

MELANIE SLOAN STATEMENT
UNINTENDED CONSEQUENCES OF LOBBYING
SEPTEMBER 14, 2009

THERE ARE GOOD AND BAD LOBBYISTS LIKE THERE ARE GOOD AND BAD MEMBERS OF CONGRESS AND GOOD AND BAD GOVERNMENT OFFICIALS. A GOOD LOBBYIST CAN HELP EDUCATE CONGRESS AND THE ADMINISTRATION ON CRITICAL AND HIGHLY TECHNICAL ISSUES.

WHEN THE ADMINISTRATION BANNED LOBBYISTS FROM COMMUNICATING WITH ADMINISTRATION OFFICIALS FOR STIMULUS FUNDING, IT WAS REALLY A CASE OF THE EMPEROR HAVING NO CLOTHES. THIS MEMO WAS DESIGNED TO PLACATE THE AMERICAN PEOPLE'S CONCERN THAT RECOVERY ACT MONEY IS SPENT ON THE PUBLIC INTEREST AND NOT AT THE BEHEST OF PRIVATE INTERESTS, BUT IN REALITY, IT WOULD NOT DO ANY SUCH THING.

BANNING LOBBYISTS FROM SPEAKING WITH ADMINISTRATION OFFICIALS REGARDING RECOVERY ACT FUNDS DOES NOT GUARANTEE THAT NO IMPROPER INFLUENCE OR PRESSURE WILL DRIVE THE DISTRIBUTION OF SUCH FUNDS.

A REGISTERED LOBBYIST COULD NOT HAVE A MEETING WITH GOVERNMENT OFFICIALS, BUT BANK PRESIDENTS, CORPORATE DIRECTORS, BUSINESS EXECUTIVES AND OTHERS – MANY OF WHOM MAY HAVE CONTRIBUTED HANDSOMELY TO THE CAMPAIGNS OF KEY MEMBERS OF CONGRESS AND THE PRESIDENT – ALL STILL HAD ACCESS. THESE PEOPLE JUST BECAME DEFACTO LOBBYISTS, ALBEIT LOBBYISTS NOT FACED WITH SAME RIGOROUS DISCLOSURE REQUIREMENTS AS REGISTERED LOBBYISTS.

THE WALL STREET JOURNAL CONFIRMED THAT THIS WAS EXACTLY WHAT HAPPENED, EXPLAINING HOW LOBBYISTS WERE SENDING COMPANY EXECUTIVES, LAWYERS OR CONSULTANTS TO MEET WITH FEDERAL OFFICIALS. A LOBBYIST AT HOLLAND AND KNIGHT EXPLAINED THAT IT WAS JUST EASIER FOR HIM TO HAND OFF STIMULUS MONEY LOBBYING TO PEOPLE WHO ARE NOT REGISTERED LOBBYISTS.

A LOBBYIST WITH THE FERGUSON GROUP EXPLAINED THAT SINCE HE COULD NOT ATTEND MEETINGS HIMSELF, HE BROUGHT LOCAL OFFICIALS TO WASHINGTON, BRIEFED THEM, PROVIDED THEM WITH A LIST OF QUESTIONS, DROVE THEM TO THE MEETINGS AND THEN EXPLAINED WHAT THE GOVERNMENT OFFICIALS' ANSWERS MEANT.

AND WHEN THESE NON-LOBBYISTS MEET WITH FEDERAL OFFICIALS, THOSE MEETINGS ARE NOT DISCLOSED. SO DURING THE WEEK OF APRIL 20, THE ENERGY DEPARTMENT, WHICH IS DISTRIBUTING OVER \$40 BILLION IN STIMULUS MONEY, DISCLOSED ONLY TWO LOBBYING CONTACTS OVER THE COURSE OF THE WEEK. CLEARLY, MEETINGS ARE TAKING PLACE, WE JUST ARE NOT HEARING ABOUT THEM.

IN ADDITION, WE WERE CONCERNED THAT MEMBERS OF CONGRESS STILL HAD INFLUENCE OVER HOW THE MONEY WOULD BE SPENT. IN EARLY MARCH, WE ALL READ FRONT PAGE STORIES ABOUT REP. MAXINE WATERS ARRANGING FOR A MEETING BETWEEN TREASURY DEPARTMENT OFFICIALS AND REPRESENTATIVES OF ONEUNITED BANK, A BANK IN WHICH REP. WATERS' HUSBAND HAS A FINANCIAL INTEREST. ONEUNITED GOT \$12 MILLION. THE MARCH 20TH MEMO DID NOT BAN ANY SIMILAR SUCH CONTACTS – WHICH CERTAINLY APPEARED THE RESULT OF UNDUE INFLUENCE, AND WAS CLEARLY INCONSISTENT WITH THE ADMINISTRATION'S GOAL OF AVOIDING IMPROPER PRESSURE.

CREW WORKED WITH THE ACLU AND THE AMERICAN LEAGUE OF LOBBYISTS TO ADVOCATE FOR THE ADMINISTRATION TO DISCLOSE ALL CONTACTS – WHETHER WITH LOBBYISTS, CORPORATE EXECUTIVES OR OTHERS – BUT THE WHITE HOUSE VIEWED THAT AS TOO BURDENSOME. NEVERTHELESS, THE RULE WAS CHANGED.

AT THE END OF MAY, THE WHITE HOUSE CHANGED THE RULE TO BAR NOT JUST LOBBYISTS, BUT EVERYONE FROM SPEAKING WITH AGENCY OFFICIALS ABOUT COMPETITIVE GRANTS ONCE GRANT APPLICATIONS HAVE BEEN SUBMITTED. WRITTEN COMMUNICATIONS WERE THEN PERMITTED. OTHERWISE, LOBBYISTS WERE ONCE AGAIN ALLOWED TO HAVE ORAL CONTACT WITH GOVERNMENT OFFICIALS, BUT ALL SUCH CONTACTS HAD TO BE REPORTED.

SO HOW HAS IT WORKED OUT? ON AUGUST 28TH, THE ASSOCIATED PRESS REPORTED THAT ADMINISTRATION OFFICIALS HAD REPORTED REMARKABLY FEW LOBBYIST CONTACTS. SINCE THE RECOVERY ACT PASSED IN FEBRUARY, AGENCIES REPORTED 197 CONTACTS WITH LOBBYISTS ABOUT STIMULUS GRANTS. THE EDUCATION DEPARTMENT LISTED 19 MEETINGS WITH LOBBYISTS AND THE DEPARTMENTS OF HOMELAND SECURITY, STATE AND VETERANS AFFAIRS REPORTED NO MEETINGS.

GIVEN ALL THE MONEY OUT THERE, IT IS HARD TO IMAGINE NO ONE IS LOBBYING FOR IT. RATHER, IT IS LIKELY THAT PEOPLE WHO ARE NOT REGISTERED AS LOBBYISTS ARE THE ONES ASKING FOR IT. SO QUERY: WHAT POSITIVE IMPACT HAVE THE NEW LOBBYING RESTRICTIONS REALLY HAD?

THE BOTTOM LINE IS THAT THE PROHIBITION ENCOURAGED PARTICIPATION BY PEOPLE WHO ARE NOT REQUIRED TO REGISTER AND ABIDE BY THE RULES SET FORTH IN THE STRINGENT REGULATIONS THAT GOVERN LOBBYISTS, THEREBY DECREASING TRANSPARENCY AND ACCOUNTABILITY. IT ALSO DISCOURAGED ACCURATE REPORTING UNDER THE LOBBYING DISCLOSURE ACT -- ESPECIALLY FOR THOSE WHO ARE ON THE CUSP FOR MEETING THE DEFINITIONAL REQUIREMENT OF A 'REGISTERED LOBBYIST.'

FOR REAL TRANSPARENCY, WE SUGGEST THAT NOT JUST LOBBYIST CONTACTS BE DISCLOSED, BUT THAT ALL CONTACTS WITH PRIVATE INTERESTS BE DISCLOSED. ANY AND ALL COMMUNICATIONS BETWEEN EXECUTIVE BRANCH OFFICIALS REGARDING PARTICULAR PROJECTS, APPLICANTS, AND APPLICATIONS FOR FUNDING SHOULD BE

DISCLOSED. THE NAME AND BUSINESS AFFILIATION OF THE PERSON WHO CONTACTS THE GOVERNMENT AS WELL AS THE NAME OF THE OFFICIAL CONTACTED, THE DATE OF THE CONTACT AND THE SUBJECT MATTER OF THE CONTACT SHOULD ALL BE DISCLOSED ON THE TREASURY DEPARTMENT'S WEBSITE. IN THIS WAY, THE ADMINISTRATION COULD BETTER MEET ITS GOAL OF ENSURING MERIT BASED DECISION MAKING.

ONE OTHER ISSUE WITH THE ADMINISTRATION AND LOBBYING: THE DECISION NOT TO HIRE LOBBYISTS. AT CREW, WE THOUGHT THE BAN ON ALL LOBBYISTS WAS OVERBROAD WHEN ANNOUNCED, BUT THEN WERE STUNNED WHEN VERY QUICKLY. AN EXCEPTION WAS MADE FOR WILLIAM LYNN AT DEFENSE.

I'VE HEARD THE ARGUMENT LYNN WAS THE ONLY QUALIFIED PERSON FOR THE JOB. REALLY? THERE WAS MORE THAN ONE QUALIFIED CANDIDATE TO BE PRESIDENT SO IT SEEMS NEARLY IMPOSSIBLE THAT LYNN WAS THE ONLY QUALIFIED PERSON TO WORK ON PROCUREMENT AT DEFENSE – I GUESS HE IS THE DEPARTMENT'S SOULMATE. BUT AFTER THAT, NO LOBBYISTS. SO THE ADMINISTRATION CAN TAKE A RAYTHEON CONTRACTOR, BUT NOT SOMEONE FROM THE SIERRA CLUB. DOES NOT MAKE SENSE.

THE FACT IS NON-PROFIT LOBBYISTS, FOLKS WHO HAVE DILIGENTLY WORKED ON ISSUES RELATED TO THE ENVIRONMENT, CONSUMER AFFAIRS, CIVIL RIGHTS, HEALTH AND OTHER IMPORTANT ISSUES COULD NOT HAVE WORKED IN THE BUSH ADMINISTRATION. JOINING NON-PROFITS IN AN EFFORT TO PUSH THE GOVERNMENT TO DO

BETTER WAS AN ADMIRABLE CHOICE AND THESE ARE THE PEOPLE WE WANT IN GOVERNMENT.

THIS BAN HAS HAD SOME NEGATIVE EFFECTS ON NON-PROFITS. FIRST, FOLKS NO LONGER WANT TO LOBBY FOR NON-PROFITS FOR FEAR OF LOSING LATER OPPORTUNITIES TO WORK FOR THE ADMINISTRATION. OTHERS, FOR WHOM IT IS A CLOSE CALL AS TO WHETHER THEY MEET THE DEFINITION OF LOBBYIST ARE DEREGISTERING SO AS TO AVOID THE TAIN. WE NEED A MORE COMMON SENSE APPROACH.

SO THAT'S THE ADMINISTRATION. WHAT ABOUT CONGRESS?

IN THE 110TH CONGRESS, IN THE FALLOUT OF THE ABRAMOFF AFFAIR, NEW LOBBYING RESTRICTIONS WERE PASSED. PRIVATELY FUNDED TRAVEL WAS SIGNIFICANTLY CUT BACK AND ALL GIFTS FROM LOBBYISTS WERE BANNED. WAS THIS REALLY NECESSARY? KEEP IN MIND THAT EVERYTHING ABRAMOFF AND HIS CRONIES DID WAS ALREADY AGAINST THE RULES.

THE RULES ALREADY PROHIBITED MEMBERS FROM ALLOWING LOBBYISTS TO PICK UP THE TAB AT POSH RESTAURANTS OR FOR RECREATIONAL TRIPS TO SCOTLAND TO PLAY GOLF. THE PROBLEM WAS AND REMAINS ENFORCEMENT OF THE RULES.

THE HOUSE AND SENATE ETHICS COMMITTEES BASICALLY SERVE AS COVER – THEY ALLOW CONGRESS TO SAY THEY TAKE ETHICS SERIOUSLY AND THEY HAVE A PROCESS FOR DEALING WITH COMPLAINTS WHILE ALLOWING CONGRESS

TO DO EXACTLY NOTHING ABOUT UNETHICAL MEMBERS IN THEIR MIDSTS.

THINK I AM WRONG? WAS A SINGLE MEMBER EVEN CRITICIZED BY THE HOUSE OR SENATE ETHICS COMMITTEE FOR HIS ROLE IN THE ABRAMOFF AFFAIR? WHAT DID THE ETHICS COMMITTEE SAY ABOUT DUKE CUNNINGHAM, OR WILLIAM JEFFERSON? THE INVESTIGATION INTO CHARLIE RANGEL HAS GONE ON FOR A YEAR NOW AND IT IS UNLIKELY WE WILL EVER HEAR ANYTHING ABOUT THE PMA SCANDAL THAT INVOLVES MURTHA, VISCLOSKY AND OTHERS.

THE HOUSE, RECOGNIZING ITS PROBLEM, CREATED THE OFFICE OF CONGRESSIONAL ETHICS. WHAT HAS THAT OFFICE DONE IN ITS FIRST YEAR? ETHICS IS A MATTER OF ENFORCEMENT AND THERE SIMPLY ISN'T ANY.

IN ADDITION, MANY OF THE NEW PENALTIES CREATED IN THE 110TH CONGRESS ARE AIMED AT LOBBYISTS NOT MEMBERS – LIKE MEMBERS OF CONGRESS CANNOT STOP THEMSELVES FROM ACCEPTING THE GIFTS OF LOBBYISTS. MEMBERS OFTEN PREACH PERSONAL RESPONSIBILITY, BUT IT APPEARS THEY REALLY MEAN OTHERS MUST EXHIBIT SUCH TRAITS, SINCE THEY ARE FATED TO ACCEPT PROHIBITED CARRIBEAN TRAVEL.