

Lobbying in the United States

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A Brief History

The ability of individuals, groups, and corporations to lobby the government is protected by the right to petition in the First Amendment of the Constitution.

- ☞ Intense lobbying began 1869-1877, during time of President Grant
 - ☞ The most influential lobbyist's wanted railroad subsidies (in Reconstruction south) and a tariff on wool (in the north)
- ☞ Progressive Era reformers (1880s-1920s) frequently attacked lobbyists as corrupting politics.
- ☞ In 1953, in a suit involving a congressional resolution authorizing a committee to investigate "all lobbying activities intended to influence, encourage, promote, or retard legislation," the Supreme Court narrowly construed "lobbying activities" to mean only "direct" lobbying (which the Court described as "representations made directly to the Congress, its members, or its committees"), and rejected a broader interpretation of "lobbying" out of First Amendment concerns.
- ☞ Prior to the 1980s lawmakers rarely became lobbyists as the profession was generally considered 'tainted' and 'unworthy' for once-elected officials such as themselves; in addition lobbying firms and trade groups were leery of hiring former members of Congress because they were reputed to be 'lazy as lobbyists and unwilling to ask former colleagues for favors'.
 - ☞ New higher salaries, increasing demand and a greater turnover in Congress and a change in the control of the House all contributed to a change in attitude about the appropriateness of former elected officials becoming lobbyists from that time onwards. The route between these roles became known as the revolving door.

Recent reform

- ☞ Lobbying Disclosure Act of 1995 requires lobbyists who are compensated for their actions to register with the Congress and issue semiannual reports of activities.
- ☞ The legislation was later amended by the Lobbying Disclosure Technical Amendments Act of 1998.
 - ☞ These require a report containing an accounting of major expenditures as well as legislation that was influenced.
 - ☞ The increasing number of former lawmakers becoming lobbyists has led Senator Feingold (D-WI) to propose paring back the many Capitol Hill privileges enjoyed by former senators and representatives. His plan would deprive lawmakers-turned-lobbyists of privileges such as unfettered access to otherwise "members only" areas such as the House and Senate floors and the House gym.
- ☞ In January 2004, the Senate considered an "ethics reform" bill, which would have established federal regulation of certain efforts to encourage "grassroots lobbying."
 - ☞ The bill said that "'grassroots lobbying' means the voluntary efforts of members of the public to communicate their own views on an issue to Federal officials or to encourage other members of the general public to do the same."
 - ☞ Opposed by a broad array of organizations, including the American Civil Liberties Union, the National Right to Life Committee, and the National Rifle Association, who argued that attempts by constituents to influence their representatives are at the heart of representational democracy, and that neither such contacts nor efforts to motivate such contacts should be considered "lobbying." Senate voted down this section.

- ☞ In July 2005, Public Citizen published a report entitled "The Journey from Congress to K Street"
 - ☞ The report analyzed hundreds of lobbyist registration documents filed in compliance with the Lobbying Disclosure Act and the Foreign Agents Registration Act.
 - ☞ It found that since 1998, 43% of the 198 members of Congress who left government to join private life have registered to lobby.
 - ☞ The Washington Post described these results as reflecting the "sea change that has occurred in lawmakers' attitudes toward lobbying in recent years."
 - ☞ A case study: Bob Livingston, who stepped down as Speaker-elect and resigned his seat in 1999. In the 6 years since his resignation, his lobbying group grew into the 12th largest non-law lobbying firm, earning nearly \$40 million by the end of 2004.
 - ☞ During roughly the same time period, Livingston, his wife, and his two political action committees (PACs) contributed over \$500,000 to the PACs or campaign funds of various candidates.
- ☞ 'Legislative Transparency and Accountability Act of 2006' (in response to the Abramoff lobbying scandal)
 - ☞ Bars lobbyists themselves from buying gifts and meals for legislators, but it leaves a big loophole: firms and organizations represented by those lobbyists may still dole out freebies;
 - ☞ Privately funded trips would still be allowed if lawmakers get prior approval from a commissioned ethics committee
 - ☞ It would require lobbyists to file more frequent, more detailed reports on their activities, which would be posted in public domains.
 - ☞ Some assailed the bill as being too weak.
- ☞ The Honest Leadership and Open Government Act of 2007
 - ☞ A comprehensive ethics and lobbying reform bill.
- ☞ The Executive Branch Reform Act would have required over 8,000 Executive Branch officials to report into a public database nearly any "significant contact" from any "private party."
 - ☞ Although promoted as a regulation on "lobbyists," the bill defines "private party" as "any person or entity".
 - ☞ Thus, under the proposal, anyone who contacts a covered government official is in effect deemed to be a lobbyist, unless the communicator is another government official or government staff person.
 - ☞ The bill defines "significant contact" to be any "oral or written communication (including electronic communication) . . . in which the private party seeks to influence official action by any officer or employee of the executive branch of the United States."
 - ☞ Groups oppose it as an infringing on the right to petition by making it impossible for citizens to communicate their views on controversial issues without having their names and views entered into a government database.
- ☞ President Obama signed two executive orders and three presidential memoranda to help ensure his administration would be a more open, transparent, and accountable government.
- ☞ These documents attempt to rein in the influence of lobbyists; they include a lobbyist gift ban and a "revolving door" ban.
- ☞ In May 2009, a Recovery Act Lobbying Rules set new limits on special interest influence.

The Internal Revenue Service defines lobbying as "asking policymakers to take a specific position on a specific piece of legislation, or that ask others to ask the same"

- ☞ Activities that seek to influence policies, possibly including public demonstrations and the filing of "friend of the court briefs", are termed as "advocacy".

Arguments in support of Lobbying

- ☞ Lobbying is protected by the 1st Amendment to the Constitution (“right to petition the government”)
- ☞ The practice is an expression of freedom of speech
- ☞ Lobbying gives voice to the opinions and desires of organized groups such as businesses, advocacy groups, and unions.
- ☞ Lobbyists often know more about a topic than those they lobby.
- ☞ As such, they are experts and actually help the legislator.
- ☞ Positive examples of lobbying
- ☞ NAACP successfully advanced civil rights legislation
- ☞ Mothers Against Drunk Driving (MADD) strived to prevent underage drinking and pushes for stricter alcohol policy

Arguments against Lobbying

- ☞ Lobbyists are doing a job they are paid for, and have no moral or ethical tie to what they are advocating on behalf of.
- ☞ Much unregulated money in the system = corruption
- ☞ Lobbyists have brought about bad things
- ☞ Oil drilling without environmental regulations, for instance.

Lobbyists use time spent with legislators to explain the goals of the organizations which they represent, to clients they explain the obstacles elected officials face when dealing with issues. They are advocating for their agenda.

- ☞ In 2007 there were over 17,000 federal lobbyists in Washington.
- ☞ While many of these lobbyists are employed by lobbying and law firms and retain outside clients, others are employed by trade associations, companies, and state and local governments.

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The top sectors and their total spending between 1998 and 2010 were:

Client	Amount Spent	Percentage of Total
1 Finance, Insurance & Real Estate	\$4,274,060,331	14.53%
2 Health	\$4,222,427,808	14.53%
3 Misc Business	\$4,149,842,571	14.11%
4 Communications/Electronics	\$3,497,881,399	11.89%
5 Energy & Natural Resources	\$3,104,104,518	10.55%
6 Transportation	\$2,245,118,222	7.63%
7 Other	\$2,207,772,363	7.50%
8 Ideological/Single-Issue	\$1,477,294,241	5.02%
9 Agribusiness	\$1,280,824,983	4.12%
10 Defense	\$1,216,469,173	4.13%
11 Construction	\$480,363,108	1.63%
12 Labor	\$427,355,408	1.45%
13 Lawyers & Lobbyists	\$336,170,306	1.14%

Note: These amounts do not include campaign contributions

“In Defense of Lobbyists”

By Michael Barone 14th June 2008 US News and World Report

Barack Obama has long said that his campaign will not accept contributions from lobbyists, and now that he is the presumptive nominee, the Democratic National Committee won't accept them, either.

John McCain says that his campaign won't employ lobbyists, and volunteers are now queried about possible lobbying activity in the past. It's only a matter of time until someone calls for a law requiring every lobbyist to paint a big, red "L" on his forehead.

Behind this stigmatization of lobbyists is the notion that the failure to produce legislation in the public interest stems from the existence of lobbyists. Which is obviously nonsense. We couldn't abolish lobbying without repealing the First Amendment, which gives all of us, even those who are paid to do it, the right to "petition the government for a redress of grievances." And the government could not sensibly do business without lobbyists – as Hillary Clinton recognized at the YearlyKos convention last August.

While Obama and John Edwards were lambasting lobbyists, Clinton said: "You know, a lot of those lobbyists, whether you like it or not, represent real Americans. They actually do. They represent nurses. They represent, you know, social workers. They represent ... yes, they represent corporations. They employ a lot of people."

Lobbying is as American as apple pie, going back to colonial times. The Rev. Increase Mather lobbied in London for a new charter for Massachusetts. Benjamin Franklin was the colonial agent – lobbyist – for Pennsylvania and other colonies. When the federal government was created, lobbyists for varied interests naturally swarmed to the capital – first New York, then Philadelphia and Washington.

It is a simple fact of life that when Congress writes laws and the executive branch writes regulations that channel vast flows of money – and laws and regulations that have vast moral implications – citizens affected by those words are going to try to make sure they're written the way they want. They're going to hire the best people they can find to do so. They want lobbyists with connections – and with expertise. They can help lawmakers understand how the words they write will affect "real Americans."

That's why I was pleased to see Clinton defend lobbying not only for those whom her Democratic audience considers good interests (nurses, social workers) but those they don't (corporations). Implicitly, she's rejecting the distinction made by the head of the Humane Society of the United States, who recently contrasted "special interest lobbyists" (presumably those working for profit-making interests) with "socially responsible lobbyists" (those working for nonprofits). But even lobbyists for nonprofits have a monetary motive: to keep their (often six-figure) salaries flowing in.

Yes, K Street is not perfect. Old entrenched interests tend to be well represented. New and growing industries and morally motivated constituencies that are unorganized tend to be underrepresented. The high-tech industry figured it could get along without much representation in Washington until Microsoft got slapped with an antitrust suit a decade ago. Now, it hires lobbyists in droves.

Not much of this will change in a McCain or Obama administration. The campaigns currently are embarrassing themselves by stigmatizing lobbyists. Obama's initial choice to head his vice presidential selection committee was Jim Johnson, who as CEO of Fannie Mae in the 1990s ran one of the most effective lobbying operations in town. McCain has had at his side through the campaign Charlie Black, who was a very successful lobbyist for more than 20 years.

More important, both candidates are proposing healthcare, carbon emission and tax changes – legislation that will, and should, face heavy lobbying. Which is fine: Such laws will have enormous ramifications, and everyone who wants to should chime in. Even – if I can use that dreaded word again – lobbyists.