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Opinion

In Defense of Lobbying

The Constitution protects the right to petition.

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In the first six months of his presidency, Barack Obama has publicly attacked and caricatured a group we know well. According to the president, this group is actively working to defeat his initiatives. That group is not the GOP leadership, the Republican minority in Congress, or the conservative media. Rather it is lobbyists, or, in his words, “well-connected lobbyists,” “entrenched lobbyists,” and “an army of lobbyists.”

His is not only a war of words. Through a series of executive orders, presidential directives and other actions, Mr. Obama has embarked on a program to systematically disadvantage individuals who properly register as lobbyists and the so-called special interests they represent. In regulations governing employment in the administration, stimulus package projects, and campaign contributions, this administration has discouraged communication between government officials and registered lobbyists. The president has praised all of this as “a clean break from business as usual.”

But what this break has principally done is restrict experts in governmental policy from access to policy makers. This is despite the fact that advocacy on behalf of varied interests is not only beneficial to the policy-making process, but is explicitly protected by the Constitution.

The final clause of the First Amendment guarantees “the right of the people . . . to petition the government for a redress of grievances.” The Supreme Court has called this right one of “the most precious of the liberties safeguarded by the Bill of Rights,” and one that “extends to all departments of the Government.” That right was derived from the earliest charters of liberty. The Declaration of Independence spoke to the importance of this freedom: “In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury.”

Petitions can be about individual liberty. But they have no less standing when they involve varied interests, including business interests.

The United States was founded as a free-market society. From the 18th century onward, Americans have petitioned their government on economic issues. In 1945, in the First Amendment case of *Thomas v. Collins*, the Court reaffirmed that it is “in our tradition to allow the widest room for discussion, the narrowest range for its restriction.” The Court also held that “the grievances for redress of which the right of petition was insured . . . are not solely religious or political ones. And the rights of free speech . . . are not confined to any field of human interest.”

Despite this constitutional protection, registered lobbyists—those who have dutifully identified themselves as professional advocates per the terms of the Lobbying Disclosure Act of 1995—have been systematically discouraged, ostensibly to remove “undue influence” over policy making.

But the reality is that the president only wants to inhibit those lobbyists that disagree with his agenda. The current debate over health care is a case in point.

On July 1, Mr. Obama said the following about lobbyists at an online town-hall meeting: “You [ordinary Americans] are what are going to drive this process forward—because if Congress thinks that the American people don’t want to see change, frankly, the lobbyists and the special interests will end up winning the day. But when the American people decide that something needs to happen, nothing can stop us.”

However, when the so-called special interests and their lobbyists support the president, he encourages rather than constrains them. The American Medical Association was “the health-care industry’s top lobbying spender” in 2008, according to this newspaper. The president was the keynote speaker at the AMA’s annual conference in June.

It would seem that a better way to proceed would be for the president to save his criticism for specific positions taken by individuals or organizations with which he does not agree, rather than censure lobbyists as a group. In that regard, the key should be evenhandedness: Treating all participants in the policy-making process equally—registered lobbyist or not—in terms of both access and exclusion. To single out registered lobbyists for unfavorable treatment undercuts a constitutionally protected right, and ignores the beneficial role a diversity of voices plays in this vital deliberative process.

President Harry Truman, at a news conference over 60 years ago, acknowledged that lobbyists can also serve the public interest. A reporter asked him: “Mr. President, to go back to lobbyists, would you be against lobbyists who are working for your program?” Truman answered: “Well, that’s a different matter. We probably wouldn’t call these people lobbyists. We would call them citizens appearing in the public interest.”

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