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Why the Honest Leadership and Open Government Act of 2007 Falls Short, and How It Could Be Improved

Rand Robins

This paper will analyze the nexus between the regulation of lobbying activities and campaign finance, in particular the foggy and perhaps dubious realm of the lobbyist's role in campaign finance.¹ Legislative lobbying and campaign finance are policed at the federal level by the amended Lobbying Disclosure Act² ("LDA") and Federal Election Campaign Act,³ respectively. The Supreme Court has recognized that each of these activities implicates analogous First Amendment issues, namely, the right to petition the government, the freedom of speech, and the freedom of association, but has afforded more deference to campaign finance laws while subjecting lobbying regulation to more searching review.⁴ Apart from federal regulation that has generally addressed lobbying and campaign finance separately,⁵ some states have adopted creative and unique laws aimed primarily at the interaction of lobbying and campaign finance.⁶

Congress recently took its first step toward legislative recognition of the potentially corrupting interplay between these constitutionally protected activities when it passed the Honest

¹ See Richard Briffault, *Lobbying and Campaign Finance: Separate and Together*, 19 STAN. L. & POL'Y REV. 105, 107 (2008) ("When they occur together, lobbying and campaign contributions can compound the dangers of undue influence that each practice presents separately.").

² Lobbying Disclosure Act of 1995, Pub. L. No. 104-65, 109 Stat. 691 (codified at 2 U.S.C.A. §§ 1601-1612 (2008)), amended by Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81, 121 Stat. 735.

³ Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified as amended at 2 U.S.C.A. §§ 431-41 (2008)).

⁴ See *Buckley v. Valeo*, 424 U.S. 1, 14-15 (1976) (holding that campaign finance restrictions implicate the most fundamental First Amendment activities of freedom of speech and association); *United States v. Harriss*, 347 U.S. 612, 627 (1954) (holding that First Amendment freedoms are involved in the assessment of lobbying regulation).

⁵ See Briffault, *supra* note 1, at 119-20.

⁶ See, e.g., MICH. COMP. LAWS § 169.226 (2007) (requiring the reporting and disclosure of all bundled contributions, without specifically targeting lobbyists); MINN. STAT. § 10A.27 (2007) (capping the fraction of total contributions a candidate can receive from a category of donors comprised of lobbyists, PACs, political funds, and large contributors).

Leadership and Open Government Act of 2007 (“HLOGA”),⁷ which amended the LDA in the wake of high-profile lobbying scandals.⁸ The major issue with respect to these activities that has yet to be fully accounted for in federal law is that lobbyists active in campaign finance are in a position to exert undue influence on elected officials above and beyond influence exerted through each activity separately. Because lawmakers already turn to lobbyists on a regular basis for substantive guidance on complex legislation, those lobbyists who contribute large sums to political campaigns can potentially unbalance the democratic process to an extent that justifies substantial limitations on activities that are protected by the First Amendment.

This paper will examine the track record of federal and state lobbying and campaign finance laws, as well as related First Amendment litigation, and propose alternative regulatory regimes accounting for the concerns raised when lobbying and campaign finance intersect. The scope of this paper will be limited in large measure by focusing on the HLOGA registration and disclosure provisions, and addressing campaign finance law tangentially where appropriate.⁹ Intended to bring greater transparency to the inner-workings of government, some of these provisions actually facilitate the potential of a small number of lobbyists to distort the political process.¹⁰

Part I of this paper will provide an overview of the HLOGA and subsequent commentary on the amendments. Part II will discuss some the concerns raised by the combination of

⁷ See Briffault, *supra* note 1, at 119-20 (noting that a “signal feature of the 2007 federal lobbying law is the requirement that federal candidate campaign committees, political party committees, and leadership PACs disclose” bundled contributions from federally-registered lobbyists in excess of \$15,000 in a six-month period).

⁸ See H.R. REP. NO. 110-161(I), at 9 (2007) [hereinafter House Report] (“[The LDA’s] shortcomings were highlighted during the 109th Congress by the conviction of a high-profile lobbyist, as well as a number of highly publicized incidents” involving gifts to government officials “in exchange for favorable treatment for clients with specific interests before the Government.”).

⁹ For an overview that informed the discussion of campaign finance laws in this paper, see Audra L. Wassom, *Campaign Finance Legislation: McCain-Feingold/Shays-Meehan – The Political Equality Rationale and Beyond*, 55 S.M.U. L. REV. 1781 (2002).

¹⁰ See *infra*, note 95. 6% of federally registered lobbyists accounted for 83% of all lobbyists’ campaign contributions.

lobbying and campaign finance activity. In Part III, this paper will look at some innovative approaches to the problem adopted by state legislatures and suggest changes to the federal regime that would guard against improper influence on the democratic process without undue infringement on First Amendment rights. Part IV concludes that more effective requirements are needed to promote transparency and public faith in the legislative process.

Part I: The Federal Approach

Registration Requirements

The federal government's primary means of regulating lobbyist conduct is to require that lobbyists disclose their contact information, their clients' information, and, to the maximum extent practicable, the specific bill numbers and executive branch actions on which they lobbied.¹¹ The HLOGA requires individuals and their employers to register with the House Clerk and Senate Secretary within forty-five days of making his or her first "lobbying contact," unless the individual or firm earns less than \$2,500 from, or spends less than \$10,000 on, "lobbying activities"¹² in a given four-month period.¹³

A "lobbying contact" means any oral or written communication to a covered executive or legislative branch official,¹⁴ made on behalf of a client with regard to the "formulation, modification, or adoption" of federal legislation, regulation, or the administration of a federal program or policy, including the negotiation and awarding of federal contracts.¹⁵ Public

¹¹ Briffault, *supra* note 1, at 112.

¹² "[L]obbying activities" means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others." 2 U.S.C.A. § 1602(7).

¹³ 2 U.S.C.A. § 1603(a).

¹⁴ 2 U.S.C.A. § 1602(3)-(4) defines "Covered executive or legislative branch official," which covers the President and Vice-President, Members of Congress, their staffs, policy advisors, as well as any member of the uniformed services at or above a certain pay grade.

¹⁵ 2 U.S.C.A. § 1602(8)(A).

speeches and articles, requests for meetings or the status of an action, testimony to government bodies included in the public record, information provided in response to a request by a covered official for specific information, statements submitted during public comment periods, and statements by tax-exempt religious organizations are not “lobbying contacts.”¹⁶

The registration filing must state contact information for the lobbyist, the client, and any entity other than the client that contributes more than \$5,000 per quarter to fund lobbying activities or actively participates in planning or managing lobbying activities.¹⁷ If other contributing organizations are listed on the client’s publicly accessible Web site as contributors, their disclosure is not required.¹⁸ Disclosure of any information about individuals who are members of, or contribute to, a client or an organization that contributes to a client is explicitly exempted. Additionally, the filing must state the general issue areas and, to the extent practicable, the specific issues on which the registrant expects to engage in lobbying.¹⁹ Finally, the filing must indicate whether any employees of the registrant worked as a covered executive or legislative branch official in the twenty-year period leading up to that filing.²⁰

Quarterly Reports

Registration is only the first step of the disclosure process. Each registrant must file a quarterly lobbying activity report with the House Clerk and Senate Secretary.²¹ Most notably, quarterly reports must (1) include a list of the specific issues on which the registrant engaged in lobbying activities and, “to the maximum extent practicable,” a list of bill numbers and

¹⁶ § 1602(8)(B).

¹⁷ 2 U.S.C.A. § 1603(b).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ § 1603(b)(6).

²¹ 2 U.S.C.A. § 1604.

references to executive branch actions; (2) indicate which chamber of Congress or agency was contacted; (3) include a good faith estimate of lobbying-related earnings and expenditures; and (4) identify any State or local governments on whose behalf the registrant lobbied.²²

Fundraising Disclosure

One area in which lobbying and campaign finance regulations overlap under the HLOGA is in their treatment of “bundled” contributions. “Bundling” occurs when an entity, either an individual or an organization, on its own initiative, receives numerous campaign contributions and then delivers the collective sum, which often far exceeds campaign contribution limits on individuals, to a candidate on the donors’ behalf.²³ The intended result is that the delivering lobbyist will earn “credit” from the candidate for the large donation.²⁴ Those making “bundled” contributions must file a report with the Federal Election Commission within thirty days of the transfer of money to the candidate.²⁵ The recipient candidate must identify the bundler with each contribution received on his or her campaign reports.²⁶ Under the HLOGA amendments, leadership PACs and party committees must report additional information about bundled contributions over \$15,000 provided by a registered federal lobbyist during a reporting period if that lobbyist delivers two or more bundled contributions.²⁷

²² § 1604(b).

²³ See Chip Nielsen & Jason D. Kaune, *Corporate Political Activities 2008: Complying with Campaign Finance, Lobbying & Ethics Laws*, 1689 PLI/Corp 13, 38, Sept. 11-12, 2008.

²⁴ See HLOGA, Pub. L. No. 110-81, § 204(8).

²⁵ See Nielsen & Kaune, *supra* note 23, at 38.

²⁶ *Id.*

²⁷ See 2 U.S.C.A. § 434(i).

Policy Rationale

Public disclosure of lobbying information can work as “a powerful disinfectant” against rule breaking and shortcutting the formal policy-making process.²⁸ Disclosing the identities of lobbyists benefits several distinct groups, the first of which is lawmakers and government officials dealing with an increasingly complex and nuanced array of issues.²⁹ Lobbyists provide focused expertise and analysis that help public officials make informed decisions and often bridge the gaps in divided and gridlocked government.³⁰ Moreover, information available from disclosure reports can shed light on the motivation, extent, and nature of lobbying activities to enterprising lawmakers and their staffs.³¹

Of primary importance to the Supreme Court in considering a First Amendment challenge to the LDA’s predecessor was that disclosure benefits lawmakers themselves.³² In *United States v. Harriss*, the Court explained that “[p]resent-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected,” and that disclosure allows lawmakers “to know who is being hired, who is putting up the money, and how much” with regard to lobbyists’ overtures.³³

Advocacy by lobbyists and information about the extent and nature of their activities helps lawmakers engage in a fact-finding process, much like a judge or jury would assess the

²⁸ See Nicolas W. Allard, *Lobbying Is An Honorable Profession: The Right to Petition and the Competition to be Right*, 19 STAN. L. & POL’Y REV. 23, 29 (2008). Mr. Allard is a partner co-chairing the Public Policy and Administrative Law Department at Patton Boggs LLP, a firm recognized by the *Washington Post* as the most powerful lobbying firm in Washington, DC. See Jeffrey H. Birnbaum, *Lobbying Is Lucrative. Sometimes Very, Very Lucrative*, WASH. POST, Mar. 27, 2007, at A11.

²⁹ See Briffault, *supra* note 1, at 116-117.

³⁰ See Allard, *supra* note 28, at 42.

³¹ See Briffault, *supra* note 1, at 119 (“[D]isclosure is particularly valuable in the lobbying context because it gives legislators a greater understanding of the pressures to which they are subject.”). This argument is of questionable validity. If lawmakers and their staffs are so pinched for time that they rely on lobbyists for substantive information, it is highly unlikely that they have the time or motivation to sift through the mountain of data contained in disclosure reports to perform some sort of background check on the lobbyists walking them through the legislative process.

³² *Harriss*, *supra* note 4, at 625.

³³ *Id.*

credibility of a witness based not only on the witness' direct examination, but also on his responses under cross examination, and perhaps his criminal or financial record, or even his demeanor on the stand. As Senator Hubert Humphrey explained, "the right to be heard does not automatically include the right to be taken seriously."³⁴ The most effective, and often the best compensated lobbyists work hard to establish and maintain their credibility with lawmakers, just as a trial lawyer would with a judge.³⁵

The second distinct facet of society benefited by disclosure is the universe of interest groups and organizations driving the boom in the practice of lobbying.³⁶ Some commentators consider information conferred through disclosure laws to be the most valuable to competing interest groups themselves, as opposed to lawmakers or the public at large.³⁷ They argue that groups will "step up their own lobbying efforts to match those of their competitors,"³⁸ a practice that would, without disclosure laws, constitute little more than guesswork. When complied with and enforced, lobbying disclosure laws "can promote the goal of fair competition among interest groups in the 'familiar Madisonian fashion of allowing factions to check factions in the service of the public good.'"³⁹

³⁴ Allard, *supra* note 28, at 32 (quoting SILENCING THE OPPOSITION: GOVERNMENT STRATEGIES OF SUPPRESSION OF FREEDOM OF EXPRESSION 194-95 (Craig R. Smith ed., 1996)).

³⁵ See W. Laird Stabler, III, *From Private Practice to Private Practice (The Governmental Roundtrip)*, 17 DELAWARE LAW. 15, 17, Fall, 1999 ("Thus, while being an advocate, a lobbyist must always remember that the statements he or she makes concerning legislative initiatives must be accurate or the lobbyist will lose credibility. A lack of credibility is certain to destroy a good working relationship with the members of the General Assembly, as it would with a Judge."); Allard, *supra* note 28, at 46 ("In reality, successful advocacy ultimately depends on the lobbyist's ability to explain how a given position advances the public interest, to respond to counter arguments advanced by persuasive and skillful advocates, and to do so credibly, consistently, and concisely.").

³⁶ Briffault, *supra* note 1, at 117.

³⁷ *Id.*

³⁸ *Id.* (quoting Anita S. Krishnakumar, *Towards a Madisonian, Interest-Group Based Approach to Lobbying Regulation*, 58 ALA. L. REV. 513, 542 (2007)).

³⁹ *Id.* Another commentator asserts that, "[i]f, in drafting the Constitution, James Madison had consciously sought to create a governmental system that would encourage – indeed dictate – that lobbying would become central to policymaking, he could scarcely have done a better job." Burdett A. Loomis, *From the Framing to the Fifties: Lobbying in Constitutional and Historical Contexts*, EXTENSIONS, Fall 2006, at 1 (2006).

Another commentator argues that the HLOGA had one major unintended consequence. Contrary to free market theory, the LDA's new rules "have not dampened the demand and need for lobbyists. Instead, greater regulation has actually coincided with a sharp increase in professional lobbying."⁴⁰ The commentator goes on to attribute to the new lobbying rules, enhanced enforcement, and stricter penalties the transformation of lobbying from "what was once a cottage industry of government ethics and lobbying training" into "a booming practice area for Washington law firms."⁴¹

Finally, the general public benefits from lobbying disclosure. For the private citizen, to know who really has the ear of one's representative is relevant and valuable information, and the First Amendment principle of uninhibited, robust, and wide-open debate is advanced by requiring disclosure of these activities.⁴² This information can enhance public understanding of how government works, educate as to what factors influence government decisions, and provide an awareness of which groups are engaged in influencing particular policies and which policies are being pushed.⁴³

HLOGA's Weaknesses⁴⁴

Although some disclosure is better than none, pointed criticism can be leveled on the LDA for its failure to require more precise information regarding bills or agency actions that are

⁴⁰ Allard, *supra* note 28, at 24. Ironically enough, Mr. Allard points out that one critical function performed by lobbyists is to clue in lawmakers to the unintended consequences of proposed legislation. He observes that "[i]t is sometimes the case that without input from the erstwhile 'beneficiary' of a new law or regulation, the provision would produce unwelcome results." *Id.* at 43. However, it is possible that lobbying activities have not spiked in recent years. Rather, it could be that legislative advocates did not consider themselves lobbyists until the HLOGA informed them as such.

⁴¹ *Id.* at 24.

⁴² See Briffault, *supra* note 1, at 118-19.

⁴³ *Id.*

⁴⁴ It is worth noting that weaknesses should probably be anticipated in a bill intended to regulate those who crafted it.

the focus of lobbying efforts, the specific lawmakers or agency officials contacted, and the financial supporters of these advocacy campaigns beyond the actual client.⁴⁵ Moreover, enforcement of the regulations has yet to gather steam. The LDA requires the Secretary of the Senate and the Clerk of the House to refer cases of noncompliance with the reporting and disclosure requirements to the U.S. Attorney for the District of Columbia for enforcement.⁴⁶ However, the number of infractions actually investigated by the Secretary or the Clerk is dramatically outpaced by the extent of noncompliance.⁴⁷ It is unclear whether enforcement actions are being effectively pursued by the Justice Department,⁴⁸ because not until the LDA's 2007 amendments was there a requirement in place for the Attorney General to report regularly on the status of enforcement proceedings.⁴⁹

One especially poorly drafted provision is the requirement that quarterly reports disclose merely what chamber of Congress or executive agency was the subject of lobbying activities, providing little or no valuable insight to lawmakers, interest groups, or the general public.⁵⁰ Moreover, while not providing useful data, the LDA's duplicative registration filings and quarterly reports impose a substantial administrative and financial burden on lobbyists and their employers. Combine a requirement for producing arguably useless data with a requirement to produce it four times a year, and the result is a mountain of paper that would frighten even a seasoned investigative reporter with a powerful computer.

Although interest groups with resources to analyze this data are able to glean useful insight into the activities of their competitors, the goal of the HLOGA was not to enhance and

⁴⁵ *Id.* at 115.

⁴⁶ *See* 2 U.S.C.A. § 1605(a).

⁴⁷ *See* House Report, *supra* note 8, at 10.

⁴⁸ *Id.*

⁴⁹ *See* 2 U.S.C.A. § 1605(b).

⁵⁰ *See* 2 U.S.C.A. § 1604(b).

facilitate more lobbying efforts, but “to provide greater transparency in the legislative process,”⁵¹ and instill confidence in the political process. One commentator asserts that the voter information benefit of disclosure is almost surely overstated because the “effectiveness of disclosure relies, in significant part, on the media’s interest in examining the available information and presenting it to the public in useful form before the election.”⁵² Absent such a labor-intensive endeavor by the media, private citizens stand to gain little from the registration and disclosure requirements enacted in the HLOGA.

For disclosure laws to be effective in promoting transparency, they must provide facts that people want to see in times, places, and ways that enable them to act on that information.⁵³ Disclosure is least likely to influence the behavior of those required to disclose or those employing information disclosed when users face a limited set of choices and so could not act on new information.⁵⁴ Disclosure laws – particularly highly-publicized laws like HLOGA – may have the perverse effect of hiding from elected officials the voters’ views on their campaign finance sources.⁵⁵

Furthermore, and perhaps most significantly, in situations where the identifiable lobbying client is essentially a front for undisclosed organizations – a “stealth coalition” – requiring the disclosure of the client without more information as to its financial backers does little more than supply a starting point for ambitious watchdog groups. Section 207 of the HLOGA sought to “close a loophole that has allowed so-called ‘stealth coalitions,’ often with innocuous-sounding

⁵¹ See Pub. L. No. 110-81 (2007).

⁵² Briffault, *supra* note 1, at 115-16.

⁵³ See Briffault, *supra* note 1, at 116 (citing ARCHON FUNG, MARY GRAHAM & DAVID WEIL, FULL DISCLOSURE: THE PERILS AND PROMISE OF TRANSPARENCY, at xiv (2007)).

⁵⁴ *Id.*

⁵⁵ *Id.*

names, to operate without identifying the interests engaged in lobbying activities.”⁵⁶ However, unless a coalition member contributes more than \$5,000 to the registered lobbyists or client, or “actively participates in the planning, supervision, or control” of the coalition’s lobbying activities, disclosure of such members is not required.⁵⁷

In a recently decided case, the National Association of Manufacturers (“NAM”) challenged HLOGA section 207 as unconstitutional both facially and as-applied to the NAM.⁵⁸ The NAM argues on its Web site that “[t]he provision was nominally targeted at ‘stealth coalitions,’ whatever they are, but missed that mark and hit legitimate, long-standing and well-known organizations like the NAM that have corporate members.”⁵⁹ The NAM claimed that if it were “forced to disclose certain of its member organizations, those members will suffer retaliation in the form of boycotts and other action against them.”⁶⁰ In rejecting this argument, the court noted that despite the fact that the NAM’s publicly available Web site already discloses more than 250 of its more than 11,000 member organizations, there was no evidence of past incidents suggesting that affiliation with the group leads to the substantial risk of threats, harassment, or reprisals from government officials or private parties.⁶¹ Furthermore, the section exempts from disclosure “any information about individuals who are members of, or donors to, an entity treated as a client.”⁶² This exception opens the door for like-minded but unaffiliated

⁵⁶ See *Nat’l Assoc. Mfrs. v. Taylor*, 549 F. Supp. 2d 68, 73-74 (D.D.C. 2008) (denying association’s motion for declaratory and injunctive relief as to 2 U.S.C.A. § 1603(b)) (quoting 153 Cong. Rec. S10709 (daily ed. Aug. 2, 2007) (statement of Sens. Feinstein, Lieberman, and Reid)).

⁵⁷ See 2 U.S.C.A. § 1603(b).

⁵⁸ See *NAM v. Taylor*, *supra* note 56.

⁵⁹ For the NAM’s interpretation of the new regulations, see *Nat’l Ass’n of Mfrs., National Association of Manufacturers v. Taylor* (U.S. District Court for the District of Columbia 2008) -- Issue Advocacy (2009), http://beagle.nam.org/results.asp?frm_Parties=Taylor&frm_Topics=Issue+Advocacy&frm_Jurisdiction=Any&frm_ExcludeSCCases=No&frm_NAMInvolvement=Any&frm_YearDecided=Any&frm_SearchType=MultiCriteria&Submit=Find.

⁶⁰ *NAM*, *supra* note 56, at 75.

⁶¹ *Id.*

⁶² § 1603(b)(3)(B).

entities to create virtually unaccountable shell organizations with which they shield their lobbying and campaign finance activities from public scrutiny.

In its argument challenging the constitutionality of HLOGA section 207, the NAM ironically highlights the weaknesses of the new disclosure requirements. The association argues that section 207

is both over-inclusive, in that it requires reporting by organizations that are by their nature not “stealth coalitions,” and under-inclusive, in that it exempts coalitions that do not hire their own lobbyists or that are funded by individual rather than corporate contributions. It is also extremely vague, and requires the expenditure of considerable resources to try to determine what it means and how to monitor the myriad member company activities that might be considered “active participation” in lobbying activities. Lobbying organizations may comply simply by listing all their members, including ones that do not meet the \$5,000 and active-participation tests, resulting in information to the public that is not responsive to the purported need to scrutinize “stealth coalitions.”⁶³

As the NAM points out, HLOGA has two loopholes through which coalitions seeking to influence public policy might slip.⁶⁴ The more important one is the exception to the required disclosure of individual members or donors. This provision essentially codifies Supreme Court holdings and dicta from civil rights-era cases that addressed as-applied First Amendment challenges to disclosure laws.⁶⁵ Although grounded on Supreme Court jurisprudence, this exemption arguably extends a protection intended to preserve the viability of oppressed minority political parties to organizations that are not historically “the object of harassment by

⁶³ See NAM Interpretation, *supra* note 59.

⁶⁴ § 1603(b)(3)(B).

⁶⁵ See, e.g., *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 88, 103 (1982) (holding Ohio disclosure requirements unconstitutional as applied to “a minor political party which historically has been the object of harassment by government officials and private parties”); *Buckley*, 424 U.S., at 74 (exempting minor parties from disclosure requirements if they can show “a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties”); *NAACP v. Alabama*, 357 U.S. 449 (1958) (holding that a court order compelling the production of the names and addresses of the Association’s Alabama membership violated due process protections because compliance would have imposed a substantial restraint on members’ right to freedom of association).

government officials and private parties.”⁶⁶ Absent a showing of “a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties,”⁶⁷ organizations do not need Congress to erect statutory barriers to transparent and honest governance in the name of privacy that the First Amendment already protects. Section 1603(b)(3)(B) works to obfuscate what is arguably an area where more disclosure – not less – would serve the public interest. Congress should avoid codifying case law addressing as-applied challenges to disclosure laws because such rulings are fact-specific,⁶⁸ and as black letter law are vulnerable to abuse in circumstances bearing no resemblance with the cases on which the legislation is based. In the NAM’s case, the real question is why is the association so reluctant to disclose its member organizations? Building on this question, why should not all such coalitions be required to disclose their membership?

The argument that revealing the identities of lobbyists, their clients, and supporting organizations and individuals potentially chills expression of dissident or unpopular views should not apply when the actions of elected representatives are so heavily influenced –

⁶⁶ *Socialist Workers*, *supra* note 65.

⁶⁷ *Buckley*, *supra* note 4, at 74.

⁶⁸ *See, e.g., NAACP*, *supra* note 65, where the Alabama Attorney General sued to enjoin the NAACP from conducting further business in, and to oust the NAACP from, the State of Alabama. Contrary to Alabama law requiring any foreign corporation to file its charter with the Secretary of State, the NAACP had never complied with the qualification statute because it considered itself exempt.

The suit alleged, *inter alia*, that the NAACP had recruited members and solicited contributions within the State, had given financial support and furnished legal assistance to black students seeking admission to the state university, and had supported a black boycott of the bus lines in Montgomery to compel the seating of passengers without regard to race. By continuing to operate in Alabama, the NAACP was “causing irreparable injury to the property and civil rights of the residents and citizens of the State of Alabama for which criminal prosecution and civil actions at law afford no adequate relief.” The court issued an *ex parte* order restraining the NAACP from operating within the state and forbidding it from taking any steps to qualifying itself to do business in Alabama. 357 U.S. 449, 452-53.

Under circumstances such as these, it is regrettable that court intervention was required to establish that state-compelled disclosure of membership or donor identities would violate the First Amendment freedom of association. However, by codifying this exception to disclosure requirements, Congress overshot the mark in an attempt to preclude such an unconscionable case from arising in the future.

improperly or not – by advocates ethically and legally bound to zealously represent the interests of their clients.⁶⁹ Anonymity can protect “the principle that debate on public issues should be uninhibited, robust, and wide-open.”⁷⁰ But when lawmakers constantly rely on lobbyists to inform substantive decisions, as they often do,⁷¹ the rationale for protecting anonymity to promote an open and uninhibited exchange of ideas is turned on its head. Lifting the curtain on lobbyists, whom they lobby, and for what purpose, serves to protect and foster – not undermine – the underlying First Amendment principle that “valuable public debate – as well as other civic behavior – must be informed.”⁷²

Although there are legitimate weaknesses in the LDA, at least one commentator argues that intense competition “to be right” is “perhaps the most effective self-correcting mechanism in the policy process.”⁷³ Given that the number of registered lobbyists in Washington has doubled in the last decade, each one must work twice as hard at zealously advocating his client’s positions.⁷⁴ Lawmakers and their staffs, “if they are any good, as most are,” rely on a variety of sources to inform their decision-making processes.⁷⁵ As California Democrat “Big Daddy” Jesse Unruh saw it, “if you can’t eat their food, drink their booze, ...take their money and then vote against them, you’ve got no business being up here [in the state legislature].”⁷⁶

⁶⁹ See Stabler, *supra* note 35, at 17.

⁷⁰ *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Although *New York Times* did not address lobbying disclosure requirements, it is a leading First Amendment case that provides an excellent analysis of the freedom of speech in the context of public discourse.

⁷¹ See generally Stabler, *supra* note 35 (providing a first-hand account of the author’s lobbying practice).

⁷² *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 587 (1980) (Brennan, J., concurring).

⁷³ See Allard, *supra* note 28, at 31.

⁷⁴ *Id.* at 49.

⁷⁵ *Id.* According to Allard, however, the variety of sources is often comprised entirely of lobbyists. *Id.* at 43 (“The truth of the matter is that legislation in Washington is extraordinarily complex...the only way [lawmakers and their staffs] can really get to the bottom of a lot of complex issues is to rely on lobbyists.”) (quoting Kenneth Gross, a leading expert on lobbying and election law).

⁷⁶ Allard, *supra* note 28, at n.20 (quoting BILL BOYARSKY, *BIG DADDY: JESSE UNRUH AND THE ART OF POWER POLITICS* (2008)). Unruh, whose career as a leading Democrat spanned four decades, served as California’s Assembly Speaker and State Treasurer. Allard mentions two other statements, the likes of which will never see a serious public forum again. The first is longtime House Speaker Sam Rayburn’s policy on accepting gifts: “You just

With this positive development, however, comes an arguably negative corollary: increased competition between lobbyists for legislative staff and members' time, which raises the question of just how directly campaign contributions are connected to "access."⁷⁷ Although the commentator initially downplays the relationship between campaign contributions and access to lawmakers and their staffs, he acknowledges that "a surprising number of lobbyists admit flat-out that they hate the system as it is, and would even endorse a complete campaign finance overhaul, which perhaps might even include a prohibition of political contributions by professional lobbyists."⁷⁸ This distaste for the current system is based in part on the characterization of campaign donations as "the gift that keeps on taking," in that once a lobbyist's contribution is disclosed, fundraisers and candidates often identify the lobbyist as a potential source of funds.⁷⁹

Part II: The Nexus Between Lobbying and Campaign Finance

Public Concern Over Improper Influence

The tension between core democratic principles of political equality – "one person, one vote" – and the rights to petition the government and make campaign contributions give rise to the central concern that lobbyists who are heavily engaged in campaign finance distort the democratic process.⁸⁰ Because large campaign contributions, particularly "bundled" contributions, can facilitate "access" to lawmakers, there is a legitimate worry that those with the deepest pockets exert the most influence on the legislative process, to the detriment of the public

don't take it unless you can eat it, drink it, or smoke it in twenty-four hours." The second is a campaign advertisement for a Pennsylvania candidate: "Drink Their Beer, Carry Their Signs, and Take Their Money, But Vote for a 'Watchdog' by voting for Stephen Sinchak."

⁷⁷ *Id.* at 50.

⁷⁸ Allard, *supra* note 28, at 52.

⁷⁹ *Id.* at 51-52.

⁸⁰ *Id.* at 108-12.

at large.⁸¹ Campaign money works with lobbying to promote the election of public officials that are more amenable or sympathetic to the donors' goals, particularly because of the ability of large contributions to "open doors" for those who can make them, an ability that lobbyists themselves acknowledge.⁸²

Anyone who followed the 2008 Democratic nomination contest saw several of the leading candidates butt heads over the propriety of accepting campaign contributions from lobbyists.⁸³ Barack Obama moved to seize the moral high ground on the issue of special interest influence when he said that lobbyists routinely manipulate bills and that large corporations essentially run the legislative and policymaking show, and he once claimed that he would not work with or employ federal lobbyists in his administration.⁸⁴ These strong public pronouncements in the heat of a campaign were politically shrewd, especially considering that exit polls from the 2006 election cycle revealed that 80% of Americans believe that lobbyists exercise undue influence on public policy,⁸⁵ and 81% of respondents to a January 2006 Pew Research Center poll believe it is common for lobbyists to bribe members of Congress.⁸⁶ Although Obama followed through on his promise to refuse donations from federally-registered lobbyists, both he and Hilary Clinton received vast sums of money from attorneys representing large corporations, and who frequently worked for firms employing registered lobbyists.⁸⁷

⁸¹ *Id.*

⁸² *Id.* at 111-12.

⁸³ See Ruth Marcus, *Democrats' Purity Primary*, WASH. POST., Aug. 22, 2007, at A17 (reporting that John Edwards and Barack Obama refuse to accept campaign donations from lobbyists while Hilary Clinton defends her acceptance of such contributions on the ground that lobbyists' clients, not lobbyists themselves, are the real problem).

⁸⁴ See James Oliphant, *Take No Money from Lobbyists? They Say It's Not That Simple*, CHI. TRIB., Feb. 10, 2008, at A19.

⁸⁵ Allard, *supra* note 28, at 25.

⁸⁶ *Id.* at 51.

⁸⁷ Marcus, *supra* note 83.

Clinton defended her acceptance of lobbyist money by arguing that the real issue was special interests, not the lobbyists representing them.⁸⁸ This argument is bolstered by the fact that, although Obama never accepted contributions from *de jure* lobbyists, he took nearly \$65,000 from lawyers at Akin Gump Strauss Hauer & Feld.⁸⁹ Akin Gump lawyers represent large oil companies such as Lukoil, while lobbyists employed by the firm represent some of the biggest and baddest corporations around: oil giants Exxon and BP, agribusiness behemoth Archer Daniels Midland, and aerospace and defense titan Boeing.⁹⁰ While the Clinton camp criticized Obama's lobbyist-related campaign promises as a naïve overstatement, and while it is possible to find hypocrisy in his campaign finance disclosures, he arguably deserves credit for "at least taking a stand" on the issue.⁹¹

In a recent television interview, Rep. Marcy Kaptur (D-OH) expressed a widely held and judicially recognized⁹² belief that lobbyists and large donors wield misrepresentative and improper influence on government decision makers, here in the context of the financial bailout package.

Those lobbyists have a lot of money behind them, and then the ordinary citizen[s], on whose back this bailout price tag has been placed, have nobody lobbying for

⁸⁸ *Id.* Accord Allard, *supra* note 28, at 46-47 ("[A]s a lobbyist, who you represent and what you have to say on their behalf are more important than who you are.").

⁸⁹ Oliphant, *supra* note 84.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² See, e.g., Reid Wilson, *Blackwell Enters GOP Chairman Race*, THE HILL, Dec. 5, 2008, available at <http://thehill.com/leading-the-news/blackwell-enters-gop-chairman-race-2008-12-05.html>. Describing similarities between RNC leadership candidates Ken Blackwell (former Ohio Secretary of State) and Michael Steele (former Maryland Lt. Governor), the author included in a list of positive political attributes that, "[t]hey are also big draws on the fundraising circuit, which gives them valuable favors to call in from those they've helped in the past." This is exactly what the Supreme Court was referring to when, on its way to upholding campaign finance limitations, it recognized that, "[t]o the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined." *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976). More recently, the Court has recognized that improper influence is not limited to outright bribery, but extends "to the broader threat from politicians too compliant with the wishes of large contributors." *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 389 (2000).

them but their members of congress, and we need to get that [bailout] money out now, down into the communities that are being affected.⁹³

Although the federal laws governing campaign finance and lobbying generally treat those activities as separate and distinct, the public does not appear to recognize this formalistic legal distinction, and it certainly does not reflect the reality of lobbying and campaign finance. Given that campaign finance and lobbying regulations are justified on the ground that they buttress public confidence in the democratic process,⁹⁴ there is a strong case for addressing these interconnected issues in a more comprehensive and pragmatic manner.

The Real Problem with Lobbying and Campaign Finance

Most lobbyists do not make campaign contributions,⁹⁵ but the most active lobbyists are frequent and generous donors.⁹⁶ A recent *Public Citizen* survey found that from 1998 through 2005, about one-quarter of federally-registered lobbyists contributed an amount sufficient to trigger the reporting requirement, \$200 or more,⁹⁷ to a single congressional candidate or political action committee.⁹⁸ Although that figure may not surprise an interested voter, the study also revealed that *6% of all federally registered lobbyists accounted for 83% of all lobbyists'*

⁹³ *Lou Dobbs Tonight: Bailout Frenzy* (CNN television broadcast Nov. 12, 2008) (reporting by Ines Ferre). Rep. Kaptur voted against the bailout bill twice. Many observers attribute the provision of bailout funds to financial institutions – as opposed to distressed mortgage holders supposedly at the heart of the economic crisis – to the efforts of lobbyists. One *Washington Post* headline read, “A Lobbying Frenzy for Federal Funds.”

⁹⁴ See *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 356 n.20 (1995) (distinguishing the Government’s compelling interests in regulation of independent campaign expenditures in *Buckley* and lobbyist disclosure requirements in *Harris* from Ohio’s interest in preventing fraud and libel from an “open-ended” ban on distribution of anonymous issue-advocacy pamphlets).

⁹⁵ See ANTHONY J. NOWNES, *TOTAL LOBBYING: WHAT LOBBYISTS WANT (AND HOW THEY TRY TO GET IT)* 200 (Cambridge University Press 2006).

⁹⁶ Briffault, *supra* note 1, at 111.

⁹⁷ See 2 U.S.C.A. § 1604(d)(1)(D).

⁹⁸ PUB. CITIZEN, *The Bankrollers: Lobbyists’ Payments to the Lawmakers They Court, 1998-2006*, at 7 (2006) [hereinafter *Bankrollers*], available at <http://www.citizen.org/documents/BankrollersFinal.pdf>.

campaign contributions.⁹⁹ Furthermore, while there are interest groups with lobbyists that advocate on behalf of nearly every facet of society,¹⁰⁰ not all of those groups have the financial resources to compete day in and day out in the campaign finance arms race. It is clear that money can matter to a degree that is in tension with the formal political equality of citizens.¹⁰¹

The House Judiciary Committee's report on HLOGA ("House Report") cites a study by the Center for Public Integrity, published in April 2006, that found that since 1998, lobbyists had "spent nearly \$13 billion to influence Members of Congress and other Federal officials on legislation and regulation.... This is roughly twice as much as the already vast amount that was spent on Federal political campaigns in the same time period."¹⁰²

Although the figures above are remarkable, the underlying trend is alarming to some,¹⁰³ and reassuring to others.¹⁰⁴ The amount of money being spent to influence both elections and legislation is exploding. Campaign contributions from lobbyists and their firms' PACs nearly doubled from \$17.8 million in the 2000 election cycle to \$33.9 million in the 2004 cycle.¹⁰⁵ There are at least two explanations for the leap, although the second does not render the trend any less troubling. First, the 2002 Bipartisan Campaign Reform Act doubled individual

⁹⁹ *Id.* at 14. The study also reported that Jack Abramoff personally donated \$180,000 to congressional candidates between 1998 and 2005, amounting to 7% of the \$2.6 million that he funneled to congressional campaigns during that time. *Id.* at 24-26.

¹⁰⁰ See Allard, *supra* note 28, at 33 (noting that debates over the State Children's Health Insurance Program "pitted 'lobbyists' representing children, nurses, doctors, senior citizens, nursing homes, specialty hospitals, health businesses, insurance companies, tobacco companies, convenience stores, gas stations, states, foreign sovereigns, and the Administration against each other, with all vying for different legislative outcomes.")

¹⁰¹ Briffault, *supra* note 1, at 108.

¹⁰² House Report, *supra* note 8, at 10.

¹⁰³ See Bankrollers, *supra* note 98, at 11 (calling for significant limitations on the ability of lobbyists to funnel contributions to politicians).

¹⁰⁴ Allard, *supra* note 28, at 25 (2008) ("Today, lobbying is more necessary, widespread, and complicated than ever before. It is also more open, more professional, subject to more rules, and practiced with a greater degree of legal compliance.")

¹⁰⁵ Bankrollers, *supra* note 98, at 7.

contribution limits between 2000 and 2004.¹⁰⁶ Second, these figures could be distorted as unregistered lobbyists that contributed in the 2000 election cycle formally register before the 2004 cycle, which would artificially inflate the upward trend in lobbyists' campaign donations. Between 2000 and 2004, the number of lobbyists in Washington more than doubled, from around 16,000 to almost 35,000.¹⁰⁷ The second explanation is supported by the House Report, which notes that nearly 14,000 documents that should have been filed are missing, almost 300 individuals, companies, or other entities have lobbied without being registered, and more than 2,000 initial registrations were filed after the legal deadline.¹⁰⁸

Although Mr. Allard cites the ability of an increasingly competitive marketplace for lobbying services to cleanse itself of unscrupulous practitioners, he implicitly acknowledges that with twice as many lobbyists in Washington, "access" on Capitol Hill could legitimately be characterized as twice as expensive.¹⁰⁹ "According to the prevailing popular view, access is almost always a function of campaign contributions. Experience and data, however, suggest otherwise."¹¹⁰ To support this argument, the author cites results of a Policy Council survey finding that 13% of Hill staffers rated campaign contributions as a determining factor, while just 1% found it to be the most important factor.¹¹¹ The survey found that the most important determining factor for access, cited by 56% of respondents, was the "importance of the organization [represented] to the member's state or district," while the second most important factor was the lobbyist's reputation for providing credible, reliable information.¹¹² What makes any given organization important to a member is a subjective determination that is likely to vary

¹⁰⁶ See Pub. L. No. 107-155, 116 Stat. 81 (2002). Conversely, the HLOGA halved the amounts triggering the LDA's registration requirements for lobbyists. See 2 U.S.C.A. § 1603(a)(3)(A).

¹⁰⁷ Allard, *supra* note 28, at 49.

¹⁰⁸ House Report, *supra* note 8, at 10.

¹⁰⁹ See Allard, *supra* note 28, at 50.

¹¹⁰ See *id.*

¹¹¹ *Id.*

¹¹² *Id.*

according to a number of different considerations. The one constant, however, is that “it is unrealistic to dismiss the role of campaign contributions in the lobbying process,” and research has confirmed the connection between PAC contributions and lobbying access.¹¹³ Although money and resulting access do not “buy votes,”¹¹⁴ the connection between campaign contributions and influence is impossible to deny.

Part III: Suggestions for Improvement

Mandatory, universal government finance of election campaigns with a prohibition on outside funding for direct candidate advocacy would go a long way toward eliminating the problems raised when lobbyists heavily engage themselves in campaign finance. Although such an approach would restrict the First Amendment right to “political speech” expressed through campaign donations, applying this restriction without exception would not disadvantage an identifiable portion of society, and would serve a compelling interest in restoring public confidence in the democratic process. Moreover, public financing of elections would remove perverse incentives for lobbyists, who are duty bound to zealously advocate their clients’ positions, and who are all too aware that campaign donations allow them to better discharge this duty. Furthermore, removing money from the equation would place emphasis where it should be – on the merits of lobbyists’ arguments rather than on their “loyalty” to a particular candidate or campaign.

One commentator noted how Obama’s rejection of lobbyists’ campaign donations compelled an approach he called “messaging over money.”¹¹⁵ “Since no lobbyist can give

¹¹³ *Id.* (citing John R. Wright, *PAC Contributions, Lobbying, and Representation*, 51 J. POL. 713 (1989)).

¹¹⁴ *Id.* at 51.

¹¹⁵ Joel Jankowsky, *Strength of Message Over Money*, THE HILL, K Street Insiders, July 22, 2008, available at <http://thehill.com/k-street-insiders/strength-of-message-over-money-2008-07-22.html>.

money to Obama’s presidential campaign or to the Democratic National Committee,” he wrote, “our ideas and suggestions will have to be accepted or rejected on their merits and not because of any perceived special standing based on a campaign contribution.”¹¹⁶ If lobbying is to remain an integral part of the policymaking process – which it undoubtedly should if lawmakers are to make informed decisions – lobbying efforts should stand or fall on their substance, not on whether the lobbyist helped a particular candidate get elected through fundraising efforts.

Perhaps the biggest obstacle to effective and egalitarian public finance of elections is determining eligibility for taxpayer dollars. Candidates not affiliated with the Republican or Democratic parties would probably be the losers in a public finance regime, and this would arguably hurt the democratic process by effectively silencing viewpoints outside the mainstream political ideologies. This concern is mitigated by the fact that independent candidates have rarely enjoyed political success on a national scale. In the event that the established political parties diverge from the popular will, however, publicly-financed elections could create a dangerous scenario where neither publicly-financed candidate represents the majority of the public. These issues could probably be resolved with the adoption of flexible regulations that acknowledge the potential for major party divergence from political undercurrents for determining who receives public financing.

In the absence of a wholesale departure from the current system, the federal government should look to the states for better ways of regulating the intersection of lobbying and campaign finance. Federalism principles underlying the Constitution allow the states to test innovative and novel legislative solutions to social and economic challenges, essentially rendering the states

¹¹⁶ *Id.* (“Lobbyists would have no special status, and we will have to rely on the value of our ideas and our advocacy skills, just like all the others who are participating in the political and policymaking process. Thus, by cutting the link between campaign contributions and lobbyists, Obama has addressed the cause of the public’s angst — the sense that campaign contributions equate to influence — and thus created the basis for lobbyists to participate in the political and policymaking process.”).

laboratories in which state legislatures may conduct these experiments.¹¹⁷ To this end, a number of states have enacted laws imposing a variety of campaign finance restrictions specifically targeting lobbyists, bundled contributions, or combinations of the two.¹¹⁸

Some of these restrictions have a temporal element. Arizona, Colorado, Utah, and Wisconsin prohibit lobbyists from making, and legislators from accepting, campaign contributions while the legislature is in session.¹¹⁹ Others take disclosure requirements a step further than HLOGA. Washington and Rhode Island require lobbyists to disclose campaign contributions in their regular lobbying reports,¹²⁰ and Washington goes further by requiring disclosure of bundled contributions as well.¹²¹ The Maryland legislature considers lobbyists' bundled contributions to be so worrisome as to warrant their outright ban,¹²² and North Carolina lawmakers prohibit any campaign contributions to elected officials by lobbyists.¹²³ Alaska prohibits a lobbyist from making campaign contributions to any candidate for state legislature other than candidates running to represent the district where the lobbyist is eligible to vote.¹²⁴ Michigan's legislation sweeps more broadly to require the reporting and disclosure of bundled contributions generally, without specifically targeting lobbyists.¹²⁵ Finally, Minnesota limits the

¹¹⁷ See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.").

¹¹⁸ See Briffault, *supra* note 1, at 120, n.71-77.

¹¹⁹ See ARIZ. REV. STAT. ANN. § 41-1234.01 (2007) (applies only to incumbents); COLO. REV. STAT. § 1-45-105.5 (2008) (applies to incumbents and candidates); UTAH CODE ANN. § 36-11-305 (2007) (incumbents only); WISC. STAT. ANN. § 13.625 (West 2007) (incumbents and candidates).

¹²⁰ See, e.g., R.I. GEN. LAWS § 22-10-9 (2007).

¹²¹ See WASH. REV. CODE § 42.17.170 (2007). The Center for Public Integrity ranked Washington first in an analysis of state lobbying disclosure laws that promote openness, accountability and public access. Center for Public Integrity, *Hired Guns, Lobby Disclosure Ranking*, May 15, 2003, *available at* <http://projects.publicintegrity.org/hiredguns/nationwide.aspx>.

¹²² See MD. CODE ANN., STATE GOV'T § 15-714(d)(1)(i) (West 2007).

¹²³ See N.C. GEN. STAT. § 163-278.13C(b) (2007).

¹²⁴ See ALASKA STAT. §§ 15.13.072(a)(4), 15.13.074(g) (2008).

¹²⁵ See MICH. COMP. LAWS § 169.226 (2007).

proportion of campaign contributions a candidate can receive from lobbyists, PACs, political funds, and large contributors.¹²⁶

In applying some of these state approaches to federal regulation of lobbying and campaign finance, three provisions appear the most appropriate. First, the federal government should ban the practice of bundling contributions for delivery by lobbyists. Doing so would work to sever the connection between large contributions and improved access to lawmakers receiving them. Donors would still be able to make campaign contributions, but would have to face public scrutiny of their decisions and motivations in doing so. Second, Minnesota's proportional cap on contributions from what could be characterized as institutional donors should be implemented at the federal level. This provision would allow well-funded groups to have their voices heard, but not at a volume that drowns out contributions from the average citizen-donor. It would encourage fundraisers to venture into the general public for campaign money, which would both pull more people into the political process and foster connections between candidates and the constituents they seek to represent in government. Third, if bundled contributions are to remain as an element of campaign finance, they should be disclosed across the board without regard for whether the delivering agent is a lobbyist or PAC representative, and an exhaustive list of donors should be included in the report. The disproportionate influence potentially accrued through the delivery of extraordinarily large donations warrants their disclosure generally. If groups or individuals are capable of making or facilitating large contributions, and given that only individuals have the right to vote, no legitimate interest is served by permitting donors to hide behind bundled contributions. As long as big donors are pursuing legitimate ends, what worries them about disclosure?

¹²⁶ See MINN. STAT. § 10A.27 (2007).

Adopting any of these state provisions at the federal level would make the legislative and political process more transparent and would improve the effectiveness of federal lobbying and campaign finance regulation. Moreover, it would untie the merits of lobbying efforts from the ability to finance election campaigns and eliminate actual or perceived improper influence from the necessary involvement of experts in the legislative process.

Part IV: Conclusion

Lobbyists and other interest groups have a First Amendment right both to advocate their positions to government officials and to contribute financial support to any candidate they choose. Under the distinct regulatory regimes governing them, lobbying and campaign finance, in isolation from one another, probably do not pose a significant danger to the administration of representative democracy. However, given that the current regimes allow individuals, organizations, and interest groups to pair campaign finance with lobbying to advance their private goals to the detriment of the broader public interest, it is clear that today's federal framework is inadequate.¹²⁷ Potential sources of influence over public officials such as bundling campaign contributions can and should be regulated generally, not just when practiced by lobbyists.¹²⁸ On the other hand, argues Professor Briffault, "there may be some situations where the campaign activities of lobbyists provide special influence for lobbyists above and beyond the benefits to their clients; in those cases, regulations aimed at lobbyists may be appropriate."¹²⁹ The real question for today's advocates of limited disclosure is, what do you want to hide, and why?

¹²⁷ See Briffault, *supra* note 1, at 121.

¹²⁸ *Id.* at 107.

¹²⁹ *Id.*