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Gaining Access: A State Lobbying Case Study

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GAINING ACCESS: A STATE LOBBYING CASE STUDY

by Trevor D. Dryer^{*}

Although many articles, both in scholarly journals and in the popular press, have addressed the role of lobbyists, few have examined how the process actually works on the ground in state capitols across the country. Through interviews with registered lobbyists in California, this Article provides insight into the surprising effect of reform legislation on the actual practice of lobbying. For example, the interviewees claimed that reforms—such as legislative term limits or prohibitions on lobbyists making campaign contributions—have not changed the role money plays for many lobbyists in gaining access, and have actually increased the influence of the professional lobby. These findings have wide-ranging ramifications, not only for the on-going process of lobbying reform in California, but also for the continuing debates over lobbying regulations in dozens of other states and at the federal level.

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I. INTRODUCTION

Articles about lobbying reform fill the pages of scholarly journals and the popular press, but the vast majority of these pieces focus on reform proposals advocated by scholars or lawyers removed from the actual lobbying process. Few pieces explore these issues from the lobbyists' perspective or analyze the proposals in light of how the lobbying process actually works *on the ground* in state capitols across the country.¹ What do lobbyists think about the reform proposals? Do they believe new lobbying laws alter their behavior or that of their colleagues? Do they perceive the proposals as "effective" in meeting their stated goals? Do lobbyists believe the legislature should enact new reforms that will be more effective in serving the public interest?

In this Article, I make a first step toward filling this gap in knowledge through a case study of lobbying regulation in California. My interviews with registered lobbyists provide a useful perspective in analyzing the effect of reform legislation on the actual practice of lobbying, and thinking about future proposals. My objective in conducting these interviews was threefold. First, I wanted to provide a more detailed and nuanced picture of how lobbying works "on the ground" by better understanding issues such as how lobbyists gain access to legislators, the most effective ways to influence legislation and the role of money in the process. Second, I hoped to understand how lobbyists perceive the effects of reform legislation and whether they believe it affects the way they, or their colleagues, conduct business. Third, I was interested in hearing lobbyists' opinions—as individuals who know the actual practice of lobbying best—on what, if anything, they believe should be done to regulate their profession in the future.

One preliminary point of caution: It would be easy to dismiss my findings

1. For examples, see *infra* notes 16-46, and accompanying text.

with the thought that this is the proverbial “sending the wolf to guard the chicken coop” and that lobbyists are not the best group to be asking about lobbying reform. My aim, however, is not to advocate for certain reforms or empirically evaluate the efficacy of reform legislation. Rather, I hope to examine lobbying reform from the “inside,” from the perspective of those whose behavior the law seeks to regulate. We know the case for reform. What we do not know is how the lobbyists, themselves, view the reform and whether they perceive it as having any effect on their actions. I recognize that lobbyists, as those poised to “suffer” or “benefit” the most from lobbying reform, have a powerful self-interest in the issue. This may mean that some of them have a skewed perspective. For some this could result in deliberately changing their responses to fit an agenda; others may have an unconscious bias stemming from the fact that they are situated in a way that outside observers and non-participants are not. However, lobbyists provide an important perspective that is worth studying for several reasons.

First, lobbyists are close to the action and best understand (with perhaps the exception of the legislators themselves) how the capitol functions, how one builds coalitions and influences legislation. They are some of the best sources about how lobbying works and are uniquely positioned to observe the effects of new laws. Second, lobbyists have a uniquely informed perspective. Many professional lobbyists have spent years, if not decades in Sacramento working in government as legislative staff, lobbyists or actual members of the legislature. This gives them a wealth of accumulated knowledge and an extremely informed perspective about the legislative process, campaigns and their financing, and the effects of past reform bills. Third, interviewing lobbyists may allow us to see things that outside reformers don’t see or understand about the process. To accurately evaluate the efficacy of reform legislation, one would certainly need to study the issue from the viewpoint of a greater number of stakeholders: legislators, legislative staff, reformers, the general public and interest groups who employ lobbyists. What follows, then, is not another normative article about campaign finance or lobbying reform or a proposal for new legislation. Rather, it is a first step at a view of what are *lobbyists* perceptions, beliefs and opinions on the process.

The results I report indicate that some current thinking about lobbying may be flawed in certain important respects. My interviews suggest that many lobbyists believe that current reforms have little effect on the way they or their colleagues do business and that some additional reforms—namely robust disclosure and reporting—would better serve the public interest. In Part I of this Article, I briefly describe my methodology. In Part II, I provide some background on lobbying by reviewing pertinent legal and political science literature and highlight how the courts have dealt with the subject. In Part III, I sketch a brief history of lobbying reform in California to provide context for the interviews. In Part IV, I set out my principal findings. In Part V, I describe some of the implications of what I found both for the lobbying profession itself and for

future lobbying or political process reforms. In this final Part, I focus on the unintended consequences of political process reform, the relative importance of money in gaining access, and process reforms.

II. METHODOLOGY

This is a case study on the practice of lobbying and lobbyists' perceptions of certain pieces of reform legislation. I should first clarify that this is not an article on lobbying in general, but rather a study of *registered lobbyists*. State and federal law regulating lobbying have withstood constitutional scrutiny² largely because they define a group of individuals whose activity permits the government to enforce registration and other requirements. Laws restricting lobbyist activity target *registered* lobbyists, because it is easier to enforce the law given the reporting and registration requirements, and because it is unlikely that a blanket regulation of all lobbying activity would survive scrutiny under the First Amendment. Given the current system of regulating registered lobbyists, I focus my study there on the individuals— who have made lobbying a significant portion of their career— who the laws are designed to regulate.

I focus on state (as opposed to federal) registered lobbyists for two reasons. First, the federal lobby is larger, better financed and more complex than state lobbies. I felt that it would be more difficult to obtain a representative sample of interview subjects and ensure that I spoke to most of the “major players” in the lobbying industry if I attempted to study the federal system. Second, because Federal law centers around the LDA³ and specific House and Senate ethics rules, it is a less fruitful area of inquiry. Recently, the states, not the federal government, have experimented with a variety of creative ways to regulate lobbying, and I was interested in examining some of these new approaches. I ultimately limited my study to California because voters in 2000 passed Proposition 34, which banned campaign contributions from registered lobbyists to members of the branch of government or agency they lobby.⁴ I felt that this ban was one of the more interesting recent approaches to lobbying regulation, and would provide a concrete issue for discussion with my interview subjects.⁵

2. See *infra* notes 51, 61-66 and accompanying text.

3. Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601 (1995).

4. California Proposition 34, S.B. 1223, 2000 Cal. Legis. Serv. Ch. 102 (Cal. 2000).

5. I initially focused on three states which had particularly interesting laws. Connecticut just this year passed a series of laws in the wake of scandal that forced Governor John G. Rowland out of office. The law, among other things, sets up a system of public financing for candidates and bans contributions from lobbyists. Mark Pazniokas, *Campaign Finance Reform Becomes Law*, THE HARTFORD CURRANT, Dec. 8, 2005; see also Office of Legislative Research Analysis, OLR Bill Analysis for SB 2103, available at <http://www.cga.ct.gov/2005/BA/2005SB-02103-R00SS3-BA.htm> (last accessed March 15, 2006). However, the Connecticut law does not go into effect until December 31, 2006, *Id.*, and until it does, it is virtually impossible to draw any meaningful conclusions as to how it will affect the practice of lobbying. Alaska enacted a sweeping campaign finance in 1996,

California has hundreds of registered lobbyists.⁶ In an effort to gain a more complete picture and better understand the inevitable selection bias of selecting a survey sample, I focused on a recent high-profile lobbying effort—the passage of the controversial Proposition 71, which provided state funds for stem cell research.⁷ This seemed a particularly appropriate way to narrow the field of lobbyists because Prop. 71 was a recent law and involved a wide variety of interests ranging from private industries to educational institutions to concerned citizens groups. My original intent was to interview the individual lobbyists who were most active in lobbying the legislature for and against putting the proposition on the ballot. I soon realized that lobbyists discuss several issues with legislators and their responses reflected general beliefs about the process and not anything unique to the stem cell lobbying effort.

I changed my focus to use the stem cell initiative not as a case study in itself, but as a screen to help ensure that I spoke with the “major players” of the lobbying profession in Sacramento. Because the stem cell initiative was high profile, well funded, and involved a variety of viewpoints and interests—ranging from non-profit educational institutions to commercial business interests—it involved most of the major lobbying firms in Sacramento. In conducting my interviews, I attempted to speak with at least one individual from each of these firms—firms either directly involved in the stem cell lobby or those with biotech and medical clients. Although I may not have always spoken with an individual lobbyist who was personally involved with the effort, the screen worked to help ensure that I spoke with people employed by the biggest and most influential lobbying firms in the state. Like any case study, there will be inherent biases, which I will attempt to at least expose, if not address later in this Part.

A. *The Interviews*

Before I conducted my interviews, I put together a test questionnaire and engaged in a pilot interview. I quickly discovered that when I asked individu-

Senate Bill 191, 1996 Alaska Sess. Laws 48, in an attempt to “restore the public’s trust in the electoral process and to foster good government.” 1996 Alaska Sess. Laws 48 § 1(b). After parts of the law were struck down by a district court challenge, *see* *Jacobus v. Alaska*, 182 F.Supp.2d 893 (D. Alaska 2001), the Ninth Circuit reversed the District Court on several points of law, notably upholding the “soft money” limits and ban on corporate “soft money.” *Jacobus v. Alaska*, 338 F.3d 1095 (9th Cir. 2003). Meanwhile, the legislature repealed and amended other sections. The law, among other things, prohibits all contributions from registered lobbyists to candidates or office holders. There is an exception which allows lobbyists to continue to make contributions (subject to the normal limits) to office holders for which they are eligible to vote. AS § 15.13.074(g). Because the lobbying community is particularly small in Alaska and dominated by some large interest groups (oil, Native American lobby), the state was less than ideal for a case study.

6. *See* California Secretary of State Website at <http://cal-access.ss.ca.gov/Lobbying/Lobbyists/> (last accessed April 28, 2006).

7. California Proposition 71, 2004 Cal. Legis. Serv. Prop. 71 (2004).

als to try to quantify things (e.g. rank the following five factors in order of importance in gaining access to legislators), they had a difficult time answering. I found that I was able to gain greater insight and more information if I asked a series of open-ended questions focusing on the individual's personal experiences. I was then able to ask more detailed closed-ended questions as a follow up. Over the course of several months beginning in October of 2005 and continuing through April 2006, I spoke with eleven registered lobbyists, all of whom had either personally worked on the stem cell initiative or their firms/organizations had worked on the issue. The tenure of my interview subjects ranged from several years to several decades of working as a lobbyist in California. During the interview, I asked a certain set of identical questions to each individual and took detailed notes on the responses given. I did not record the interviews, as I thought that taping would inhibit candor as lobbyists are particularly sensitive to public exposure of any sort of negative comments. Additionally, I guaranteed the subjects that their anonymity would be protected—neither their name, their firm or client's names or the issues on which they lobby would be revealed, and that all quotes would be accurate, but not attributed to particular individuals. While the clarity of this paper may suffer, I felt this was the only way to conduct potentially sensitive interviews.⁸

B. *Limits of a Case Study*

I chose the case study because my goal was to examine the qualitative effects of attempts to regulate lobbyist participation in the political process. In a system as complex as lobbyists influencing governmental actors, it would be difficult to quantify the effects of the law from public records. While some data, such as campaign contributions, are publicly available, simply analyzing these figures would not take into account various ways an individual can help fund someone's candidacy, such as holding fundraisers, encouraging friends to make contributions or making contributions via PACs or in the name of family members. I felt that the case study would be an important first step in discerning the effects of Proposition 34, knowledge that could potentially lead to further empirical research.

As Jane Schacter and Victoria Nourse point out, case studies are “not generalizable to populations or universes but, instead, to theoretical propositions: ‘[T]he investigator’s goal is to expand and generalize theories (analytic generalization) and not to enumerate frequencies (statistical generalization).’”⁹ Case

8. In conducting my interviews, I relied on the methodology explained by Professor Jane Schacter and employed in her study of legislative drafting, Victoria F. Nourse & Jane S. Schacter, *The Politics of Legislative Drafting: A Congressional Case Study*, 77 NYU L. REV. 575 (2002). Professor Schacter's methodology was largely based on R. Peabody et al., *Interviewing Political Elites*, 23 POL. SCI. & POL. 451 (1990) (explaining how to structure studies involving “political elite” interviews).

9. Nourse & Schacter, *supra* note 8 at 580, quoting ROBERT K. YIN, CASE STUDY

studies are certainly vulnerable to several criticisms, including bias, structuring, or the risk of interview subjects providing socially desirable responses.¹⁰ However, as Schacter and Nourse point out, quantitative studies are not without their shortcomings and are also subject to bias.¹¹ Case studies can be a good way to test theories and develop explanations for observed phenomenon, which is what I attempt in this paper.¹²

I have tried to minimize instances of bias. I began with open-ended questions asking respondents to describe their lobbying experience. As the interview progressed, I employed more pointed questions inquiring into how the individual gained access to decision makers. These answers were used to evaluate consistency with the more open-ended accounts. Finally, I worked to ensure that the sample represented a wide variety of individual lobbyists—from lobbyists working at private lobbying firms, to those representing non-profits and public interest groups. I also interviewed two government affairs officers to cross-check stories told by lobbyists.

Despite these efforts, as with any case study, it is impossible to avoid selection bias completely. By using the stem cell initiative as a screen, this Article does leave out some important types of lobbyists. The sample consists largely of lobbyists who work at professional lobbying firms hired by a variety of clients to lobby for their legislation. The firms represent a wide range of clients and interests ranging from corporations to large non-profits charities and universities, to trade associations and unions to political social action groups. For example, many large lobbies such as the chamber of commerce and the police and firefighter associations use outside lobbying firms.¹³ However, the sample omits two important groups. First, government agencies play an important role in lobbying the legislature. Many of these agencies have registered lobbyists on their staff, while others may not. Some researchers have found that government lobbyists are some of the most effective in gaining access to legislators and are very influential.¹⁴ The second group that is left out is large unions or professional associations, such as the California Teachers Union, that

RESEARCH: DESIGN AND METHODS 13 (2D ED. 1994).

10. *Id.*

11. Nourse & Schacter, *supra* note 8 at 580; *see also* GARY KING ET AL., *DESIGNING SOCIAL INQUIRY: SCIENTIFIC INFERENCE IN QUALITATIVE RESEARCH* 5 (1994) (noting that “neither quantitative nor qualitative research is superior to the other” and observing “[t]he very abstract, and even unrealistic, nature of statistical models.”); Randy Stoecker, *Evaluating and Rethinking the Case Study*, 39 *SOC. REV.* 88, 93 (1991) (“[T]he probability sample and statistical significance tests ensure neither a valid explanation nor a valid generalization.”).

12. Nourse & Schacter, *supra* note 8 at 580; *see also* HARRY ECKSTEIN, *REGARDING POLITICS* 119; Stoecker, *supra* note 11 at 109 (“The case study is the best way by which we can refine general theory.”).

13. *See* California Secretary of State Website, at <http://cal-access.ss.ca.gov/Lobbying/Employers/> (last accessed April 22, 2006).

14. *See infra* note 41.

employ their own in-house lobbyists and do not use lobbying firms. While this is a definite selection bias in the study, I feel that it is preferable not to include these groups. First, lobbyists for governmental agencies or unions only represent one client rather than several. This means that they likely gain access to legislators differently than individuals who represent several interests. Second, unions represent a powerful political constituency (i.e. potential votes). While lobbying firms may represent clients with significant political clout, the relationship is more opaque and the connection less obvious, which likely shapes the way they gain access to members. Third, in the case of governmental lobbyists, agencies are not allowed to “campaign” for members or make political contributions to their campaigns. I suspect that this would affect the way governmental lobbyists interact with members of the legislature. Lobbyists who work in-house for unions, non-profits and governmental agencies, represent an important segment of the lobbying core; while examining these groups is less germane to this Article, it is a fruitful area for further research.

The results of this case study may not be generalizable to lobbying nationwide or even across California, nor is the study intended to draw statistically reliable estimates of lobbying behavior. Rather, my hope is to provide a limited test of some fundamental assumptions about lobbying and the role of money in politics. Hopefully the case study will provide a unique look into the practice of lobbying and lay the foundation for further empirical research in this area.

III. BACKGROUND ON LOBBYING

Before I address the findings of my study, it would be helpful to briefly examine what work scholars have done in the area in addition to providing some background on Proposition 34, the most recent “reform” attempt to regulate the practice of lobbying in California.

A. *Review of Pertinent Academic Literature*

The role lobbyists play in the political process is an interesting topic, yet it has a fairly thin academic literature. Several of the articles written about lobbying regulation are student Notes or Comments and very few articles address state lobbying restrictions, which are often more innovative than any statutes enacted by Congress. The literature on the topic can be broken into three broad categories: practical guides to lobbying, regulation of the process principally through the tax code and other administrative procedures, and First Amendment concerns.

Several legal groups write practical guides to lobbying. Most notably, the Practising Law Institute publishes periodic updates that outline lobbying regulation and restrictions on both the federal level and state levels along with out-

lining the current court rulings on the topic.¹⁵ Other industry groups publish similar practical guides targeted at companies or individuals working in the industry.¹⁶ Several state bar journals¹⁷ or other industry publications¹⁸ publish guides explaining to their membership recent changes to lobbying laws and how that might affect their practice of law or their clients. These handbooks can be valuable resources to attorneys, especially when changes in state law regulating lobbying could subject lawyers to lobbying regulation for certain day-to-day activities, when such actions previously would have been outside the scope of the lobbying laws. All of these materials generally do not discuss the public policy rationale behind the law or the effects of the changes in the legal landscape on the political process. Rather, they are meant to be practical guides for practitioners on how to comply with relevant state and federal laws.

Several scholars have explored the effect of the Internal Revenue Code on the regulation of lobbying. Many of these articles focus on the Congress' attempt to curtail lobbying activities through revising the Internal Revenue Code to prohibit or make it increasingly difficult for non-profits registered as 501(c)(3) organizations to engage in lobbying activities and still maintain their tax-exempt status. Most authors argue for the unconstitutionality of such attempts,¹⁹ creating arguments for allowing non-profits to engage in a wider variety of lobbying activities. They assert that such an approach would further public policy,²⁰ or could at least allow increased lobbying while avoiding some

15. See, e.g., Kenneth A. Gross & Ki P. Hong, *Lobbying and Gift Laws at the State Level*, Practising Law Institute, Corporate Law and Practice Course Handbook Series, 1508 PLI/ Corp. 685 (Sept. 2005); Robert F. Bauer et al., *Disclosure of Federal Lobbying Activities*, Practising Law Institute, Corporate Law and Practice Course Handbook Series, 1508 PLI/ Corp. 645 (Sept. 2005).

16. ERWIN G. KRASNOW, DAVID R. SIDDALL, AND MICHAEL D. BERG, *FCC LOBBYING: A HANDBOOK OF INSIDER TIPS AND PRACTICAL ADVICE*, Telecommunications Reports International (Washington: 2001).

17. See, e.g., Lisa Nolen Birmingham, *Administrative Lawyers Beware—You May Be Lobbying* 26-MAR. VT. B.J. 18 (2000) (discussing the scope of Vermont lobbying laws and how many administrative lawyers may unwittingly qualify as lobbyists under the law); Marylou Lowder Kent & Daniel L. Houlihan, *New Lobbying Registration Rules May Affect You* 82 ILL. B.J. 216 (1994) (analyzing how changes to registration requirements may affect lawyers who do not consider themselves "lobbyists").

18. See, e.g., Jon Delano, *New Lobbying Registration Law Raises Questions for Lawyers*, 1 No. 10 LAWYERS J. 5 (2000) (discussing Pennsylvania lobbying restrictions and when lawyers may come under the reach of the law).

19. Amy E. Moody, Comment, *Conditional Federal Grants: Can the Government Undercut Lobbying by Nonprofits Through Conditions Placed on Federal Grants?*, 24 B.C. ENVTL. AFF. L. REV. 113 (1996) (arguing that the Simpson and Istook Amendments of 1995 which prohibit all lobbying activities by § 501(c)(3) and § 501(c)(4) organizations who receive federal funds are unconstitutional).

20. Nina J. Crimm, *Democratization, Global Grant-Making, and the Internal Revenue Code Lobbying Restrictions*, 79 TUL. L. REV. 587 (2005) (arguing for easing IRS lobbying restrictions to allow charitable organizations to maintain their non-profit status while simultaneously engaging in a wider variety of lobbying, which will help promote democratization abroad).

of Congress' concerns with ensuring that tax-exempt organizations remain true to their "public charity" status and do not become simply political organizations masquerading as 501(c)(3) charities.²¹ Others take a more measured approach merely discussing the impact of changes to Internal Revenue Code regulation of various aspects of lobbying regulation.²²

The third significant group of articles concerns the constitutional limits on congressional power to regulate or restrict lobbying activity. Most of these scholars write about federal regulation, with several writing on the LDA or specific rules governing the relationship between Congress and lobbyists.²³ Other articles discuss the validity of lobbying regulations arguing that the industry should enjoy special constitutional protection.²⁴ Many articles suggest

21. See Melissa Waller Baldwin, *Section 501(c)(3) and Lobbying: The Case for the Local Organization*, 23 OHIO N.U. L. REV. 203 (1996) (discussing why allowing some § 501(c)(3) organizations to lobby would not be against public policy and suggesting reform to the Internal Revenue Code to accomplish this); Miriam Galston, *Lobbying and the Public Interest: Rethinking the Internal Revenue Code's Treatment of Legislative Activities*, 71 TEX. L. REV. 1269 (1993) (arguing for reform of the Internal Code's regulation of lobbying activities); Oliver A. Houck, *On the Limits of Charity: Lobbying, Litigation and Electoral Politics by Charitable Organizations Under the Internal Revenue Code and Related Laws*, 69 BROOK. L. REV. 1 (2003) (examining the 1934 lobbying restrictions on public charities and discussing the limits of such organizations' ability to engage in lobbying and other activities before running afoul of the tax code and their tax-exempt status).

22. See Shannon King, *The Lobbying Deduction Disallowance: Policy Considerations, Comparisons, and Structuring Activities Under Amended Section 162(E)*, 15 VA. TAX REV. 551 (1996) (discussing the expanded disallowance of deduction of lobbying expenses under the 1993 amendments); Pamela O'Kane Foster, Note, *Lobbying on the Internet and the Internal Revenue Code's Regulation of Charitable Organizations*, 43 N.Y.L. SCH. L. REV. 567 (1999) (discussing IRS regulations in the age of the Internet).

23. See, e.g., Michael H. Chang, *Protecting the Appearance of Propriety: The Policies Underlying the One-Year Ban on Post-Congressional Lobbying Employment*, 5-WTR KAN. J.L. & PUB. POL'Y 121 (1996) (concluding that a federal one-year ban on members of Congress engaging in lobbying is based on sound policy); Kathryn L. Plemmons, *Lobbying Activities' and Presidential Pardons: Will Legislators' Efforts to Amend the LDA Lead to Increasingly Hard-Lined Jurisprudence?*, 18 BYU J. PUB. L. 131 (2003) (discussing the effect of amending the LDA to regulate those lobbying for Presidential Pardons will have on jurisprudence); Ron Smith, *Compelled Cost Disclosure of Grass Roots Lobbying Expenses: Necessary Government Voyeurism or Chilled Political Speech?*, 6 KAN. J.L. & PUB. POL'Y 115 (1996) (discussing tension between disclosure requirements of the LDA and the right to privacy recognized by the courts); Steven A. Browne, Note, *The Constitutionality of Lobbying Reform: Implicating Associational Privacy and the Right to Petition the Government*, 4 WM. & MARY BILL RTS. J. 717 (1995) (examining the policy underlying the LDA and examining the Constitutional implications).

24. Andrew P. Thomas, *Easing the Pressure on Pressure Groups: Toward a Constitutional Right to Lobby*, 16 HARV. J.L. & PUB. POL'Y 149 (1993) (arguing that the right to lobby may be protected under the Constitution); Stacie L. Fatka & Jason Miles Levien, Note, *Protecting the Right to Petition: Why a Lobbying Contingency Fee Prohibition Violates the Constitution*, 35 HARV. J. ON LEGIS. 559 (1998) (arguing that despite little judicial support for the notion that lobbyists have a right to remain anonymous when trying to influence legislation, a complete ban on all contingency fee lobbying is overbroad and would place an unconstitutional burden on the right to petition the government); Comment, *Public Disclosure of Lobbyists' Activities*, 38 FORDHAM L. REV. 524 (1970) (arguing that the cost involved

that restrictions are inherently bad and do not serve the principles underlying our representative system of government.²⁵ One piece summarizes lobbying regulation in the U.S. and discusses attempts to export similar anti-corruption laws to Russia.²⁶

Not surprisingly, given the little literature written on the subject, there are very few articles that delve into state regulation of lobbyists. One article examined the First Amendment implications of a recently passed law in Ohio.²⁷ The other article was a student comment exploring Oregon's prohibition on members of the legislature becoming lobbyists immediately after they leave public office.²⁸ This leaves ample opportunity for scholarship exploring some of the more creative attempts to restrict lobbying activities and analyze recent reform statutes that have recently passed in states such as California, Alaska, Vermont and Connecticut.²⁹

The political science literature is significantly richer than the legal articles, but is nonetheless still thin. The literature explores three primary questions: why certain states enacted particular laws and reform proposals, what are the mechanics of the lobbying process, and how lobbyists effectively exert influence (through contributions, creating networks etc).

One study from 1991 delves into the differences in state lobbying laws and tries to describe some of the underlying reasons states have enacted different laws. The author cites political culture and "professionalism" (legislators who are well paid, are in session almost all year and have adequate staff) as two key explanations.³⁰ She examines three categories of factors—statutory definition

with complying with lobbying reporting requirements may cause certain poorly funded groups to hire fewer lobbyists. This may impinge on their constitutional right to associate).

25. James M. Demarco, Note, *Lobbying the Legislature in the Republic: Why Lobbying Reform is Unimportant*, 8 NOTRE DAME J.L. ETHICS & PUB. POL'Y 599 (1994) (arguing that Congressional gridlock stems from the legislative system and that lobbyists actually improve the process and increase the public's participation in government).

26. Jason D. Kaune, Note, *Exporting Ethics: Lessons from Russia's Attempt to Regulate Federal Lobbying*, 20 HASTINGS INT'L & COMP. L. REV. 815 (1997) (exploring the implications of exporting U.S. anti-corruption laws and lobbying regulations to the Russian Federation).

27. Linda Furney, *Fair Hearing: Balancing Lobbying Regulation with Free Speech in Ohio*, 32 U. TOL. L. REV. 529 (2001) (chronicling the history of lobbying restrictions and reporting in Ohio and discussing their validity under the First Amendment).

28. Jeni L. Lassell, Comment, *The Revolving Door: Should Oregon Restrict Former Legislators from Becoming Lobbyists?*, 82 OR. L. REV. 979 (2003) (exploring states' restrictions on legislators becoming lobbyists and discussing the proposed bill in Oregon); see also Michael H. Chang, *Protecting the Appearance of Propriety: The Policies Underlying the One-Year Ban in Post Congressional Lobbying Employment*, 5 KAN. J.L. & PUB. POL'Y 121, 122 (1996) (discussing the increased access former legislators can get as lobbyists).

29. See, e.g., Cal. Gov. Code § 85702 (2001); AK ST § 15.13.074; C.G.S.A. § 1-95 (Conn. 2005); 2005 P.A. 05-287, § 50 (Conn. 2005); VT ST T.2 § 266; 2006 Vermont Laws P.A. 99 (H.248).

30. Cynthia Openheim, *Explaining Differences in State Lobbying Regulation*, W. POL. Q., Vol. 44, No. 2 (June 1991) at 405-421, 406.

of a lobbyist, frequency and quality of disclosure, and oversight and enforcement of regulations—that contribute to the stringency of the state’s lobbying regulation laws and enforcement procedures.³¹ Specifically, the study found that states with “moralistic” political cultures were more likely to enact stringent laws than those with “traditionalistic” or “individualistic” cultures.³² Additionally, “professional legislatures”—those with higher pay, longer sessions and significant staff—are less likely to rely on lobbyists for information and are more likely to strictly enforce the rules.³³ The findings in this Article contradict this last finding; California is a state with a “professional legislature,”³⁴ yet for reasons discussed later in this paper, lobbyists’ perceived influence has *grown* in recent years, largely due to term limits. While their influence may be less than lobbyists in what one author would term “citizen legislatures,” lobbyists in California at least perceive their influence as significant, a position shared by their clients who continue to expend large sums of money for their services.

Another group of papers explores the dynamics and mechanics of lobbying interactions. One study examines “lobbying enterprises”, groups of like minded lobbyists and their legislative allies, suggesting that a lobbyist’s success depends, in part, on the strength and viability of these groups in the legislature. Specifically, lobbyists support and fund legislative allies who work within the legislative arena to trade votes and work out deals.³⁵ Lobbying enterprises insure access to congressional offices and facilitate coordination of lobbying campaigns. The author suggests that if only individual lobbying contacts are analyzed, the lobbying impact will be underestimated because it will overlook the internal mobilization and bargaining of the lobbyist’s legislative allies.³⁶

Another paper explores the legislator-lobbyist interaction by examining their backgrounds, the types of interests they represent, and the role they play.³⁷ One researcher examined how legislators regulate their interactions with lobbyists so as to limit the undue influence of interest groups even in the absence of lobbying regulations. He suggests that this process is largely a function of signaling between the lobbyist and legislator.³⁸ The lobbyist has an informational advantage in that he knows about his client—the wealth and electoral salience

31. *Id.* at 405-421, 407.

32. *Id.* at 405-421, 417.

33. *Id.* at 405-421, 418.

34. *Id.*; see also California Legislative Calendar, available at http://www.senate.ca.gov/~newsen/schedules/_CALENDAR/SENATE_CALENDAR_2006.PDF (last accessed April 29, 2006).

35. Scott H. Ainsworth, *The Role of Legislators in the Determination of Interest Group Influence*, *Legislative Studies Quarterly*, Vol. 22, No. 4 (Nov. 1997), pp. 517-533, 519-524.

36. Scott H. Ainsworth, *The Role of Legislators in the Determination of Interest Group Influence*, *LEGIS. STUD. Q.*, Vol. 22, No. 4 (Nov. 1997) at 517-533.

37. Samuel C. Patterson, *The Role of the Lobbyist: The Case of Oklahoma*, *J. OF POL.*, Vol. 25, No. 1 (Feb. 1963) at 72-92.

38. *Supra* note 36, at 41-56.

of his client—which he signals to the legislator in a variety of ways.³⁹ When the lobbyists' interests line up with that of the legislator, he has an incentive to exaggerate his position. However, as long as the legislator is aware of the asymmetry, she can structure the interaction to obviate some of the lobbyists' advantage and undue influence.⁴⁰

The third category of lobbying articles center on how lobbyists exert influence and gain access to legislators. One researcher examines how often a lobbyist is approached for advice by policymakers. He concludes that full-time, experienced lobbyists have the largest "advice advantage," although female lobbyists and lobbyists who work for government agencies enjoy a similar benefit.⁴¹ He analyzes data that comes from a survey of 595 state lobbyists surveyed in 1996 who lobbied either in California, Wisconsin or South Carolina.⁴² He noted that 27 percent of respondents said they were approached "frequently" and 54 percent said they were approached "occasionally" by legislators for advice and those who have been lobbying longer are approached much more frequently.⁴³ This is consistent with the results of the interviews I present later in this paper; seasoned, professional lobbyists in California are typically contacted a great deal by legislators to give them advice on an issue and those with institutional knowledge are much more likely to be approached than those who are new or inexperienced. Additionally, several papers focus on how lobbyists determine who to lobby.⁴⁴

Another paper examines the link between campaign contributions and the ability of special interests to get their legislation passed (or blocked) by studying a particular milk subsidy. The author notes that it appears that the congressmen who received PAC contributions from the milk lobby in 1974 were more likely to vote for the subsidy in 1975 and that those who voted for the subsidy in 1975 were more likely to receive higher PAC contributions in 1976.⁴⁵ He concludes that this "exchange" model (of trading contributions for political favors) passes some basic tests to which he subjects it.⁴⁶ Another team of researchers found that the National Rifle Association and Handgun Control lobby's campaign contributions had a significant impact on votes on handgun control bills even when ideology, members' prior position and constituency

39. *Id.*

40. *Supra* note 36, at 41-56, 43-45.

41. Anthony J. Nownes, *Solicited Advice and Lobbyist Power: Evidence from Three American States*, LEGIS. STUD. Q., Vol. 24, No. 1 (Feb. 1999) at 113-123.

42. *Id.* at 114.

43. *Id.* at 117-19.

44. Marie Hojnacki & David C. Kimball, *Organized Interests and the Decision of Whom to Lobby in Congress*, AM. POL. SCI. REV., Vol. 92, No. 4 (Dec. 1998); Ken Kollman, *Inviting Friends to Lobby: Interest Groups, Ideological Bias, and Congressional Committees*, AM. J. OF POL. SCI., Vol. 41, No. 2 (Apr. 1997) at 519-544.

45. W. P. Welch, *Campaign Contributions and Legislative Voting: Milk Money and Dairy Price Supports*, W. POL. Q., Vol. 35 No. 4 (Dec. 1982) at 478-495, 493.

46. *Id.* at 478-495.

characteristics were held constant.⁴⁷ However, one study suggests that contributions are more powerful when coupled with a grassroots electoral presence in the member's district who you are lobbying. In fact, the study indicates that organized groups seldom lobby and contribute to members of the U.S. House where they have no geographical presence.⁴⁸

The remaining political science articles on lobbying centered around how interest groups build coalitions among the citizenry and within the legislature to press their legislative agenda.⁴⁹ A couple of papers focused on the mechanics of lobbying such as how groups determine who in the legislature to lobby,⁵⁰ how lobbying works across multiple venues,⁵¹ or how a lobbyist interacts with both legislators and members of her associated group.⁵² How public interest groups interact with the federal government,⁵³ or lobbying in foreign countries.⁵⁴ There was one older article on the theory behind lobbying,⁵⁵ and an interesting piece

47. Laura Langbein & Mark A. Lotwis, *The Political Efficacy of Lobbying and Money: Gun Control in the U.S. House, 1986*, LEGIS. STUD. Q., Vol. 15, No. 3 (Aug. 1990) at 413-440.

48. John R. Wright, *PAC Contributions, Lobbying, and Representation*, J. OF POLI., Vol. 51 No. 3 (Aug. 1989) at 713-729.

49. See, e.g., Scott Ainsworth, *The Role of Legislators in Determination of Interest Group Influence*, LEGIS. STUD. Q., Vol. 22, No. 4 (Nov. 1997) 517-33; Anne N. Costain, *The Struggle for a National Women's Lobby: Organizing a Diffuse Interest*, W. POLI. Q. Vol. 33, No. 4 (Dec. 1980) 476-491; Paul Findley, *Congress and the Pro-Israel Lobby*, J. OF PALESTINE STUD., Vol. 15, No. 1 (Autumn 1985) 104-13; Richard W. Gable, *NAM: Influential Lobby or Kiss of Death?*, J. OF POLI. Vol. 15, No. 2 (May 1953) 254-73; Valerie Heitshusen, *Interest Group Lobbying and U.S. House Decentralization: Linking Informational Focus to Committee Hearing Appearances*, POLI. RES. Q., Vol. 53, No. 1 (Mar. 2000) 151-76; V. Kerry Smith, *A Theoretical Analysis of the Green Lobby*, AM. POLI. SCI. REV. Vol. 79, No. 1 (Mar. 1985) 132-147.

50. David Austen-Smith & John R. Wright, *Counteractive Lobbying*, AM. J. POLI. SCI., Vol. 38, No. 1 (Feb. 1994) 25-44; Marie Hojnacki & David C. Kimball, *The Who and How of Organizations' Lobbying Strategies in Committee*, J. OF POLI., Vol. 61 No. 4 (Nov. 1999) 999-1024.

51. Thomas T. Holyoke, *Choosing Battlegrounds: Interest Group Lobbying Across Multiple Venues*, POLI. RES. Q., Vol. 56, No. 3 (Sept. 2003) 325-36.

52. Scott Ainsworth & Itai Sened, *The Role of Lobbyists: Entrepreneurs with Two Audiences*, AM. J. OF POLI. SCI., Vol. 37, No. 3 (Aug. 1993) 834-66; William P. Browne, *Variations in the Behavior and Style of Lobbyists and Interest Groups*, J. OF POLI., Vol. 47, No. 2 (Jun. 1985) 450-68.

53. See, e.g., Jeffrey M. Berry, *Consumers and the Farm Lobby*, PROCEEDINGS OF THE ACADEMY OF POL. SCI., Vol. 34, No. 3 (1982) 68-78.

54. See, e.g., James E. Alt, et. al., *Asset Specificity and the Political Behavior of Firms: Lobbying for Subsidies in Norway*, INT'L ORG. Vol. 53, No. 1 (Winter 1999) 99-116; James A. Dunn, Jr., *The French Highway Lobby: A Case Study in State-Society Relations and Policymaking*, COMP. POLI. Vol. 27, No. 3 (Apr. 1995) 275-95; John T. S. Keeler, *Agricultural Power in the European Community: Explaining the Fate of CAPP and GATT Negotiations*, COMP. POLI., Vol. 28, No. 2 (Jan. 1996) 127-49; Manfred von Nordheim & Richard W. Taylor, *The Significance of Lobbyist-Legislator Interactions in German State Parliaments*, LEGIS. STUD. Q. Vol. 1, No. 4 (Nov. 1976) 511-31.

55. Robert E. Lane, *Notes on the Theory of the Lobby*, W. POLI. Q., Vol. 2, No. 1 (Mar. 1949) 154-62.

on lobbying as a communication process.⁵⁶ Although more political scientists have written on the topic than members of the legal academy, the literature on lobbying is still quite thin and leaves ample room for future study and empirical investigation.

B. *Lobbying Regulation and the Courts*

One of the earliest Supreme Court cases on lobbying came from the 1950s, which is widely viewed as establishing a “constitutional right to lobby.” Mr. Rumley was the secretary of the Committee for Constitutional Government, which sold books “of a particular political tendentiousness.”⁵⁷ The House Select Committee on Lobbying Activities requested that Rumley turn over the records of individuals or organizations who had bought large numbers of the books for re-distribution. Rumley refused and was convicted under a statute that provides penalties for refusing to give testimony in any matter under investigation by Congress. In dicta, the Court suggested that there is a constitutional protection for lobbying activities, although it stopped short of such a direct holding.⁵⁸

A few short months after *Rumley* came down, the Court issued its opinion in *United States v. Harriss*.⁵⁹ The case involved a constitutional challenge to the Federal Regulation of Lobbying Act of 1946 (FRLA).⁶⁰ FRLA was the nation’s first comprehensive disclosure law for domestic lobbyists and was a system of lobbyist registration and disclosure for those who attempted to influence Congress.⁶¹ It was intended to provide the public information about who was at-

56. Lester M. Milbrath, *Lobbying as a Communication Process*, PUB. OPINION Q., Vol. 24, No. 1 (Spring 1960) 32-53.

57. *United States v. Rumely*, 345 U.S. 41, 41 (1953).

58. *United States v. Rumely*, 345 U.S. 41, 44-46 (1953) (suggesting that lobbyists enjoy a Constitutional protection for their activities. This was the USSC’s first encounter with the question of whether the lobbying industry enjoys a Constitutional protection).

59. 347 U.S. 612 (1954).

60. Federal Regulation of Lobbying Act, 60 Stat. 893 (Aug. 2, 1946).

61. Section 308 of the Act provided: “(a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included . . .” 2 U.S.C. § 267; 60 Stat. 841 (Aug. 2, 1946).

tempting to influence their elected representatives. The Court reasoned that without this public information, ““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.”⁶² Individuals whose “principal purpose” was to influence the passage or defeat of legislation in Congress were required to register with the Clerk of the House of Representatives and the Secretary of the Senate and file quarterly reports.⁶³

In *Harriss*, the Court grappled with a constitutional challenge to the Act and had to engage in aggressive statutory interpretation to uphold it. The case arose from a prosecution of two lobbyists and the National Farm Committee for failing to report expenditures used to lobby for the passage of a bill that would raise the price of agricultural commodities and the defeat of a similar bill that would lower the prices.⁶⁴ The lobbyists challenged the law on three grounds: 1) that it is too vague and indefinite to meet the requirements of due process, 2) that the registration and reporting requirements violate the First Amendment guarantee of free speech, freedom of the press and the right to petition government, and 3) that the penalty provisions violate the First Amendment right to petition the government.⁶⁵ The court “cured” the problem with vagueness and indefiniteness by narrowing the definition of “person” to whom the act applies. In doing so, the Court first struck down language in § 305⁶⁶ that required persons to report their expenditures to influence legislation in a somewhat tortured reasoning.⁶⁷ Section 307,⁶⁸ the court held, modified § 305 by defining who was

62. *United States v. Harriss*, 347 U.S. 612, 625 (1954).

63. FRLA, 2 U.S.C. § 305.

64. *Harris*, 347 U.S. at 614-15.

65. *Id.* at 617.

66. Section 305 provided: “Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 266 of this title shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing— (1) the name and address of each person who has made a contribution of \$500 or more not mentioned in the preceding report; except that the first report filed pursuant to this chapter shall contain the name and address of each person who has made any contribution of \$500 or more to such person since August 2, 1946; (2) the total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (1) of this subsection; (3) the total sum of all contributions made to or for such person during the calendar year; (4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of \$10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure; (5) the total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4) of this subsection; (6) the total sum of expenditures made by or on behalf of such person during the calendar year.” 2 U.S.C. § 264(a); 60 Stat. 840 (Aug. 2, 1946).

67. *Harris*, 347 U.S. at 620.

68. Section 307 provided: “The provisions of this chapter shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent

covered by the act and if a person did not meet the requirements of § 307, they were not subject to the reporting requirements of § 305 despite the plain language to the contrary in § 305.⁶⁹ Since § 307 only covers the “solicitation, collection or receipt of money or anything of value,”⁷⁰ the Court reasoned that expenditure were not covered under the Act at all and were, therefore, free from reporting requirements. Thus, the Court significantly narrowed the scope of the Act limiting it to solely fundraising.

Additionally, the Court further narrowed § 307 holding that the Act does not cover all activities. Namely, it read a new requirement into the statutory provision that required disclosure of activities designed to “influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.”⁷¹ The Court, basing its decision presumably on legislative history and a vague notion that the justices knew the legislature’s intent, eliminated “indirectly” from the statute and defined “directly” as “direct communication with members of Congress on pending or proposed federal legislation.”⁷² The Court felt that this aggressive interpretation of the statute was necessary to save it from First Amendment challenge and still accord Congress a measure of “self-protection.”⁷³ As the dissent noted, this interpretation left the Act “touching only a part of the practices Congress deemed sinister.”⁷⁴

Whether or not one agrees with the Court’s interpretive techniques, it is clear that the majority (along with the three dissenters) recognized that lobbying was an essential part of the First Amendment right to petition the government. The Court (and dissenters) seemed worried about the chilling effect laws could have on the citizenry’s attempt to make their voice and needs heard.⁷⁵ *Harris* stands for the proposition that the First Amendment prohibits laws that would ban lobbying altogether or regulate them in such a way as to significantly chill speech. Yet, the case cannot be read to prohibit any governmental regulation. The majority strenuously asserted that the “American ideal of government by elected representatives depends to no small extent on [elected official’s] ability to properly evaluate [legislative] pressures.”⁷⁶ The justices felt that Congress needed some way to insure that they were able to evaluate the

or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes: (a) The passage or defeat of any legislation by the Congress of the United States. (b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.” 2 U.S.C. § 266, 60 Stat. 841 (Aug. 2, 1946).

69. *Harris*, 347 U.S. at 620.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 625.

74. *Id.* at 634.

75. *Id.* at 626, 631-33.

76. *Id.* at 625.

influence of lobbyists and insure that they were able to hear the voices of their constituents over the roar of special interests. Although FRLA was later replaced by the LDA, *Harriss* is still a pivotal case and remains in force today.⁷⁷

It was not until the landmark case of *Buckley v. Valeo*,⁷⁸ in which it upheld the Federal Election Campaign Act of 1971, that the Court explicitly stated that the First Amendment applied to lobbying communications. The Court was careful to explain that this protection was not absolute, and that the government could regulate lobbying activities. Indeed, by upholding FECA, the Court gave government such leeway.⁷⁹

California courts recognized a constitutional right to lobbying early on. The state's Supreme Court determined that laws that "significantly interfere" with the right to petition the government are subject to strict scrutiny, while laws that have merely an "incidental impact" on that right require only rational basis review. Applying this reasoning, the court concluded that the bans on lobbyists making campaign contributions were unconstitutional.⁸⁰ Several other courts have come to the same conclusion.⁸¹ It is against this backdrop

77. FRLA, the product of poor drafting and further weakened by the narrow holding in *Harriss*, was widely considered ineffective; just two years after its passage, President Truman called for it to be amended. *History of the Lobbying Disclosure Act*, Public Citizen (July 23, 2005) at 3-4, available at <http://www.lobbyinginfo.org/documents/LDAhistory.pdf> (last accessed April 27, 2006). The primary concerns were that it was poorly drafted and did not cover Congressional staff, grass-roots lobbying or the executive branch. *Id.* It also was vague as to who had to register, was unclear about what constituted lobbying as a "principal purpose" (which would trigger the reporting requirement). *Id.* The law was also poorly enforced and extremely ineffective. A 1991 General Accounting Office (GAO) study found that roughly 10,000 of the 13,500 individuals listed as key influence peddlers in the *Directory of Washington Representatives*, were not registered as lobbyists. Furthermore, the GAO determined that 60 percent of registered lobbyists reported no activity, and 90 percent no expenditures. General Accounting Office, "Federal Lobbying: Federal Regulation of Lobbying Act of 1946 is Ineffective," (July 1991). Congress eventually amended the lobbying disclosure scheme when it passed the Lobbying Disclosure Act of 1995. Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601 (1995).

78. 424 U.S. 1 (1976).

79. *Buckley v. Valeo*, 424 U.S. 1 (1976) (holding that the First Amendment applied to lobbying communications, but simultaneously upheld the Federal Election Campaign Act of 1971).

80. *Fair Political Practices Comm'n v. Superior Court of L.A. County*, 599 P.2d 46, 53-55 (Cal. 1979).

81. *See, e.g., Liberty Lobby, Inc. v. Pearson*, 390 F.2d 489, 491 (D.C. Cir. 1968) (holding that Constitutional protection is granted to lobbyists through the First Amendment right to petition, and stating that "[e]very person or group engaged. . . in trying to persuade Congressional action is exercising the First Amendment right of petition."); *Moffett v. Killian*, 360 F. Supp. 228, 231-32 (D. Conn. 1973) (implying that state or federal statutes that seek to restrict lobbying are obligated to demonstrate that such measures pass constitutional muster, and reasoning that just because one earns a living by lobbying or soliciting lobbyists to lobby for him/her does not mean that s/he should not be afforded the same First Amendment protection that booksellers or motion picture distributors enjoy); *ACLU v. N.J. Election Law Enforcement Comm'n*, 509 F. Supp. 1123, 1128-34 (D. N.J. 1981) (holding that the constitutional right to lobby also applies to state lobbying legislation, and laws that appear to in-

that California began to engage with the issue of regulating lobbying activities.

IV. INTRODUCTION TO AND HISTORY OF CALIFORNIA REGULATION OF LOBBYING

California first began regulating the political process in 1893, but notably did not begin regulating lobbyists until 1949.⁸² Prior to World War II, most powerful lobbyists worked on behalf of corporations—corporations whose influence was largely curtailed by so called “purity of election” laws and similar regulations. Public indifference to lobbyist regulation changed in the 1940s, when a rotund fellow by the name of Arthur Samish began to gain considerable influence as a personal lobbyist. Governor Earl Warren noted that, “On matters that affect his clients, Artie unquestionably has more power than the governor.”⁸³ After Samish appeared in *Collier’s Magazine* holding a dummy puppet meant to represent the legislature, the public was outraged and the legislature soon enacted laws regulating lobbying and requiring financial disclosure.⁸⁴

The current regulatory regime dates from 1974, when California voters overwhelmingly approved Proposition 9, which enacted the California Political Reform Act (“PRA”), the most comprehensive regulation of state campaign finance and lobbying in the country to date. Like its federal counterpart in the Federal Election Campaign Act, the PRA both created a new set of regulations and disclosure laws and also established an independent agency—the Fair Political Practices Commission—for its enforcement.⁸⁵

In 1996, voters amended the PRA by approving Proposition 208, which inserted language that defined contributions made “directly or indirectly to or on behalf of a particular candidate” or through an “intermediary or conduit” as

fringe on this right are subject to strict scrutiny, and cautioning that State legislatures must exercise care when implementing the measures that lobbying groups must take in order to register, because the filing of extensive paperwork in order to comply with the regulations should not function to deter groups from lobbying).

82. In 1893, the Legislature enacted a “purity of election” law based on an English law enacted roughly a decade earlier. The law was designed to curtail corruption and addressed issues ranging from the secret financing of elections to bribery, fraud and coercion. It set campaign expenditure limits, banned independent expenditures, prohibited transfer of money from one candidate to another and fixed forfeiture of office as a penalty for violators. *See The States: Laboratories in Reform*, Brief History of Money in Politics, Center for Responsive Politics, available at, <http://www.opensecrets.org/pubs/history/history4.html> (last accessed January 22, 2006); *see also* THE NEW GOLD RUSH, California Commission on Campaign Financing, 1985. To facilitate enforcement of the law, candidates were required to file detailed financial disclosure statements with the Secretary of State. *History of the Political Reform Division*, California Secretary of State, available at http://www.ss.ca.gov/prd/about_the_division/history.htm (last accessed January 22, 2006); *see also* THE NEW GOLD RUSH, California Commission on Campaign Financing, 1985.

83. *Id.*

84. *Id.*

85. California Proposition 9, Ann. Cal. Gov. Code. T. 9 (approved June 4, 1974).

counting as “contributions from [both] the contributor *and* the intermediary or conduit.”⁸⁶ The law made exceptions for representatives of the candidate and campaign volunteers, but the law expressly stated that registered lobbyists do not qualify for this exemption.⁸⁷ It was the first time in recent history that California explicitly stated that lobbyists could not directly act as conduits to funnel money or campaign contributions from their clients to candidates. Any money they directly funneled to candidates would count against their own contribution limit. Proposition 208 was challenged in court, but the case became moot when voters passed Proposition 34, which significantly amended the PRA provisions that were at issue.⁸⁸

In 2000, the Legislature submitted Proposition 34 to the voters, who approved the measure on November 7, 2000 by a hefty margin of 60.1% of ballots cast.⁸⁹ The law became operative January 1, 2001. The initiative revised several sections of the PRA, but significantly tightened registered lobbyists’ contribution restrictions. The law mandates that:

An elected state officer or candidate for elected state office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to an elected state officer or candidate for elected state office, if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer.⁹⁰

This formulation notably scrapped the previous distinction in the law between people who make political contributions and those who act as “conduits” for those contributions in favor of a blanket prohibition, which the legislature stated was necessary “to reduce the influence of large contributions with an interest in matters before state government.”⁹¹

The key to enforcement is whether an individual is considered a registered lobbyist.⁹² To clarify who is a “lobbyist” and who is not, the California Fair Political Practices Commission has developed two tests. The first covers “in-house” lobbyists, or individuals who only lobby on behalf of their employer. If such a person is compensated and spends at least one-third of that time in direct communication with qualifying officials, she is considered a lobbyist and must

86. Cal. Gov. Code § 85702 (1999).

87. Cal. Gov. Code § 85702(a)(3) (1999).

88. See *California Pro-life Council PAC v. Scully*, 989 F.Supp. 1282 (E.D.Cal.1998).

89. Proposition 34 Abbreviated listing, Record 1094, California Secretary of State, available at <http://www.ss.ca.gov> (last accessed January 27, 2006).

90. Cal. Gov. Code § 85702 (2001).

91. Stats 2000 ch 102, Section 1(b)(3); Cal. Gov. Code § 82016, Notes regarding the 2000 amendment.

92. Under California law, a “lobbyist” is defined as any person who receives \$2,000 or more “in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action.” Cal. Gov. Code § 82039(a).

register.⁹³ The second test concerns “contract lobbyists”, or individuals who lobby for someone other than their employer. Such an individual is considered a lobbyist if he receives (or is entitled to receive) more than \$2,000 in a calendar month for direct communication with qualifying officials.⁹⁴ It’s important to note that people who lobby on a voluntary (unpaid) basis, individuals who are only reimbursed for reasonable travel expenses, certain state employees acting within the scope of employment, journalists, certain religious societies acting to protect their right to practice their doctrines, and individuals bidding on contracts (and otherwise don’t attempt to influence administrative or legislative action) do not qualify as lobbyists.⁹⁵

Certain lobbying groups and entities must also register and report under the law. A “lobbying firm” is defined as “any business entity, including an individual contract lobbyist,” that either:

- (1) receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action on behalf of any other person⁹⁶ or (2) receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action on behalf of any other person, if a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing legislation or administrative action.⁹⁷

There is a similar “catch all” provision that designates individuals or groups that do not meet the strict definition of a “lobbying firm”, but nevertheless employ individuals determined to be “lobbyists” under the Code or contracts for such individuals’ services for economic consideration and for the purpose of influencing legislative or administrative action.⁹⁸ Lobbying firms and lobbyist employers are required to register with the California Secretary of State⁹⁹ and the individual lobbyists they employ must prepare and submit lobbyist certifications¹⁰⁰ which are filed as part of the registration by their lobbying firm or lobbyist employer.¹⁰¹ In addition to registration, lobbyists, lobbying firms and lobbyist employers must “keep detailed accounts, records, bills, and

93. *Lobbying Disclosure Information Manual*, California Fair Political Practices Commission, Section 1-3 (July 2005), available at <http://www.fppc.ca.gov> (last accessed Jan. 27, 2006).

94. *Id.*

95. Cal. Gov. Code § 86300; *supra* note 83.

96. Cal. Gov. Code § 82038.5(a)(1).

97. Cal. Gov. Code § 82038.5(a)(2).

98. Cal. Gov. Code § 82039.5.

99. Cal. Gov. Code § 86100(b)-(c).

100. Cal. Gov. Code § 86103.

101. Cal. Gov. Code § 86100(a).

receipts”¹⁰² of their expenses. They must also file periodic reports with the Secretary of State¹⁰³ and as a check on these reports, state and local agencies must disclose payments they receive from lobbyists of \$250 or more.¹⁰⁴

The key to both the definition of a “lobbyist” or a “lobbying firm” are what the legislature meant by the phrases “direct communication” and “influencing legislative or administrative action.” A person cannot qualify as a lobbyist under the law unless he or she (or their employees in the case of a lobbying firm) engage in direct communication with an elected official and does so for the purpose of influencing legislative or administrative action. The California Fair Political Practices Commission has clarified these terms. “Direct communication” is when a person appears as a witness before, talks to (either by telephone or in person), corresponds with, or answers questions or inquiries from any qualifying individual either personally or through an agent.¹⁰⁵ A person doesn’t engage in “direct communication” for the purpose of the statute if he is merely furnishing technical information to an administrative agency that is not designed to influence legislative or administrative action, or meets or speaks with a qualifying official in the presence of a registered lobbyist retained by the individual or individual’s employer.¹⁰⁶ The Commission defines “influencing legislative or administrative action” as communicating directly or taking any action “for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing any legislative or administrative action.”¹⁰⁷ If a firm or individual does not meet either of these requirements, they are not required to register as a lobbyist or lobbying firm under California law.

As with many statutes regulating the political process, Proposition 34 was challenged in court. The only provisions challenged were those relating to the regulation of lobbyists. The lawsuit was filed in September of 2001, just a few short months after the new law became effective. It was filed in Federal District Court by the Institute of Governmental Advocates, a non-profit organization representing the interests of lobbyists, and three individual named lobbyists. The plaintiffs challenged the constitutionality of the statute on First and Fourteenth Amendment grounds in addition to bringing a § 1983 claim. The court held that the statute’s restrictions were valid under the First Amendment, that the classification of registered lobbyists had a rational relationship to a legitimate state interest and thus did not violate the Fourteenth Amendment.

In granting summary judgment and upholding the law, the District Court determined that the plaintiffs’ First Amendment claim failed because the state had a legitimate interest in “preventing corruption and the appearance of cor-

102. Cal. Gov. Code § 86110.

103. Cal. Gov. Code §§ 86113-115.

104. Cal. Gov. Code § 86116.5.

105. *Supra* note 83.

106. *Id.*

107. *Id.*

ruption.”¹⁰⁸ To address this interest, the state passed a narrowly tailored law. First, the court reasoned that the law only prohibits contributions by lobbyists if the individual is registered to lobby the office for which the candidate seeks election; it does not prohibit contributions by all lobbyists to all candidates.¹⁰⁹ Second, the court reasoned that regulations interpreting the definition of a lobbyist were suitably narrow and excluded most individuals from the definition of “lobbyists” who do not spend a significant part of their time engaging in the activity.¹¹⁰ Third, relying on decisions made by other federal courts, the District Court determined that the statute still passed Constitutional muster even though its prohibition was not limited solely to when the legislature was in session.¹¹¹ The court determined that the danger of corruption in California is no different when the legislature is out of session than when it is in session and that the business of the state continues on a year-round basis, not just during formal sessions of the legislature.¹¹²

The court also denied plaintiffs’ Fourteenth Amendment claim. It held that lobbyists were not members of a suspect classification and that the classification drawn bears a rational relationship to a legitimate state interest of preventing corruption and the appearance of corruption. If lobbyists were allowed to make contributions as legislation winds through the process, the court reasoned, there would be a legitimate temptation to exchange dollars for political favors. The United States Supreme Court had recognized that lobbyists may be treated differently because of this fact,¹¹³ and the District court adopted this approach.¹¹⁴ After the District Court issued its ruling, plaintiffs did not appeal the case and there have been no further challenges to the validity of Proposition 34 and the changes it made to the PRA. As the most recent piece of reform legislation in California, Proposition 34 and its restrictions formed the basis for several questions I asked respondents. Their opinions were interesting and, at times, surprising. With this background in mind, I now turn to my findings.

V. FINDINGS

I discuss my principal findings below. In all of the areas highlighted, there was near unanimity among respondents; where there were small disagreements, I have indicated such. In general, individuals I interviewed felt that lobbying

108. *Institute of Governmental Advocates v. Fair Political Practices Commission*, 164 F.Supp.2d 1183, 1189 (E.D. Cal. 2001).

109. *IGA*, 164 F.Supp.2d at 1190.

110. *Id.* at 1190.

111. *Id.* at 1191. For information on other courts which have upheld time restrictions on lobbying activities, see *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705 (4th Cir. 1999); *Kimbell v. Hooper*, 164 Vt. 80 (Vt. 1995).

112. *Supra* note 98, at 1192.

113. See *United States v. Harriss*, 347 U.S. 612 (1954).

114. *Supra* note 98 at 1195.

reforms have had less impact on the practice of lobbying than many may have believed. This does not suggest, however, that the laws might not work a significant influence on the electorate and the way they perceive politicians and the transparency with which the political process operates. The findings, after all, represent opinions of the group with, perhaps, the greatest vested interest in lobbying regulation and reform. I find no reason to doubt or seek independent verification of the responses I received.

First, I guaranteed lobbyists their anonymity in the interviews and insured them that I would not present the findings in a way where one could deduce their name or firm. This, I believe, helped respondents speak candidly. Second, I did not ask about potentially sensitive information, such as details of clients or information about members of the legislature. Third, and most importantly, most all respondents gave me information that went against their self interest. Several advocated reform proposals that would further limit lobbyists' influence or create additional reporting burdens. All spoke candidly about the significant role fundraisers played in gaining access to legislators; public disclosure of this information could help fuel another round of reform, which would erode the comparative advantage professional lobbyists have over the general public in gaining access. In sum, the lobbyists I interviewed had little to gain from the conversation and revealed information that was contrary to their self interest. In order to fully understand the issue, one would certainly need to also understand the position of other stakeholders, such as politicians, staffers, and the citizenry. While the findings, certainly represent a certain point of view, I have no reason to believe that they are not sincere reflections of how registered lobbyists view their profession and the lobbying process. The findings are grouped into four primary categories:

Effect on Lobbyists' Personal Contributions. Lobbyists believe that Proposition 34 has not significantly altered the quantity of individual contributions they and their colleagues make to political candidates. Most of the lobbyists I interviewed claimed that they did not make any political contributions to candidates before or after the passage of Prop. 34. Those who did make contributions before the ban gave small amounts to various friends seeking political office; a few lobbyists continue to make contributions to this date, although they are prohibited from contributing to office holders or candidates in the branch of government or agency they lobby. If these beliefs prove to be widespread, it suggests that restricting lobbyists' ability to make personal contributions has little, if any, effect of removing the role money plays in gaining access to decision makers or influence over legislation. Money will continue to remain a significant part of the practice of lobbying without more fundamental campaign finance reforms.

Diversity in Gaining Access. Lobbyists reported that they gain access to decision makers in a variety of ways largely dependent on two factors: whether the lobbyist works for a for-profit lobbying firm or non-profit institution, and the "type" of legislator being lobbied. Interviewees believed that money plays

a larger role in for-profit firms gaining access, whereas non-profit institutions rely more on the reputation and prestige of their institution. Additionally, the legislature is not simply a monolith; it is composed of individuals with particular personalities and values. Respondents believed that there is no single way to “gain access,” rather various factors played into gaining access by the lobbyist—donations, lobbyist’s reputation or knowledge on a certain subject matter, lobbyist’s clients, the knowledge of the legislator on a particular subject matter. While this observation is really common sense, it suggests that future political reforms should take into account the notion that simply reducing the flow of money from lobbyists to legislators may alter the ways lobbyists gain access, but likely will not diminish their influence.

Term Limits Effect on Lobbying. Respondents believed that the passage of term limits significantly increased the influence lobbyists had on the legislative process. With members of the legislature only in office for a set period of time, they felt the members no longer developed expertise in a given subject area. Additionally, members commonly run for various other offices at the state or federal level and when they change jobs, they often take their staff members with them. The lobbyists felt this left them as the “institutional memory” around the capitol, which gives them a significant amount of influence. Consequently, lobbyists believe that term limits have increased both their access to and influence with legislators.

Reform Proposals. Respondents nearly universally believed that it would be possible to alter the public perception of the lobbying profession through various reform proposals. One should, certainly, be skeptical of their ability to objectively evaluate reform proposals, but nonetheless, their observations suggests that the notion that “money will find a way” or that it is impossible to change the status quo may be overly simplistic and pessimistic. While some reforms may not produce the desired result, there is a perceived potential for change. Most respondents believed that the current system does little to curb malfeasance and often results in absurd outcomes and a significant burden not only on the lobbying community, but the taxpayers as well. Most suggested reforms that would curb these costs while increasing transparency and accountability, which is lacking under the current system.

A. *Playing the Money Game*

1. Lobbyists’ individual contributions

The first theme to emerge from my research was that respondents overwhelmingly believed that Proposition 34’s campaign contribution ban has virtually no effect on the practice of lobbying. Lobbyists remarked repeatedly, and consistently, that the era of lobbyists making campaign contributions has largely ended. With the exception of one lobbyist, who was also a former

member of the legislature, none of the individuals interviewed reported contributing money to political candidates before the passage of Proposition 34. One respondent observed, "The notion of personal contributions has never suffused the California lobbying experience. Maybe some lobbyists gave some personal money, but usually small amounts. . . and mostly to local people."

The general consensus among those interviewed, was that making political contributions is disadvantageous for two reasons: it's bad for business and can hurt one's reputation. As one lobbyist put it, "Once you start making contributions to your best friends, other guys find out about it and are on to you. Then are you going to clam up or start giving money to everyone? It doesn't take much thought to see that it will cause you embarrassment and make you a person to avoid around the capitol." If a lobbyist begins handing out donations, she will soon have to give equal contributions to all 80 members of the assembly and 40 members of the senate to avoid playing favorites; assuming a donation of a thousand dollars each, this can quickly add up to a large chunk of the lobbyists' salary. Lobbyists worried that if they were not evenhanded in their contributions, they would alienate some members and hurt their ability to obtain meetings with them or get them critical information on a vote. Given that a lobbyist's main job is to influence legislation on behalf of her clients, being shut out from several members' offices could prove disastrous for business. In fact, several respondents said that it was an unofficial policy at their firm that lobbyists would never make personal contributions to candidates for elective office. It seems that the only exception is for close personal friends running for local office; in this case, some lobbyists seemed willing to make small donations, typically in the range of a couple hundred dollars. Respondents reported that this was the practice long before Proposition 34's passage, therefore, the bill did little to alter behavior.

Interviewees remarked that making political contributions could lead to public embarrassment. A tenacious reporter could easily look up the political contributions made by a lobbyist to various members and construe those donations as a quasi-bribe. The negative publicity resulting from an unflattering article could not only cause embarrassment, but induce clients to move to other lobbying firms. When I asked when this tradition of not making personal political contributions began, respondents mentioned that it came about with disclosure laws. In the mid-1970s, registration and reporting requirements resulted in a dramatic drop in the practice of lobbyists making personal contributions. Once lobbyists were required to record and report their activities and donations and campaigns required to disclose their expenditures and contributions, reporters or interested citizens could with a little effort ascertain how much a lobbyist was giving and to whom. Many lobbyist thought it better to make indirect contributions, which would be more difficult to track through disclosure reports.

Examination of disclosure forms filed with the Secretary of State back up these assertions. The vast majority of lobbyists I interviewed did not make po-

litical contributions in the legislative session leading up to the passage of Proposition 34 (or at least contributions that they reported), nor have they made contributions since. Only a couple of respondents made contributions (and one of them was a former member of the legislature, himself). Those who did contribute did so in small amounts often to local candidates and continued to contribute even after the ban went into effect.¹¹⁵ This data backs up the assertion that disclosure stemmed the direct flow of cash from lobbyists to candidates; the passage of Proposition 34 simply regulated a practice already largely out of favor with the lobbyists themselves.

2. There is still money in politics

The fact that lobbyists are prohibited from personally contributing money to campaigns does not mean that they do not play a large and significant role in the money game. Lobbyists at private firms reported that members have come to expect that lobbying firms will help them raise money, typically by holding large fundraisers where they get their clients to write checks up to the limit for personal and PAC contributions. These client fundraisers aren't tracked by disclosure documents, so it is virtually impossible for interested citizens to link up the names of the actual donors (which are publicly reported) with the fundraiser the lobbyist organized or the lobbyist who advised them to contribute money. Independent verification of these findings is also virtually impossible. As one individual working for a private firm remarked, "The firm is on the hook for giving a lot of money and getting their clients to max out to the various members they work with. The firm holds fundraisers for a whole host of folks. . . . [Members of the legislature] listen to the people who not only explain things to them, but also people who hold fundraisers and help them stay in office." Another person felt that lately members are becoming bolder in their requests for cash. He reported that frequently members call lobbying firms asking them to hold fundraisers; large firm sponsored fundraisers can raise as much as \$20,000 on a single evening.

This observation seems at odds with respondents' prior insight into personal contributions. If lobbying firms held a fundraiser for one member of the legislature, wouldn't they feel compelled to hold them for every member? Why not just refuse to hold fundraisers altogether? When pressed on this issue, interviewees did not have a particularly good answer. Most interviewees reported that their firms did not hold fundraisers for all members of the legislature, rather they picked members to support who could best help further their

115. One should note the potential flaws in relying on this data. The information was gleaned from individual lobbying reports filed with the California Secretary of State in which lobbyists self-reported their expenditures and contributions with little to no external monitoring or verification. The low number of contributions could be due to some individuals failing to report contributions, although this seems a less likely explanation of the phenomenon.

clients' interests (e.g. members in key leadership positions or on committees with jurisdiction over the areas in which their clients worked). Additionally, they often held fundraisers with a specific group of clients—biotech clients, for example—for a particular member of the legislature. They would hold a fundraiser for a different member with other clients. How they picked which members to support is outside the scope of this paper, but would be an interesting topic for future research.

Typically lobbyists report that they stay one step removed from the actual exchange of money. When asked about how they fundraise, respondents answered that they primarily organize fundraisers and invite clients or advise clients how to donate their money. They may also develop a contribution strategy for their executives or PACs to get money to key allies in the legislature. Lobbyists felt that members of the legislature know that they have this sort of fundraising power and will often be more willing to meet with lobbyists who also are instrumental in helping them raise large quantities of money.¹¹⁶ The lobbyists interviewed believed with virtual unanimity that these large fundraisers are what members care about, not the individual checks lobbyists may or may not make to their campaigns.

B. *Lobbyists Gain Access in Multiple Ways*

Not surprisingly, lobbyists reported gaining access to legislators in a variety of ways that were highly dependent on several variables. During the course of interviews, it was striking how well lobbyists typically knew members of the legislature and what it would take to get a meeting with them. In questioning lobbyists about how they gain access, most responded by first breaking legislators into various categories such as “good” and “bad” or “those interested in policy” versus “those who aren’t” or members who are “well informed” versus those who are “along for the ride.” It appeared that respondents had roughly characterized members of the legislature and then decided how to best approach them based on this characterization. One lobbyist summed it up well. “Members will talk to people depending on a multiple factors. . . . Well motivated members will meet with articulate people regardless of financial considerations. . . . There are some others that are there for a ride and money is a big deal. It [donations] doesn’t directly influence their vote, but it helps gain access. Money [is also typically] transferred to them in the form of independent expenditures.” After creating categories, lobbyists then typically described the slightly different approaches they would take to gain access to a decision maker in the group.

¹¹⁶ The role of money in gaining access to decision makers is discussed in greater detail in subsequent sections.

1. "Policy Wonks"

Virtually all respondents identified a group of legislators who were genuinely concerned with creating good public policy and would expend the time and energy necessary to fully inform themselves on the issue and make carefully reasoned decisions. I have labeled this group "policy wonks." Most all of the people I interviewed remarked that the vast majority of the members of the current legislature fall into this category. These members want to fully understand the history of bills, the implications and potential benefits and drawbacks of the piece of legislation. Because term limits can prevent individual members from developing expertise and lead to larger staff turnover (further exacerbating the problem), lobbyists reported that many of these members turn to them to help for advice and background on the issue.

Respondents believed with near unanimity that if a lobbyist developed a reputation in a certain area, he or she could easily gain access to "policy wonks" to discuss bills in their area of expertise. Many respondents remarked that a lobbyist's reputation for telling the truth and doing reliable research was what allowed them to continue to enjoy significant access; those who became sloppy or used too much blatant "spin" often lost their reputation in the capitol and were less effective in gaining access through this route. A couple of lobbyists remarked that it is also not uncommon in Sacramento for members to proactively call lobbyists and ask for briefings on certain bills. When pressed on the issue, most of the lobbyists believed that when members proactively solicited briefings, that they called several lobbyists to solicit various opinions on the issue. "They [the members] know you're representing a viewpoint, but you can give them information that they don't have at the tip of their fingertips." Lobbyists believed this information was valuable; because of term limits, many felt that a senior lobbyist has had much more experience in Sacramento than any member of the legislature and, therefore, is in a much better position to explain the history of a bill or an issue. They believed their advice helped members understand the potential political pitfalls from voting a certain way or how a bill will affect various constituent groups.

It appeared from the interviews that members the lobbyists placed into the "policy wonk" category liked to gather information from a variety of sources and viewed knowledgeable lobbyists as a very convenient way to obtain information, even if it meant that lobbyists would present their client's viewpoint. Because legislators are aware that the information is based on lobbyists' perceptions, it is unclear whether members called a particular lobbyist because of his perceived expertise or because he represented clients whose interests aligned with the agenda of the legislator. Respondents could be overestimating their ability to persuade legislators of the soundness of a client's position. It is possible that members who proactively ask for briefings are not using lobbyists to help them make a decision, but rather to give them the best ammunition and arguments that can be made to persuade their colleges to vote in favor of or

against a bill.

2. “Money Types”

Lobbyists described another category of members of the legislature as “money types” or individuals who were “along for the ride” and cared more about being re-elected than the policy they were setting. For these individuals, lobbyists felt contributions play a significant role. A majority of lobbyists I interviewed remarked that this group was a small minority of individuals in Sacramento, but a couple of respondents believed that all of the members were concerned with fundraising to a certain extent. “Everything is judged by money,” one lobbyist remarked, “access, bill passage—everything.” To these individuals, if you gave money, you got access or if you arranged for large fundraisers, you could get in to see the member without a problem. “Without arranging donations, it’s difficult [to gain access].” From the interviews, it was apparent that there are a significant minority of legislators who give preferential treatment to large donors and are much more willing to meet with individuals who help to keep them in office.

This process often starts even before a candidate runs in his or her first primary. Candidates commonly make appointments to come to lobbying firms before they declare their candidacy in hopes of convincing lobbyists to recommend to their clients that they make contributions. This is also good for the lobbyist. As one lobbyist explained, “If your client makes contributions, there is a credit that is attached to that that leads to a greater willingness to meet with the lobbyist or instructions to staff to give appointments.”

Lobbyists believed that the process continues once the member is in office; an opinion that has even greater force when one examines the timing of the fundraisers. One individual explained that the legislature has a carefully timed calendar of key legislative dates that is publicly released. For example, bills have to be out of Committee by a certain date in April and out of the Finance Committee in June and through the first house shortly thereafter (unless it is a two year bill). Interviewees reported that members often hold key fundraisers in the days leading up to each calendar deadline, which gives lobbyists an opportunity to get face time (for a price) with the member before key votes to pass or kill legislation happen. While not vote trading per se, it does partly explain the pressure on lobbyists and lobbying firms to hold big fundraisers and advise their clients where they should strategically place their money.

While, if true, this may sound like almost a quid pro quo arrangement, several lobbyists described it in more benign terms. Legislators weren’t in the business of trading money for access; it is simply “human nature” to agree to meet with people you know or with whom you are acquaintances. As one lobbyist put it, “If you had a fundraiser, [members] meet the people who have paid to come. So, the next day when [members] have to return calls, they’ll return calls of the people they’ve met. It’s not buying votes, but they’ll listen to peo-

ple they know.” This sort of comment partially explains why lobbying firms hold fundraisers frequently. During these fundraisers, they can introduce their own lobbyists to new members and also link up members with various clients. It’s a form of networking that lobbyists believe makes it much more likely that they will be able to obtain meetings with members—they have not only helped raise funds for the individual, but also have met the member and developed an acquaintance, if not a personal relationship. While this sounds intuitively true, it is impossible to discern from these perceptions whether members are taking meetings with lobbyists because they are an acquaintance or because they know that the individual was (at least partly) responsible for filling their campaign coffers.

3. Non-profits and prestige

While not a different category of legislators, the lobbyists’ description of gaining access would be incomplete without a word about non-profits. Well known non-profit organizations, whether public interest groups or educational institutions, appeared to gain access to legislators in a very different way than their for-profit counterparts. In the course of this study I spoke with three lobbyists who had spent part of their career working for non-profit institutions. Lobbyists remarked that because 501(c)(3) organizations are prohibited from making political expenditures, the money game plays a much smaller role in their lobbying activities. While some organizations have set up separate segregated funds (PACs), I was surprised to learn that lobbyists perceive PAC donations from these groups as having very little influence on their gaining access to decision makers.

Lobbyists believed that access was granted or denied based on the prestige of the non-profit organization or the political/social message their organization conveys to the public. For example, a conservative member will not likely accept PAC donations from or take meetings with “liberal” groups such as the ACLU or NARAL even if they needed the money; the political fallout and damage to future fundraising would not be worth the risk. Conversely, members who want to promote a certain political agenda or assure their constituents of their positions on particular issues may take the donation as sign of aligning themselves with the organization’s cause.

Similarly, lobbyists felt that educational institutions use their status and prestige to gain access without having to play the money game. “The money game doesn’t get played here,” remarked one non-profit lobbyist, “we get access from our expertise, name and reputation.” Lobbyists reported that legislators liked being “affiliated” with educational institutions and always seemed to relish the opportunity to work with them on issues. Additionally, respondents felt that educational institutions have a general reputation for existing above the political fray, which makes them attractive sources of information. One individual observed, “[Educational institutions] have a reputation for being an hon-

est broker, which means that [they] don't have to curry favor with legislators to gain access." This makes intuitive sense. Educational institutions can not only bring their significant expertise to bear on an issue, but also provide a degree of credibility to a bill or situation. In areas where scientific data may be in dispute or the outcome somewhat unclear, educational institutions throwing their weight behind a proposal can give it a large degree of legitimacy. Several lobbyists believed that this legitimacy coupled with the prestige of doing business with universities plays a significant role in allowing educational lobbyists to gain easy access to members on their name alone, whereas individuals representing other interests may have a more difficult time.¹¹⁷

C. *Lobbyists Believe Term Limits Have Increased Their Influence*

In 1990, California voters passed Proposition 140,¹¹⁸ which imposed a series of term limits on members of the legislature. Assembly members are now allowed three two year terms and Senators two four year terms. Proponents of the proposition felt that this would bring back the days of the "citizen legislator," increase gender and racial diversity in the legislature and remove some of the pressure on elected officials to make decisions with an eye to the next election.¹¹⁹ Many hoped that this would be an important way to break the influence of special interests on members of the legislature. One of the more interesting findings arising out of the interviews was the near unanimity with which lobbyists believed term limits have *increased* the influence of lobbyists in Sacramento.¹²⁰ Respondents identified two primary causes for this perceived increase of power. First, and most importantly, lobbyists reported that with large legislative turnover, they have become the "institutional memory" around Sacramento and legislators increasingly rely on their expertise when making decisions. Second, most legislators run for other offices after they are termed out from their current position and, therefore, need the lobbyists and the large sums of money they can raise to build up a "war chest" for future elections where they may be running as a challenger or have less name recognition.

Respondents agreed that term limits severely undermine the institutional knowledge and expertise of the legislative branch. Before term limits, respondents explained, legislators would stay in office for several years and develop significant expertise in a particular subject area. Additionally, their staffs

117. This advantage is significantly diminished when educational institutions are lobbying for their own interests (e.g. faculty salary increases, new buildings etc). In such instances, members of the legislature are more apt to treat educational lobbyists as any other special interest group.

118. Proposition 140, 1990 Cal. Legis. Serv. Prop. 140 (Approved Nov. 6, 1990).

119. See *infra* note 110.

120. One respondent remarked that term limits were of little consequence asserting, "Term limited legislature doesn't look very different than the legislature before. It doesn't make any difference to have a term limited legislature."

would also remain in place over longer periods of time, many of them waiting for their boss to retire so they could run for his or her seat. Under term limits, the average experience of the members has decreased. As the members move on to other pursuits, they take large numbers of their staff with them, or the staff themselves runs for office. As one lobbyist put it, this “lets lobbyists play a little faster and looser with the facts and can interject own interpretation of laws and what they means.”

The Public Policy Institute of California recently released a study on the effects of term limits. They made several interesting findings which back up the observations of lobbyists. Once term limits went into effect and veteran members had been termed out, the average length of tenure of committee chairs, unsurprisingly, dropped from 5.7 years in the Senate to 4.2 years and from 5.6 years to 2.5 in the Assembly.¹²¹ Additionally, the average length of time members were on a committee before ascending to the chair role has significantly decreased in the Assembly. Today, members are typically on a committee for not much more than one session before becoming chair. Cain & Krousser suggest that this is further evidence that committee chairs are rotating through various committees instead of staying on one committee and developing expertise.¹²² Finally, the researchers note that budget cuts mandated by Proposition 140 coupled with higher changeover of members of the legislature resulted in a dramatic decrease in the number of professional staff available to members. Although staffing levels have begun to increase again and the Senate has been successful in retaining many of its most senior staff members, this problem has further contributed to an overall loss of expertise in Sacramento, especially in the Assembly.¹²³

Respondents reported that since lobbyists are often around Sacramento for decades, term limits have made them the “institutional memory” of the capitol, which can give them increased access and influence. “Term limits have prohibited legislators [from becoming] experts in things, so they rely more on lobbyists. Term limits are giving lobbyists more power because lobbyists are institutional memory and [the members] want to be briefed.” Another lobbyist observed that members will often call lobbyists who are known for their expertise in a particular area to come and give them briefings on issues or background on bills they’re considering. Another respondent noted, “People [are] now coming to legislature who have five to six years city council experience

121. Bruce E. Cain & Thad Kousser, *Adapting to Term Limits: Recent Experiences and New Directions*, Public Policy Institute of California (2004) at 24, available at http://www.ppic.org/content/pubs/report/R_1104BCR.pdf (last accessed April 3, 2006). The authors continue to note that although experience levels have dropped, both chambers’ adaptation strategies have provided much more continuity than one might expect.

122. *Id.* at 25. The authors continue to note that although experience levels have dropped, both chambers’ adaptation strategies have provided much more continuity than one might expect.

123. *Id.* at 26-28.

instead of waiting for 20 years for [assembly or senate] seat above them to vacate. Everything is churning and all are equally inexperienced.” Whether or not the members’ lack of experience translates into increased influence on the part of lobbyists over the final bills passed is an open question. Yet, respondents all believed that term limits have given them more influence, increased access and opportunities for them to advocate their position with decision makers.

The second way lobbyists felt term limits have increased their power is through their ability to raise large sums of money for members’ political campaigns. Lobbyists described a process of “lateral transfers and devolution” where members would no longer stay in office until they ran for the office above them, but will now because of term limits, run for offices that are less prestigious. They explained that it is no longer uncommon to see a member of the legislature run for a board of supervisors or a city council; many even run for lesser statewide offices to stay in politics. As one lobbyist put it, “Term limits make everyone suddenly want to be an insurance commissioner.” And as another put it, “The fact that someone is termed out doesn’t limit their asking for campaign contributions. Everyone sets up a separate committee to raise money for an unnamed office he may run for in the future. They’ll then either run or donate money to the party or legislative committees.” This pattern of devolution has one obvious consequence—people constantly need to fundraise.

As one individual explained, “Term limits are awful in regard [to fundraising] because people always thinking about getting elected. Term limits always have you looking for the next office.” Another lobbyist opined that the “money game. . . has gotten ten times more important since term limits came in during the 1990s.” Lobbyists believe that their easy access to wealthy donors and their influence over their clients make them attractive allies to have, and becoming an ally usually means trading money for access.

D. *Lobbyist Views on Reform Proposals*

Political reform is beginning to seem like a perennial topic of interest in the last decade. Proposals are constantly cropping up to alter the political process to make it more open, transparent and comport with a notion of fairness. I probed the lobbyists on this issue asking them what their opinion was on the current reform proposals and if they had any suggestions for future action. I recognize that lobbyists are probably not the best group to give an opinion on reforms that would alter the way they do business. They probably have a skewed self-interested perspective on the issue, not because they are corrupt or selfish, but because they are simply situated differently than outside reformers. Yet, I felt the topic was worth addressing because while lobbyists may be self-interested, they arguably are best positioned to know what reforms would work and which ones would not. I feel that their knowledge of their own practices and the reputations of their colleagues, makes them particularly good judges in

this area. While I recognize that the findings in this section are likely skewed, the lobbyists' point of view is interesting and adds to the debate over future political reforms.

1. Lobbyists believe that current reforms are ineffectual and costly

The lobbyists I interviewed all believed (not surprisingly) that while some proposals such as disclosure were good in theory, the reform proposals of recent years are largely ineffectual and quite costly. While nobody appeared to pine away for the days when lobbyists could funnel unlimited amounts of cash to legislators on behalf of wealthy clients, lobbyists thought that Proposition 34 and other disclosure laws caused unnecessary work for them and an unnecessary expense for taxpayers. Under the current system, California law requires lobbyists to file quarterly lobbying reports disclosing campaign contributions they make and any amount of money they spend to influence members of the legislature.¹²⁴ In order to provide accurate reporting, most lobbyists stated that they keep extensive logs about who they meet with and whether anything of value was exchanged. This gets tallied up in quarterly reports submitted to the California Fair Political Practice Commission, who publishes pdf versions on the Internet. Because reporting is arduous, and with strict Assembly and Senate gift laws in place¹²⁵—which prohibit gifts to members of the legislature over \$10 (meals count as gifts)—lobbyists reported that they typically still meet over meals with members, but the members pick up their own tab. Consequently, lobbyists believed that nearly all reports filed and posted in the Internet contain useless information as lobbyists do not have anything to report either in the way of campaign contributions or money expended on activities. Indeed, a survey of reports for the years 1999-2005 of the lobbyists I interviewed revealed that on nearly all of the quarterly filings, the lobbyist listed that he or she had nothing to report.

Although the California Secretary of State lists the names of all registered lobbyists, their employer and employer's clients on their website,¹²⁶ it is impossible to tell from the mandatory reports who the lobbyists were meeting with and what was being discussed. One lobbyist summed up the position of virtually all of the interviewees, "All of this [disclosure] is a monumental waste of time. It's extremely bureaucratic. . . like trying to do your own taxes. . . you can do it, but to really do a good job, you have to spend hours." Most of the lobbyists did not advocate for eliminating the reporting and disclosure requirements altogether, but simply suggested simplification and reform which would pro-

124. Cal. Gov. Code § 86113.

125. *The \$10 Gift Limit*, California Fair Political Practices Commission, at <http://www.fppc.ca.gov/index.html?id=27> (last accessed April 30, 2006). The Fair Political Practices Commission defines a "gift" as "any payment that confers a personal benefit on the recipient." *Id.*

126. See <http://cal-access.ss.ca.gov/Lobbying/>.

vide the public with, what they termed, “useful” information and create an incentive for lobbyists to conduct themselves above board.

A small, but significant group of respondents were openly hostile to reforms in general and were pessimistic that reforms could actual have a positive impact on the process. “I’m agnostic on whether laws will ever change human behavior,” remarked one lobbyist, “Tobacco, for example, was product of unrelenting scientific reporting and medical carping which led to belief that smoking is bad for you. . . . The American political reform movement tends to act as if human nature changes when a law has passed. Human behavior exists without regard to the laws.” This individual went on to quote the Devil’s Dictionary, a humorous “dictionary” of sorts written by Ambrose Bierce in 1911. He gleefully read me the definition of “reform,” which was, “A thing that mostly satisfies reformers opposed to reformation.”¹²⁷

Others insisted that no matter what reforms take place, there will always be people willing to engage in illegal or ethically questionable activity. “Money in politics confuses who is your constituent. Campaigns are expensive and you buy votes by giving them the money to finance a campaign. Big political scandals will always happen [respondent went on to cite the Jack Abramoff scandal].” Another in this group maintained that current laws against bribery and fraud were adequate. “Compared to many countries in the world, America’s problems are remarkably benign. Bribery is still punished and the laws won’t prevent things like Duke Cunningham and Jack Abramoff from happening.” This group of individuals believed that reform bills should aim to extract useful information from the vast majority of lobbyists who were honest and forthcoming.¹²⁸

2. Lobbyists believe that simple reforms could increase accountability

Despite the somewhat pessimistic outlook of current attempts at reform, many of the lobbyists indicated that they thought meaningful, beneficial reform was possible—and needed—to serve the public interest and increase lobbyist and member accountability. Many of the suggestions for reform centered on changes to the reporting system. Several lobbyists advocated moving to a real time, web-based reporting system that provided more useful information to citizens, such as a searchable database of who lobbyists meet with and what topics were discussed:

“[The current reporting system] is a waste of taxpayer money and embarrassment to government. It’s not timely. You need real time reporting on a weekly basis. Most firms track real time, and it could easily be sent in on weekly basis.”

127. Ambrose Bierce, “Definition of Reform”, DEVIL’S DICTIONARY, available at <http://www.alcyone.com/max/lit/devils/> (last accessed April 5, 2006).

128. For examples of reforms, see, *infra*, Section V.

“Disclosure makes sense. It would do a lot if we had an easy database to link up meetings with donations.”

“The current system just doesn’t serve a public purpose that couldn’t be more easily reached by a web-based system available to public real-time that reported just things that reporters or citizens are interested in—who is giving what \$ to what candidate and through or by whom. That’s what we should focus on, yet the current empire doesn’t do that at all.”

Another person advocated repealing all limits in exchange for full disclosure. This individual reasoned that as long as people were able to know who was giving money to whom, behavior would be kept in check. If voters became upset, they could always have recourse through publicly embarrassing the representative or voting him or her out of office.

The best idea would be to let people give what they give, but have everything accessible on the internet and see who lobbyists’ clients are and how much money they are giving to different candidates. This is a good way to come at it. It prohibits outrageous behavior, but still allows for some boondoggles that aren’t outrageous, but probably not a good thing. Lobbyists have to say how much clients gave and what the lobbyist lobbied on behalf of. People can then see what clients are paying for people to influence etc. People then can follow up with members.

Another respondent suggested simply regulating the time, manner and place of speech without altering limitation on speech itself. Under such a system, the state would enact a law prohibiting giving, receiving or arranging campaign contributions while the legislature is in active session.¹²⁹ In California, the Legislature is in active session from January to September. Even when the body is in session, the lobbyist explained, members attend almost daily fundraisers held at noon and in the evenings. “Everyone knows when various legislative deadlines are to get bills out of committee or to a full vote on the floor,” he explained, “it’s no coincidence that key fundraisers are set up five days or two weeks before the deadlines when almost every lobbyist or interest group has something they’re trying to pass or kill. . . . There is all the incentive in the world [for the lobbyist] to show up with a happy face.” He believed that forcing fundraising into the four-month period when the legislature is out of session would force both members and lobbyists to “focus in the long term” and remove some of the pressure to vote a certain way because of large donations the member just received. He continued to suggest that cabining fundraising would allow people to look at the legislative record for last session, which he felt would force fundraising to take on a “decidedly different tone.”

Lobbyists routinely griped about the rule prohibiting members from receiving anything that could be construed as a “gift”—such as flowers or a meal—if it’s value is over \$10. Several lobbyists described the limit as ineffectual and

129. Several states have adopted similar provisions prohibiting members from soliciting (or in some cases receiving) contributions while the legislature is in session. *See, e.g.*, VT ST T.2 § 266 (Vermont); NC ST § 163-278.13B (North Carolina).

something that is an “irritation” and completely useless in preventing corruption. Many felt that the only thing it prohibits is normal social interactions with their friends who are legislators. As several of them explained, when they are conducting business, they can get around the gift rule by setting up a dinner with a client and the relevant legislator. Under the gift rules, the client can buy the legislator dinner without limit. Additionally, a couple of individuals were opposed to the rule because they felt that small “gifts” such as meals had little if no influence on members. “The \$10 gift limit is ridiculous; taking someone to lunch is not way to buy a vote,” stated one respondent. While their responses are, certainly, self-interested, it is interesting that all of them supported “meaningful” public disclosure. While many of them thought it would go too far to force lobbyists to disclose their meeting schedule and what was discussed, most felt that figuring out a way to trace contributions in a way that linked client donations to the lobbyists and lobbyists to members, would be helpful.

VI. IMPLICATIONS

This study raises some interesting questions and suggests some implications for the reform movement and study of the regulation of the political process. It begins to create a more complete picture of how lobbyists and lobbying actually works, which is useful in evaluating the current situation or new reform proposals. Future research is needed to examine how the process works from the perspective of legislators, staffers, lobbyists’ clients, and lobbyists in other states or Washington, D.C. Because this study is a first step in this direction, I view these implications as preliminary and merely suggestive. While I think it is hard to draw broad conclusions from the case study, I do think the findings enrich the picture of lobbying, and in certain instances cast some doubt on methods used by lobbying reformers.

A. *Many Reforms Are Easy to Circumvent and Have Unintended Consequences*

Reforms, such as Proposition 34, appear to be ineffectual and easily circumvented. Proposition 34 was ostensibly designed to prevent the appearance of corruption and undue influence in California politics by removing the ability of registered lobbyists to make direct contributions to individuals who they lobby. The reason for this restriction is, arguably, to prevent the appearance of legislators trading votes for contributions in a quid pro quo arrangement. However, to stay within its constitutional bounds, the prohibition cannot be too broad or restrictive. For example, spouses and children of lobbyists are permitted to make donations. One respondent stated that before Proposition 34, he made some contributions to candidates and now his wife makes the contributions for him. This practice, alone, renders the law virtually dead letter.

More importantly, it is not clear that plugging this “loophole” would change anything. Individuals commonly circumvent the spirit of the law (prohibiting monetary transfers from lobbyists to legislators) in less obvious ways. Lobbyists, for example, often arrange meetings and have their client pay for the meal instead of paying for it directly and having to file a report with the Secretary of State to comply with the gift laws. As one lobbyist suggested, it is also not uncommon for members to pay for their own lunches out of their campaign funds. Since lobbyists play a significant role in fundraising for candidates, it is simply an indirect way for the lobbyist to confer a benefit on the legislator, such as a meal.

Additionally, legislators and candidates know the significant role lobbyists play in fundraising—they hold dinners and fundraisers for members and also advise their clients where to put their individual contributions and PAC dollars. The fact that candidates approach lobbying firms well in advance of their first primary is evidence of the power of lobbyists in Sacramento. If the lobbyist contribution restriction was intended to reduce the influence of well-moneyed lobbyists and special interest groups, it has, at best been ineffectual, and at worst had the opposite effect. Rather than reduce lobbyists’ influence, the law has somewhat increased it by putting greater pressure on individuals to curry favor with the lobbyist to raise the significant funds necessary to run for office. Perhaps these individuals are making campaign promises that favor lobbyists’ clients well before they even announce their candidacy. Current reforms on the books do little to curb this practice; they simply drives it “underground” making it more difficult for the public and press to trace who is giving money to whom. The findings suggest that removing money from politics may be a difficult feat to ever achieve under the current approach of restricting contributions and expenditures. Unless reformer try a new approach, the money may just go elsewhere as smart individuals find new “loopholes” around current restrictions.

Federal campaign finance regulation is an example of “money finding a way” around the letter of the law. Worried about actual corruption, or the appearance of corruption, Congress passed the Federal Election Campaign Act of 1971.¹³⁰ The Supreme Court upheld the parts of the law limiting contributions to candidates, requiring public disclosure of contributions and expenditures, the publicly financing of Presidential elections and the provision creating the Federal Election Commission. It struck down expenditure limits, restrictions on “independent expenditures” and limitations on candidates expending their personal funds on their own campaigns.¹³¹ FECA dramatically changed the way candidates conducted campaigns. It had the effect of forcing candidates to raise money in smaller amounts from a greater number of individuals. Addi-

130. Federal Election Campaign Act of 1971, 2 U.S.C. § 431; Pub. L. 92-225 (Feb. 7, 1972).

131. *See Buckley v. Valeo*, 424 U.S. 1 (1976).

tionally, it shifted a significant portion of expenditures from the candidate campaigns to national parties who could run issue ads or other costly forms of advertising on the candidates' behalf paid for out of donations not regulated under FECA.

Reformers soon realized that large wealthy individuals and groups were still able to funnel large sums of "soft money" (money unregulated by FECA) to individuals through indirect channels. When Congress passed the Bipartisan Campaign Reform Act¹³², among other things, it attempted to close some of these contribution "loopholes." It instituted a ban on "soft money", which was upheld by the Supreme Court.¹³³ However, this did not eliminate the ability of wealthy donors or moneyed interests to contribute large sums of money to campaigns.¹³⁴ Instead of making contributions to parties, these individuals now gave their cash to 527 organizations—-independent political groups under the Internal Revenue Code—which ran ads, conducted voter registration and supported candidates the way parties used to before BCRA. The current debate is now over how to best regulate these organizations and whether the unintended consequence of BCRA was simply to shift large donations and money from the political parties to 527 organizations.¹³⁵ This experience is an example of a vicious cycle: new regulations create new ways of circumventing the letter of the law, which spurs additional regulations. It is difficult to see when and how this cycle could be broken. As the Court stated in *McConnell*, "We are under no illusion that BCRA will be the last congressional statement on the matter [of regulating money in politics]. Money, like water, will always find an outlet."¹³⁶

This study suggests that similar attempts to cabin lobbyists' influence through regulating their ability to make contributions results in a similar motivation to circumvent the law. Like federal campaign finance reform, lobbyists and legislators at the state level will find a way to get around the laws thus necessitating additional reforms and regulations. Reformers should consider this fact when crafting new regulations and carefully weigh their effectiveness against the additional burdens of compliance and enforcement. The findings

132. Bipartisan Campaign Reform Act of 2002, 2 U.S.C. § 441i; Pub. L. 107-155 (Mar. 27, 2002).

133. See *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003).

134. See e.g., James V. Grimaldi & Thomas B. Edsall, *Super Rich Step into Political Vacuum*, WASH. POST, Oct. 17, 2004 at A14.

135. See, e.g., Senator John McCain, Press Release, August 18, 2004, available at <http://www.campaignlegalcenter.org/press-1268.html> (last accessed April 10, 2006) (cataloging the significant donations wealthy individuals have made to 527 organizations in recent months); Amy Keller, *Bill to Reform 527s Attracts Schumer, Lott*, ROLL CALL, Feb. 2, 2005 (noting a recent attempt in Congress to regulate 527s); Steve Weissman & Ruth Hassan, *BCRA and the 527 Groups*, Campaign Finance Institute Report, Mar. 8, 2005, available at http://www.cfinst.org/studies/ElectionAfterReform/pdf/EAR_527Chapter.pdf (last accessed April 10, 2006) (suggesting that 527 donations partly, but not completely, replaced old "soft money" donations).

136. *McConnell*, 540 U.S. at 224.

suggest that meaningful reform is possible, but simply passing more restrictive laws may not be the best solution. Rather, the reform community should at least consider measures, such as robust disclosure, to create incentives for politicians and the lobbying corps to police their own actions out of fear of negative public exposure. While, the study does not suggest that this would be more effective, it is an alternative worth considering.

B. *Personal Connections Matter as Much if not More Than Contributions*

Lobbyists' responses suggest that personal relationships are a significant factor in gaining access to decision makers. Legislators are much more likely to take meetings or accept phone calls from people they know. The better a lobbyist knows a legislator, the more likely she will be in getting the time and access to communicate her concerns about legislation. Contributions do play a role in this process, but can be viewed as a way of facilitating access. Members will attend fundraisers out of the necessity of raising campaign funds. However, as several lobbyists noted, once they have met a member at a fundraiser, or elsewhere, it is significantly easier for them to arrange meetings with them in the future, regardless of future contributions. This suggests that while contributions may play a role in a members' decision whether or not to meet with a lobbyist, personal contact outside of the lobbying context is also important.

C. *Process Reforms*

This study suggests that meaningful public disclosure would curb the influence of registered lobbyists without overly restricting groups' ability to have their voices heard in Sacramento. Lobbyists reported that members similarly wanted to avoid having to disclose expenditures or activities. Several individuals stated that most members would rather pay for their own meal rather than have to list the expense on the disclosure report. Similarly, lobbyists stated that they typically do not make permissible campaign contributions (which are permitted under Prop. 34) because they would prefer not to publicly disclose the contribution on their quarterly lobbying reports.

One might think that lobbyists and members' aversion to disclosure comes from the fact that reporting requirements are burdensome. However, respondents stated that most lobbying firms have a practice of carefully logging expenditures, meetings with members including what was discussed, and the contributions their clients make. It seems that it would take very little extra effort to transfer this data to a simple lobbying report. As the study implies, public scrutiny of their activities may play a greater role in lobbyists and members alike changing their behavior to avoid having to disclose certain activities.

The findings suggest that a potential way to better regulate lobbying activity would be to replace some of the burdensome restrictions with a robust reporting requirements. As one lobbyist remarked, reporting would be much

more meaningful if lobbyists had to file weekly electronic reports detailing who their clients are, which of their clients are giving money to which candidates, who the lobbyist met with and what was the nature of the meeting. Assuming there was a good way to check and verify compliance with the disclosure requirements, such a scheme could create both a powerful incentive and enforcement mechanism.

If significant amounts of information were made available to the public in an easily searchable database, reporters or citizens groups could easily begin tracking where the money was coming from and link that with the way members were voting on particular bills. Assuming that these groups do their job, the citizenry will be able, at election time, to evaluate whether they believed that their representative voted in their interest on certain bills or was pandering to individuals or groups which made significant campaign contributions.¹³⁷ Campaign contributions and support from special interest groups could become a greater part of the campaign discussion and help the citizenry better evaluate their elected representatives.

Although disclosure systems certainly have their own set of problems, such regimes have worked fairly well in other contexts. For example, the functioning securities markets are largely successful because of the SEC's compelled disclosure regime. Additionally, food labeling and recent environmental disclosure requirements have helped solve problems efficiently and effectively. This suggests that reformers should consider strengthening disclosure laws as a good way to balance the public interest with that of individuals First Amendment rights to lobby their elected representatives.

D. *Areas for Future Research*

The findings also suggest the need for future research into the practice of lobbying. Until we better understand the issues from the perspectives of legislators, legislative staff, lobbyists' clients and the general public, it will be difficult to craft meaningful reform legislation. A significant next step would be to conduct quantitative or qualitative studies into these other important stakeholders to understand the nuances of the lobbying process and how future legislation can best achieve its desired end. Additionally, quantitative research across several states and the federal government into how lobbyists gain access

137. I do not mean to suggest that moneyed interests and the public interest are always at odds. Often the two interests align. Additionally, members may take money from a special interest, but still may vote against that interest. Although such action may result in the special interest withholding future funds, this is not always the case. Some lobbyists reported that certain clients made it a practice of making contributions to all members in key leadership positions, even if they did not always vote the way the client thought they should; the contributions still facilitated access. Decisions by interest groups on which members to support are, certainly, complex and involve more considerations than simply whether or not the member votes the way the interest group would.

to decision makers and the role contributions play in obtaining access would be beneficial. Such a study could help confirm the results of this Article and understand if they are generalizable across larger lobbyist groups. In conducting this research, one would need to include not only lobbyists at professional firms, but also “in-house” lobbyists who work for unions, trade associations and the federal government. Their perspective would be invaluable to better understanding these issues. The area of lobbying reform is ripe for additional research, especially into better understanding how the process works and not simply theoretical reform proposals.

VII. CONCLUSION

The aim of this case study is not to disparage lobbying or advocate for a particular flavor of regulation. It is, instead, intended to probe the interactions between lobbyist and legislator in an attempt to better understand the lobbying process. Lobbying is an important practice in our system of government. Not only is it enshrined in the Constitution, it is a vital way for minority interest groups to make their voices heard. In a country as expansive and diverse as ours where politicians are increasingly removed from their constituents, lobbyists can play a vital role in crafting legislation that is in the public interest.

Reformers often raise the specter of undue influence in lobbying, which is something that should be addressed. Yet, without a better understanding of where lobbyists’ influence comes from and how they gain access to decision makers, the efficacy of reform legislation is highly speculative. It seems that the reform goal is not to eliminate lobbying itself, but reduce the situations (or ability of lobbyists to create such situations) where members will have to choose between what is best for their constituents and what is best for their own political careers. Many would probably agree it is less than ideal for the country if legislators vote based on a need to fundraise for their next campaign and not what is best for their constituents. As reformers and academics alike learn more about lobbying interactions, they can better craft legislation that will allow the important function of lobbying to go forward while eliminating pitfalls. This case study provides no definitive answers or solutions to the reform question, but does underscore the need for further information. I hope that this project will push the effort ahead by contributing to our collective understanding of lobbying and by identifying areas for future study.