Study Commission believes that a regulated lobbyist who commits a crime relating to lobbying activities should also be held accountable under the Ethics Law.

Accordingly, the Study Commission recommends that a regulated lobbyist be prohibited from committing a criminal offense arising from lobbying activity.

Proposal: Prohibit certain central committee activities.

Certain activities of a regulated lobbyist who is a member of a central committee may create potentially significant conflicts of interest between the role of lobbyist as an advocate and the role of active participant in political activities. One role of central committee members is to nominate individuals to fill vacancies in certain elective offices. Additionally, current law prohibits regulated lobbyists from serving on certain fund-raising committees or political committees. The Study Commission believes that regulated lobbyists who serve on central committees should not participate in certain sensitive activities or be an officer of the central committee.

Accordingly, the Study Commission recommends that a regulated lobbyist who is serving on a State or local central committee be prohibited from serving as an officer of the central committee and from participating in fund-raising activity on behalf of the political party or in actions relating to filling a vacancy in a public office.

V.

Political Campaign Activity and Reports of Contributions

Background

Involvement in campaign fund-raising activities by lobbyists and those who hire lobbyists is one of the most intensely-debated issues in current American politics. There is no doubt that interest groups, businesses, and their representatives make substantial campaign contributions, sometimes as individuals and other times through political action committees. Moreover, State officials and candidates for office actively solicit contributions from these willing sources of campaign funds. Such contributions are variously attributed to the donor's attempt to enhance access to decision makers, to promote elected officials' goodwill toward the donor, or to help elect candidates whose policies are aligned with the donor's interests and beliefs.

Professor Rosenthal noted:[11]

> The prevailing belief is that for every campaign contribution there is a quid pro quo, an agreement by the legislator to do something in return for the donor. Although explicit agreement is rare and would legally constitute a bribe, special interests do not give for nothing.... There is no question that interest groups and lobbyists give for strategic reasons and not simply out of the goodness of their hearts. Their objective is to promote group issues, and campaign contributions are intended, in one way or another, to accomplish that objective.

Because of the prevalence of this belief, regardless of whether it is an accurate assessment or an unfair stereotype, the public and news media are deeply suspicious of the involvement of lobbyists and their employers in the fund-raising process.

In 1995, the General Assembly enacted legislation to remove individual regulated lobbyists from certain fund-raising activities on behalf of State officials and candidates for State offices. The law specifically allowed a lobbyist to make personal campaign contributions and to advise others regarding positions taken by a candidate. The Study Commission has concluded that this provision needs to be tightened somewhat to accomplish its original intent.

Over the course of its deliberations, the Study Commission discussed ways of addressing the public's concern regarding direct campaign contributions and determined that the best approach lies in enhanced public disclosure by lobbyists and their employers. It concluded that disclosure of contributions to candidates for State offices on a semi-annual basis would serve to highlight any concentration of contributions from particular persons and from entities with shared interests. The electorate could make use of that information in forming views about elected officials and candidates and when deciding for whom to cast their votes.

To accomplish these goals, the Study Commission makes the following recommendations for statutory change.

Proposal: Require an individual regulated lobbyist to file a separate report of campaign contributions.

Individual regulated lobbyists are the most visible element of interest-group activity in State government. For the same policy reasons that they currently report their lobbying compensation and expenditures, it is appropriate that individual lobbyists be required to disclose campaign contributions to State officials and candidates for State office.

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[11] Rosenthal, *supra* note 1, at 222.

A new provision should be added to require that a separate report be filed with the State Ethics Commission, disclosing cumulative contributions (regardless of amount) made during the standard 6-month reporting period to a member of the General Assembly, the Governor, the Lieutenant Governor, the Attorney General, the Comptroller, or a candidate for any of those offices.

Both direct and indirect contributions that benefit one of the specified officials or candidates would be reported. Thus, if a regulated lobbyist knows that his or her contribution to a political action committee will benefit one of the specified officials or candidates, the contribution to the PAC should be reported, even if the specifics of the PAC's subsequent contributions or transfers are not yet known. Additionally, a contribution by a family member of a regulated lobbyist may be a reportable indirect contribution depending on the circumstances of the contribution.

Proposal: Require the employers of regulated lobbyists to report certain campaign contributions.

While the Annapolis lobbying corps is the focal point of the public's attention, the bulk of interest-group campaign contributions come from the entities that employ individual regulated lobbyists. It is common for State officials and candidates for State office to use the list of lobbyist employers in preparing fund-raising solicitations, and many of the same motivations that influence the contributions of individual lobbyists apply equally to their employers. The Study Commission has determined that substantial contributions by persons who employ lobbyists should be specifically reported by those persons.

As with the proposal for enhanced reporting by individual regulated lobbyists, the Study Commission has determined that disclosure can promote public confidence in government by creating greater transparency in the political process. Although individual campaign contributions are already reported by the recipient candidates, it is often difficult to connect the named person with a particular interest, and it is nearly impossible for the public to get a full picture of the contributions made by various individuals who share a common business affiliation. For that reason, the Study Commission proposes that contributions by officers, directors, and partners of the business entity that employs a lobbyist should be attributable to the business entity. If made at the business entity's suggestion or direction, the contributions of employees, agents, and other persons should likewise be attributable to the business entity. If a business entity owns 30% or more of a subsidiary, the two entities should be treated as a single entity for reporting purposes.

In making this proposal, the Study Commission drew extensively on the long-standing reporting requirements for persons doing $100,000 or more of business with the State, or a local government of the State, that are codified in Article 33, Title 14 of the Annotated Code. This provision is largely unchanged from its enactment in 1974 and has provided an effective safeguard in the governmental procurement process by bringing targeted public scrutiny to contractors' political contributions. The Study Commission's proposal does not mirror the Article 33 law entirely (e.g., contributions to local candidates are not reported under the proposal), but the process is very similar. Indeed, many of the persons who would be required to file under the new proposal already

file this same information in the reports currently required by Article 33, Title 14. For that reason, the reporting periods for both reports are the same, and both reports would go to the State Election Board. A person or entity that filed under Article 33, Title 14 could satisfy the new requirement merely by submitting a notice of the other filing in lieu of preparing a duplicate statement.

It is the intent of the Study Commission that the standards for reporting under this proposal be interpreted in the same manner as those in place under Article 33, Title 14. Therefore a contribution of at least $500 to a slate that contained an applicable recipient would be reportable even if the slate also contained candidates for offices not covered by the law. Likewise, a contribution of at least $500 to an independent PAC (not created by the business entity) would not be reported unless the PAC were created to support a specific candidate or group of candidates or the contribution were designated for transfer to a particular candidate.

Proposal: Prohibit an individual lobbyist from forwarding fund-raiser tickets or other fund-raising solicitations to benefit a member of the General Assembly, the incumbent in one of the four statewide offices, or a candidate for any of those positions.

When the General Assembly enacted significant restrictions on an individual regulated lobbyist's participation in campaign fund-raising activities for State officials and candidates for State office, the law left a loophole that has created the appearance that individual regulated lobbyists are still participating directly in the solicitation of campaign contributions from their clients.

Current law prohibits an individual regulated lobbyist from soliciting or transmitting a political contribution for the benefit of a member of the General Assembly, an official in any of the four statewide offices, or a candidate for any of those positions. As interpreted by the Ethics Commission, the law does not prohibit the lobbyist from acting as an impartial conduit for campaign fund-raising solicitations — essentially being a mail forwarding service for candidates who wish to send solicitations. Given the intent of the law that individual regulated lobbyists not be involved in campaign solicitations, this loophole undermines public confidence in the Ethics Law by presenting the appearance of improper participation by the lobbyist in the fund-raising effort.

While it may be acceptable for an individual regulated lobbyist to respond to inquiries regarding the appropriate contact person within an entity that employs the lobbyist, it is inappropriate for the lobbyist to be forwarding solicitations. The law should be amended to explicitly prohibit the practice.

Technical change: Consolidation of provisions relating to lobbyist participation in fund-raising activities.

As sometimes happens in the legislative process, two provisions of law that address essentially the same subject — the involvement of regulated lobbyists in campaign fund-raising activities -- were codified in separate parts of the statutory law. Both were enacted in 1991 in response to well-publicized instances of extensive participation by lobbyists in candidates' fund-

raising committees. The Study Commission recommends that the two provisions be consolidated in the Ethics Law.

Section 15-707 of the State Government Article, discussed above, and Article 33, § 13-201(a)(4) both prohibit individual regulated lobbyists from being involved in campaign committees that benefit members of the General Assembly, officials in the four statewide elective offices, or candidates for those positions. The Article 33 provision states that the lobbyist may not "organize or establish a political committee" for that purpose. The section in the State Government Article provides that the lobbyist may not "serve on a fund-raising committee or a political committee, or act as a treasurer or chairman of a political committee" for the benefit of the designated officials or candidates.

It serves the purpose of clarity and consistency in the law for the two provisions to be consolidated in current § 15-707 of the State Government Article (renumbered under the proposed bill to be § 15-714).