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Lobbying

ABA Panel Recommendations Would Break Link Between Lobbying, Campaign Funding

The link between Washington lobbying and campaign fund-raising would be broken if controversial new recommendations from a bipartisan task force commissioned by the American Bar Association are adopted.

A report released Jan. 11 by the ABA task force calls for lobbyists to be banned from fund-raising for any lawmakers whom they lobby. The report also called for changes in current lobbying disclosure rules to reveal more activity, such as "grassroots" lobbying and lobbying by people who claim exemption from current rules.

Though controversial, the task force may have a better chance of having its recommendations taken seriously because it was led by veteran lawyers with strong ties to top Democrats and Republicans.

The co-chairs included Charles Fried, a Harvard law professor and former U.S. solicitor general under President Reagan. Also heading the effort was Republican election lawyer Trevor Potter, counsel to 2008 Republican presidential nominee Sen. John McCain (R-Ariz.), veteran Democratic election attorney Joseph Sandler, and Rebecca Gordon of the law firm Perkins Coie, counsel to the Democratic National Committee and deputy counsel to President Obama's 2008 campaign.

The task force report stopped short of calling for a ban on lobbyist campaign contributions, though it recommends that lobbyists be subject to a lower limit on the aggregate annual amount of contributions they can give. The report also recommends a ban on lobbyists' contributions to those lawmakers whom they have lobbied in support on an "earmark"—a special funding provision for a specific client. The recommendations also would ban "contingent fees" for lobbyists—payments that are made if a lobbyist secures an earmark or other provision.

'Deeply Troubling Source of Corruption.'

The types of lobbyist fund-raising activities that would be restricted by the new recommendations include serving on a lawmaker's campaign fund-raising committee, soliciting or "bundling" of contributions, as well as organizing and host fund-raising events. A lobbyist who does these any of these things for a lawmaker would be barred from lobbying that lawmaker for a period of two years.

The 30-page task force report said restrictions on these activities are needed because lobbyists who help provide large amounts of campaign money become "an extremely valuable asset" to lawmakers and are thus able to "wield particularly strong influence" in achieving their lobbying goals on behalf of clients. "A self-reinforcing cycle of mutual dependency has become a deeply troubling source of corruption in our government," the report said.

The other task force recommendations regarding lobbying disclosure would beef up provisions of the 1995 Lobbying Disclosure Act of 1995. The task force said the current LDA provision defining lobbying activities that must be disclosed are not adequate, particularly when lobbyists retain additional outside firms to do portions of the advocacy work. Such work, including polling and advertising to generate public support for policy proposals, is known as grassroots lobbying and is not currently regulated.

The new recommendations also would eliminate a widely perceived loophole in current rules which allows a lobbyist to escape disclosure under the LDA if he or she claims to spend less than 20 percent of work time for a particular client on lobbying activity.

Finally, the report suggested that lobbying enforcement be handled by a regulatory body such as the Civil Division of the Department of Justice, which should be given appropriate powers to effectively administer lobbying laws. Currently, the laws are administered by officials on Capitol Hill, who have limited regulatory and enforcement powers. Cases of noncompliance with the LDA can be referred to Justice Department officials, but DOJ has taken enforcement action on only a few of the thousands of referrals that it has received from Capitol Hill in the more than 10-year history of the current disclosure law.

Task Force Working Since 2009

The task force on federal lobbying laws has been considering recommendations since its creation was announced in 2009 at a conference of the ABA Administrative Law Section ([2795 Money & Politics Report, 7/1/10](#)). The task force recommendations are expected to go before the ABA House of Delegates at its annual meeting next August for consideration by the full bar association. However, the recommendations are being released now in hopes of broader consideration by policy makers in Congress and the Obama administration.

Thomas Sussman, the director of the ABA governmental affairs office in Washington, told BNA that leaders of the newly convened 112th Congress may be willing to look at substantive recommendations to update federal lobbying laws. The administration also may be ready to re-examine the issue, following Obama's heavy criticism of Washington lobbyists adoption of executive branch policies to limit their influence.

Sussman indicated he was sure that the task force's key recommendations to "rationally separate lobbying from

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fund-raising" would be controversial. He suggested, however, that the plan may face more resistance from lawmakers under constant pressure to raise campaign money than from lobbyists who may feel pressured to provide that money.

By Kenneth P. Doyle

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