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Reform for Illinois

Joint Commission on Ethics and Lobbying Reform

Re: Illinois Lobbyist Registration Act and Lobbying Reform

January 15, 2020

Leader Harris, Senator Sims, members of the Commission, thank you for the opportunity to participate in this hearing. My name is Alisa Kaplan and I am the Policy Director of Reform for Illinois. Reform for Illinois is dedicated to advocating for reforms that enhance the effectiveness, accountability, and integrity of Illinois government.

Reform for Illinois appreciates the first steps the General Assembly took last year towards making information about lobbying in Springfield more accessible and transparent to the public. The legislature now has the opportunity to make common sense policy changes that will help boost the integrity of the lobbying process, bring Illinois closer in line with other jurisdictions across the country, and help restore the public's trust in our lawmakers.

The practice of lobbying in Illinois gives a significant amount of power to private interests. It is therefore vital for the public to know as much as possible about who is wielding that power and how, and also to be protected against potential conflicts of interest that may arise from its practice and compromise the democratic process.

It is worth noting that despite having almost ten registered lobbyists for every legislator, Illinois lags behind many states - and even other local jurisdictions within our state - on major dimensions of lobbying regulation. Today I will discuss four potential areas for improvement. First, disclosure of lobbyist compensation. Second, so-called "shadow lobbying". Third, lobbying by legislators. Finally, "revolving door" restrictions.

1. Disclosure of compensation

Illinois is an outlier among states when it comes to disclosure of lobbyist compensation. More than 30 states plus the City of Chicago, Cook County, and other local jurisdictions around the country require lobbyists and their employers to disclose at least some information about how much they are making and spending.[1]

We recognize that there are, as with all transparency measures, concerns and potential tradeoffs that would come with fee disclosure. For example, we understand that some lobbyists are concerned that disclosing their fees could cause undesirable cost competition and possibly entrench existing pay inequities.

We are sympathetic to these considerations, particularly those around inequity, but we are not aware of significant problems with these issues in the many jurisdictions that require compensation disclosure. Furthermore, measures like requiring aggregate rather than periodic compensation numbers could alleviate concerns about fee comparison. Finally, we believe that the benefits of disclosure outweigh the potential drawbacks. Recent events illustrate how important it is for the public to know how much money is being spent to influence their representatives, and who is spending it.

2. Shadow lobbying

Recent revelations about Mike McClain, who according to press reports was paid more than $300,000 as a "consultant" for ComEd after he stopped registering as a lobbyist,[2] have raised the issue of so-called "shadow lobbying." The Illinois Lobbyist Registration Act defines lobbying as "any communication with an official...for the ultimate purpose of influencing executive, legislative or administrative action."[3] The definition's focus on communication with officials excludes individuals who are paid to influence government action but may not interact with lawmakers directly. For example, under the current definition, a "strategic consultant" can advise entities and individuals on how to approach officials and what to say to them, but as long as they do not interact with those officials directly, they do not have to register. Thus, some professionals may orchestrate lobbying campaigns while remaining hidden from public view.

The American Bar Association has suggested that lobbying entities be required to disclose the identities and compensation of individuals who engage in lobbying activities that might not otherwise fall under conventional contact-based definitions. This might include what the federal

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[1]Linda King, "50-State Assessment of Lobbying Expenditure Data," *National Institute on Money in Politics*, July 5, 2011, https://www.followthemoney.org/research/institute-reports/50-state-assessment-of-lobbying-expenditure-data

[2]Tony Arnold and Dave McKinney, "5 Things To Know About the ComEd Corruption Probe," *WBEZ Chicago*, November 15, 2019. https://www.npr.org/local/309/2019/11/15/779673978/5-things-to-know-about-the-com-ed-corruption-probe.

[3] Illinois Lobbying Registration Act, 25 ILCS 170/2(e).

government calls "lobbying activities" such as "strategic advice"[4] or "counseling services in support of preparation and planning of lobbying activities."

Such a measure would bring such individuals out of the shadows and acknowledge that influence over government action can take forms besides direct contact with officials.[5] Requiring disclosure rather than registration would increase transparency while avoiding additional burdens on nonprofits and smaller entities who might be unduly burdened by broadening registration requirements to include non-contact advocacy work.

3. Lobbying by elected officials

The issue of lobbying by elected officials in other jurisdictions arose last year when Illinois Representative Luis Arroyo was indicted by federal authorities for allegedly attempting to bribe a fellow state lawmaker in exchange for legislative action favoring Arroyo's Chicago lobbying client.[6]

While the majority of legislator-lobbyists undoubtedly act with honesty and integrity, the ability of state legislators to lobby other units of government can create significant conflicts of interest and opportunities for corruption. It also feeds the public perception that legislators often put their own personal interests - or those of their paying clients - above the interests of their constituents or the public.

Last month, the City of Chicago passed a comprehensive ban on cross-lobbying that could serve as a model or starting point for a state law. Chicago's law prohibited lobbying by elected officials in both directions: it barred Chicago officials from lobbying other units of government, and it barred elected officials of other units of government from lobbying Chicago.

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[4] Charles Fried et al., "Lobbying Law in the Spotlight: Challenges and Proposed Improvements Report of the Task Force on Federal Lobbying Laws Section of Administrative Law and Regulatory Practice." *The American Bar Association*, January 3, 2011.

[5] The federal government provides two possible models for defining activity that could come under a "shadow lobbying" measure. It defines "lobbying activities" as "preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others." 2 U.S.C. § 1601(7). https://www.senate.gov/legislative/Lobbying/Lobby_Disclosure_Act/3_Definitions.htm.
H.R. 1 (2019), a reform bill recently passed by the U.S. House, would have broadened federal lobbyist reporting requirements by including "counseling services" and redefining a lobbying "contact:" "Any individual, with authority to direct or substantially influence a lobbying contact or contacts made by another individual, and for financial or other compensation provides counseling services in support of preparation and planning activities which are treated as lobbying activities under paragraph (7) for that other individual's lobbying contact or contacts and who has knowledge that the specific lobbying contact or contacts were made, shall be considered to have made the same lobbying contact at the same time and in the same manner to the covered executive branch official or covered legislative branch official involved." https://www.govtrack.us/congress/bills/116/hr1/text.

[6] Munks, Jamie, and Dan Petrella. "Rep. Luis Arroyo Resigns after Being Charged with Bribery." *Chicago Tribune*, November 1, 2019. https://www.chicagotribune.com/politics/ct-rep-luis-arroyo-resigns-20191101-m3klechzi5ccrkaztq3t7764vi-story.html.

At a minimum, Illinois should implement a ban on state legislators lobbying other localities. This would reduce conflicts like the one in Arroyo's case and eliminate the possibility that state legislators will use their public position to exert inappropriate pressure on local officials for the benefit of their private clients.

4. Revolving door restrictions

So-called revolving door regulations generally require a "cooling off" period of one to two years after government officials leave office before they can begin working as lobbyists. Revolving door regulations serve two main purposes: they decrease the chance that officials will prioritize a potential employer over their constituents while in office, and they reduce the undue advantage a former official-lobbyist has because of their close relationships with colleagues still in government.

Illinois is one of only about eleven states without revolving door restrictions on legislators. Most of the others are much smaller states such as Nebraska, Idaho, Oklahoma, and New Hampshire.

More than a dozen states have at least a two year prohibition on lobbying, currently considered best practice. Several states offer good models, with two year cooling off periods that apply to a range of lobbying activity, not just direct contacts with officials.[7] Florida voters recently approved a six year prohibition, now the longest in the country.

We have seen how relationships between lawmakers, lobbyists, and special interests can get too cozy, potentially promoting corruption and distorting the democratic process. Implementing a revolving door restriction would bring Illinois in line with the vast majority of other states and begin to draw healthy boundaries between the lobbying industry, special interests, and the government, whose primary obligation should always be to the public.

We understand that this would be a significant step for Illinois and we know there are many exemplary public servants whose employment options would be limited by this restriction. But we feel it is important to emphasize just how much of an outlier Illinois is among states in this area, and how concerning that is given the role the lobbyist/government relationship has played in recent scandals. It is finally time for Illinois to join the majority of states in implementing revolving door reform in Illinois.

Conclusion

Reform for Illinois is grateful for the Commission's attention to these issues. We believe that adopting these recommendations would be a step towards restoring the public's trust in its elected officials and in the process by which those officials make decisions that affect Illinoisans' lives and livelihoods. Trust in that process is essential to our democracy. Thank you for your consideration.

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[7] Craig Holman & Carolyn Esser, "Slowing the Federal Revolving Door: Reforms to Stop Lobbying Activity by Former Public Officials and States that Lead the Way," *Public Citizen*, July 22, 2019. https://www.citizen.org/article/slowing-the-federal-revolving-door/#_ftn12.