

MTA Commentary—Lobbying
June 10, 2009

Last week, the 10th Circuit Court of Appeals remanded to the Federal Communications Commission a couple of fairly arcane rules which the FCC had earlier issued. The rules pertain to telecommunications relay services, or TRS. TRS enables conversations between people with and without hearing or speech disabilities. With this service, a caller with a hearing or speech disability can call a relay center with a special text telephone device. The relay center then places the call and relays the conversation between the caller and the called party.

Two TRS providers challenged the new rules because the FCC threw in a couple of additional provisions not dealing specifically with TRS implementation. The FCC ruled that TRS funds that are collected to pay for TRS services cannot be used for lobbying purposes. The Court of Appeals ruled in favor of the two TRS providers, finding that that the FCC's lobbying restrictions were arbitrary and capricious because they violated the providers' First Amendment rights to engage in political and commercial speech without any showing of how or why the restrictions were directed at the implementation of a federal program.

The FCC isn't the only government entity to jump on the anti-lobbying bandwagon, either. Citizens for Responsibility and Ethics in Washington, the American Civil Liberties Union and the American League of Lobbyists, among others, have protested federal rules which restrict lobbyists' contact with federal officials. These groups argue that the federal restrictions are both too narrow and too broad. They're too narrow because the restrictions do not apply to contacts between federal officials and others who are not registered lobbyists, like corporate executives, special interest groups, or other government officials who may represent their own special interests. On the other hand, they argue the restrictions are too broad because the restrictions are based on the assumption that all lobbyists exert improper pressure on poor, unsuspecting government officials.

In fact, the whole anti-lobbying campaign is based on the assumption that government officials are corrupt, or at least they're all standing on the precipice of corruption and can easily fall into the abyss. All it takes is a free lunch, and voila, the government official turns to putty in the lobbyist's hands!

Now of course, lobbying has a bad reputation. While it may not be the oldest profession on Earth, it often is placed in the same arena; and lobbying has been around a long, long time. As long as people have been making decisions that affect other peoples' lives, those affected have tried to influence those doing the affecting. And history is littered with notorious tales of sleaze and corruption. So it is with some trepidation that I stand in defense of lobbying, and lobbyists.

While it's possible to find bad actors in any enterprise, my experience tells me that the overwhelming majority of people are decent and honest people doing the best at what they do, whether they're auto mechanics, plumbers, politicians or lobbyists. A very small minority of people in any profession is corrupt or corruptible; yet we spend a lot of time focusing on the corrupt minority, and not the honest majority.

Further, lobbying is Constitutionally protected by the First Amendment, which reads in part:

Congress shall make no law ... abridging the freedom of speech, or of the press, of the right of the people ... to petition the Government for a redress of grievances.

In other words, we individually and collectively have the right to petition our government. And that's a good thing! With so much of our government nowadays being un-elected, it's more important than ever that we have unfettered access to government so that we can articulate our concerns, interests and grievances.

Moreover, blaming lobbyists for laws or regulations that you either like or dislike gives way too much credit to lobbyists. After all, lobbyists don't pass laws or promulgate regulations. They can't vote Yea or Nay on the House or Senate Floor. They don't sign legislation into law. They don't publish rules in the Federal Register. What they do is provide information—often information that

decision-makers lack, but need in order to make well reasoned decisions. Lobbyists are often resources for information that decision makers need to know about the laws or rules they write. We don't want our public officials making decisions in a vacuum. Bureaucrats in Washington don't necessarily know how their decisions play in Montana, for example. Lobbyists, representing people with common interests, provide information that otherwise may not be a part of the decision process.

The only power lobbyists really possess is the power of persuasion. That power is based on credibility. If a lobbyist reliably represents an issue or constituency with credible, accurate information, then the information, not the lobbyist, may be influential. Or not. That depends on whether, and how, such information is assimilated by our government.

So the next time you think about how much you love or hate a government policy, thank our nation's founders for your right to petition the government.

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