



January 20, 2010

BY EMAIL (BFC15@aol.com)

Re: The Illinois Lobbyist Registration Act

Dear Rep. Currie:

I write in response to your recent inquiry to me regarding possible new legislation that would amend the Illinois Lobbyist Registration Act (“the Act”), 25 ILCS 170/5, which was amended last year, Pub. Act 96-555 at § 65. The ACLU respectfully suggests two changes to the Act: (1) adoption of a system of no-fee registration for all lobbyists, like that of the federal government and nine other states; and (2) repeal of the exemptions for certain media and church lobbying from the Act’s registration, reporting, and fee requirements.

I. THE LOBBYIST REGISTRATION FEE

The position of the ACLU of Illinois is that no lobbyist should be required to pay any fee in order to register with the government as a lobbyist. This no-fee approach to lobbyist registration has two benefits. First, it ensures that the broadest range of people and organizations can participate in government decision-making, without regard to ability to pay. Second, a reasonable system of lobbyist registration and reporting contributes to government transparency and accountability, and fees may tend to deter registration.

Accordingly, systems of no-fee lobbyist registration have been adopted by the federal government and nine states (Arkansas, Delaware, Hawaii, Iowa, Michigan, Minnesota, Oregon, Rhode Island, and Washington).¹

The Minnesota Legislature tasked the Minnesota Campaign Finance and Public Disclosure Board with responsibility to investigate the issue of fees for lobbyists and other similar entities. In 2004, that Board reported back to the Legislature as follows:

¹ See 2 U.S.C. §§ 1601-03; Ark. St. § 21-8-601 through 21-8-607; Del. Code §§ 5831-5837; Haw. Rev. St. § 97-2 through 97-7; Iowa Code §§ 68B.36-68B.38; Mich. St. §§ 4.417-4.431; Minn. St. §§ 10A.03-10A.38; Or. Rev. St. §§ 171.740-171.785; R.I. St. §§ 22-10-1 through 22-10-12; Wash. Rev. St. §§ 42.17.150 – 42.17.230. See generally “Lobbyist Registration Requirements,” National Conference of State Legislatures (March 2008) (a 50-state survey of lobby fees), at <http://www.ncsl.org/LegislaturesElections/Ethics/NCSLEthicsCenterLobbyistRegistrationRequir/tabid/15362/Default.aspx>.

“The Board recommends that fees not be assessed to the Board’s clients, because of the probable negative effects on participation in the Board’s disclosure and regulatory programs, and on citizen participation in political processes.”² Thus, Minnesota is a no-fee state.

In addition to the foregoing policy considerations, the First Amendment limits the size of the fee that government may charge for lobbyist registration. Lobbying is a form of speech, association, and expression protected by the First Amendment. Lobbying fees cannot exceed the government’s actual and reasonable costs in administering and enforcing lobbyist registration rules. The government bears the burden of proving that its revenues from a lobbyist fee are properly tailored to its regulatory costs.³

The Illinois Lobbyist Registration Act now provides that all persons and organizations required to register as lobbyists must pay a registration fee of \$1,000. 25 ILCS 170/5. In response to the pending federal lawsuit challenging this fee, key personnel within the Office of the Illinois Secretary of State – including the Secretary’s budget director – closely examined the Secretary’s actual costs in administering and enforcing the Lobbyist Registration Act, including creating budgets based on their projections of the future costs of satisfying all new reporting and investigative responsibilities pursuant to the 2009 amendments to the Act. Based on this analysis, the Secretary estimates that it will cost about \$1.2 million to administer and enforce the Act in FY10, and about \$1.3 million in FY11. On the other hand, the \$1,000 lobby registration fee is likely to raise nearly \$4 million, as there were nearly 4,000 registered lobbyists in December 2009, and also in prior years. While the Secretary is uncertain of the number of future registered lobbyists, and thus of the amount of future fee revenues, the Secretary has produced no evidence suggesting that registration and revenues will drop. Any variance from these projected revenue and cost figures is likely to be insignificant. *See* Exh. 1 hereto (the Secretary’s factual stipulations), and Exh. 2 (a grid summarizing these stipulations).

Notably, in addition to the nine no-fee states identified above, sixteen additional states charge an annual lobbyist registration fee no higher than \$150.⁴ Fourteen more states

² *See* “Fees for Lobbyists, Political Committees, and Political Party Units,” Report to the Minnesota Legislature from the Minnesota Campaign Finance and Public Disclosure Board (Jan. 2004) at cover letter, at <http://www.cfboard.state.mn.us/feestudy/CFBFeeStudy.pdf>. *See also id.* at p. 14 (same).

³ *See generally* *Murdock v. Commonwealth of Pennsylvania*, 319 U.S. 105, 117 (1943); *Joelner v. Village of Washington Park*, 378 F.3d 613, 626 (7th Cir. 2004); *South-Suburban Housing Ctr. v. Greater South Suburban Bd. of Realtors*, 935 F.2d 868, 897-98 (7th Cir. 1991); *Covenant Media of Illinois, LLC v. City of Des Plaines*, 2005 WL 2277313, *5 (N.D. Ill. 2005) (Lefkow, J.); *Chicago Newspaper Publishers Assn. v. City of Wheaton*, 697 F. Supp. 1464, 1471 (N.D. Ill. 1988) (Hart, J.); *Moffett v. Killian*, 360 F. Supp. 228, 231, 232 (D. Conn. 1973).

⁴ *See* Al. St. § 36-25-18(a) (\$100/year/lobbyist); Ariz. St. § 41-1232(C), (E) (\$25 biennial fee for principals); Cal. Government Code § 86102 (for each principal, \$25/year/lobbyist); Co. St. § 24-6-303(1.3)(a), and 8 Co. Regs. 1505-8(2.1) (\$40/year/lobbyist, with a discretionary exception for non-profits); Conn. St. §§ 1-95(a) & (b), and Office of State Ethics, Agency Regulations § 1-92-

have sliding scales, in which the size of the lobbyist fee depends upon the number of principals that each lobbyist represents, so that a lobbyist with only one principal pays no more than \$100 per year.⁵ A further seven states charge between \$150 and \$360 per year.⁶ The remaining three states vary their fees as follows: in Texas, non-profits pay \$100 per lobbyist, while for-profits pay \$500 per lobbyist; in Wisconsin, there is a sliding scale depending upon the number of principals per agent, so that the annual fee for a lobbyist with one principal, plus that principal, is \$375; and in Massachusetts, non-profits pay \$100 per lobbyist, while for-profits pay \$1,000 per lobbyist.⁷ Thus, Illinois's flat \$1,000 lobbyist registration fee, with no exception for non-profits or for lobbyists with only one principal, is far out of the national mainstream.

47, available at <http://www.ct.gov/ethics/cwp/view.asp?a=2313&q=301724> (\$150 biennial fee per employer and lobbyist); Ind. Code § 2-7-2-1 (\$50/year for non-profits and their lobbyists, \$100 for others); Ky. Rev. St. §§ 6.807(2), 6.809 (\$250 biennial fee for all employers of lobbyists); La. Rev. St. § 24:53(I) (\$110/year/lobbyist); Mo. St. § 105.473(1) (\$10/year/lobbyist); Mt. St. § 5-7-103(1) (\$150 biennial fee per lobbyist); N.J. St. 52:13C-23a (\$100/year/lobbyist); Nev. Code § 218.932(1), and Leg. Counsel Bureau, at <http://www.leg.state.nv.us/Lobbyist/SessionData/75/Docs/11%202009%20Packet%20Mem.pdf> (\$120/year/lobbyist); Ok. St. Tit. 74 § 4250(A) (\$100/year/lobbyist); Pa. St. Title 65, Pa.CSA § 13A10 (\$100 biennial fee per lobbyist and per principal); Ut. St. § 36-11-103(3)(a)-(b) (\$25 biennially per lobbyist); Wy. St. § 28-7-101 (\$25/year/lobbyist).

⁵ See Fla. Admin. Code 34-12.200 (\$50 for the first principal, and \$20 for each additional principal); Idaho St. § 67-6617(a)-(b) (\$10 per principal); Md. State Government §§ 15-703(a)(2), 15-703(e)(1) (\$100 per principal); Miss. Code § 5-8-5(1) (for each agent, \$25 per principal, and for each principal, a flat \$25); N.H. St. § 15:4 (\$50 per principal); N.M. St. § 2-11-3 (\$25 per principal); N.Y. Leg. Law 1-e(a)(1), (e)(iii) (\$200 per principal, biennially); N.C. St. §§ 120C-200, 120C-201, 120C-207 (for each agent, \$100 per principal, and for each principal, a flat \$100, with a discretionary waiver for non-profits); N.D. St. § 54-05.1-03(1)(c), (e) (\$25 for the first principal, and \$15 per each additional principal); Ohio St. § 101.72(A)-(C), (E)-(F) (for each agent, \$25 biennially per principal, and for each principal, a one-time flat \$25); S.D. St. § 2-12-3 (\$40 per principal); Vt. St. Tit. 2 § 263(e)-(g) (\$25 biennial fee for each agent and each principal, plus \$5 for each principal represented or agent retained); Va. St. § 2.2-424 (\$50 per principal); W.V. St. §§ 6B-3-2(b), (d), 6B-3-3a(a) (biennially, \$100 fee from each agent, plus \$100 per principal).

⁶ See Alaska St. § 24.45.041 (g) (\$250/year/lobbyist); Ga. St. § 21-5-71(f)(1)-(2) (\$25/year for lobbyists representing non-profits, and \$200 for others); Ks. St. § 46-265(b) (as much as \$360/year/lobbyist); Me. St. Tit. 3, § 313 (\$200/year/lobbyist); Neb. St. § 49-1480.01(1)-(3) (\$200 per principal); S.C. St. 2-17-20(A), (G) (\$100 per employer and principal); Tenn. St. § 3-6-302(e), and Rules of Tennessee Ethics Commission, Rules 580-1-1-.03(3), and .04(3), at <http://www.state.tn.us/sos/rules/0580/0580-01-01.pdf> (for each agent, \$150 per principal, and for each principal, \$150 per agent).

⁷ See Mass Gen. Laws, Ch. 3, §§ 39, 41; Wis. St. § 13.75 (biennially, \$375 from each principal, \$250 from each agent with one principal, \$400 from each agent with two or more principals, and \$125 from each agent per principal); Tx. Government §§ 305.003(a), 305.005.

In sum, the ACLU of Illinois would support a bill creating a no-fee system of lobbyist registration, would be neutral on a bill creating a low-fee system, and would oppose a bill creating a high-fee system.

II. THE MEDIA AND RELIGION EXEMPTIONS

The Illinois Lobbyist Registration Act contains exemptions for certain media organizations and certain employees of religious organizations from all of the Act's reporting, registration, and fee requirements. 25 ILCS 170/3(a)(2) & (7). These two exemptions apply even if the organization or individual in question has significant expenditures related to lobbying, unlike other exemptions from the Act. 25 ILCS 170/3(a)(6), (8). These exemptions are not new, but the fee increase and the expanded reporting requirements from the 2009 amendments to the Act significantly aggravate the inequity of these exemptions. Further, these exemptions contradict the First Amendment's prohibition on exemptions from speech restraints for favored speakers.⁸ Accordingly, the ACLU of Illinois respectfully recommends the legislative repeal of these two exemptions.

A. The media exemption

The Act exempts from all fee, registration, and reporting requirements: "Persons or entities who own, publish, or are employed by a newspaper or other regularly published periodical, or who own or are employed by a radio station, television station, or other bona fide news medium that in the ordinary course of business disseminates news, editorial or other comment, or paid advertisements that directly urge the passage or defeat of legislation." 25 ILCS 170/3(a)(2).

Many if not most news organizations, in the ordinary course of business, disseminate news, editorials, and/or paid advertisements that urge the passage or defeat of legislation. Thus, all of these for-profit and non-profit news organizations – and all of their respective owners, publishers, and employees – are exempt from all registration, reporting, and fee obligations under the Act. Many members of the news media engage in direct legislative advocacy on a broad array of matters of public concern, including the reporters' privilege, the Freedom of Information Act, the Open Meetings Act, regulation of commercial advertising, and the tort of defamation. Many non-media organizations engage in legislative advocacy on these same issues – but unlike the media, these non-media organizations must register, report, and pay the \$1,000 fee.

At least twenty-six other states have enacted far more narrow exemptions from their respective lobbyist registration rules (including applicable fees) solely for the actions of

⁸ See *Carey v. Brown*, 447 U.S. 455, 461-62 (1980); *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92, 101 (1972); *Chicago Acorn v. Metropolitan Pier & Exposition Auth.*, 150 F.3d 695, 702 (7th Cir. 1998). See also *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 14 (1989) (plurality); *id.* at 28 (Blackmun, J., concurring in the judgment); *id.* at 26 (White, J., concurring in the judgment).

the news media of reporting and publishing news and editorial comment.⁹ For example, Iowa exempts “[r]epresentatives of the news media only when engaged in the reporting and dissemination of news and editorials.”¹⁰ Unlike Illinois, these states do not more broadly exempt the news media in their entirety, and thus these other states do not exempt the media from lobbyist reporting and registration when the media are engaged in direct, face-to-face legislative advocacy. In any event, Illinois does not need the narrow media exemption used in these other states, because the Illinois definition of lobbying – “any communication with an official,” 25 ILCS 170/2(e) – cannot reasonably be interpreting to include the media’s traditional function of reporting and disseminating news and editorials.

B. The religion exemption

The Act exempts: “Any full-time employee of a bona fide church or religious organization who represents that organization solely for the purpose of protecting the right of the members thereof to practice the religious doctrines of that church or religious organization, or any such bona fide church or religious organization.” 25 ILCS 170/3(a)(7).

In other words, this exemption extends to persons who (a) work full-time for a religious organization, and (b) whose representation for lobbying purposes is exclusively to advance “the right of the members [of that religious organization] to practice . . . religious doctrines . . .” At a minimum, this exemption extends to certain legislative advocacy in support of the free exercise of religion. This includes advocacy for a broad array of exemptions for religious practices from various laws of general applicability (*e.g.*, an exemption from the Illinois Human Rights Act for church employees who define and disseminate church doctrine). It also includes support for numerous kinds of laws that require various accommodations of religious practice (*e.g.*, a mandate that employers accommodate certain religious practices of their employees). Many non-religious organizations engage in legislative advocacy on these same issues, sometimes in support of and sometimes in opposition to the proposed religious exemption or accommodation. But these non-religious organizations, unlike the religious organizations, do not enjoy an exemption from the Act’s registration, reporting, and \$1,000 fee.

⁹ See Al. St. § 36-25-1(18)(b)(3); Ark. St. § 21-8-601(a)(3)(A); Conn. St. § 1-91(l)(2); Haw. Code § 97-2(e)(4); Idaho St. § 67-6618(b); Iowa Code 68B.2(13)(b)(2); Md. State Government § 15-701(b)(1)(ii); Mich. St. § 4.415(7)(a); Minn. St. § 10A.01 Subd. 21(b)(7); Miss. Code Ann. § 5-8-7; Neb. St. § 49-1434(3)(b); Nev. Code § 218.912(1) & (2)(b); N.H. St. 15:1(V)(e); NJ St. § 52:13C-27(a); N.M. St. § 2-11-2(E)(8); N.Y. Legis. Law § 1-c(c)(B); N.C. St. § 120C-700(5); Ohio St. § 101.76(A); Ok. St. Tit. 74 § 4249(1); Or. Rev. St. § 171.735(1); Pa. St. Title 65, Pa.CSA § 13A06(2); R.I. St. § 22-10-3(2); Texas Gov. § 305.004(1); Vt. St. Tit. 2 § 262(4); Wash. Code § 42.17.160(3); Wis. St. § 13.621(1).

¹⁰ See Iowa Code § 68B.2(13)(b)(2).

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Thank you for soliciting the ACLU's views on these important First Amendment questions. If you have any questions, please do not hesitate to call me at (815) 483-1990.

Sincerely,

Mary Dixon
Legislative Director
ACLU of Illinois