Testimony of

Dr. James A. Thurber
Distinguished Professor and
Director, Center for Congressional and Presidential Studies
American University
Washington, DC

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Comments on the Executive Branch Reform Act of 2007

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I would like to thank Chairman Henry Waxman, Ranking Minority Member Tom Davis and Members of the House Committee on Oversight and Government Reform for the invitation to comment on the Executive Branch Reform Act of 2007 and generally on ethics and lobbying in the executive branch.

My name is James A. Thurber, Distinguished Professor and Director and Founder of the Center for Congressional and Presidential Studies at American University in Washington, DC. I teach a graduate seminar on Lobbying and Ethics and founded the Public Affairs and Advocacy Institute (the Lobbying Institute) at AU. I am also currently working with the Committee for Economic Development on a special study entitled, "Making Washington Work" that focuses on lobbying reform. I have served on the American Association of Political Consultants' Board of Directors and their Ethics Committee for the last five years and have published an analysis of the American League of Lobbyists' Code of Ethics. Finally, I assisted the House and Senate Rules Committees in formulating the lobbying and ethics reform in the last Congress.

In the course of my research, publication, teaching and public service, I have studied ethics and lobbying, "revolving door" conflicts of interest,

and contracting conflicts of interest. I have been asked to testify today on the Executive Branch Reform Act of 2007, in particular on sections that address lobbying and the "revolving door" of employment between executive branch top level officials and the private sector. I will set forth some of the major problems with lobbying executive branch officials, the current attempt to solve those problems, and my recommendations for better solutions.

Statement of Problems

Secret meetings between lobbyists and executive branch officials

Public confidence in the integrity of Congress was at a historic low during the 2006 election, but it was alarmingly low for the executive branch, too. The appearance of impropriety exacerbates public trust in government, ultimately causing a decline in civic participation and confidence in our democracy. The public interest is undermined when narrow private interests meet in secret with government officials, and when no-bid contracts for government projects are awarded to political friends. Last week, this committee brought to light many of the problems surrounding federal contracting, including a lack of oversight of the contracting process and contractor conflicts of interest.

There is little transparency in the federal contracting process and even less when it comes to lobbying executive branch officials. Part of the problem is the inappropriately limiting definition of lobbying. The definition should be expanded to include actions to obtain federal contracts or expand the scope of current federal contracts, Requests for Proposals and attempts to exert hidden influence on the Federal regulatory policy.

The best way to eliminate the potential evils of "secret meetings" is to make them open to the public or, if that is not appropriate, make them transparent through prompt and accurate reporting of their occurrence. Recent lobbying reform bills passed in the House and Senate (whose differences I hope will be reconciled soon) made the reporting requirements for registered lobbyists stronger. You should adopt similar requirements for those who lobby the executive branch. One very public and striking example of the lack of transparency in executive branch lobbying was Vice President Cheney's Energy Task Force. Vice President Cheney – himself a former energy industry executive – met with top energy company officials to write the administration's energy plan. Despite repeated requests for transparency, through the disclosure of the names of these private interests and the minutes of the meetings, Government Accountability Office requests, and a court case, those meetings have remained secret. Less attention has been paid to

the hundreds of secret meetings that happen each week between government executives and lobbyists for private interests who are seeking federal contracts or contract extensions, or who are seeking to influence changes in federal rules or regulatory policy.

Revolving door between lobbyists and government

The rapidly revolving door between the private sector, especially K street lobbying firms, and government raises concerns about the integrity of actions by government officials, and it can lead to conflicts of interest for government executives and an "unlevel playing field" for some "well-connected" government contractors. It is common for a former government employee to have privileged access to government officials through a network of friends and colleagues built while serving in government.

The revolving door problem between K Street and the executive branch seems to be getting worse. According to the Center for Responsive Politics, which maintains a "revolving door database," the Reagan administration had 214 top level officials go through the revolving door, the Clinton administration had 268 officials do the same, and as of September 2006, the Bush administration had 253 officials leave their top government offices for lobbying and jobs in the private sector.

According to a *New York Times* investigation, as of June 2006, ninety Department of Homeland Security (DHS) officials had left government service to become consultants, lobbyists, or executives for companies doing business with the federal government within a few weeks – including former secretary Tom Ridge and even the infamous former FEMA director Michael Brown. This is particularly meaningful as the DHS is less than five years old! More than two-thirds of top DHS officials left for the private sector in the department's first years.[1]

Current law prohibits federal government employees from lobbying their former employers for one year, but a loophole created at DHS only prohibits former employees from lobbying certain agencies within DHS – which means they can still lobby other agencies within the department immediately after they leave. This loophole was created in 2004, when the top DHS ethics official got approval from the Office of Government Ethics (OGE) to divide the department into seven sections for conflict of interest purposes.[2] The loopholes created at DHS essentially allow former government officials to turn their government contracts and knowledge into personal profit. This goes against the letter and intent of the one-year ban that is currently in place and represents a serious ethical breech.

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[1]Eric Lipton. "Former Antiterror Officials Find Industry Pays Better" *New York Times*. June 18, 2006.
[2] Elena Herrero-Beaumont. "DHS's Seven Revolving Doors," *Homeland Security: National Imperative or Business as Usual?* Columbia Graduate School of Journalism. July 24, 2006.

It is common for top government employees, career and political, to leave the government for jobs in the private sector. Most political appointees are forced to leave when the White House changes hands. The vast majority of employees will enter or reenter the private sector. They bring with them skills learned and networks of contacts made at their former agencies and these attributes have value to lobbying firms and the clients they represent. It is important to point out that most federal employees who move to the private sector do so with good intentions and have not spent their time in government service unduly influenced by the prospect of future private gain. However, the temptations of future employment in the private sector are there and when acted upon, the public loses.

The Revolving Door Working Group, which includes Public Citizen, Common Cause, and the Project on Government Oversight, compiled a report in 2005 that documented the increase in unethical if not illegal actions by top level government employees, including:

- handing out favors to their former clients;
- awarding contracts to their former employers;
- instituting official acts affecting former clients;
- negotiating future employment with private interests affected by their official actions;

- leaving government service and becoming lobbyists in the same area of responsibility while in government;
- taking advantage of loopholes in certain laws that allow the government procurement official to be hired by a company to whom he awarded contracts;
- expanding the scope and size of a contract without competition and awarding it to friends and companies with close relationships with the government official; and
- writing the specifications for a request for proposal (RFP) so that they can only be met by a friend or former employer.

All of these problems call for rigorous enforcement and reforms of lobbying and revolving door regulations in the executive branch.

Solutions: The Executive Branch Reform Act of 2007

I support the Executive Branch Reform Act and believe that its requirements will bring more transparency to executive branch lobbying and help slow the revolving door in and out of government and thus reduce widespread conflicts of interest between government executives and the private sector. However, I think the bill should go farther in its recommendations.

End Secret Meetings

The bill would end secret meetings between lobbyists and other private parties and executive branch officials by requiring executive branch officials to report these meetings quarterly to the Office of Government Ethics and to make them public.

The bill calls for useful data to improve transparency and the nature of the contact between lobbyists and other private parties and government officials by requiring the following: date of the contact/meetings; subject matter of the contact and executive branch action; and if contact was made for a client, the name of the client. It also requires a searchable computerized database designed to minimize the burden of filing and to maximize public access to reports filed under the act saved for six years. While the searchable database improves transparency and usefulness of the data by Congress, the public, and the media, one crucial piece is missing, and that is the location of the meeting. Are these meetings taking place in government offices, restaurants, conferences, golf courses, or other venues where conflicts may arise?

Like the new reporting requirements recently approved for legislative branch lobbyists, executive branch reports should be filed on a quarterly basis. I agree that there should be sanctions for those who do not meet filing deadlines.

The purpose of these changes in current law is twofold: it brings transparency to the process, and it helps make government executives accountable to the public as the meetings and their participants will be part of a public record.

However, the bill should also require individuals, who meet with and lobby executive branch officials in order to expand the scope of federal contracts or secretly push the executive officials for regulatory changes, to file reports of their lobbying activities.

Enforce existing lobbying registration law in the executive branch

While many executive branch lobbying activities are currently covered under the Lobbying Disclosure Act of 1995 (LDA) (with amendments in 1998), they are often ignored. That act defines lobbyists by contacts made and time spent and requires registration based on money received. A lobbying contact is any oral or written communication to a covered legislative or executive branch official with regard to the formulation, modification, or adoption of federal legislation, rules, regulations, policies or administration of a federal program including federal contract, grant or license. This definition of what is covered is broad and inclusive, but often ignored with respect to executive branch lobbying. The recipient officials in the current law include: President, Vice President,

officers and employees of the Executive Office of the President, officials in a Level IV position of the executive schedule, political appointees serving in a confidential or policy-making position, and senior military officers. Other changes to improve lobbying transparency anticipated in 2007 include quarterly rather than semi-annual reports, an improved publicly accessible report from lobbyists, easy identification of political contributions from lobbyists to Members, and identity of the House and Senate members' offices that are contacted. These improvements to the Lobbying Registration Act should be applied and enforced to executive branch lobbying. The Executive Branch Reform Act of 2007 should use the same definitions of lobbying and those officials who are covered as in the LRA including future changes to that act.

Slow the Revolving door

Your bill extends the period during which government employees cannot engage in lobbying after leaving office and expands the scope of prohibited activities in many of the same ways as do the lobbying reforms passed by the House and Senate for Members and some congressional staff. I agree with the provisions in the bill that change the "cooling off" period from one year to two years for lobbying the government agencies with which the former official was associated. Two years is long enough to help

ensure that there is no impropriety while the official is still in government service, and it is long enough to convey to the public that the revolving door for employment and lobbying is slowing down appropriately.

Government officials are currently generally prohibited from negotiating future employment with private interests who are affected by their official actions. I support closing various loopholes in the current prohibition. While the bill restricts the granting of waivers that allow public officials to negotiate future employment in the private sector, I would go farther and eliminate the waivers all together. I cannot envision a situation where negotiating for a private sector position while a government employee would be necessary or desirable or in the public interest.

I agree with the ban on executives who worked for private contractors from awarding contracts to their former employers when they enter government – this is the least that should be done. In addition, the bill should be stronger in preventing government executives from expanding the scope of contracts, influencing the awarding of non-competitive contracts, and regulating their former industries. In recent years, top officials at the Environmental Protection Agency, National Highway Traffic Safety Administration, and the Interior Department have been put in charge of regulating their old clients and firms, and whether such coziness has resulted

in poorer public policy or not, there is an appearance of impropriety that erodes confidence in government and is not in the public interest.

Close Loopholes in the Current Law

The bill closes some important loopholes on the hiring of government procurement officials by companies to whom they awarded contracts. There is currently a one year ban on government procurement officers awarding these contracts, but it is self-enforcing (see 5CRF2625.502). Waivers are too often given automatically by supervisors. The bill makes those waivers much more difficult to give and receive and strengthens the requirement to monitor recusal agreements by the Office of Government Ethics.

Conclusion

I am convinced that the Executive Branch Reform Act of 2007 will help to restore trust and accountability in government through greater transparency and more rigorous enforcement of lobbying and ethics in the executive branch. The bill strengthens the enforcement of existing laws and ethics rules that cover executive branch officials and lobbyists. The bill enhances disclosure and transparency of executive branch lobbying activities and lobbyists. Public awareness of lobbying activities is essential for our

democratic government to function with the support and trust of the American public.

The bill tightens ethics laws in public service and remedies many conflict of interest problems stemming from loopholes in the revolving door in and out of government and from inadequate disclosure and secret improper influence by lobbyists and private parties over public policy making. It might be impossible and maybe even undesirable to "stop" the revolving door – but we can slow it down, and we can bring transparency to the process by broadening the requirements for all executive branch officials and lobbyists to report their lobbying activities. The bill improves the legal framework regulating revolving door activities by tightening its enforcement.

More accountability in lobbying and government actions generally will come by making the activities of lobbyists and federal executives open to pubic scrutiny and by uniformly enforcing existing laws and closing loopholes in those laws. This proposed bill will meet those objectives. In that way the public trust can be reestablished in government generally and, specifically, in the federal executive branch. Good government is a process, not a discrete event. It is essential that the federal executive branch begin the process to reform lobbying as Congress has done. After all, twenty-six

states have revolving door restrictions for executive branch or senior-level government employees. Some states, including California and New Mexico, have a permanent ban on working for private interests on the exact same issues or contracts that the government officer was responsible for while in government. It is time the Federal Government tightened rules for former government employees.

Throughout my testimony, I have recommended ways to make the law even stronger and I hope you will consider going beyond the provisions of the Act and incorporating my suggestions.

Thank you for listening to my testimony today. I would be pleased to answer any questions related to the Executive Branch Reform Act of 2007 and other questions you might have with respect to my testimony at this time or after this hearing.