Lobbying Disclosure

Folder Citation: Collection: Records of the 1976 Campaign Committee to Elect Jimmy Carter; Series: Noel Sterrett Subject File; Folder: Lobbying Disclosure; Container 86

To See Complete Finding Aid:

http://www.jimmycarterlibrary.gov/library/findingaids/Carter-Mondale%20Campaign_1976.pdf

common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036
John W. Gardner, Chairman (202) 833-1200

August 6, 1976

Lobbying Disclosure

On June 15, the Senate passed (82-9) a lobbying disclosure bill supported by Common Cause. A similar measure is now being marked up in the House Judiciary Committee. Even if legislation should be enacted in this Congress, ample opportunities for Presidential leadership will remain. Any lobbying law passed in the 94th Congress will barely scratch the surface of lobbying directed at the executive branch. Strengthening proposals will be necessary in the future; ideally, they should emanate from the executive branch. Additionally, disclosure of private pressures exerted on the executive branch can be achieved if high-level policy-makers are required to log for the public record outside contacts and communications. Logging is already practiced successfully by some agencies, and could be implemented on a broader basis by executive order. Both logging and disclosure of executive branch lobbying are discussed below.

1946 Lobbying Act

The Federal Regulation of Lobbying Act of 1946--one of the great legislative hoaxes of all time--requires groups and persons whose "principal purpose" is to aid in the passage or defeat of

legislation by Congress to file quarterly reports of lobbying expenditures with the Secretary of the Senate and the Clerk of the House (2 U.S.C. Sec. 261). Due mainly to the difficulty in applying the "principal purpose" standard, the 1946 Act has proven to be singularly ineffective and unenforceable since its enactment. In 1954, the Supreme Court, narrowly interpreted the law's application and coverage (347 U.S. 612).

The U. S. Senate Government Operations Committee recently cited six major shortcomings of the 1946 Act and concluded: "The result is a law which is in effect no law at all." (S. Rept. No. 94-763). The Act's shortcomings identified by the Committee are as follows:

> (1) Groups which utilize their own funds in an attempt to influence legislation are not required to register their efforts unless they solicit, collect, or receive funds from others for that purpose.
>
> (2) The present law does not apply to organizations or individuals unless lobbying is their principal purpose. Many organizations do not register at all, concluding that lobbying is not their "principal purpose."
>
> (3) The present law does not clearly cover efforts by a lobbyist which do not involve direct contact with Congress. Thus, lobbyists who attempt to influence Congress by soliciting others to communicate with Congress (e.g., "grassroots" lobbying) do not have to report these efforts.
>
> (4) The present law does not clearly include lobbying communications with staff employees of Senators or Representatives.
>
> (5) In general the law's reporting requirements are so vague and ambiguous that the lobbyists who do report often file incomplete information or interpret the requirements differently.
>
> (6) No agency of the federal government is given clear responsibility and adequate investigatory powers to enforce compliance with the Act.

In 1975, the General Accounting Office reported that enforce-

ment of the Act was virtually non-existent (April 2, 1975). The GAO reported that the Clerk of the House and the Secretary of the Senate received the reports but do not have investigative authority. The Act gives the Department of Justice responsibility for criminal prosecution but does not authorize Justice to monitor the reports. The results are predictable: only one successful prosecution has been brought against a lobbyist in the last 30 years for failing to register; a GAO audit of 1,920 quarterly reports for 1974 found that 48 percent of the reports were incomplete and 61 percent were received late.

Present lobbying requirements are so weak that they reveal only a fraction of what is actually spent (one percent according to a recent Christian Science Monitor report). Such major lobbying organizations as the American Trial Lawyers Association and the American Road Builders Association remain unregistered. The National Rifle Association did not file lobby reports until last year. Countless other organizations fail to register or substantially underreport. Common Cause (with just 14 registered full-time and part-time lobbyists) reported spending twice as much money for lobbying in 1974-1975 as the entire oil and gas industry. Sixty oil, gas, and associated corporations and 16 committees or associations representing such interests have 229 registered lobbyists and 29 registered firms, but reported only $683,279 for lobbying purposes between October 1, 1974, and September 30, 1975.

The paucity of public data on lobbying activities feeds the

cynicism of many Americans regarding the political process. According to an April 7, 1975, Harris survey, by a lopsided 72 to 9% the public feels that "Congress is still too much under the influence of special interest lobbies."

The Senate-passed lobbying bill (S.2477) is consistent with Common Cause's full disclosure proposals. It provides for:

(1) a definition of lobbyist focusing on organizations that act through paid employees and attempt to influence or solicit others to influence policy decisions;

(2) quarterly reports of lobbying expenditures, of gifts, loans or honoraria that exceed $10 in value (when an aggregate of $50 in gifts to any covered officials has been reached), and of contributions in excess of $2500 made to organizations to support their lobbying activities;

(3) coverage of attempts to influence executive branch officials on legislation, nominations, and government contracts over one million dollars; and

(4) oversight and enforcement by the Comptroller General and the Justice Department.

Coverage of the Executive Branch

Common Cause believes that a comprehensive lobbying disclosure package should include registration and reporting by organizations that attempt to influence the executive branch on policy matters. The public's interest in knowing of the activities of those who attempt to influence governmental decisions is no less because the decision is to be made by the President or the executive branch instead of Congress.

Coverage of the executive branch is increasingly important because of the mushrooming of administrative and regulatory functions of the federal government. The recent revelations of entertainment of Defense Department and Congressional officials by major defense contractors are excellent examples of the need for broad coverage.

Eleven state laws now cover attempts to influence executive branch decision-making--Arizona, California, Colorado, Hawaii, Kansas, Louisiana, Massachusetts, Minnesota, Tennessee, Utah, and Washington.

The Senate-passed lobbying disclosure bill covers contacts with executive branch officials regarding legislation, nominations, testimony before Congress, and government contract or awards in excess of one million dollars. While this is a substantial improvement over present law, Common Cause favors coverage of attempts to influence all policy decisions by the executive branch. This would include such decision-making by executive branch and independent agencies as the promulgation of rules and regulations (as in most of the state laws mentioned above).

Logging

In addition to requiring persons who attempt to influence executive branch policy decisions to register and report their lobbying expenses, Common Cause believes that high level executive branch policy makers should be required to log outside contacts and communications.

Logging would enable citizens to hold agency officials accountable for the inordinate access often given to special interest lobbyists and would give officials a strong incentive to meet more regularly with non-industry representatives. The FEA, Consumer Product Safety Commission, Federal Trade Commission, Food and Drug Administration, and the Justice Department have logging requirements.

Senator Kennedy's Judiciary Subcommittee has held hearings on S. 1289, the Open Communication Act of 1975. Kennedy's bill would require federal officials at the GS 15 level and above to keep a record of each contact initiated by private citizens or public employees outside the agency when the communication deals with a matter under consideration by the agency. Exceptions are made for informants and reporters. The provisions of the bill could be implemented by executive order.

Arguments For and Against

Virtually every major lobbying interest has opposed meaningful lobbying disclosure reform--from the AFL-CIO to Ralph Nader (who does not now register or disclose) to the Chamber of Commerce to the environmentalists. In an effort to protect the status quo that allows many of their lobbying efforts to go largely unreported, these groups have made two major arguments:

First, opponents argue that lobbying disclosure reform will have a chilling effect on citizen participation in government and is perhaps unconstitutional. Some also claim that lobbying disclosure will cut down on the free flow of information between

lobbyists and government officials.

Common Cause recognizes that public participation in governmental affairs is a fundamental democratic principle protected by the Constitution. Nevertheless, the magnitude of special interest lobbying necessitates its full and timely disclosure. The U.S. Supreme Court has upheld the 1946 Act (347 U.S. 612) and declined to review a decision by the Washington State Supreme Court upholding that state's tough lobbying disclosure law (417 U.S. 902). The Washington Court had stated, in part: "The voting public should be able to evaluate the performance of their elected officials in terms of representation of the electors' interest in contradistinction to those interests represented by lobbyists" (517 P. 2d 911, at 927-932).

The Senate was careful to avoid provisions that would inhibit communications by citizens with their representatives. Organizations that meet the bill's substantial threshold (defined in terms of dollars spent or lobbying contacts made), not individuals, are required to register and report. Contacts by constituents with their own Senators or Representatives, requests for information and testimony on the record are excluded from coverage. Major contributors to lobbying groups must be disclosed, but not membership lists of organizations.

Second, opponents argue that meaningful lobbying disclosure requires too much detail and paperwork. Opponents claim that disclosure is unnecessarily burdensome.

Disclosure is a lesser alternative to prohibitions and it serves a clear public purpose. It does impose some burden, but it is clearly warranted. Disclosure provides information to

public officials and the public about the way money is spent to influence governmental decision-making. Former Chief Justice Warren, in upholding the 1946 Disclosure Act, wrote: "Otherwise, the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal" (347 U.S. 612, at 625).

Since November of 1972, one-half of the states have adopted significant new lobbying disclosure provisions. Tough new disclosure laws with independent enforcement are in operation and are working well in such diverse states as California, Kansas, Washington, and Minnesota. As mentioned above, several agencies are already complying with the substance of Common Cause's logging proposals.

Our own experience refutes the argument that reporting requirements are overly burdensome. Common Cause has had little difficulty in filing detailed lobbying reports on the federal or state levels. Our federal reports give total expenditures on advertising, wages, printing and mailing, office overhead, telephone, and other items. They include numerous pages of itemized expenditures, including the date, amount, recipient, and purpose of each expenditure. Common Cause has filed such reports far more detailed than those required by the newly-passed Senate bill -- for the last five years. We find such reporting a minor nuisance, nothing more.

In addition to these two major arguments against lobbying disclosure reform, certain organizations that qualify for tax exempt status under section 501(c)(3) of the Internal Revenue

Code have expressed concern that new legislation will jeopardize their tax status. Present law limits such organizations to "unsubstantial" lobbying activities. But this objection has been pretty well taken care of by recent measures. The House has passed and the Senate is presently considering Common Cause-supported legislation (H.R. 13688) to quantify and make clear how much money a tax exempt organization may spend on lobbying. The Senate-passed lobbying bill also provides that an organization shall not be denied a tax exemption because it is registered under the bill.