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## A Better Way to Fix Lobbying

Lee Drutman

### EXECUTIVE SUMMARY

That Washington is corrupted by special interests is perhaps the most common critique of the federal government. Poll after poll reveal a public convinced that lobbyists are a destructive influence,<sup>1</sup> and most lobbying reform ideas accordingly take a distinctly moralizing tone. “Drain the swamp” was Nancy Pelosi’s rallying cry in 2006, backed by a promise to, on Day One, “break the link between lobbyists and legislation.”<sup>2</sup> President Obama, too, spent his campaign bashing special interests (as did McCain), and also made a symbolic point of enacting new lobbying rules for his administration on Day One.



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This paper argues that high-handed moralizing about lobbying misses the point: Lobbyists are not inherently corrupting, nor does their primary influence stem from some devilish power to automatically compel legislative outcomes through campaign contributions and/or personal connections, as is commonly believed. Rather, their influence comes from their ability to become an essential part of the policymaking process by flooding understaffed, under-experienced, and overworked congressional offices with enough information and expertise to help shape their thinking.

This situation, however, is far from benign. First, representation is extremely one-sided. Depending on the estimate, between two-thirds and three-quarters of all money spent on lobbying is spent on behalf of businesses. If lobbying is a contest of who has the resources to blanket and bird-dog Capitol Hill and the

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Lee Drutman is adjunct professor at the University of California's Washington Semester Program.

federal bureaucracy with arguments and information on any given issue, it's just not a fair fight. Second, the process is not adequately transparent. The public, the media, and even competing advocates are hard-pressed to know which lobbyists are meeting with whom and what they are arguing and why. Without transparency, accountability suffers.

This paper proposes a simple, cost-effective solution: The Library of Congress should create a website that will become the de facto online forum and clearinghouse for all public policy advocacy. Such a website would both level the playing field (it is much cheaper to post a web page than to hire an army of lobbyists to descend on Washington) and increase transparency and accountability (if all positions and arguments are public, everyone knows who is lobbying for what and why). This will result in more democratic and more thoroughly vetted public policy.

## The Fall and Rise of Madison's Vision

The problem of special interests is as old as America, and attempts to solve it go back at least to James Madison, who in *Federalist #10* addressed the fear that factions might tear the country apart. Madison proposed two methods of dealing with factions: "the one, by removing its causes; the other, by controlling its effects." Since to remove its causes would be tantamount to stamping out free expression and liberty (which Madison rightly believed would be "worse than the disease"), the man who would become our fourth president was left with only the second option: a faith that in some rough and tumble way, faction would counteract faction, and something resembling the public interest would emerge from the kicked-up dust of political confrontation.

"Extend the sphere, and you take in a greater variety of parties and interests," wrote Madison. Such has been a great hope of American democracy ever since: that out of the sprawling diversity of society would emerge a vibrant marketplace of ideas to reflect our collective interests and intelligence.

Yet, the 2011 vintage of Madison's pluralist dream seems woefully distorted. And while the widespread cynicism may overstate the level of corruption in Washington, it is hard to make the case that American democracy is a true marketplace of ideas – open, transparent, and competitive – in the way Madison had hoped.

## The Current System and its Problems

Utter the word "lobbyist" and the image most likely to come to mind is Jack Abramoff. The caricature is of a smooth operator, plying lawmakers with exotic gifts and trips in exchange for legislative favors. The stories that make headlines are the ones of the lobbyist lavishing a 19th-century Louis Philippe commode, among other gifts, upon a congressman in exchange for military contracts<sup>3</sup> or of

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the congressman being discovered with \$90,000 worth of cold, hard cash in his freezer, taken in exchange for promoting high-tech businesses abroad<sup>4</sup> – tales of exasperating influence-peddling that are designed to offend our civic and moral sensibilities.

And yet, for all the colorful caricatures, the daily grind of almost all lobbying is remarkably banal. It much more closely resembles the tiring lawyerly mastery of arcane policy and legislative detail and depends on the careful patience to make the same arguments and pitches to anyone who will listen, over and over and over again. It is lobbyists who can and will explain, ad infinitum and in painstaking details, to every possible Hill staffer, how changing the allocation adjustment allowance spelled out in regulation F, subsection 15(g) of the proposed Make America Better Act from 12 percent to 20 percent is a good and fair way to help hard-working Americans (and why failing to do so would undermine our global competitiveness).

While the days of the boozy dinners and exotic golf outings as the stock and trade of lobbyists are long gone (and were probably overstated even then), the stereotype persists. It remains the MacGuffin of too much lobby reform thinking: the elusive moralizing hope that if only politicians had the courage to pass the right reform, we could finally root out all that infernal corruption. Problem is, there's really not very much outright corruption, and whatever exists tends to eventually get exposed and prosecuted.

To be sure, wealthy special interests do enjoy certain advantages, especially the access that campaign contributions and well-connected lobbyists are widely acknowledged to provide.

And certainly, we'd all be better off if candidates had access to public funding – at the very least they could spend more time on the issues and less time dialing for dollars. Likewise, there are good reasons to have extended cooling-off periods in transitioning from Congress to lobbying. However the current political environment makes both of these reforms non-starters. It's also important to note that extensive political science research has been unable to detect any systematic relationship between campaign money and outcomes.<sup>5</sup>

More importantly, even if we moved to a system of full public funding of elections and tightened revolving door restrictions, lobbyists would still play an outsize role in the political process for a very important reason: they are providers of valuable policy-related information and expertise, made all the more important by the high turnover rates among Congressional staffers. A recent Policy Council survey found that two-thirds of staffers say that lobbyists are "necessary to the process" as either "collaborators" or "educators." Lobbyists are also frequently referred to as "partners."<sup>6</sup>

Right now, your average member of Congress is keeping track of hundreds of issues, with a handful of staffers dedicated to a more limited portfolio. The legislative process involves many small decisions about what to do on these issues: Which pieces of legislation to introduce; which pieces of legislation to co-

sponsor; which amendments to introduce in committee; which amendments to support in committee; how to vote in committee; which amendments to introduce and support on the floor; how to vote on the floor; how much to try to intervene as administrative agencies try to implement rules mandated by legislation, etc.

Put yourself in the role of a congressional legislative director for a moment. On average, you have been in your position for little more than three years, and in the House for just under six years. According to the Congressional Management Foundation, there's a decent chance (27 percent) you are under 30 years old, and a high likelihood (87 percent chance) you are under 40 years old. There's a 55 percent chance you have no more than a bachelor's degree, and only a 16 percent chance you have a law degree. You have the help of two or three legislative aides. They will be on average younger (most are in their 20s), slightly more green (there's an 80 percent chance a legislative aide will have less than three years experience), and be responsible for covering maybe a dozen issues.<sup>7</sup>

On average, you make \$84,000 a year – a good salary, but far less than you'd make if you switched over to a lobbying firm. The hours are long (80-100 hour weeks are not uncommon), and frequently unpredictable. This is a good reason why very few people make a career of being on the Hill.

By a 1974 law, all House offices are capped at 18 staff members, split between the home district and Washington, DC. Even as districts have grown larger in population, the volume of constituent mail and the demands of legislative complexity have multiplied, the magic number of 18 has stayed the same.

Over on the Senate side, things are a little better in terms of age and experience, but only slightly. Staffs are a little bigger and a little more experienced, but there are still serious problems of experience and turnover.

Moreover, the issues are increasingly complex: Dodd-Frank was 2,300 pages and covered incredibly complicated intricacies of the domestic and global financial system; The Affordable Care Act was 2,400 pages and dealt with the bizarre complexities of the health care system. Both were full of sub-section after sub-section of arcane, technical details, and it seems unlikely that any staffer could master much of the bill without relying on outside help.

Congress frequently moves at a chaotic pace. Working in the Senate, I've seen the scrambles. When a committee mark-up or a floor vote is coming up, where does a staffer go to know what he/she needs to know to write an informed vote recommendation? Where does the member of Congress go?

Often they will consult the lobbyists who have done the hard work of reaching out to all the offices and building relationships ahead of time. In a frenetic, high-turnover environment where congressional staff are always playing a game of intellectual catch-up, lobbyists are there to fill in the gaps.

And though it is hard to find something morally wrong with merely providing information and argumentation, there are good reasons to be concerned.

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For transparency policy to be effective... the information must be both easy to understand *and* easy to utilize.

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First is that lobbying resources are unequal. There are 16 lobbyists representing business for every one representing a union or public interest group.<sup>8</sup> When lobbying is in part a game of who can flood Congress with the most bodies and the most reports and who can pay attention to the most details and moving parts, it's a game where resources do matter.

A second problem is that it is often unclear who is arguing for what and why. Without such transparency, accountability suffers.

Disclosure is a hallmark of modern lobbying reforms. Thanks to the Honest Leadership and Open Government Act, lobbyists now file quarterly reports listing their clients, issues, institutional targets (e.g. Senate, House, Department of Transportation) and compensation. This was an improvement on the Lobbying Disclosure Act of 1995, which required semi-annual reports, which itself improved on the Federal Regulation of Lobbying Act of 1946, which required minimal disclosure and registration that was roundly ignored. All campaign contributions directly to candidates are disclosed as well. In many respects, the United States has the best lobbying disclosure regime in the world. But it could be better.

The problem is that making information publicly available does not automatically make information useful, as Archon Fung, Mary Graham, and David Weil have argued convincingly in an excellent book on transparency entitled *Full Disclosure: The Perils and Promise of Transparency*. For transparency policy to be effective, they found, the information must be both easy to understand *and* easy to utilize. Users must be able to register their choices clearly, and disclosers must have the ability and incentive to respond meaningfully.

Right now, for all its wonders, the current disclosure system doesn't do a very good job of that. All we know is there is a lot of money and that it is disproportionately coming from business interests. This is probably more disempowering than anything else: the amount of money spent feels so overwhelming, the dominant storyline is that money corrupts, and ergo Washington must be a hopelessly corrupt place: Why even bother?

What's missing is the kind of information that would allow citizens to respond meaningfully. Knowing the rough *how much* and even a bit of the *when* is good, but it's only part of the equation. Citizens also need to know *who* is advocating for *what*, and *why* and *how*.

Such information would allow everybody – members of Congress and their staff, journalists, and the public – to be better informed. If knowledge is power, this brings more power to the individuals most likely to hold organized interests accountable.

## A New System

I propose a new system that will solve these two problems and make the advocacy process more effective and democratic. Here's how it will work:

Every time a piece of legislation is introduced, the Library of Congress currently makes that legislation available online already through the "THOMAS" System (found at <http://thomas.loc.gov>). I propose adding a second web-based system: "JAMES" (named for James Madison).

JAMES would be a forum for lobbyists, constituents, and other interested parties to come together to publicly and transparently debate legislation, and in the process provide congressional staff, journalists, and the public access to the best available arguments, information, and ideas about public policy – all in a way that is easily searchable and sortable.

Separate pages would exist for each bill introduced. Since legislation ranges in complexity and importance, JAMES will reflect that. Many of the 8,000 bills introduced each year are purely symbolic, and will generate little to no activity. Other pieces of legislation are incredibly complex, and may require multiple sub-pages for separate titles, sections, and amendments. It is important that the Library of Congress hire innovative thinkers and programmers to help develop and guide the architecture of the site as it evolves. (Existing online forums such as Wikipedia, Yelp, and Reddit have all developed innovative mechanisms to usefully aggregate information and could serve as models.)

One way to think about JAMES is as a modern variation on notice-and-comment rulemaking for the legislative process. Under the 1946 Administrative Procedure Act (APA), federal agencies were required to open up administrative rulemakings to transparent public comment. Proposed rules are now published in the *Federal Register* and anyone can submit a comment.

The Obama administration has done an excellent job of making this process more accessible by posting all rules and comments on Regulations.gov. Yet, Regulations.gov remains a 21<sup>st</sup> century gloss on a mid-20<sup>th</sup> century commenting process. It does not allow individuals to update their comments as new information becomes available, and it lacks adequate functionality to aggregate, sort, and dis-aggregate comments based on who is writing and what they are saying.

In order to make JAMES more easily navigable, different types of participants should use the system in different ways.

### 1. Registered Lobbyists

Registered lobbyists will be required to first briefly state their client organization's position on the bill (or amendment or section of the bill), and if they wish, to provide a simple aye-or-nay recommendation. The up or down votes will make it easy for anybody, including congressional staff, to see who

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is for and who is opposed to particular policies. Lobbyists will be required to advertise whether they are representing non-profits, for-profits, organizations of for-profits (such as trade or business associations), or state, local, or foreign governments.

Lobbyists will also have the opportunity to provide as many supporting documents and arguments as they like, and they can update their pages as much as they like as new information becomes available (or they wish to respond to ongoing events). They will also be able to post separate pages for each state and congressional district if they wish, in order to provide more targeted information to help individual offices better understand how their constituencies might be affected.

## 2. Constituents

Currently, if constituents wish to share their opinion with their Senator or Representative, they can write a letter, call the office, or send an e-mail. Congress receives more than 200 million messages a year from constituents, roughly 90 percent in e-mail form.<sup>9</sup> Most offices keep an internal tally and a stack of generic responses, but it eats up significant staff time to respond. Meanwhile, citizens have little idea what happens to their comments.

JAMES will provide a systematic and central forum for constituents to register their opinions and for congressional offices to tally and track constituent opinion. It will also allow citizens to see how their opinions compare to other constituent opinions.

Constituent opinion would work similarly to lobbyist input, but would be organized by state and congressional district and tallied accordingly. Every U.S. taxpayer would get an account based on his or her social security number. Each account would be able to provide one up or down vote on a bill (or amendment or section of the bill), and one opportunity to comment. Comments will require citizens to use their real names (this can be enforced through the use of social security numbers to log in). The reason is to encourage high-level civic debate and to prevent the kind of free-for-all name-calling that frequently arises in anonymous comment threads. Up-or-down votes, however, can remain anonymous.

## 3. Members of Congress

Members of Congress often wish to advocate publicly for particular policies, especially if they are the sponsors or co-sponsors of bills and amendments.

Therefore, they would also be entitled to post pages that make the case for a particular bill, section, or amendment and provide useful information. Additionally, they would also be able to post to their individual district/state sub-pages if they wish to make public their position on a given issue, or explain why they plan to or did vote a particular way. This will make it easier for constituents to find out where their Senators and Representatives stand on issues.

#### 4. The Executive Branch

Both the Executive Office of the President and the administrative agencies possess important opinions and valuable expertise on a range of policy issues. Members of Congress tend to be particularly interested what executive branch experts have to say, in good part because the administrative agencies are responsible for implementing and enforcing the laws and have insights into such things as cost and feasibility (administrative agencies are interested in weighing in for the very same reasons). JAMES should reflect the importance of the executive branch by providing a separate section for it to weigh in.

### **Using JAMES**

Those who wish to use JAMES to research lobbying efforts would be able to search by bill and within bills by section. Say you wanted to assess S.216 (The Food Safety Accountability Act of 2011), which passed in the Senate on April 13, 2011 but is still pending in the House as of this writing. JAMES would have a hub page for this bill. You would be able to see which organizations are opposed and which are in favor, and each of those organizations would have a page outlining their arguments, providing relevant information and would have contact information should you want to learn more. You would be able to see what constituent opinion was like by district, state, or for the entire nation.

JAMES would be of immense help to congressional staffers and members of Congress who need to learn something very quickly about an issue. The sheer volume of information congressional staff have to cover, as well as the high turnover rates, means that staff are often scrambling to research issues. This would help them to do this more systematically, potentially transforming the nature of some staffers' jobs.

The same goes for journalists. In the 24/7 news cycle, deadlines are even more relentless. Rather than just relying on the most visible or recent press releases, journalists would also have immediate access to a list of anybody who is interested in a particular issue, giving them more choices on who to interview and the ability to find a broader range of perspectives in a timely fashion.



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Lobbyists could potentially improve their standing with the public by directing attention to the education and argument parts of lobbying.

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The public and other interested parties will now see who is advocating for what, what their arguments are, and what information they are basing those arguments on. Rather than endless reporting speculating about who is saying what behind closed doors and how special interests are twisting arms, this could shift public debate more to the actual arguments by making those actual arguments and facts more easily accessible and comparable.

Public interest groups who can't afford to hire enough lobbyists to schedule multiple meetings with every office will now have a more level playing field on which to compete. They also will be able to see what corporations are arguing, and will more easily be able to respond to these allegations. Likewise, corporations can respond to any unfounded allegations their critics might be spouting.

### **Why Lobbyists Will Want to Participate**

In defending their profession, lobbyists frequently argue that much of what they do is to make government more effective by providing valuable policy expertise.<sup>10</sup> If that is indeed the case, lobbyists should welcome the opportunity to participate. By making what they do transparent, this system could help to dispel popular myths that all lobbyists do is put the closed-door hurt on craven lawmakers. Instead, by adopting this system, lobbyists could potentially improve their standing with the public by directing attention to the education and argument parts of lobbying.

However, there are understandable reasons why lobbyists might be reluctant to participate. The most likely is that they prefer to tailor their arguments to specific congressional offices and to present different arguments publicly and privately, obscuring their rationales. If this is true, it would seem to make transparency all the more important.

In order for JAMES to be effective, it must become the standard conduit for lobbying. The most straightforward way would be to simply require that all registered lobbyists must participate. However, this seems politically difficult to enact into legislation, and challenging to enforce.

A more likely way for it to take hold is for a few early adopter congressional offices to signal that they will only seriously entertain lobbying and constituent opinion that comes through JAMES. The rationale for this could be simple: "If you can't make a public case for your position, we aren't interested in talking to you." Once certain congressional offices announce their intentions to use JAMES as their primary resource for learning about issues, lobbyists will have a clearer incentive to participate. Once some lobbyists start using JAMES, those on the other side of the issue will want to be able to respond to accusations. As the benefits of the system become clear, all offices and lobbyists will adopt JAMES as the primary clearinghouse for public policy debate and discussion.

Certainly, this will not and should not entirely replace in-person meetings

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and phone calls and e-mails, nor is it designed to. In many ways, it has the potential to make in-person meetings more productive, since staffers and members of Congress would have more opportunities to brush up on current information and arguments in advance of those meetings.

Nor will this put a final end to the disproportionate influence that certain lobbyists or special interests have. Money will presumably still matter, as will relationships, as will constituents, as will party, as will any number of factors. There are dozens of reasons why lawmakers and their staff make the decisions that they do. Special interests will continue to try to influence outcomes by contributing to campaigns and hiring well-connected lobbyists, and nothing proposed here will make this entirely irrelevant. But JAMES will hopefully render their advantages less important.

## Conclusion

The quality of public policy depends on many factors, but perhaps the most important of these is the quality of information and argument. All legislation is ultimately written by people making decisions based on their ideas and understandings about how the world works, how the world should work, and how to bridge that gap. Where they get that information matters. JAMES will make it more likely that such information is balanced and transparent by providing a central clearinghouse where any member of Congress, staffer, journalist, or constituent could, at the few clicks of a mouse, learn what different organized interests, constituents, and members of Congress think about any piece of legislation or amendment: who supports it, who opposes, and why.

With each passing year, the number of lobbyists and the amount of money spent on lobbying increases. Washington now has 13,000 registered lobbyists. Annually, \$3.5 billion is spent on direct lobbying expenditures (and much more on indirect lobbying), and \$500 million in PAC contributions goes directly to candidates. These are numbers that are not going to decline, and we should stop expecting that they will – or even that such numbers must by definition represent a perversion of our democratic ideals.

Rather sermonize about special interests running Washington, we ought to accept that Washington lobbying is an inevitable byproduct of the simple fact that our modern federal government makes decisions that impact a remarkable array of societal interests and that the complexities and complications of 21<sup>st</sup> century governance require diffuse and specialized knowledge. Rather than try to extinguish or circumscribe attempts to influence public policy, I say let's have more. Let's make lobbying maximally accessible and accountable. After all these years, let's prove Madison right.

#### Governance Studies

The Brookings Institution  
1775 Massachusetts Ave., NW  
Washington, DC 20036  
Tel: 202.797.6090  
Fax: 202.797.6144  
[www.brookings.edu/governance.aspx](http://www.brookings.edu/governance.aspx)

#### Editor

Christine Jacobs

#### Production & Layout

John S Seo

## Endnotes

<sup>1</sup> See, for example, a Gallup Poll from April 2011, in which lobbyists topped all other societal institutions in a ranking of who had too much power: 71 percent of respondents complained that lobbyists had “too much power” – as compared to 13 percent who said their power was “about right” and 8 percent who said they did not have enough. Lydia Saad, “Americans Decry Power of Lobbyists, Corporations, Banks, Feds,” Gallup, April 11, 2001.

<sup>2</sup> David Espo, “Pelosi Says She Would Drain GOP ‘Swamp,’” *Associated Press*, October 6, 2006,

<sup>3</sup> Evan Thomas and Jamie Reno, “Top Gun's Tailspin; Randy Cunningham was a high-flying aviator whose taste for the lavish perks of politics brought him low,” *Newsweek*, December 12, 2005.

<sup>4</sup> Allan Lengel, “FBI Says Jefferson Was Filmed Taking Cash,” *Washington Post*, May 22, 2006.

<sup>5</sup> Ansolabehere, Stephen, John M. de Figueiredo, and James M. Snyder Jr. 2003. “Why Is There so Little Money in U.S. Politics?” *The Journal of Economic Perspectives* 17(1): 105-130; Summing up almost 40 studies, they conclude: “Overall, PAC contributions show relatively few effects on voting behavior. In three out of four instances, campaign contributions had no statistically significant effects on legislation or had the ‘wrong’ sign – suggesting that more contributions lead to less support.”

<sup>6</sup> The Policy Council, “Changing of the Guard: 2007 State of the Industry for Lobbying and Advocacy,” 2007.

<sup>7</sup> Congressional Management Foundation, “2009 House Compensation Study,” 2009.

<sup>8</sup> I define public interest group to include groups representing consumer, environment, or good government causes. For more detail on the contours of Washington representation, see: Schlozman, Kay Lehman et al. 2008. “Who Sings in the Heavenly Chorus: The Shape of the Organized Interest System.” paper given at the Midwest Political Science Association annual meeting.

<sup>9</sup> Congressional Management Foundation, “How Capitol Hill is Coping with the Surge in Citizen Advocacy,” 2005.

<sup>10</sup> See, for example, Allard, Nicholas W. 2008. “Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right.” *Stanford Law and Policy Review* 19(1). Allard argues that lobbying “plays a vital role in promoting an effective representative government. By providing focused expertise and analysis to help public officials make informed decisions and often bridging gaps in divided and gridlocked government, lobbyists sustain and advance the policy process.”

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