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Learn to Love Lobbying

By Fraser Nelson, David W. Brady, & Alana Conner Snibbe

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Candy Lightner (third from left, above), founder of Mothers Against Drunk Driving, attends the signing of legislation that raised the drinking age to 21 in 1984. Wheelchaired activists (below) lobby for greater access to public buildings and transportation in 1972.



LEARN TO LOVE LOBBYING

*Most nonprofits don't know how to lobby and, worse, think that it entails cutting shady deals with sleazy characters. Yet lobbying is nothing more than educating legislators – a right that our democracy guarantees. To make the changes they want to see in the world, nonprofits must learn to lobby. And who knows? **They may even learn to love it.***

WHAT DO MOTHERS AGAINST DRUNK DRIVING and the National Beer Wholesalers Association have in common? How are the Campaign for Tobacco-Free Kids and Philip Morris similar? What do the Love Canal Homeowners Association and Hooker Chemical Company share?

They all know that if you want to change the world, you have to lobby local, state, and federal governments.

Legislative action is often the best way to bring about the stable, sweeping changes that nonprofits crave. And yet non-

profits routinely forfeit their right to lobby, finds the Strengthening Nonprofit Advocacy Project (SNAP), a survey of more than 1,700 national nonprofits conducted in 2001 by Tufts University, OMB Watch, and the Center for Lobbying in the Public Interest. (See chart on p. 59 for a definition of lobbying.) Although many nonprofits have lobbied once or a few times in the past, very few make lobbying a regular activity.

The ranks of lobbyists are therefore short of nonprofit voices, and instead are dominated by the interests of industries

or specific corporations. In Utah, for example, where one of the authors (Fraser Nelson) long worked for the Disability Law Center (DLC), fewer than 5 percent of the registered lobbyists represent community-based organizations. In the absence of nonprofit lobbyists, corporations and industries frame most public policies – including those that affect nonprofit issues, nonprofit clients, and even the nonprofit sector itself.

Nonprofits have their reasons for steering clear of legislatures. But when they do not use every avenue to assert their clients' rights – especially when clients cannot do so on their own – they fail in their missions. At the DLC, for instance, clients are residents of the state mental hospital, are homeless, or are children with disabilities. When nonprofits don't speak up for them, no one does. More generally, when nonprofits shy away from the rough-and-tumble world of politics, they miss out on opportunities to improve legislation, to strengthen their organizations, and to advance their issues.

Why Not Lobby?

When nonprofit leaders are asked why they don't lobby, their first answer usually involves the word "sleaze." They do not see what lobbying has to do with their pure and unselfish missions. They protest that rubbing shoulders with high-powered folks in Gucci loafers can't possibly advance their causes, and will only turn off their donors. After all, who wants to be associated with the likes of Jack Abramoff?

Even when they are lobbying, nonprofits don't like to use "the L-word," finds the SNAP study. Instead, they use such euphemisms as "educating policymakers" or "advocacy" – a much broader term that means any endeavor to change government or private sector policy, including lobbying, education campaigns, and public appeals. Unlike these other forms of advocacy, though, only lobbying is regulated by the government.

FRASER NELSON was the executive director of the Disability Law Center from 1996 to 2006. She is now launching *Promise Venture Partners*, a venture capital fund focused on improving the lives of low-income children and providing management consulting to nonprofit organizations.

DAVID W. BRADY is the Bowen H. and Janice Arthur McCoy Professor of Political Science and Leadership Values in the Stanford Graduate School of Business, and professor of political science in the university's School of Humanities and Sciences. He is also deputy director and senior fellow at the Hoover Institution, and an academic editor of the *Stanford Social Innovation Review*.

ALANA CONNER SNIBBE is senior editor of the *Stanford Social Innovation Review*. Her writings on science and social issues have appeared in *The New York Times Magazine* and other publications.

Many boards and directors do not understand the laws governing nonprofit lobbying, and so labor under the false assumption that lobbying will get them into trouble with the IRS – a second obstacle to nonprofit lobbying. For example, half of the nonprofits in the SNAP study incorrectly thought that they could not lobby if part of their budget comes from federal funds.

Worries about the IRS are not entirely unfounded: In 2006, the IRS investigated the NAACP for abusing its tax-exempt status after the organization's chairman, Julian Bond, criticized President George W. Bush during the 2004 presidential campaign.

In the end, the IRS called off its investigation. Indeed, the IRS has made it easier for nonprofits to account for their lobbying and advocacy activities. (See "Know Your Rights" on p. 60.) There are no limits at all on volunteer lobbying efforts, and very generous limits on the amount of money nonprofits can spend in a given year. In 10 years of active, year-round legislative advocacy, for instance, the DLC, a \$1.7 million dollar agency, has never even come close to the limit (20 percent of our budget) allowed for direct lobbying activities.

Finally, most nonprofit leaders say they have a hard enough time meeting their program needs and providing direct services to clients without taking on the law of the land. Lobbying is not a client service or program, and so nonprofits easily overlook it when the time comes to develop their annual budgets. Many line staff and board members feel that "real" nonprofits provide something directly beneficial to an individual or a community, and that lobbying would take away from that. They also fear that the bottom line will suffer if donors perceive that the agency's political work is undermining its mission.

Educators, Not Sleaze

Yet lobbying is not only about K-Street bandits cutting backroom deals in clouds of cigar smoke. It isn't dodgy dealings behind the back of the IRS. And it isn't an expensive diversion from the pursuit of mission.

Instead, lobbying is just committed citizens giving the right information to the right people at the right time. Politicians are generalists – they have to deal with an overwhelming number of issues, from Medicaid to water rights to banking regulations. They need lobbyists to educate them so that they can make the best decisions for their constituents.

Businesses know this, and use it to their advantage. In 1985, the Business Roundtable, the AFL-CIO, and several other players lobbied Congress to restrict high-risk, high-yield, noninvestment-grade securities – also known as junk bonds. Junk bonds fund a variety of undertakings, ranging from hostile takeovers and leveraged buyouts to business growth. In the early 1980s, corporations claimed that junk bonds undermined competitiveness and diverted capital from worthier investments.

What Is Lobbying, What Is Not

Lobbying is one of the many forms of advocacy that nonprofits can undertake. Unlike more general advocacy, however, lobbying has its legal limits, which are regulated by government. The activities in the second column may seem like lobbying, but actually are not, and therefore are not subject to government regulation.

LOBBYING (legal, regulated)	NOT LOBBYING (legal, unregulated)
Attempting to influence specific legislation by doing one of the following:	Contacting government agencies and legislators about regulations already in place
Contacting legislators or their staff (that is, <i>direct lobbying</i>)	Educating members about pending legislation without a specific call to action
Urging the public to take action (that is, <i>grassroots lobbying</i>)	Responding to written requests for assistance from a legislative body
	Examining broad social and economic problems
	Challenging or supporting legislative proposals that would change the organization's rights

SOURCE: The Center for Lobbying in the Public Interest

One voice against the anti-junk bond legislation was that of Michael Milken's firm, Drexel Burnham Lambert. The firm hired lobbyists to remind legislators in 24 states that their districts did not have investment-grade companies, and so their constituents needed junk bonds to thrive. Lobbyists also pointed out that junk bonds funded many woman- and minority-owned companies. Congress got the picture that junk bonds may not be all bad, and decided against passing new legislation regulating them.

The need for information is even greater at the state and local levels, where there are no budgets for large staffs, and where legislators aren't necessarily professional – or even full time. In Utah, for example, the chair of the state Legislature's Executive Appropriations Committee from 2001 to 2004, Leonard Blackham, was a turkey farmer from Moroni. Although Sen. Blackham's area of expertise was the poultry industry, he became one of the state's strongest voices for mental health treatment. Working with the state chapter of the National Alliance for the Mentally Ill (NAMI) and the DLC, he developed involuntary civil commitment legislation that makes it easier to get people into mental health treatment without violating their civil rights.

For years, NAMI and the DLC fought bitterly over the issue of forced treatment. On the one hand, NAMI wanted a looser definition of the conditions under which the state could force an individual into psychiatric treatment. On the other hand, the DLC wanted more protections for the civil liberties of mentally ill people.

But recent cuts to mental health funding placed treatment beyond the reach of many Utahns. Involuntary civil commitment – for which people do not have to pay – was one route that families could take to get psychiatric care for their relatives.

A staunch conservative, Blackham appreciated that involuntary commitment can violate individual freedoms, and he was impressed that the U.S. Supreme Court had termed the practice “a massive curtailment of liberty.” And as chair of the appropriations committee, he did not want citizens abusing involuntary commitment for free care. But Blackham was also moved by NAMI members' testimonies about their families' pain, as well as about how Utah's underfunded public mental health services exacerbated their suffering. In the end, the senator crafted legislation that both gives people treatment at a price they can afford and protects their rights.

Unsung Virtues of Lobbying

The most obvious virtue of lobbying is that it can improve the laws that most affect nonprofits' clients. For example, the DLC lobbied the Utah Legislature to tighten regulation of wilderness boarding schools for teens with behavioral problems, so that now these schools are safer. The DLC's lobbying also helped to make polling places more accessible to people with disabilities.

A second, equally important, but often overlooked benefit of lobbying is that it strengthens organizations. When nonprofits

Know Your Rights

Public charities that want to lobby must choose one of two standards against which the IRS will measure their activities. The oldest and best known is the insubstantial part test, which requires that “no substantial part of a charity’s activities ... be carrying on propaganda or otherwise attempting to influence legislation.”

The problem with this standard is that it defines neither “substantial” nor “lobbying,” which led many nonprofits to limit themselves to a tiny range of activities. And so in 1976 Congress created the section 501(h) expenditure test, which nonprofits can explicitly elect to adopt using IRS Form 5768. The 501(h) test sets specific dollar limits on how much nonprofits can spend on lobbying without losing their exempt status or incurring penalty taxes.

The total lobbying expenditures limits under the 501(h) test are:

- 20 percent of the first \$500,000 of exempt purpose expenditures (typically, the organization’s budget minus some fundraising and capital costs)
- plus 15 percent of the next \$500,000 of exempt purpose expenditures
- plus 10 percent of the next \$500,000 of exempt purpose expenditures
- plus 5 percent of the remaining exempt purpose expenditures
- up to a total cap of \$1 million

Churches and their affiliates are not allowed to take the 501(h) election, although they may lobby under the insubstantial part test.

SOURCE: Worry-Free Lobbying for Nonprofits: How to Use the 501(h) Election to Maximize Effectiveness, by the Alliance for Justice

get involved in lawmaking, they raise their profile among elected officials, the media, donors, and potential partners. For instance, lobbying has made Voices for Utah Children the state’s best-known advocate for children’s issues, and the go-to source for the media, state agencies, and elected officials on issues affecting children. The group provides expert testimony and research on how state policy will affect children’s welfare. In a clever combination of fundraising and advocacy, the agency holds an annual luncheon that both honors its advocates and

outlines the challenges facing Utah’s vulnerable children. As a consequence, corporate lobbyists, elected officials, the media, and influential members of the public become aware of the agency’s vital role in caring for children. They also learn about the actions they can take to guarantee that state and federal laws and policies benefit Utah’s children.

Lobbying is also a great way to involve nonprofit volunteers, donors, and board members. Getting board members who are leaders in their communities – such as clergy, physicians, and teachers – to speak with legislators or to participate in press conferences deepens their connections to organizations and their missions. For this reason, Planned Parenthood Action Council of Utah takes its high-powered board members, who include a former congresswoman, to help lobby for reproductive rights in Washington, D.C.

In addition, lobbying can be a vehicle for empowering clients. When the Disability Community Alliance brought 200 people, many with profound cognitive disabilities, to the Utah state Capitol last year, it sent a strong message that their voices deserve recognition. Tom Brownlee, an advocate from West Jordan, Utah, worked with Rep. David Hogue to pass a resolution removing words like “feebly minded” and “mental retardation” from the Utah Code. Brownlee and other advocates gained the confidence and experience they needed to work on other big initiatives.

Being Political

One final barrier to lobbying is the mystery of actually getting involved in the process. To the uninitiated, lobbying can seem complicated and arcane. But at its heart, it’s just politics.

Politics means working with strange bedfellows and making compromises. In the 1970s, for example, coal companies in the eastern United States found themselves working alongside environmental groups in the western United States for the same cause: mandating pollution-reducing scrubbers in new power plants. Coal from mines in the western United States met EPA standards for sulfur dioxide emissions without additional processing, but coal from Eastern mines is dirtier. (In order to meet EPA standards, power companies must install scrubbers to filter sulfur dioxide from Eastern coal.) Unless Congress federally mandated the use of scrubbers, Eastern coal mines would not be able to compete with Western coal mines. Enter Western environmental groups, which wanted Western power companies to install scrubbers so that they would have even cleaner air. In the end, dirty coal and cleaner air together lobbied Congress, and to this day scrubbers are standard issue for all new power plants built in the United States.

In 1999, the DLC similarly learned how to work with strange bedfellows. That year, two people with mental illnesses were involved in shooting incidents in Salt Lake City, including one

in which a man shot two people at the Mormon Family History Library before turning the gun on himself. In response, Rep. Gary Cox, a policeman, proposed a bill that would greatly limit access to guns by people with mental illnesses. The DLC's staff and board discussed the bill at length and, though it was a controversial stand, decided to oppose the legislation. The DLC worked with the National Rifle Association, Utahns for Guns, Scientologists, and the Utah branch of Phyllis Schlafly's arch-conservative Eagle Forum (all for the first time) to develop a compromise bill that both preserved gun rights and protected the public.

In lobbying, pure victories are uncommon. The willingness to compromise is essential. Good lobbyists soon learn that unless they are violating a core principle, some progress is better than none at all. For seven years, Utah state Sen. Pete Suazo and Rep. David Litvak worked to pass hate crimes legislation in Utah. The Legislature defeated the bill every year because gay and lesbian citizens were among the groups the bill sought to protect. The civil rights organizations working on the legislation refused to remove homosexuals from the groups listed, although it was clear that the bill would not pass as long as they were on the list. As a compromise, lobbyists helped draft a bill that did not list groups by name, but instead generally referred to groups that have historically suffered from discrimination. With a few more modifications, archconservative opponents finally approved the bill.

Understanding politics not only advances our organizations' missions, it also requires us to be better people. Effective lobbyists never hassle, harangue, or threaten. They don't carry grudges. Mario Cuomo, the former governor of New York (and political mentor to the first author, Nelson), was fond of quoting the Chinese military strategist Sun Tzu: "Keep your friends close, and your enemies closer." One way to do this is to thank both profusely. Legislators and lobbyists work hard, often for little money and at considerable personal sacrifice. They deserve and need to feel appreciated for their public service. Nonprofits cannot thank legislators and their fellow lobbyists enough, even if all they did was help them understand the opposing side's viewpoint.

Telling the Truth

Because the function of lobbyists is to relay facts, their stock-in-trade is honesty. Nonprofit lobbyists may not have the basketball tickets or outsized expense accounts of their corporate counterparts, but they do have the integrity of their causes on their side.

And so when nonprofit lobbyists sully their reputations,

their fall from power is all the greater. This is what happened to the AARP. In the late 1980s, the AARP lobbied Congress to pass the Medicare Catastrophic Coverage Act, which would cap out-of-pocket expenses for elderly recipients' acute care. The

Charlton Heston of the National Rifle Association knows how to work with strange bedfellows. In 1999, the NRA partnered with the Disability Law Center to lobby for mentally ill people's right to own guns in Utah.



AARP said that seniors favored the act and would be able to pay for it through a hike in their Medicare premiums. Yet the AARP, knowingly or unknowingly, had misrepresented the elderly, who did not want to pay the increased fees. Seventeen months after the bill passed, Congress had to repeal it. The AARP has yet to fully recover its reputation on Capitol Hill because many lawmakers still do not trust the group.¹

Nonprofit lobbyists can maintain their integrity by never exaggerating, never promising something they can't deliver, and never speaking beyond their knowledge. They should become familiar with phrases such as "I cannot answer that with certainty" and "I do not know." They should present all sides of an issue so that legislators can understand the opposition to their position. They should also make sure that potential supporters are aware of any negatives to supporting their position that might prove embarrassing in committee hearings, floor debate, or the press.

Last, nonprofit lobbyists should not be afraid to change their minds. Sometimes the issue they are promoting faces too tough an opposition. Their research may be faulty or new research may draw a different conclusion. Politics can change – the governor no longer supports the bill, or the chamber of commerce is oppos-

Residents of the Love Canal area of Niagara Falls, N.Y., lobbied extensively until the federal government relocated more than

800 families from the polluted area and reimbursed them for their homes.



ing the legislation. Part of telling the truth is letting legislators know when they are going to lose and, if possible, how badly. Honesty will give them the opportunity to choose their battles.

Making It Real

One of the great advantages that nonprofit lobbyists have is that they can easily frame their issues in human terms, connecting bills and appropriations to real people. During a 2005 effort to restore optional Medicaid services for mental health, dental, and vision care in Utah, advocates from the Utah Issues Center for Poverty Research and Action helped clients of psychiatric day treatment attend a rally for dental care. One constituent drove his point home with a sign reading “I may be mental, but I still need dental!”

Nonprofits can help legislators understand their issue by arranging for them to meet people whom their legislation

affects, either in person, through letters, or by developing fact sheets. The general rule of thumb is that one constituent contact is worth five contacts from professionals or other lobbyists on the same issue. But remember, when nonprofits bring constituents and board members to meet with legislators, they should direct the conversations so that they are short, sweet, and interactive. Constituents should not lecture legislators or saddle them with personal issues.

Not just the form, but also the content of nonprofits’ lobbying communications needs to be concrete, immediate, and relevant to legislators. When lobbyists against junk bond reg-

ulation spoke with lawmakers from Virginia, for example, they did not argue that junk bonds are important to the American economy, or that junk bonds have a higher risk-adjusted yield than investment-grade securities. Instead, they pointed out that in a single district alone, there were 9,000 jobs in companies funded solely by junk bonds. Such relevant, immediate, and concrete facts make legislators sit up and listen.

Worth the Work

One reason we have so many bad laws and regulations is that nonprofits are not as engaged in the political process as they should be. When nonprofits have lobbied in the past, they have made extraordinary progress in civil rights, the environment, child welfare, and other core issues. In Utah, the direct lobbying of the DLC and other advocacy organizations has led to fundamental changes in the way the state of Utah

ADDITIONAL LOBBYING RESOURCES

Alliance for Justice

Alliance for Justice aims to help nonprofits influence public policy. The organization has a separate program called the Nonprofit Advocacy Project, which offers free technical assistance over the phone, workshops, easy-to-understand legal guides, and other tools and information to organizations that want to lobby.

Center for Lobbying in the Public Interest

CLPI encourages 501(c)(3) nonprofits

to lobby on behalf of their constituents, causes, and communities. Its “Nonprofit Lobbying Guide,” available online, explains lobbying laws and describes how to lobby effectively.

Internal Revenue Service

The Internal Revenue Service regularly updates its Web site on issues of importance to nonprofits. Its recently released fact sheet 2006-17 outlines how churches and all 501(c)(3) organizations can stay within the law

regarding the ban on political activity, and it distinguishes between advocating for a candidate and advocating for legislation. The Web site also offers the one-page 501(h) election form, IRS Form 5768.

OMB Watch

OMB Watch promotes open government, accountability, and citizen participation. Its nonprofit advocacy program gives extensive information on nonprofit speech and lobbying rights.

PHOTOGRAPH BY BETTMANN/CORBIS

responds to citizens with disabilities.

Lobbying is central to nonprofit work in another way: It shapes the laws and regulations that govern the operation and evaluation of the nonprofit sector itself. As local, state, and federal governments pass more legislation overseeing nonprofit activities, legislators need to hear from nonprofits about the crucial role the sector plays in their communities.

Make no mistake: Lobbying is grueling work. Nonprofits must do what they say they will do – everything from writing legislation to getting data to returning constituents' phone calls. They must arrange positive press by visiting with local papers, generating letters to the editor, holding press conferences, and organizing public rallies. They must stand around in uncomfortable shoes on marble floors for hours. They must not leave the scene of the action, even when they are exhausted and the sun is going down, for many bills pass or die late at night.

But many nonprofit advocates have learned to love lobbying, as did Andrew Riggle, a 31-year-old Utahn with cerebral palsy. Riggle coordinates the Disability Community Alliance, a Utah-based organization for people with developmental disabilities and their families. Armed with sound data

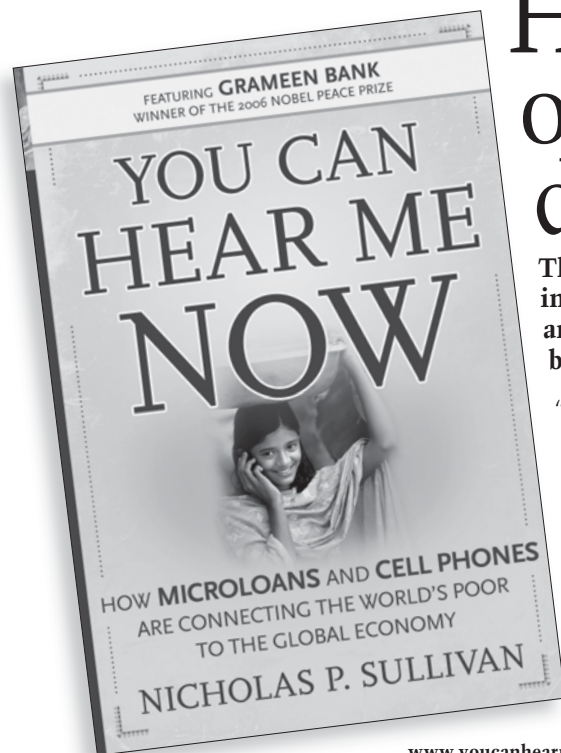
and dozens of personal stories, Riggle tirelessly chased legislators and policymakers in his speedy wheelchair during the last session of the Utah state Legislature. In those 45 days he taught legislators not only about the needs of his constituency, but also about the abilities of people who move and speak differently from them. In the process, he convinced the state to allocate a record-breaking amount of money to his cause.

As Riggle illustrates, when nonprofits lobby, they have a good chance of securing precisely the kinds of long-term, wide-ranging, and deeply meaningful changes that their mission statements embody. In so doing, they benefit both their clients and their organizations. Lobbying may take some getting used to, but it should be in every nonprofit's toolbox. □

¹ Thomas R. Oliver, Philip R. Lee, and Helene L. Lipton, "A Political History of Medicare and Prescription Drug Coverage," *The Milbank Quarterly* 82 (2004): 283-354.



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