"[T]he 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."

UNITED STATES v. HARRISS

347 U.S. 612, 74 S.Ct. 808, 98 L.Ed. 989 (1954).

Section 305 of the Federal Regulation of Lobbying Act requires "every person receiving any contributions or expending any money" to influence passage or defeat of congressional legislation to file the name and address of each person who makes a contribution of $500 or more or to whom $10 or more is paid as well as the total of all contributions and expenditures. Section 308 requires "any person who shall engage himself for pay or for any consideration" to influence congressional legislation to register under oath and give the name of employers or clients by whom he is or is to be paid, a full accounting of expenses and expenditures, the legislation with which he is concerned, and citations to any material which he has "caused to be published."

A group of lobbyists were charged with failing to register and to report expenditures. The district judge dismissed the charges on the grounds that the statute was an unconstitutional abridgment of First Amendment freedoms of speech, assembly, and petition. The government appealed.

Mr. Chief Justice **WARREN** delivered the opinion of the Court....

I

The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.

On the other hand, if the general class of offenses to which the statute is directed is plainly within its terms, the statute will not be struck down as vague even though marginal cases could be put where doubts might arise. United States v. Petrillo [1947]. And if this general class of offenses can be made constitutionally definite by a reasonable construction of the statute, this Court is under a duty to give the statute that construction....

... The key section of the Lobbying Act is § 307, entitled "Persons to Whom Applicable"....

> The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be

used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

This section modifies the substantive provisions of the Act, including § 305 and § 308. In other words, unless a "person" falls within the category established by § 307, the disclosure requirements of § 305 and § 308 are inapplicable. Thus coverage under the Act is limited to those persons (except for the specified political committees) who solicit, collect, or receive contributions of money or other thing of value, and then only if the principal purpose of either the persons or the contributions is to aid in the accomplishment of the aims set forth in § 307(a) and (b). In any event, the solicitation, collection, or receipt of money or other thing of value is a prerequisite to coverage under the Act.

The Government urges a much broader construction– namely, that under § 305 a person must report his expenditures to influence legislation even though he does not solicit, collect, or receive contributions as provided in § 307. Such a construction, we believe, would do violence to the title and language of § 307 as well as its legislative history. If the construction urged by the Government is to become law, that is for Congress to accomplish by further legislation.

We now turn to the alleged vagueness of the purposes set forth in § 307(a) and (b). As in United States v. Rumely [1953] which involved the interpretation of similar language, we believe this language should be construed to refer only to " 'lobbying in its commonly accepted sense' "–to direct communication with members of Congress on pending or proposed federal legislation. The legislative history of the Act makes clear that, at the very least, Congress sought disclosure of such direct pressures, exerted by the lobbyist[s] themselves or through their hirelings or through an artificially stimulated letter campaign. It is likewise clear that Congress would have intended the Act to operate on this narrower basis, even if a broader application to organizations seeking to propagandize the general public were not permissible.

There remains for our consideration the meaning of "the principal purpose" and "to be used principally to aid." The legislative history of the Act indicates that the term "principal" was adopted merely to exclude from the scope of § 307 those contributions and persons having only an "incidental" purpose of influencing legislation. Conversely, the "principal purpose" requirement does not exclude a contribution which in substantial part is to be used to influence legislation through direct communication with Congress or a person whose activities in substantial part are directed to influencing legislation through direct communication with Congress. If it were otherwise– if an organization, for example, were exempted because lobbying was only one of its main activities– the Act would in large measure be reduced to a mere exhortation against abuse of the legislative process. In construing the Act narrowly to avoid constitutional doubts, we must also avoid a construction that would seriously impair the effectiveness of the Act in coping with the problem it was designed to alleviate.

To summarize, therefore, there are three prerequisites to coverage under § 307: (1) the "person" must have solicited, collected, or received contributions; (2) one of the main purposes of such "person," or one of the main purposes of such contributions, must have been to influence the passage or defeat of legislation by Congress; (3) the intended method of accomplishing this purpose must have been through direct communication with members of Congress. And since § 307 modifies the substantive provisions of the Act, our construction of § 307 will of necessity also narrow the scope of § 305 and § 308.... Thus § 305 is limited to those persons who are covered by § 307; and when so covered, they must report all contributions and expenditures having the purpose of attempting to influence legislation through direct communication with Congress. Similarly, § 308 is limited to those persons (with the stated exceptions) who are covered by § 307 and who, in addition, engage themselves for pay or for any other valuable consideration for the purpose of attempting to influence legislation through direct communication with Congress. Construed in this way, the Lobbying Act meets the constitutional requirement of definiteness.

II

Thus construed, §§ 305 and 308 also do not violate the freedoms guaranteed by the First Amendment– freedom to speak, publish, and petition the Government.

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. This is the evil which the Lobbying Act was designed to help prevent.

Toward that end, Congress has not sought to prohibit these pressures. It has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose. It wants only to know who is being hired, who is putting up the money and how much. It acted in the same spirit and for a similar purpose in passing the Federal Corrupt Practices Act– to maintain the integrity of the basic governmental process. See Burroughs & Cannon v. United States [1934]....

Reversed.

Mr. Justice **CLARK** took no part in the consideration or decision of this case.

Mr. Justice **DOUGLAS** with whom Mr. Justice **BLACK** concurs, dissenting....

Mr. Justice **JACKSON,** dissenting....

The clearest feature of this case is that it begins with an Act so mischievously vague that the Government charged with its enforcement does not understand it, for some of its important assumptions are rejected by the Court's interpretation. The clearest feature of the Court's

decision is that it leaves the country under an Act which is not much like any Act passed by Congress....

The Act passed by Congress would appear to apply to all persons who (1) solicit or receive funds for the purpose of lobbying, (2) receive and expend funds for the purpose of lobbying, or (3) merely expend funds for the purpose of lobbying. The Court at least eliminates this last category from coverage of the Act, though I should suppose that more serious evils affecting the public interest are to be found in the way lobbyists spend their money than in the ways they obtain it....

Also, Congress enacted a statute to reach the raising and spending of funds for the purpose of influencing congressional action *directly or indirectly*. The Court entirely deletes "indirectly" and narrows "directly" to mean "direct communication with members of Congress." These two constructions leave the Act touching only a part of the practices Congress deemed sinister.

Finally, as if to compensate for its deletions from the Act, the Court expands the phrase "the principal purpose" so that it now refers to any contribution which "in substantial part" is used to influence legislation.

I agree, of course, that we should make liberal interpretations to save legislative Acts, including penal statutes which punish conduct traditionally recognized as morally "wrong." Whoever kidnaps, steals, kills, or commits similar acts of violence upon another is bound to know that he is inviting retribution by society, and many of the statutes which define these long-established crimes are traditionally and perhaps necessarily vague. But we are dealing with a novel offense that has no established bounds and no such moral basis. The criminality of the conduct dealt with here depends entirely upon a purpose to influence legislation....

The First Amendment forbids Congress to abridge the right of the people "to petition the Government for a redress of grievances." If this right is to have an interpretation consistent with that given to other First Amendment rights, it confers a large immunity upon activities of persons, organizations, groups and classes to obtain what they think is due them from government. Of course, their conflicting claims and propaganda are confusing, annoying and at times, no doubt, deceiving and corrupting. But we may not forget that our constitutional system is to allow the greatest freedom of access to Congress, so that the people may press for their selfish interests, with Congress acting as arbiter of their demands and conflicts.

In matters of this nature, it does not seem wise to leave the scope of a criminal Act, close to impinging on the right of petition, dependent upon judicial construction for its limitations. Judicial construction, constitutional or statutory, always is subject to hazards of judicial reconstruction. One may rely on today's narrow interpretation only at his peril, for some later Court may expand the Act to include, in accordance with its terms, what today the Court excludes.... The *ex post facto* provision of our Constitution has not been held to protect the citizen against a retroactive change in decisional law.... As long as this statute stands on the books, its vagueness will be a contingent threat to activities which the Court today rules out, the contingency being a change of views by the Court as hereafter constituted....

Editors' Notes

(1) **Query:** In this case Warren engaged in the same sort of avoidance as did Harlan in Yates v. United States (1957; reprinted above, p. 519) by concealing constitutional interpretation under the guise of statutory interpretation. Why?

(2) "Void for vagueness," often mentioned by the Court in passing, refers to the doctrine that the elementary fairness encompassed in the basic notion of due process of law requires a statute to be sufficiently clear that its terms and its scope may be understood. Thus, for example, the Court could strike down a New Jersey statute that made it a crime to be a "gangster," Lanzetta v. New Jersey (1939), and a New York law forbidding the showing of "sacrilegious" motion pictures, Burstyn v. Wilson (1952). Obviously, the doctrine is related to that of "overbreadth"; see the discussion of that concept in the editors' notes to Gooding v. Wilson (1972; reprinted above, p. 539). See Anthony Amsterdam, "The Void-for-Vagueness Doctrine," 109 *U.Pa.L.Rev.* 67 (1960).

(3) Here and even more so in NAACP v. Button (1963), reprinted next, the Court was very solicitous of a right to lobby, though conscious of the possibility of its misuse. Indeed, the justices practically assumed without discussion that such a right is protected by the First Amendment. It had not always been so. Trist v. Child (1874) invalidated a contract under which Nicholas Trist agreed to give L.M. Child a share of what Child could persuade Congress to pay Trist for his negotiating the Treaty of Guadelupe Hidalgo with Mexico (1848). The Court treated lobbying, even as here where there was no evidence of any effort at bribery, with great moral disdain, noting that:

> If the instances were numerous, open, and tolerated, they would be regarded as measuring the decay of public morals and the degeneracy of the times.... If the agent is truthful, and conceals nothing, all is well. If he uses nefarious means with success, the spring-head and the stream of legislation are polluted. To legalize the traffic of such service, would open a door at which fraud and falsehood would not fail to enter and make themselves felt at every accessible point.