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## ■ THE LOBBYING LOOPHOLE

As the legislative battle over tort reform heats up this fall, expect to hear a lot from the Citizens Against Lawsuit Abuse. The "citizens" of CALA include Philip Morris, Owens-Corning Fiberglass, and about 600 small and medium-sized businesses who plan to wage a highly visible—and no doubt expensive—campaign to rewrite New Jersey's liability laws. CALA is run by Princeton Public Affairs, one of the state's most powerful lobbying firms.

To the extent that CALA spends money on traditional lobbying activities—communicating with legislators, their staffs, the Governor, her aides and other administration officials—those efforts must be disclosed under the state's lobbying reform law, which went into effect in 1991. The public will know just who is trying to influence the outcome of an important public policy debate, and how.

But that does not appear to be what CALA has in mind. Rather than targeting policy makers, the campaign will be aimed at the general public, who, if they are convinced by the group's arguments, will presumably urge their legislators to reduce companies' exposure to product liability and other lawsuits. And the group is under no obligation to report how much it spends on that campaign.

Such so-called "grassroots lobbying" should be familiar to anyone who saw a "Harry and Louise" ad during the recent national health care reform debate. The tactic is a popular one among interest groups of all ideological bents. The New Jersey Education Association has suggested that it would mount a similar lobbying effort to defeat Governor Whitman's education reform plans, including school choice, a reduction in teacher benefits, changes in the financing of pensions, and competency testing for teachers—all anathema to the teachers union. Such a campaign would also be immune to public scrutiny.

The loophole that allows these efforts to escape disclosure is the law's definition of lobbying expenditures. The statute focuses specifically on expenditures made in conjunction with communications to members of the executive and legislative branches, "as distinguished from commu-

nication to the general public." Thus, well-heeled lobbyists may undertake effective campaigns that influence policy makers even as they bypass them—and the disclosure law—through appeals to the public at large.

The term "grassroots lobbying" as it applies to most of today's efforts is a misnomer. Rather than the people being the source of a grassroots movement, it is the professional lobbyist, or lobbying organization, that mobilizes the public in support of or in opposition to an issue. The techniques are not private meetings, meals, and gifts, but television, radio, and newspaper advertising and mass mailings to highlight an issue before the public and urge individual citizens to contact their representatives in support of the lobbyist's cause.

Public campaigns are protected by the First Amendment, of course, and no one questions the right of an interest group to wage such an effort. As a practical matter, however, these high-powered lobbying efforts can only be pursued by wealthy interests, not by ordinary citizens at the grassroots level. Because of the money involved in carrying out an effective "grassroots" campaign, it is much easier for the special interests, or those with the ability to raise political dollars, to conduct such efforts.

In a white paper entitled *Lobbying Reform*, published a year before the lobbying reform act passed, the Election Law Enforcement Commission recommended that disclosure of grassroots lobbying activities be required. While recognizing the inherent right of groups and individuals to lobby their public officials—either directly or indirectly—ELEC noted that "grassroots lobbying can be a very powerful tool in the hands of special interests and in their endeavors to influence the political process."

"The lack of a requirement for disclosure of the 'grassroots' activity constitutes a major gap in New Jersey's law," the Commission stated, adding that through "a well-orchestrated effort that lets public officials know that there is 'grassroots' support for their position on an issue, lobbyists can successfully achieve their aims."

The Commission was only recognizing what professional lobbyists have already figured out. There is more and more evidence that lobbyists are taking a grassroots approach to their business. Indeed, it might be said that the 1990s is the decade of the grassroots campaign.

Rep. Dick Zimmer (R-12th) recently formed a group called the Coalition for Lower Taxes to undertake a campaign in support of Governor Whitman's fiscal policies. That effort includes radio advertisements and direct mail urging citizens to let their legislators know they support the Governor's plans. Because this activity is officially unrelated to his reelection and involves no direct lobbying, there is no federal or state requirement that he disclose the sources of the money used to finance the group.

In 1992, then-Public Advocate Zulima Farber launched an investigation into People for Fair Insurance of New Jersey, an organization backed by a number of insurance companies. Farber's investigation focused on whether policy holders were paying for a "grassroots" campaign to urge the Legislature to repeal parts of an insurance reform law that were onerous to the companies.

The Public Advocate's concern notwithstanding, it is important that these kinds of expenditures be disclosed as a lobbying activity. Significant amounts of money presumably were available to People for Fair Insurance of New Jersey, amounts not available to ordinary citizens, for the purpose of mounting a high-powered lobbying effort, including newspaper advertising and direct mail. How much money, and where it was spent, we will never know.

The list goes on: Both sides of the gun issue undertook advertising campaigns during the battle over the assault weapons ban a few years back. And the cable television industry mounted a successful campaign to block passage of a tax on cable services.

In none of these instances did the public have any idea how much money was being spent on these lobbying campaigns. It should! While lobbying is a right protected

by the Constitution, we must recognize that organized interests can have a disproportionate impact on the political process, especially when they are able to spend large sums of money attempting to mobilize citizens on an issue.

Some civil libertarians have expressed concern about laws requiring financial disclosure of grassroots lobbying campaigns, fearing the regulation of communication to the public. But disclosure laws do not impose any curbs on free speech or lobbying; they merely require the groups involved to report how much they are spending. The U.S. Supreme Court has recognized that distinction in its decisions on election spending. In *Buckley v. Valeo*, the Court upheld the right of individuals and groups to spend as much money as they wished independently on behalf of a candidate, but it did not bar the government from requiring the disclosure of those expenditures. The same principle should apply to lobbying campaigns.

Writing a law that requires disclosure without impinging on First Amendment rights requires some care, but other states have managed to do so, Connecticut, Washington, Maryland, and New York among them. Their laws are narrowly drawn to require the disclosure of financial information about "grassroots" media campaigns. These states restrict disclosure to instances in which direct advocacy is aimed at specific legislation or a topical issue. Despite the narrow scope of these laws, citizens in those states have learned much about the pressures being brought to bear on the political system.

New Jersey should be proud of its record in pursuing lobbying reform. Its 1991 statute sheds much light on the activities of pressure groups, their tactics, methods, effectiveness, and financial activity. Now it is time to take the next step. Senators William Schluter (R-Pennington) and John Lynch (D-New Brunswick) have both introduced bills that would regulate grassroots lobbying. The Legislature should take up those measures. With such action, the public would know the true extent of lobbying activity pursued by special interests in New Jersey.

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