

(Washington D.C.) - Congressman Robert C. “Bobby” Scott, (D-VA-3), spoke on the Floor of the House of Representatives today to promote lobbying reform that is both effective and constitutional. Rep. Scott offered an amendment to the lobbying reform bill that called for a study of the practice of some lobbyists charging percentage contingency fees for obtaining earmarks in appropriations bills. The amendment was adopted by the Judiciary Committee, but unfortunately it was removed by Republicans in the Rules Committee.

Today, more and more lobbyists appear to be entering into contracts that pay the lobbyist a percentage contingency fee or “success fee” for securing earmarks in appropriations bills. A Congressional Research Service memorandum dated September 21, 2000, cites a legal treatise that says, “[these contracts] furnish the strongest incentive to the exertion of corrupting and sinister influences . . . [they are] utterly void as against public policy.” Supreme Court Justice Oliver Wendell Holmes, according to the memorandum, “explained that it was the ‘tendency’ in such contract agreements to provide incentives toward corruption.”

The Supreme Court has questioned the morality of contingency fee contracts for lobbying dating as far back as 1853, stating that “common law . . . will not lend its aid to enforce a contract to do an act . . . which is inconsistent with sound morals or public policy; or which tends to corrupt or contaminate, by improper influences, the integrity of our social or political institutions.”

These contracts are illegal for lobbyists representing foreign governments and illegal in some lobbying activities involving the Executive branch. They are also illegal in lobbying activities in 39 state legislatures. However, such contracts involving Congressional lobbying do not appear to be illegal under federal criminal law.

“These contracts have been found to encourage corruption and so any bill dealing with lobbying activities must consider percentage contingency fees charged by lobbyists. Unfortunately, Republicans on the Rules Committee would not even allow an up-or-down vote on a study of this practice,” Rep. Scott concluded.

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