



# Ban Lobbyists from Fundraising for Politicians

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In Congress and state legislatures, special interest lobbyists are delivering large sums of money to politicians, which effectively prioritizes the private interests of their corporate clients over the interests of the general public. Former congressman Mick Mulvaney demonstrated this dynamic when he said, “We had a hierarchy in my office in Congress. If you’re a lobbyist who never gave us money, I didn’t talk to you. If you’re a lobbyist who gave us money, I might talk to you.”<sup>1</sup> The only way for all Americans to have their voices heard is to restructure state and federal law to reduce the corrupting influence of big money so that the general public is fairly represented.

## Problem: Lobbyist fundraising distorts democracy

1. In American elections, there are limits on how much individuals can contribute directly to political candidates. These limits were intended to prevent large contributions that threaten “the integrity of our system of representative democracy” and public confidence in that system.<sup>2</sup> However, some individuals subvert these limits by asking clients, business partners, friends, and even corporate PACs to donate to a particular candidate. They make sure that the candidate knows that they are the one bringing in large sums of money, which affords them the kind of access and political influence that limited contributions cannot buy.
2. Although this fundraising is of general concern, it is particularly concerning when lobbyists are the ones raising the money. When lobbyists act as fundraisers for candidates, it “has the additional effect of increasing the clout of those who are in the day-to-day business of trying to influence legislation.”<sup>3</sup>
3. For example, only a few weeks after U.S. Speaker of the House Paul Ryan (R-WI) introduced his blueprint for the tax bill, he attended a fundraiser on Nantucket hosted by a high-profile tax lobbyist.<sup>4</sup> Although the total proceeds of the event were not disclosed, ticket prices ranged from \$2,500 to \$10,000; the latter including a photo with Ryan.<sup>5</sup>

4. Evidence shows that individuals who fundraise for candidates are rewarded for their efforts in ways that undermine public accountability and trust. For example, *The Washington Post* identified 246 fundraisers who raised more than \$100,000 for George W. Bush’s 2000 presidential campaign.<sup>6</sup> More than 40 percent of them eventually received a job or appointment in the Bush administration. For example, M. Teel Bivins—a rancher, member of the Texas Senate, and Bush campaign fundraiser—was appointed to be the U.S. ambassador to Sweden. In a 2001 interview with the BBC, Bivens candidly described the relationship between fundraising and access:

*“You wouldn’t have direct access if you had spent two years of your life working hard to get this guy elected president, raising hundreds of thousands of dollars?” he said. “You dance with them what brung ya.”*<sup>7</sup>

About one-fifth of the 246 fundraisers mentioned above were registered lobbyists “whose livelihoods depend on the perception that they can get things done in the government.”<sup>8</sup>

#### Solution: Ban lobbyists from fundraising for candidates for state office

Lobbyists should not be able to fundraise for candidates—or political parties—and thereby gain more access and influence than if they were not able to circumvent the limits on their own contributions. A lobbyist fundraising ban should be crafted as follows:

- **Define lobbyist fundraising broadly.** Some lobbying regulations specifically pertain to “bundling,” a term that usually signifies collecting and transmitting contributions or taking credit for them in a written record. Fundraising should be defined more broadly to include: hosting or underwriting events where funds are raised; transmitting or delivering contributions from another person; making or sending a communication soliciting contributions; or otherwise directly or indirectly soliciting, transmitting, or facilitating a contribution to any candidate or political party. Moreover, lobbyists should not be able to fundraise for nonprofits or other organizations tied to lawmakers.<sup>9</sup>
- **Make any lobbyist fundraising count towards the lobbyist’s individual contribution limit.** Contribution limits are (or ought to be) set at an amount that allows reasonable expressions of support yet remains low enough to mitigate the risk of undue influence. Therefore, in those states where lobbyists are allowed to make personal contributions, lobbyists should be able to meet this threshold either by raising money from others or by contributing themselves, as long as the total does not exceed their personal limit.<sup>10</sup>
- **Include reasonable exceptions.** Any ban on lobbyist fundraising should be clearly limited so as not to infringe on the mere expression of support or opposition to a candidate or other sharing of information that does not include a solicitation. Moreover, it should not prevent lobbyists from engaging in volunteer activity unrelated to fundrais-

ing or from raising funds for their own campaign should they decide to run for office. Lastly, courts have expressed concern about bans on fundraising that could prevent an individual from advising family members about political contributions.<sup>10</sup> Therefore, solicitation of immediate family members should be exempt.

- **Prohibit candidates and political parties from knowingly accepting lobbyist fundraising proceeds.** To help ensure adequate enforcement, both the lobbyist and the recipient of the contribution should be liable for violations of the fundraising ban in situations where the recipient should know that the money was the result of lobbyist fundraising.
- **Ensure that the law adequately defines who is a lobbyist.** A ban on lobbyist fundraising will only be effective if lobbyists are appropriately identified. Particularly at the federal level, many would-be lobbyists are able to avoid registration by taking advantage of a lax definition—a long-standing problem that should be corrected. Moreover, in order to prevent easy evasion, the ban on fundraising should extend to any agent of the lobbyist as well as any employee of the same lobbying firm.

### A ban on lobbyist fundraising is constitutional

Although lobbying and campaign finance laws have been under constant attack nationwide by ideologues who oppose any restrictions on using money to influence politics, courts have regularly upheld the constitutionality of restrictions on gifts and campaign contributions from lobbyists. In the words of the U.S. Court of Appeals for the 4th Circuit: “*Any payment* made by a lobbyist to a public official, whether a campaign contribution or simply a gift, calls into question the propriety of the relationship.”<sup>12</sup>

Although many courts have upheld a range of restrictions on lobbyist contributions and fundraising, judicial approval has not been universal. Most notably, the U.S. Court of Appeals for the 2nd Circuit overturned a prior version of Connecticut’s ban on lobbyist bundling, suggesting that there were less restrictive alternatives to Connecticut’s rule.<sup>13</sup> Nonetheless, a properly constructed ban on lobbyist fundraising should pass constitutional muster and is consistent with the broader First Amendment jurisprudence supporting restrictions on lobbyist contributions and gifts.<sup>14</sup> Americans have a right to fair representation, and need common sense rules to maintain a discourse between constituents and elected representatives that is not distorted by money.

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## Endnotes

- 1 Glenn Thrush, "Mulvaney, Watchdog Bureau's Leader, Advises Bankers on Ways to Curtail Agency," *The New York Times*, April 24, 2018, available at <https://www.nytimes.com/2018/04/24/us/mulvaney-consumer-financial-protection-bureau.html?smid=tw-nytimes&smtyp=cur>.
- 2 *Buckley v. Valeo*, 424 U.S. 1, 27-28 (1976).
- 3 *Los Angeles Times*, "The House misses an opportunity to go even further than the Senate on reform efforts," May 21, 2007, available at <http://articles.latimes.com/2007/may/21/opinion/ed-disclosure21>.
- 4 Victoria McGrane, "DC lobbyists ready for 'Hunger Games' of tax code reform," *The Boston Globe*, July 27, 2017, available at <https://www.bostonglobe.com/news/nation/2017/07/27/lobbyists-ready-for-hunger-games-tax-code-reform/50JUSNYSIRko5nWEpcbFQP/story.html>.
- 5 *Ibid.*
- 6 Thomas B. Edsall, Sarah Cohen, and James V. Grimaldi, "Pioneers Fill War Chest, Then Capitalize," *The Washington Post*, May 16, 2004, available at <http://www.washingtonpost.com/wp-dyn/articles/A29142-2004May15.html>.
- 7 *Ibid.*
- 8 *Ibid.*
- 9 For example, on the eve of the debate over tax legislation, lobbyists and other donors were asked to attend a fundraiser for the Orrin G. Hatch Foundation, featuring Sen. Orrin Hatch (R-UT), chairman of the Senate Finance Committee. Carrie Levine, "Companies court lawmakers with charitable giving, but don't always disclose the funds," Center for Public Integrity, March 5, 2018, available at <https://www.publicintegrity.org/2018/03/05/21585/companies-court-lawmakers-charitable-giving-dont-always-disclose-funds>.
- 10 See, e.g., Fred Wertheimer and Norm Eisen, "A 10-Point Plan to Drain the Swamp," Real Clear Policy, November 15, 2017, available at [http://www.realclearpolicy.com/articles/2017/11/15/a\\_10-point\\_plan\\_to\\_drain\\_the\\_swamp\\_110421.html](http://www.realclearpolicy.com/articles/2017/11/15/a_10-point_plan_to_drain_the_swamp_110421.html) (stating that lobbyist bundling at the federal level should be limited "to no more than the \$2,700 total that the lobbyist could give to the candidate").
- 11 *Green Party of Connecticut v. Garfield*, 616 F.3d 189, 209 (2d Cir. 2010).
- 12 *Preston v. Leake*, 660 F.3d 726, 737 (4th Cir. 2011).
- 13 *Garfield*, 616 F.3d at 207-211.
- 14 See, e.g., *See, e.g., Md. Right to Life State Political Action Comm. v. Weathersbee*, 975 F. Supp. 791, 798 (D. Md. 1997) (upholding prohibition on lobbyists soliciting campaign contributions or serving as campaign treasurers); *Preston v. Leake*, 660 F.3d 726, 741 (4th Cir. 2011) (upholding ban on lobbyist contributions); *Ognibene v. Parkes*, 671 F.3d 174, 185-91 (2d Cir. 2011) (upholding a law that lowers contribution limits "approximately twelve-fold" for lobbyists and individuals doing business with the city and makes their contributions ineligible for matching funds); *Fl. Ass'n of Lobbyists, Inc. v. Div. of Legislative Info. Servs. of the Fl. Office of Legislative Servs.*, 525 F.3d 1073, 1079 (11th Cir. 2008) (upholding ban on lobbyists giving legislators "anything of value"); *Inst. of Gov'tal Advocates v. Fair Political Practices Comm'n*, 164 F. Supp. 2d 1183, 1194 (E.D. Cal. 2001) (upholding a ban on lobbyist contributions).