The American Lobby

The American Lobby:

Evolution without Rules and Its Legacy of Corruption

By

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PREFACE

I didn't set out to be a lobbyist or to teach about it. The idea of writing books about it was a passing fancy. While I was politically engaged in my younger years, it wasn't until my undergrad time that I began to grasp the possibility of entering the dark arena. When I announced to my best friend David Boone that I was considering a lobbying career, he looked at me like I had two heads.

My education as a lobbyist started as an undergraduate during my time at East Carolina University and extends to the present day. I had the great good fortune to find educators, colleagues and friends that brought me to this point. I am thankful for most of them most of the time.

My first assignment when I went to work for AT&T in 1983 was lobbying in the state capitals of Annapolis, Maryland and Dover, Delaware. I learned more about politics at the street level in the first three months than I did in all my undergrad classes in political science, no criticism intended for my college professors. There's just no substitute for the lessons you take from the scrum of a state legislature where the experience brings to life the parchment-dry theories of the academy, and often explodes many basic notions about how the government operates. I was blessed to work with some real pros and discovered much that served me well in the ensuing years. During this time, I was also responsible for representing AT&T with the Washington congressional delegations from those states.

In Washington, I lobbied the Congress and later assumed responsibilities for running AT&T's political action committee (PAC). At that time, AT&T had the largest corporate PAC in America. No surprise, I was amazingly popular with members of Congress looking to tap the company's PAC account. For much of

the time in Washington, I worked on trade issues highlighted by the passage of the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) agreement.

For six years, I lived in Brussels and managed AT&T's lobbying operations for Europe, the Middle East and Africa (EMEA). It was the most testing and enjoyable part of my career, since it dovetailed with my doctoral research on the European Parliament and much of my earlier academic experience. The challenges in building effective advocacy programs in different political and cultural settings were stimulating beyond anything I ever imagined.

As I completed my lobbying career I left with a sharpened sense of what's right and what's wrong with the occupation; the role that lobbying plays in our democracy and in governments around the world. I had developed a tempered appreciation for the well-worn homilies used to defend every-day lobbying. I continue to celebrate the fact that every American interest group is rightfully protected by the First Amendment; that its free speech and assembly safeguards are a shield against tyranny. I also realized that interest groups abuse these protections to justify all manner of shady operations while dodging legitimate efforts to regulate their right to petition the government. I recognize, in addition, that the First Amendment doesn't guarantee equality for interest groups in the advocacy arena– that AT&T and similarly positioned companies can outgun 99 percent of the groups on the field and that they can marshal a flood of resources to overwhelm the institutions of government.

But political reality is more complex than popular portrayals of the lobbyist-lawmaker relationship. Lobbyists and public officials dance a minuet where the lead often changes. Lobbyists are not, as many suggest, puppet-masters pulling the strings of politicians. Both have something to offer the other and there are constant transactions based on rational choice processes.

At the same time, we now see many instances where interest groups dominate some policy arenas through a process of regulatory or legislative capture. Consider the ability of the National Rifle Association to thwart efforts to pass laws limiting the ownership and

use of assault rifles in the US, or the possibility of a Democratic member of Congress adopting a pro-life position.

Personal Thanks

Long departed professors like Dr. Hans Indorf inspired me to go to Washington, work on Capitol Hill and acquire the kind of knowledge it takes to work effectively in the political arena. He was my first and most important mentor. The lessons of his counsel during and after the ECU program in Bonn, Germany inspire me fifty years later. It sometimes seems that my own voice is just an echo of his (without the German accent). It is my hope that the gentle guidance, wisdom and direction of Dr. H.A.I. "Sy" Sugg are reflected in some small measure in the way I manage myself professionally. Later at Notre Dame the insightful counsel of Dr. Ed Goerner, my dissertation director, and Dr. John Roos guided me in positive and productive directions. Roos, in particular, set the congressional hook in me. Fr. Claude Pomerleau provided needed spiritual guidance while expanding my appreciation of Francophone perspectives on Europe.

My time working for Congressman John Brademas and Congresswoman Barbara Mikulski imparted an enduring admiration for Congress and the people that work around it. I continue to be mostly unapologetic in defending the Congress and believe that they don't get enough credit in the shadow of our presidential government and hateful polarization.

While lobbying initially for AT&T in Washington, Delaware and Maryland, I was embraced and guided by managers with decades of experience in the public policy world. Tom Chilcotte, Robert Brown, Jerry Lowrey and a host of others accelerated my political growth. I consider scores of my colleagues at AT&T to be eternal friends. The list could be endless, but Tom Berkelman, Gary Koch and Jim Paxton stand out.

My experience in Brussels left me with treasured friends from those years. Patrice Chazerand, Georg Brodach, Randy Slack and Giulio Senni–all a part of our lobbying operation in Brussels. Ken Lindhorst was an unerring and constant voice of guidance, perception and

reason throughout my assignment. He certainly saved me from myself on a few occasions.

When I moved to the academy at George Washington University's Grad School of Political Management, I intended to stay a short time. But this became a second career, one that included many rewards after I assumed leadership of the Legislative Affairs Program. My greatest satisfaction during these years were the relationships I had with the students. I saw hundreds pass through the Legislative Affairs Program including many classes of Army Fellows. More than a few of my students became recognized leaders in the Washington lobbying community. A few hold elective office. Many thanks to Chris Arterton, the GSPM's founding dean, and a marvelous staff of professionals for their unerring commitment and collegiality. They made it a pleasure to go to work every day. I recruited and managed scores of professors as the head of the Legislative Affairs Program and the Certificate Program in PAC Management. A few deserve particular mention including former Congressmen Bob Carr, Dan Maffei and Martin Frost. Julius Hobson, John Angel, Susan Wiley, Mark Strand, Gus Martinez, Martin Gold, Howard Marlowe, Gene Fisher, Brian Pomper, Don Bates and David Schild were particularly generous in their contribution to the school.

Special thanks to my neighbors, Larry and Greg Guthrie for their insights and guidance while I completed the book and identified a publisher.

I am eternally grateful to Notre Dame for their generous support during my doctoral program and appreciate the chance to serve Our Lady's University since 2005 as a professor in their Washington Semester Program.

None of this would have been possible without the uncompromising love and support of my wife Bea. Her tolerance of the many challenges I subjected her to were more than any person should endure.

If it weren't for my mother, Jane Hengst, I would have never set out on this academic and lobbying journey. She had an uncanny way of

pushing the buttons that got me moving in the right direction in my early life. Who knows where I would have landed without her?

Finally, to Alex my son. He is clearly the best writer in the family and sets an amazingly high bar. He and his fabulous wife Kelsey are a source of unparalleled joy.

INTRODUCTION

THE LONG ARC OF LOBBYING IN AMERICA

". . . the flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper-class accent."
—E.E. Schattschneider

". . . . those who own the country should govern it."
—John Jay

In the spirit of full disclosure . . .

I spent twenty years working as a lobbyist, and I treasure the experience. Most of the time, I lobbied for AT&T, working at the state, national and international levels. I especially appreciate the people in and around the political process–my colleagues, the elected and appointed officials and their staff, journalists, even some of my opponents. As in all of life there were lots of "characters"–interesting and intelligent people–some of the smartest I ever met. Yes, there also were folks that played it too close to the edge, but fewer than one would expect reading current accounts of the arena where lobbyists are portrayed as a band of crooks and swindlers. I attempt to provide a balanced portrayal of the people, events and actions of individuals in the pages that follow. No doubt, some of the depictions will seem harsh, others lenient. All reflect my judgement, including my biases.

America is the lobbying epicenter of the world and it's a big business. Just how big is a matter of some uncertainty.

While spending on lobbying in 2023 at the national level was reported officially over $4.0 billion, it was certainly more than this. The figure published by Opensecrets doesn't include grassroots spending, a critical and costly element in current lobbying practice,

or money disbursed to support the public relations elements of lobbying campaigns. The work of many consultants in the "lobbying complex" doesn't find its way into official reports. The actual amount spent by advocacy groups in the US may be as much as $9 billion annually. Of course, this doesn't include money contributed to election campaigns.

While official registrations with the Clerk of the House of Representatives and the Secretary of the Senate suggest that the lobbying community in Washington numbers about 14,000, reputable analysts suggest that the actual number of people that lobby is over 100,000.

This leads one to wonder, "What's going on?" Why are these figures so wildly different? The contrasts based on official filings referenced above and reality are dramatic. One might assume in this day and age that we could come up with hard numbers from the lobbying arena.

But the differences derive less from shoddy reporting and more from deficiencies in our laws and their interpretation by courts, and regulators along with willful ignorance by our legislators. Our laws fail to capture activity, costs and people that fall under the most basic definition of lobbying, "any attempt to influence public policy." Indeed, as we shall see, the prevailing legal definition of lobbying and its practitioners is much narrower than this. The differences also result from a lack of political will in our institutions to develop and implement a meaningful and effective system of lobbying regulation.

This failure is a legacy of corruption that evolved from earlier days, but which came to full flower during the Gilded Age (from the 1870s to around 1900) and the decades that followed. Throughout this period there were no effective laws to regulate lobbying activity. Interest groups took advantage of the legal vacuum, developing an array of practices and techniques that defined or redefined appropriate advocacy activity. In the absence of guardrails, guidance or barriers, techniques emerged that undermined, and in some instances redefined, notions of fairness, equity and decency. Since then, lobbyists opposed the development of comprehensive regulatory rules, defending practices that emerged in earlier days. For

the most part, Congress failed to act, perpetuating a lawless lobbying regime and betraying our democracy.

The Present State of Affairs

Million dollar-a-year lobbying operations in Washington are passé. In many respects it isn't surprising given the size of the stakes. Google's parent company, Alphabet, spent $14.5 million in 2023. This does not include unreported expenditures on grassroots and public relations, key components of advocacy programs. The company employed 90 lobbyists in Washington to assist in their advocacy program. Google's revenues for 2023 were $306 billion, so their lobbying expenditures, even if some are underreported, were paltry compared to their revenues.

Amazon has over 125 registered lobbyists and spent nearly $19.9 million in 2023. Amazon's revenue for 2023 was over $574.8 billion, making its lobbying operation look puny in the grand scheme of the company's activities.

Qualcomm, a multinational producer of telecom equipment and services spent $7.2 million lobbying in 2023 on 43 lobbyists including a multi-million-dollar contract with Covington and Burling, their A-list lobby-law firm.

The Gila River Indian Community defends its reservation gambling operations via a $2.9 million contract with seven lawyers from Akin Gump, a leading lobby-law firm in Washington.

In the arena of environmental activism, there are 121 organizations registered with the Congress. They had 468 lobbyists. They spent $27.7 million in 2023 Organized labor spent well over $52 million representing over 98 unions in 2023. They employed 414 lobbyists.

Why is so much spent and why do interest groups devote so many resources? The easy answer is that there is so much at stake and the return on investment is significant.

Today and the Legacy

The Washington lobbying world is stable and predictable by most measures. The lobbyists and their targets know their roles. The tools, tactics and methods are understood. Most lobbyists are rigidly defensive of the *status quo*. The laws are intelligible, at least, but observed cavalierly by some and enforced episodically. The mores and folkways are sensible if not always logical. Laws and regulations have tightened intermittently since the mid-20th century, but deficiencies remain. These are a legacy of the dysfunction and lawlessness of earlier times.

The legal and ethical underpinnings of the US lobbying system have been evolving since the earliest days of the Republic. The progress, if you can call it that, has been fitful and lackluster as we tried to establish regulations on the right to petition the government as guaranteed in the First Amendment. The first national law to regulate lobbying wasn't enacted until 1946. Court challenges and congressional disinterest made it meaningless within a decade and left gaping holes in the regulatory regime. Later revisions in the law were commendable but incomplete. Ethics rules requiring financial disclosure for members of Congress were adopted in 1978, but to this day, Congress has not passed a law specifically prohibiting members from owning assets that conflict with their official duties. A broad system of campaign finance regulation was mandated after Watergate. Since then, lobbyists and lawyers have spent their time gutting, revising and regutting the statute. The result of all this is a regulatory system that is more loophole than law.

As troubling as our present circumstances are, it was much worse earlier. The extent to which our current system is lacking can be traced to lobbying practice in previous times.

The period that stretched from the Gilded Age through the administration of Franklin Roosevelt provided several issues that illustrate the consequences of lawlessness in the lobbying sector. In this environment of weak or unenforceable laws, rules and ethical guidance, lobbyists tried any tactic that looked promising. Their methods were often revolutionary and frequently clever, but

sometimes underhanded and disgraceful. Many became essential tools in the lobbyist box of gadgets.

Especially interesting are several individual cases we discovered that examine how interest organizations developed and deployed lobbying techniques in an environment that was nearly free of legal, regulatory or moral constraints.

Consequential Issues

There are six issues examined in this work, covering a broad range of controversies over several decades before and after the turn of the 20th century. The issues have been researched and studied and are generally well-known. A few haven't received much notice in recent years, but in their day, they generated plenty of heat. For each of these issues, we consider the question at hand, the forces at play, and the actions taken by the interest groups. Particular attention is given to some important, and frequently colorful individuals as each case is examined.

Practices developed by interests changed the lobbying environment and impacted policy outcomes. In every instance noteworthy and innovative lobbying methods were prominent elements of their campaigns. Many reemerged later as standard practices; a legacy of earlier times. These are discussed in the concluding comments for each case. Each section closes with an overview of the sources used in compiling the narrative.

The work begins with a consideration of railroad lobbying in the late 19th century. The industry's achievements were considerable, giving the nation a transportation network that united our territory and propelled economic growth. The railroads relied in large part on the support of Congress to finance this growth. Their advocacy methods challenged the presumed roles that public officials play in the consideration and advancement of private interests in Congress. Their lobbyists effectively captured members of Congress and enrolled them as railroad promoters. While they gave us the grandeur of the Transcontinental Railroad, they also gave us the disgrace of the Crédit Mobilier scandal. The legacy of railroad lobbying

techniques includes the effective capture of members of Congress and their congressional staff.

A second case examines a lengthy advocacy campaign devised and executed by King Leopold II of Belgium who sought and secured control of central Africa in the late 19th century. This area of 900 thousand square miles came to be known as the Congo Free State. Leopold's extraction of wealth from the region depended on the enslavement of millions of natives of the Congo region. Torture and murder were commonplace. His long-running international advocacy campaign included decisive intermediate decisions in both Europe and the United States designed to secure political support for his acquisition. The chapter includes an examination of several unique personalities that fought for and against Leopold. It also includes a discussion of global approaches and techniques that were revolutionary in their time and that found their way into common advocacy practice.

Patent medicines were a multi-million-dollar business in earlier times, and until 1906, the US had no system in place to regulate them. The producing companies were completely out of control. Any faker could dream up any concoction, make any claim of remedy or cure, sell their worthless or toxic wares, and reap enormous profits. There were no laws and they had little to worry about since they were effectively defended by their sector's trade group, the Proprietary Association of America. The Proprietary Association's most noteworthy and venal innovation was the "red clause"–a contractual arrangement that blackmailed America's leading publishers into supporting products that addicted, maimed and killed Americans. The legacy of lobbying practices by the patent medicine crowd finds current expression in the tragic continuation of scams run by a new breed of bottom feeders that exploit inadequacies in both the regulatory regime and lobbying laws.

The adoption of the Prohibition Amendment (18th) to the US Constitution was a mighty struggle pitting "wets" against "drys" over many decades. Advocates pressed their case for and against prohibition, developing compelling and controversial approaches

that became standard tactics in later lobbying operations. These included some of America's earliest grassroots and direct mail schemes. The battle also produced provocative and flamboyant individuals, worthy of further examination for the roles they played in advancing innovative approaches to lobbying. Today we see vestiges of lobbying efforts used by the Anti-Saloon League (ASL) in the way interest groups try to connect dollars contributed to campaigns with votes by members of Congress.

One of the first pieces of legislation introduced in the First Congress in 1789 was a tariff measure. It was, in fact, a critical issue for the country at that moment in US history, since it provided revenue for our impoverished national government. It was one of the first pieces of legislation signed into law by President George Washington. Included in the bill were provisions inserted by commercial interests to secure protection in the form of tariffs on goods from foreign manufacturers and suppliers. From this point forward, tariff legislation became a frequent issue looming over Congress. Businesses argued convincingly that our infant industries had to be sheltered from foreign (mostly British) commercial interests. Of course, the British had schooled the Americans on the finer points of protectionism during the colonial era. American commerce got hooked on high tariffs. Their lobbying techniques provided textbook lessons for later advocates.

Passage of the Public Utilities Holding Company Act in 1935 was a critical goal of the Franklin Roosevelt administration. The forces arrayed for and against its adoption were massive; the competition intense and bitter. The utility effort was the largest lobbying campaign seen in Washington until that time. Investigations found that the utilities had anticipated the battle many years earlier when they adopted comprehensive strategic approaches that were well ahead of their time. These included far-reaching schemes of community mobilization. A recent version of a utility tactic, the flooding of Congress with bogus telegrams, continues as an occasional lobbying maneuver today. This issue also saw the emergence of a fully armed White House liaison operation committed to advancing administration policies.

Lawlessness, Chaos and Shenanigans

The contours of the US lobbying environment during the period covered in this study were defined by several critical factors. These narrow the focus for the book while providing a lens to study the issues, the lobbying conducted and their impact on the policy process.

First, lobbyists were unburdened by law, regulation or ethical guidance. The only statutory limits for lobbyists were anti-bribery laws, and their enforcement was a joke. Ethics rules were rarely applied and there were no enforceable restrictions on campaign contributions. Interest groups and their lobbyists were free to try anything that might be effective. In this setting new lobbying techniques emerged unencumbered.

Second, government institutions lacked the capacity to study the merits of policy issues in our growing industrial society. Rank and file members of Congress had little or no staff. House and Senate leaders along with the committees had only a handful of aides, and few of these had professional expertise. Under these conditions, lobbyists were positioned to dominate the decision process, and they frequently did just that.

Third, neither rule nor precedent established effective boundaries between the roles of public officials and lobbyists. It was not unusual for public officials to advocate for interest groups that paid them during their terms of office. Congressional staff, limited as they were, sometimes moonlighted as lobbyists, and interest groups sought out and secured positions for their employees on committees to assist in the legislative enterprise–effectively institutionalizing and legitimizing conflicts of interest.

Fourth, lobbyists often labored under contingency agreements–they only got paid if they won. Since losing doesn't put bread on the table, these deals certainly incentivized great creativity at its best, but unethical and criminal activity at its worst. Although the scope of permissible contingency arrangements was narrowed somewhat in later statutes, these provisions are still legal in Washington.

Fifth, the issues examined in this book were consequential, propelled by obsession, often driven by greed, stirred by popular passion. The players were deeply committed, and the pressures were considerable, stimulating risk-taking and innovation by advocacy groups on both sides of the issue.

In this environment, lobbyists were the alpha players. While many interest groups and informed observers at the time found lobbying to be distasteful, interest groups embraced them nonetheless.

Today's lobbying environment is perhaps more respectable, but that's an easy standard to beat. Our current laws lend an air of legitimacy to lobbying by wrapping the occupation in the constitutional warmth of First Amendment protections. Most parents would, however, be horrified to learn that their kids wanted to be lobbyists.

The cases examined in this work provide some indication of how things have and have not changed over the years. One of the things we find in these essays is that some of today's techniques, celebrated as the "latest and best of inventions," are surprisingly similar to that which we found over a century ago.

Biases and Qualifiers

Lobbying is not a profession, it's an occupation. Unlike doctors, lawyers, accountants and teachers, even barbers and manicurists, there are no regulatory authorities empowered by governments to regulate their work and to punish transgressions of ethical or legal codes. No authority is able to strip a lobbyist of their right to lobby. There is no understood curriculum to become a lobbyist in the same manner as we have for lawyers, doctors and accountants. Anyone can enter the market as a lobbyist and stay there as long as they can find someone to pay them.

Lobbying is a very competitive arena where the former baseball manager Leo Durocher got it right, "winning isn't everything, it's the only thing." The occupation attracts a group of people that are driven and who play it close to the edge when it comes to the rules. Among

contract lobbyists, so-called “hired guns,” there is a robust competition for clients.

Today, there are lots of laws intended to regulate the lobbying industry, but these suffer from significant deficiencies. There are yawning loopholes that permit many to avoid registration and reporting. In the US, grassroots activity is exempt from reporting their operations to the US House and Senate. While there are scores of firms that stimulate citizen interventions with public officials on every imaginable issue, we have no idea how much is spent on these endeavors. Evidence suggests it is considerable. Another loophole exists in the rules that define a lobbyist, only covering those individuals who actually advocate face-to-face and who meet compensation and time commitment thresholds. Accordingly, many “unlobbyists,” individuals with broad political networks and extensive experience, refuse to register, assuming made-up job descriptions to avoid any association with lobbying or advocacy.

While the techniques of lobbying today are surprisingly similar to that which we found a hundred years ago, the legal and regulatory environment is much different. As a practical matter, there were no enforceable rules until late in the 20th century. Before then, lobbyists, wined, dined, bought and bribed. There was no register of lobbyists; no list of who represented what interests or what they got paid; no enforced limitations or prohibitions on lobbyists making campaign contributions. Committee meetings in Congress were often secret affairs and lobbyists operated in the shadows of government. Lobbyists were essentially unconstrained by norms, laws or regulations. It was the Wild West of lobbying.

Lobbying entered the 20th century in a state of lawlessness. There were no ways to temper their excessive inclinations. They could nearly always outgun the Congress and the executive. When we finally tried to regulate lobbying in the mid-20th century, the die had been cast. Lobbyists were strong enough to kill, mitigate or compromise attempts to limit their powers.

Our citizens understand this. Little wonder that our population is so skeptical about lobbying, lobbyists and the role they play in the political arena. This is enduring and disturbing.

CHAPTER ONE

THE STATE OF PLAY TODAY AND WHY IT MATTERS

"No wonder there are bandits in the Campo when there are none but thieves, swindlers and sanguinary macaques to rule us in St Marta."
—Joseph Conrad, Nostromo

"Empires are not built by means of evangelical perfection."
—Charles DeGaulle

Americans take some pride in the fact that every assessment of lobbying regulation around the world places the US near the top of the heap; that our laws are better and our regulatory regime more complete. Certainly, we have extensive regulation and rules for lobbying. Our campaign finance laws mandate reports on much of the money spent in our elections. Conflict of interest regulations yield nifty reports for journalists on the number of millionaires in the Congress and their private sector investments. But the evaluation doesn't mean that our system is perfect. Far from it. We're just suffering from garden variety American chauvinism.

The fact is that the bar for measuring international lobbying regulation is pretty low. Only a handful of countries are committed to effective regulation and the matter is ignored in most. If you examine studies by Freedom House or Transparency International, lobbying regulation worldwide is downright miserable. So, being at the top of the heap is no big deal.

US lobbying regulation is deeply flawed, in fact, a legacy of lobbying practice and techniques that defined the policy process in earlier, lawless times. From the late 19th through the mid-20th century, in particular, our lobbying system developed with no reference to rules or laws. Lobbyists didn't register with any agency of the government.

There was no record of who worked for whom or how much they made. No conflict of interest law was on the books. No campaign finance laws. Our bribery statutes were a comic punchline. There was no accountability for anyone that sought to influence policy.

In the second half of the 20th century Congress tried to carve out a basic regulatory structure for lobbyists. Optimists feel that we are better today than we were in the period of the study. Critics see a continuing dumpster fire. No matter where you come out on the question, the contrast is enlightening, providing a clearer perspective on then, now and the way forward.

When one considers lobbying in earlier times, we see distinctive differences between now and then–that lobbying today is somehow better–cleaner, more ethical, better regulated. There's something very American in this notion; an idea that we are always making progress; moving forward; leaving an imperfect past behind. We suffer for this tendency.

The balance of this chapter provides an overview of current laws regulating lobbying in the US. It includes a summary of our lobbying rules, campaign finance regulations and conflict of interest laws. This is followed by a discussion of major deficiencies, highlighting, in particular, the nexus between yesterday's standards and today's practice.

Lobbying Rules

Parents don't raise their kids to be lobbyists. It doesn't take much imagination to envision the reaction of mom or dad at a holiday dinner when junior announces his/her decision to pursue a career as a lobbyist. After dad chokes on his turkey and mom spews her wine . . . Well, you get the picture.

While a life for their kids on the dark side might horrify parents, lobbying is an attractive occupation for a young person itching to get into the political arena. It is a logical step in their career progression; from issue activist to Capitol Hill staffer to lobbyist. They are lured by the attraction of a rousing life in a vibrant city, the chance to

pursue an issue passion or just to immerse themselves in and around the centers of political power. If you catch the political bug, Washington is the place to be and lobbying is an attractive landing strip.

On top of this, it isn't very hard to get into the business. Lobbying is an occupation, not a profession, so there are no university degree requirements like we have for lawyers, doctors and accountants. No bar associations, or medical societies to police practitioners or to threaten wayward operatives.

Graduate and law degrees are helpful, but the lobbying legion is open to every imaginable specialty and background. Anyone can be a lobbyist as long as they can find someone to pay them.

The demand for politically connected operatives is insatiable, so aspiring influence peddlers know that building a strong network of contacts around Capitol Hill and the administration is a winning ticket.

There's good reason for the tawdry reputation of lobbyists. Given the ease of entry and the upside earning potential, the business has attracted a wide array of characters over the years; an entrepreneurial collection of talented, incisive, forceful activists, promoting every imaginable issue. The population includes a heathy number of rogues, rascals and snake oil peddlers. More unfortunate are the criminals, crooks and felons who have dragged the reputation of lobbyists into the abyss. Every few years we hear another sordid tale of scandal that leaves people shaking their heads. The most recent one was headlined by Jack Abramoff.

Lobbyists have always received special attention in the US. Since they labor under the protection of the First Amendment, they are immune to possible elimination and shielded from restrictions that are too severe. Because of their proximity to the decision process, the lack of transparency for many interactions with officials and the fact that many are paid handsomely to influence decisions, the suspicion of corruption is elevated. These suspicions are validated by our history.

US Lobbying Law-Definitions and Regulations

The present array of rules for lobbyists in the US are broad, covering a range of interactions between lobbyists and public officials. The laws are mostly contained in the Lobbying Disclosure Act (LDA) of 1995 and the Honest Leadership and Open Government Act (HLOGA) of 2007. Both the Congress and the executive branch have regulations for lobbyists based on these laws. Below is a summary of their most prominent provisions. The **Sources** section at the end of this chapter provide connections to more detailed information.

Lobbyists seek "to impact the decisions of public officials." These efforts can be as simple as a letter or a phone call or as complex as a global campaign involving a legion of advocates and a massive media effort. Any individual can qualify as a lobbyist under this broad definition. It aligns with the standard definitions of a lobbyist seen in most academic treatments of interest groups.

The *legal definition* for a lobbyist under US law, however, is much narrower. The law defines a lobbyist in the following manner.

- Someone that makes more than one lobbying contact of a covered official, *and*
- Someone that spends at least 20 percent of their time engaged in lobbying activities over a three-month period, *and*
- An individual or lobbying firm that is paid $3000 or more in compensation over any three-month period representing an organization. For incorporated entities, the expenses threshold for filing is $10,000 in any quarter.

"Contacts" are oral or written communications on substantive matters; "activities" include both contacts as well as support work related to contacts; "covered officials" include members of Congress, congressional staff and executive branch officials.

Once someone starts lobbying in the US, they have 45 days to register with the Clerk of the House of Representatives and the Secretary of the Senate, entering the name the lobbyist, their

employer and their clients. There are more detailed requirements if a foreign entity controls 20 percent or more of the client or employer.

From the date of the registration onward, reports must be filed on a quarterly basis. They must include all the information referenced above along with a list of specific issues lobbied including the identity of specific legislation or executive branch issues. They also must include:

- The names of employees who lobbied
- The houses of Congress lobbied,
- Executive agencies lobbied,
- Foreign entities represented based on the above definitions,
- Statements of expenses and income.

In addition, semiannual reports must be filed that:

- Identify any political committee (Political Action Committee, Leadership PAC or other contribution entity) controlled by the lobbyist of the organization they work for,
- Identify of any candidate who gets a contribution from the above-referenced political committees and the amount of their contribution,
- Certify that the registrant has read and understands the rules of the Congress related to gifts and travel and that they did not knowingly provide travel or a gift that violated the rules of Congress.

Any covered official can demand a lobbyist to reveal the identity of their clients, and whether or not the lobbyist is registered under the provisions of the LDA. All information is publicly available. The LDA includes criminal penalties for violations of the law.

Congress has adopted broad rules against gift-giving by lobbyists. This guidance addresses what had become common practice earlier where lobbyists routinely provided entertainment, travel and dinners for members and staff. Before passage of the Honest Leadership and Open Government Act the exchanges became excessive, sometimes

involving extravagant expenditures raising suspicions about inappropriate influence or vote buying. In what many describe as an overreaction to the scandals, Congress adopted rules that limited allowable gifts to trinkets, baseball caps and T-shirts. The rules predictably included scores of exceptions that permit creative lobbyists to entertain under narrower circumstances.

The House and the Senate have established policies to prevent retired members from lobbying immediately after their departure from Congress, "spinning through the revolving door." Members of the House are prohibited from lobbying for one year after leaving office; Senators have to wait two years. Some senior staffers and former executive branch officials face restrictions after their official service.

In some respects, lobbyists are treated as a "suspect class," subject to restrictions in their interactions with officials that do not apply to regular citizens.

Registered lobbyists are prohibited, for instance, from arranging travel for covered officials. In addition, lobbyists may not travel in the company of any covered official on a visit to a facility or location represented by the lobbyist. These practices had become routine for many well-heeled organizations where lobbyists would arrange trips to company headquarters, conveniently located near top-notch golf courses, that were visited in conjunction with a facility visit. While on the plane, the lobbyist had a captive audience. Of course, any non-lobbyist could make these arrangements and travel with the official.

Campaign Finance

"Member of Congress are single-minded seekers of re-election." While the context of Congress has changed, this often-cited quote from David Mayhew is as true today as it was when he wrote it in the early 1970s. This particular fixation among members creates a special relationship between them and the lobbying community which supplies a healthy portion of their campaign cash.

People that run for office are passionate, aggressive and goal-oriented–people that work for endless hours while electioneering,

people that sacrifice their personal lives as they campaign, and yes, people that beg for money from perfect strangers to fill their campaign treasury. While there are exceptions that prove the rule, there is a solid relationship between the amount of money raised by candidates and their likelihood of election day victory. Every candidate knows this and many lobbyists embrace the notion. Many use this single principle to guide all or most of their advocacy programs.

The popular impression is that lobbyists are buying votes when they make contributions. As appealing as this notion seems to reformers, journalists, and misdirected lobbyists, it doesn't really work that way. In large part, lobbyists give money to candidates that have a history of support for their issues. They all hope, of course, that their contributions have an impact, but a $1000 check doesn't mean much in a $10 million campaign.

Before Watergate and passage of amendments to the Federal Election Campaign Act (FECA) in the 70s, the only restrictions on campaign contributions were found in the Corrupt Practices Act which passed in 1910. It was never a serious piece of legislation in its original form, since it was fashioned to limit only contributions by the national party organizations and failed to address contributions that went directly from interest groups to candidates. A 1925 amendment to the law actually sets limits on the amount a candidate could spend in a race and required them to report any contributions in excess of $100. Predictably, Congress never established mechanisms for reporting and regulation and the law was never enforced.

The FECA and its several amendments in the 1970s focused on limiting corruption and the appearance of corruption. Broadly speaking, it narrowed the sources and size of contributions to campaigns and mandated full disclosure of contributions and expenditures by campaigns and contributing committees. The FECA created a regulatory body, the Federal Election Commission (FEC), to develop and administer rules for contributors and candidates. One of the early FECA amendments tried to limit expenditures by

campaigns, but this provision fell victim to a court challenge grounded in First Amendment free speech arguments.

Unfortunately, the FECA left exploitable loopholes, and these grew in the 1990s. Like all loopholes in the campaign finance arena, lawyers and their candidate clients found they could abuse these weaknesses in the law.

Congress responded eventually with passage of the Bipartisan Campaign Reform Act (BCRA) in 2002. It focused on two specific issues. First, it addressed the infusion of unlimited contributions made by private interests to political parties. These *soft money* contributions came from incorporated entities that were banned otherwise from making contributions directly to candidate campaigns under the FECA. But a nimble regulatory maneuver opened the gates for interest groups in the early 1990s. This decision allowed circumvention of the old prohibition against contributions from incorporated entities and permitted groups to funnel money through political parties that then spent the money to support specific candidates. BCRA banned these contributions. This prohibition is still in place, although interest groups have found ways to inject soft dollars into the arena through non-party sources. The fallout is discussed later.

A second target of BCRA also fell short of its mark following court challenges. Issue advocacy, advertisements that asked voters to contact candidates on controversial issues, were banned in the statute. Even though these ads did not ask citizens to vote for or against candidates, Congress decided that the ads impacted a voter's inclination to vote for or against a candidate, and that these needed to be included in regulated contribution activity. Corporations had become particularly adept at using issue ads to impact elections. BCRA banned use of these issue ads 60 days prior to a general election and 30 days before a primary election. This provision was overturned in the *Citizen's United* decision in 2010.

Other regulatory and court decisions plundered the balance of the campaign finance regime before and after *Citizen's United*. A few of the original principles, however, remained intact.

- There is a general commitment to transparency in campaign finance rules. All contributions to campaigns over $200 in aggregate must be reported by the campaign.
- The identity and employer of the contributor must be provided.
- Direct contributions to campaigns by incorporated entities are prohibited.
- The amount of contributions given directly to candidate committees is limited. These include contributions by individuals, political action committees and most parties.
- The limit on PAC receipts to candidates has remained the same since the passage of the FECA in the 70s, $5000 per election.

Since the passage of BCRA in 2002, a movement has emerged that is committed to wiping out limits on contributions to political campaigns. In large part, this group argues that restrictions on individuals and corporations violate their free speech rights. This was the basic argument in the *Citizen's United* case and became the basis for an FEC decision known as *Speechnow* allowing PACs to make unlimited independent expenditures in support of candidates as long as those contributions were not made directly to or in coordination with a candidate committee.

A number of additional changes to the campaign finance law have occurred since 2002.

- Non-connected PACs, those not affiliated with a corporation or union, are permitted to accept unlimited contributions from individuals and corporations and can use these contributions to make unlimited contributions in support of candidates.
- Contribution limits for individuals are indexed to account for inflation. These are raised ever election cycle; $3,300 for the 2023-2024 election cycle.
- Super PACs are able to make unlimited contributions and now play a significant and growing role in financing campaigns.
- Non-profit 501(C)4 PACs have emerged as important players. These PACs are permitted to keep the names of their contributors anonymous based on regulations in that section of the Internal Revenue Service (IRS) code. This undermines