

THE PARADOX OF REGULATING LOBBYING THROUGH LEGISLATION

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I. INTRODUCTION

This Article points at an alleged paradox of regulating lobbying through legislation and suggests several explanations. This alleged paradox is based on the public-choice approach to legislation and lobbying according to which, lobbyists who serve interest groups constitute a predominant player with crucial influence on the promotion or non-promotion of bills. At the same time, legislation that regulates lobbying by imposing duties and costs on lobbyists is actively promoted and constantly expanding globally.¹ It may be argued that the regulation of lobbying conflicts with the legislators' interests because such regulation might restrict their negotiating freedom as well as their gains from "selling" legislation to interest groups. If that were the case, we would expect both lobbyists and legislators to prevent laws to that effect from materializing; yet, such legislation is introduced and even expanding.

One possible explanation of that paradox wishes to question the fundamental assumptions of the public choice approach, whereby the legislators' market is dominated by interest groups while politicians, by nature, exclusively promote their own self-interests. This Article will not

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1. The United States was the first to legislatively regulate lobbying, more than a century ago. In the 1990s, it was followed by Canada and Germany; and in the 2000s, the issue became regulated in many other countries including Poland, Hungary, Taiwan, Lithuania, Australia, Slovenia, Montenegro, Austria, Georgia, and Israel. Laws introduced in these countries cite the lobbyists' duty to disclose and report on their activities to the lobbied bodies (some countries impose such duties only vis-à-vis the legislative branch, while others also name the executive branch among the recipients). Disclosure requirements may include the duty to disclose the lobbied issues, file detailed expense and campaigning reports, and so on. For additional information see RAJ CHARI, JOHN HOGAN & GARY MURPHY, *REGULATING LOBBYING: A GLOBAL COMPARISON* 18-19 (Manchester Univ. Press, 2012).

address that explanation. Furthermore, my basic assumption is that the legislation market actually follows the economic theory of legislation.² This Article therefore focuses on another possible explanation whereby legislation that restricts lobbyists is largely endorsed because it promotes the common interests of lobbyists and legislators alike.³

This Article offers five possible explanations of the aforementioned alleged paradox that point at the legislators' and lobbyists' interests in promoting legislation that regulates lobbying⁴—two explanations that focus on the lobbyists' interests and three that focus on the legislators' interests.⁵

II. THE PARADOX PRESENTED

The phenomenon of interest groups that employ lobbyists to influence policymaking and promote legislation has expanded over the past decade and is currently an inherent part of the democratic process. For the most part, lobbyists are hired by commercially-oriented interest groups to directly address policy-makers whose decisions could have an impact on the interests of those groups.⁶ Lobbyists may promote legislation that either uphold the groups' interests or prevent harm to

2. Economic theories that address legislation issues view laws as commodities acquired by certain groups or coalitions of groups that bid high for legislation and thus overpower groups that oppose specific laws or wish to procure other laws in the same field. These theories refer to groups that wish to procure legislation as "interest groups" (organizations comprising two or more individuals who share goals and wish to promote them by actively attempting to influence public policies; see Yael Yishay, *INTEREST GROUPS IN ISRAEL – A TEST OF DEMOCRACY passim* (1986)), while naming the legislators, "sellers." Those "sellers"—i.e., legislators or politicians—act as quasi-brokers on the legislation market, seek parties that may be interested in laws that they have to offer, and intend to sell the required product. In exchange, the sellers collect material or economic benefits (e.g., funds for their campaigns) or non-material benefits (e.g., a promise to support politicians in the following election), as market forces of supply and demand keep the legislation market balanced. For further reading see generally JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY* (1962); George J. Stigler, *The Theory of Economic Regulation*, *BELL J. ECON. & MGMT. SCI.*, Spring 1971, at 3.

3. "Interest Groups" is a collective term denoting groups that wish to promote given interests, whatever they may be. The term does not imply negative aspects as such since groups may wish to promote laws that promote public good or address environmental issues to make the world a better place. See Robert D. Tollison, *Public Choice and Legislation*, 74 *VA. L. REV.* 339, 341 (1988).

4. Lobbying is a broad field and can exist on all government levels. Lobbyists, therefore, may address various players, including legislators, members of the executive, and so on. The regulation of lobbying activities may, therefore, vary and comprise in-house ethical codes, rules, regulations, and so on. This Article focuses on lobbying that targets legislators and its regulation through legislation.

5. See *infra* Part III.

6. CHARI, HOGAN & MURPHY, *supra* note 1, at 3-4.

those interests. Their counterparts are politicians who benefit from lobbyists' acts on the political arena since they could help politicians promote their personal interests (re-election, gaining political clout, etc.).

According to the economic theory of legislation, interest groups follow a pattern known as rent-seeking, in which they "acquire" legislation that promotes their interests using a "currency" that could promote the legislators' own interests.⁷ Legislators, therefore, benefit from the lobbyists' acts on the political arena as they help them finance campaigns, guarantee votes, and so on. Thus, legislators "sell"⁸ legislation and policies to interest groups that, in return, bolster their political standing. The presence of active lobbyists on a political arena attests to the existence of rent-seeking processes.⁹

The key objection to the lobbying process is that the legislation it produces, as well as other public decisions made under its influence, reflect the narrow interests of those lobbyists and their senders and might ignore public interests.¹⁰ Thus, politicians who succumb to pressure from interest groups and lobbyists practically take public wealth from society as a whole and surrender it to specific groups while often conflicting with public interests.

Thus, the manner in which legislators and other policy-makers make decisions and the operating tactics of lobbyists are criticized. Attempting to gain greater control of that process, many countries introduced laws that regulate the lobbyists market by imposing disclosure and transparency duties as well as ethical codes and rules of conduct.¹¹ Such legislation presumably increases the transparency levels

7. See generally Arye L. Hillman, *Rent Seeking*, in THE ELGAR COMPANION TO PUBLIC CHOICE 307 (2d ed., 2010); Richard A. Posner, *Theories of Economic Regulation*, BELL J. ECO. & MGMT. SCI., Autumn 1974, at 335.

8. Doernberg & McChesney and Shaviro referred to legislators as "sellers." See Richard L. Doernberg & Fred McChesney, *On the Accelerating Rate and Decreasing Durability of Tax Reform*, 71 MINN. L. REV. 913, 926-34 (1987); Daniel Shaviro, *Beyond Public Choice and Public Interest: A Study of the Legislative Process as Illustrated by Tax Legislation in the 1980s*, 139 U. PENN. L. REV. 1, 64-66 (1990). Lobbyists were also called "brokers." See ROBERT MCCORMICK & ROBERT TOLLISON, POLITICIANS, LEGISLATION, AND THE ECONOMY: AN INQUIRY INTO THE INTEREST-GROUP THEORY OF GOVERNMENT 3-6 (1981). Shaviro maintains that the difference is mainly semantic and argues that, brokers or sellers, they are still politicians who make mutually-beneficial deals with lobbyists at the public's expense. *Id.* at 3-7. Others maintain that the gap between these two names is substantial. See Jonathan R. Macey, *Promoting Public-Regarding Legislation Through Statutory Interpretation: An Interest Group Model*, 86 COLUM. L. REV. 223, 232 (1986).

9. See generally Hillman, *supra* note 7.

10. See Richard Hall & Alan V. Deardorff, *Lobbying as Legislative Subsidy*, 100 AM. POL. SCI. REV. 69, 69-70 (2006).

11. See CHARI, HOGAN & MURPHY, *supra* note 1, at 5-8. The scope of lobbying-regulating rules vary from one democracy to another, but all the laws that address it employ similar rhetoric and terms such as transparency, reporting, and responsibility. Two basic types of legal tools can be

of decision-making processes, imposing costs on lobbyists that, theoretically at least, conflict with their own interests.

If this is the case and lobbyists who represent interest groups *do* control legislators—how could legislation that conflicts with lobbyists' own interests be introduced? Furthermore, legislation that imposes disclosure and reporting duties while restricting lobbyists' entry might conflict with the legislators' interests since, potentially, laws that make the activities of lobbyists and legislators transparent might impair on the latter's operations behind the scenes and draw public criticism. If the legislators' activities are exposed to the public, their negotiating flexibility might diminish and their profits from "selling" legislation to interest groups might decline—or might they?

As noted, a potential answer here may question some basic assumptions—for example that the legislation market is dominated by interest groups or that politicians by nature wish only to promote their personal interests. This Article will not address that answer. Furthermore, my basic assumption is that the legislation market indeed follows the rules of the economic theory of legislation. In this Article, I shall focus on different explanations of the aforementioned alleged paradox and argue that legislation that restricts the activities of lobbyists works because it serves the interests of lobbyists and legislators alike.¹² This line of thought will have to illuminate the advantages that such legislation offers both parties and show it is their most effective option.

As stated, lobbying may take place on every government level and lobbied parties may be members of the legislative, the executive, the judiciary, and other government bodies. Similarly, lobbying activities could be regulated by means such as in-house ethical codes, sets of rules, or specific regulations.¹³ Based on the public-choice paradigm and the economic theory of legislation, legislators are key decision-makers¹⁴ and therefore key targets for interest groups or for lobbyists who represent

identified in those rules: barriers, and registration and transparency duties. Barriers are sets of rules that define practices that regulation is meant to prevent, ban the presentation of false information or extending gifts and other benefits in the process, and specify cooling periods. Alternatively, "disclosure duties" do not ban certain activities, but require that information on the lobbying process be accessible to the public and demand, for example, that details of promoted issues, the lobbyists' clients, the sums they are paid, and their lobbying activities be revealed. The most basic requirement in this field is that lobbyists undergo registration. It appears in all lobbying regulations. For more on this issue see Shirley Naveh, *The Paradox of Lobbying Regulation* (2015) (unpublished Ph.D. dissertation, Haifa University School of Law) (on file with author).

12. See *infra* Part III.

13. See CHARI, HOGAN & MURPHY, *supra* note 1, at 3-4.

14. See Stigler, *supra* note 2, at 11-13; see also Posner, *supra* note 7, at 347.

these groups.¹⁵ This Article specifically addresses legislator-targeted lobbying and its legislative regulation.¹⁶

III. POSSIBLE EXPLANATIONS OF THE PARADOX

This Part presents five possible explanations that point at the embedded advantages of regulated lobbying for both legislators and lobbyists.¹⁷ The first explanation refers to the legislators' interest in regulating lobbying through legislation as an apparatus for exposing the intensity of legislation seekers' preferences.¹⁸ The second explanation pertains to the lobbyists' interest in lowering the costs associated with obtaining essential information before deciding whether they should lobby for an issue.¹⁹ The third explanation relates to the legislators' interest in improving the reliability of information provided by lobbyists.²⁰ The fourth explanation has to do with legislators' interest in lowering the costs associated with obtaining essential information.²¹ And the fifth explanation addresses the lobbyists' interests in lowering the legislators' extortionist powers against them.²²

These explanations are based on several general assumptions as presented in the literature:²³

- (1) Lobbyists and legislators have limited resources.²⁴
- (2) Legislators are mainly (but not necessarily exclusively) re-election-motivated.²⁵
- (3) Legislators have no ascertained information as to which law or policy would guarantee them broader public support. They

15. STEVEN CROLEY, *Interest Groups and Public Choice*, in RESEARCH HANDBOOK ON PUBLIC CHOICE AND PUBLIC LAW 49, 72-78 (DANIEL A. FARBER & ANNE JOSEPH O'CONNELL eds., 2010).

16. *See infra* Part III.

17. *See infra* Part III.

18. *See infra* Part III.A.

19. *See infra* Part III.B.

20. *See infra* Part III.C.

21. *See infra* Part III.D.

22. *See infra* Part III.E.

23. David Austen-Smith & John R. Wright, *Competitive Lobbying for Legislators' Votes*, 9 SOC. CHOICE & WELFARE 229, 230-33 (1992).

24. Hall & Deardorff, *supra* note 10, at 71-72.

25. Austen-Smith & Wright, *supra* note 23, at 231. The term "re-election" refers to situations in which legislators vote for the most popular laws that the majority of voters desire. When legislators must choose between two bills, they invest in the one they perceive as electorally lucrative. In many cases, bills are relevant to given minorities, but even in such cases legislators vote according to the electoral popularity of one minority. *See* DAVID R. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION 13 (1974); Warren E. Miller & Donald E. Stokes, *Constituency Influence in Congress*, 57 AM. POL. SCI. REV. 45, 45-46 (1963).

have preconceptions on issues, but those may change given additional information.²⁶

(4) Interest groups generally seek to narrowly influence legislators' votes on a certain agenda, as opposed to the broad influence of some general philosophy.

(5) Lobbyists often process information that legislators do not.²⁷

(6) Lobbyist-provided information influences legislators only if they have not possessed it in the first place.

(7) Lobbyist-provided information is significant only if its reliability is proven. The fact that some group chooses to purchase it is indicative of the information's veracity. Asymmetry between lobbyist and legislator exists only if information comes with a price; otherwise, the legislator would know it fully.

(8) If they so choose, legislators may investigate and verify the information that lobbyists give them, but they have no incentive to do so. Generally, they would rather not invest the required resources nor procure the same information indirectly and at lower costs, but the fact that they can do that influences the lobbyists' behavior.

(9) Legislators are generally lobbied by a single group, or by two groups with conflicting agendas and views.²⁸

Potential explanations are presented against the backdrop of the above assumptions.²⁹

A. First Explanation: Legislators' Interest—An Apparatus that Exposes the Preference Intensity of Legislation Seekers

The regulation of lobbyists practically creates an apparatus that exposes the intensity of legislation-seekers' preferences. Given that legislators have limited resources and are rational players who wish to maximize their gains, such an apparatus could be important and significant for them.³⁰

Lobbying is an important part of the interest-groups model since it is the channel through which those groups convey their demands to the legislators. In that model, legislation is a commodity that legislators exchange for benefits that promote their re-election. Because their

26. Austen-Smith & Wright, *supra* note 23 *passim*.

27. Some maintain that lobbying is a two-stage process. *Id.* at 231. In the first stage, specific information is gathered and studied, while in the second stage, lobbyists and legislators engage in strategic communication based on that information. *Id.*

28. *Id.* at 232-33, 236-45.

29. See *supra* Part III.

30. That explanation appears in the literature. See, e.g., Margaret F. Brinig, Randall G. Holcombe & Linda Schwartzstein, *The Regulation of Lobbyists*, 77 PUB. CHOICE 377 *passim* (1993).

resources are generally limited, legislators must, among other things, classify and sort through the interest groups' requests they receive. Being rational players, legislators aspire to maximize their profits from the product they are selling while improving their chances of being so rewarded.³¹ Thus, they need ways to classify the offers they receive by the scope of their benefits from them. Regulation could serve as a tool that helps legislators identify legislation-seeking actors whose demands are strongest.³² Regulation could help legislators establish entry barriers that push up the price of the process, thus eliminating players with less intensive preferences. Regulation, therefore, raises the price of the process and introduces barriers while presenting legislators with information on lobbying groups that had managed to organize and pay the price of regulated lobbying. Furthermore, it is reasonable to assume that lobbyists who cross those barriers and can pay entry fees will also deliver the goods. Regulated lobbying that includes registration, disclosure, and reporting duties imposes costs on lobbyists and creates barriers. According to Franklin Fischer, "[a] barrier to entry is anything that prevents entry when entry is socially beneficial."³³

Following such regulation might be expensive and thus its presence could separate between legislation seekers in terms of the strength of their demands. Such a sorting mechanism can help legislators appreciate the strengths of legislation demands by various groups, which can help them reach a more correct decision (i.e., a decision that brings legislators closer to their goals) and lower the chances of them making wrong choices and investing in legislation that does not promote or underpromote their goals. According to the public choice theory, legislators wish to maximize their personal power, but even if we accept the Brennan and Hamlin³⁴ assumption that legislators wish to promote issues that they perceive as serving the public good if that serves their reelection, that explanation remains valid.³⁵

Regulating lobbying, therefore, helps identifying lobbyists who may undertake the exchange of goods that is the foundation of the economic theory of legislation because through such regulation, legislators can select the groups that are willing to pay more for

31. Austen-Smith & Wright, *supra* note 23, at 233, 236-37.

32. Brinig, Holcombe & Schwartzstein, *supra* note 30, at 380-81.

33. Franklin M. Fisher, *Diagnosing Monopoly*, 19 Q. REV. ECO. & BUS. 7 (1979), reprinted in 27 J. REPRINTS ANTITRUST L. & ECO. 671, 687 (1997).

34. GEOFFREY BERNAN & ALAN HAMLIN, *DEMOCRATIC DEVICES AND DESIRES* (Cambridge Univ. Press, 2000); Abner J. Mikva, *Foreword*, 74 VA. L. REV. 167, 167-69 (1988).

35. See generally BERNAN & HAMLIN, *supra* note 34; Mikva, *supra* note 34.

legislation.³⁶ Lobbyists who are willing to pay prices as quoted in the regulation instructions signal to legislators that the benefit they give them are worth at least the price of lobbying. Hence, the regulation of lobbying can help legislators sort legislation requests and identify those that serve them best politically.

Regulation also creates an entry barrier that makes lobbying more expensive and increases the value of preserving the lobbyists' reputation.³⁷ Having invested in getting through that barrier, lobbyists' reputation is worth more, as might be losing it, which improves the chances that legislators would subsequently be paid by the interest group.³⁸

Regulation improves the legislators' ability to identify the strong preferences of legislation seekers while making legislation more expensive. According to the model suggested in the literature,³⁹ the regulation of lobbying should only minimally impact the scope of suggested legislation because the costs of bills are relatively low.⁴⁰ At the same time, such regulation should decrease the relative part of bills that actually become laws because legislation promotion becomes expensive. The regulation of lobbying practices should help legislators more effectively identify lucrative bills (whose promotion yields more), focus on those, and avoid investing in and promoting less lucrative bills. Hence, the expectation is that fewer bills would turn into laws. This, in turn, is expected to raise the price of legislation and allow legislators to collect higher rents for the efforts they make on behalf of interest groups.

The creation of entry barriers is no simple matter and requires great attention. Too low barriers would not produce the desired filters, while barriers that are too high might over-filter bills, which might make legislators lose the benefits they may entail.

Very few empirical studies addressed the practical impact of lobbying regulation on the number of lobbyists registered as active.⁴¹ Even fewer studies attempted to tie these data with the argument made in this Article that regulation creates entry barriers that help legislators study the lobbyists' intensity of preference. A relevant empirical study by Brinig, Holcombe, and Schwartzstein ("BHS") examined the quantity

36. Brinig, Holcombe & Schwartzstein, *supra* note 30.

37. *Id.*

38. *Id.* at 378.

39. *Id.*

40. *Id.*

41. Kenneth G. Hunter, Laura Ann Wilson & Gregory G. Brunk, *Societal Complexity and Interest-Group Lobbying in the American States*, 53 J. POL. SOC. 488 *passim* (1991).

of bills against the number of actual laws introduced in the U.S.⁴² They wished to establish that the regulation of lobbying creates entry barriers by removing low-intensity preference groups from the arena, as a result of which legislators have to respond to fewer but more qualitative (in preference-intensity terms) appeals, which yields higher rents for legislators.⁴³ BHS argued that regulation can lower the rate of bills that become laws.⁴⁴ In a critical study, Lowery and Gray⁴⁵ questioned the BHS study and maintain that the regulation of lobbying actually creates minimal and insignificant barriers, and that legislators have other ways to verify the preference intensity of various groups.⁴⁶ Their study, they said, shows that legislators are not aware of preference intensity and that lobbyists are not sensitive to all lobbying costs.⁴⁷ They argue that regulation only marginally impacts on the number of lobbyists who register as such, and suggests that the findings of the BHS study are rather weak.⁴⁸

In summary, according to this explanation, regulation (1) allows legislators to identify the intensity preferences of legislation seekers, (2) increases the probability of receiving actual benefits for providing the product that improves the reputation of interest groups, and (3) renders the product more expensive by reducing supply.⁴⁹

*B. Second Explanation:
Lobbyists' Interest in Lowering the Costs of Information*

According to this explanation, regulation lowers the costs of information obtained by lobbyists before they decide whether they should lobby or ignore legislators who support the stance of their interest group ex-ante. This argument is based on a model developed by David Austen-Smith and John R. Wright⁵⁰ whereby lobbyists decide to lobby a friendly legislator who supports them ex-ante only if that legislator is lobbied by another interest group that attempts to alter her view. This is known as counteractive lobbying.⁵¹ In this explanation, it is argued that

42. Brinig, Holcombe & Schwartzstein, *supra* note 30, at 380-82.

43. *Id.*

44. *Id.*

45. David Lowery & Virginia Gray, *How Some Rules Just Don't Matter: The Regulation of Lobbyists*, 91 PUB. CHOICE 139 (1997).

46. *Id. passim.*

47. *Id.* at 145.

48. *Id.*

49. *Id.*

50. David Austen-Smith & John R. Wright, *Counteractive Lobbying*, 38 AM. J. POL. SCI. 25 (1994); *see also* Austen-Smith & Wright, *supra* note 23.

51. Austen-Smith & Wright, *supra* note 50, at 29-31.

regulation serves lobbyists by lowering the costs of information that leads to the decision of whether or not to exercise counteractive lobbying, the basic assumption being that the costs of obtaining such information independently, without regulation, are higher than the costs imposed on lobbyists when regulation imposes the disclosure duty on them.⁵²

In principle, interest groups may lobby three types of legislators:

- (1) Friendly Legislators whose ex-ante stance corresponds with the group's;
- (2) Unfriendly Legislators whose ex-ante stance conflicts with the group's; and
- (3) Uncommitted Legislators who have not yet formed a stance on the group's issues.

According to Austen-Smith and Wright's theory and empirical findings, interest groups lobby all three types of legislators.⁵³ Lobbying uncommitted or unfriendly legislators can be explained intuitively: Interest groups wish to minimize the number of legislators who oppose the policy they promote and make more people support it. These groups, therefore, engage in lobbying efforts to convince undecided legislators to side with them and convince unfriendly legislators to change their minds. Lobbying friendly legislators who share the groups' views, however, is less intuitive to explain. Austen-Smith and Wright maintain that interest groups lobby friendly legislators when they wish to thwart advocacy efforts by opposing groups and to keep those legislators on their side, so to speak.⁵⁴ Thus, when lobbyists approach unfriendly legislators, they do so *regardless* of whether or not an opposing group makes similar efforts, but when they choose to lobby friendly legislators, that choice *follows* their opposition's moves.

Based on that model and conclusions, it may be argued that information about the existence and lobbying activities of opposing groups is essential for their decision on whether or not to engage in counteractive lobbying.⁵⁵ This argument may lead to a conclusion that regulation that imposes the disclosure of information duty on such efforts actually benefits lobbyists.⁵⁶

Thus, Austen-Smith and Wright maintain that the counteractive

52. *Id.* at 25-43.

53. *Id.* at 25-26.

54. *Id.* at 29.

55. *Id.*

56. This is true only if the costs of disclosure and reporting, as imposed by legislation, are lower than the costs of espionage designed to uncover such essential information about the opposing lobbying group. *Id.*

lobbying concept is intuitive and self-evident when groups lobby friendly legislators, attempting to thwart the lobbying efforts of competing groups.⁵⁷ They made three hypotheses and proved them with data they had collected on lobbying efforts that various organizations made regarding Robert Bork's nomination for Associate Justice on the U.S. Supreme Court in 1987.⁵⁸

To present the hypotheses, they created a model of lobbying as a strategic procedure of information transfer between two groups (Ga and Gb) with opposing views (a and b, respectively) and a legislator (L), in which both groups offer L information about their stances. Suppose L is undecided and wants to make the correct decision, when "correct" for L means a decision that gains voters' support and improves L's re-election chances (or harm these chances as little as possible). Groups procure information about voters' preferences. Should a given group find that voters' side with its stance, it would certainly wish to accentuate that fact when communicating with L directly. If the procured information reveals the opposite, groups would not wish to convey that information easily, and might even provide L with partial or misleading data. Legislator L expects the groups' efforts to help her or her make the correct decision, as specified above. Of course, L may gather such information on her⁵⁹ own, but that might be expensive and L would rather conserve resources for other ends. Still, though legislators want lobbyists to do it for them, even if that means they might make a decision that is "incorrect" for them, they do expect the information to be reliable and thus may verify it occasionally and, if they find that groups misled them, they might punish them (by, for example, denying their access).⁶⁰

In the first hypothesis, the group that opposes the legislator's stance ex-ante is the one that makes the lobbying efforts.⁶¹ This is understood rather intuitively: If L supports stance b and Ga does not engage in counteractive lobbying, L's vote would clearly uphold the interests of Gb. Since lobbying efforts are expensive, Gb would rather not make them at all in this case.⁶² When not lobbied by either group, L votes

57. *Id.* at 29.

58. *Id.* at 35-42.

59. Here and hereinafter, pronouns refer to both genders.

60. See generally Austen-Smith & Wright, *supra* note 50.

61. *Id.* at 31-33.

62. Generally speaking, the more important an issue is for the legislator's supporters, the harder it would be for interest groups to make that legislator vote against the interests of her electorate. *Id.* Also, the more important an issue is for those groups, the more reliable the information they give to the legislator would be, which increases the probability that the legislator votes while fully informed. *Id.*

according to the information at her disposal at the time, which happens to serve Gb, in which case Gb avoids lobbying efforts. Hence, when only one of two groups lobbies a legislator, it is the group that opposes her views.

In the second hypothesis, a group's decision to lobby unfriendly legislators is made independently of the advocacy efforts of other groups. That is true under two conditions.⁶³ The first has to do with the legislators' preconceptions (P) and the assumption that they may be altered. If L's P is strong to a point that makes the possibility that L would switch sides from b to a unreasonable, no group would invest in lobbying L.⁶⁴ The second basic condition pertains to the cost (C) of information procurement. If C is very high, no group would invest resources in lobbying L either. In this case, L trusts the information received from Ga and Gb without verifying it. Furthermore, L would avoid such verification efforts if the cost of procuring information proved very high. This, in turn, gives groups a strong incentive to twist or misrepresent information they have. Yet, realizing that might be the case, L may choose not to trust the information she is given, particularly if it conflicts with L's original views (even if the groups present truthful information). Thus, Ga's decision to make lobbying efforts depends on these two parameters—L's P and C of information—and is made independently of Gb.⁶⁵

The third hypothesis asserts that when a friendly legislator is lobbied by a group whose views *conflict* with her, the group that shares her views may decide to lobby her, but their efforts would be purely preemptive.⁶⁶ The reason for that is the fact that Gb attempts to prevent Ga from influencing L only if it is certain that the probability that Ga could influence L is not low. Clearly, when voters obviously prefer policy b over policy a, Ga's incentive to lobby is rather weak. Still, Ga may try to lobby in such cases as well, but decide to present L with misleading or partial information. In equilibrium cases, groups may present the information they have and often present it precisely, but sometimes it may provide misleading information to influence L's stance. The legislators know that information provided by a given group is correct in most cases and may often vote to promote its interests even if that information conflicts with their initial preconceptions. Legislators

63. *Id.* at 33.

64. *Id.* at 32-33. Low P value indicates that L is convinced a priori that policy b is better than policy a, and it is unlikely that any amount of lobbying would change L's mind. *Id.* Accordingly, even Ga would find this situation not worth its lobbying efforts. *Id.*

65. *Id.*

66. *Id.* at 33-34.

who are told by Ga that voting for concept a is the right way to go may try to sporadically verify the information they are given, which motivates Ga to present reliable data.

In the end, legislators make the “correct” choices in most cases, but may occasionally err. Thus, in an equilibrium, the odds that Ga could mislead L are positive, and these are the cases that make Gb engage in lobbying efforts. Yet, Gb’s decision *does* depend on Ga’s choice. Following on the first hypothesis, only Ga has good reason to try and change L’s vote. Thus, Gb’s only incentive for investing costly information and making lobbying efforts is the attempt to thwart Ga’s efforts. Hence, Gb is actually lobbying against Ga more than it promotes policy b as such.⁶⁷

It should be stated that Gb would lobby in an attempt to thwart the advocacy efforts of Ga only if it feels that chances are high that Ga could change L’s stance. That probability is high when voters prefer policy a over policy b, which improves Ga’s chances of influencing L, which motivates Gb to engage in counteractive lobbying.

These hypotheses, as noted, were tested with collected data regarding the lobbying efforts of organized groups that were involved in Robert Bork’s nomination for Associate Justice on the U.S. Supreme Court in 1987.⁶⁸ The data was collected through direct emailing and personal interviews held from 1989-1990,⁶⁹ and were later placed in a formal model that corroborated them.⁷⁰

Pointing at the co-dependency between actually lobbying and the decision to do so reflects a need to receive information on existing lobbying efforts. Regulation that forces the lobbying party to reveal its activities makes Gb’s “self-discovery” redundant, which lowers the costs of revealing that piece of information.

Hence, if Gb’s expenses comprise the costs of collecting data on voter preferences and on the activities of Ga, legislation that imposes a duty to disclose groups’ activities (Is it lobbying? Which issue? Who is lobbied?) spares Gb of the need to gather that data at its own cost. According to the Austen-Smith and Wright model, the cost may be substantially low in cases of counteractive lobbying because, as evident from the aforementioned hypotheses, Gb’s decision on whether or not to

67. *Id.* at 35-42.

68. Gregory Caldeira & John R. Wright, *Lobbying for Justice: Organized Interests Before the Senate, 1916-90*, VOX POP NEWSL. POL. ORGS. & PARTIES, Spring 1991, at 4, 4-5.

69. Austen-Smith & Wright, *supra* note 50, at 35.

70. *Id.* at 29-42.

engage in counteractive lobbying *depends* on whether Ga is lobbying or not.⁷¹

Lobbyists may support such regulation because it could help them obtain the information they need without investing efforts and resources. This is true for as long as the costs of self-disclosure duty imposed by regulation are lower than the “costs of espionage” that groups need to spend in order to reveal that information.

Before concluding the presentation of this argument, we should note one basic assumption of the Austen-Smith and Wright model—that lobbying has a real impact on legislators—which is not self-evident and conflicts with views that the literature has presented for many years.⁷² One of the conclusions that may be drawn from the Austen-Smith and Wright model is that lobbying substantially impacts legislators’ resolutions.⁷³ This conflicts with a general concept that was dominant between the 1960s and the 1990s, according to which that impact was rather small, if at all, amounting at best to bolstering existing stances.⁷⁴ That concept is based on several approaches and explanations.

One of the key approaches to lobbying, ever since the early 1960s, was known as Milbrath’s Communication Approach.⁷⁵ It argued that interest groups have little impact on legislators or legislation results because lobbying was mainly meant to bolster, not change legislators’ stances.⁷⁶ It assumed that legislators have preconceptions due to which they are selective about certain stimuli and indifferent to others. Legislators, therefore, predetermine which communication channels are open to them and which are not. That assertion imposes a given reality on interest groups in which they may deliver their message only if a communication channel is open to receive it. According to Milbrath, interest groups create messages and choose means to deliver them in ways that receivers would welcome them,⁷⁷ which is why they do not bother to communicate with legislators who oppose them.⁷⁸

Matthews⁷⁹ also maintained that lobbying efforts are for the most part directed at legislators whose views are firm and solid. Zeigler⁸⁰

71. *Id.* at 31-34.

72. *Id.* at 27-28.

73. *Id.* at 42-43.

74. *Id.* at 42.

75. *See generally* LESTER M. MILBRATH, *THE WASHINGTON LOBBYISTS* (Chicago: Rand McNally, 1963).

76. *Id. passim.*

77. *Id.* at 189.

78. *Id.* at 217.

79. DONALD R. MATTHEWS, *U.S. SENATORS AND THEIR WORLD* (Random House, 1960).

80. HARMON ZEIGLER, *INTEREST GROUPS IN AMERICAN SOCIETY* (Prentice-Hall, 1964).

argued that successful lobbying depends on the degree of legislators' agreement with a group's stated views more than on its own powers of manipulation and argument.⁸¹ Bauer, Pool, and Dexter⁸² explained the tendency to "preach to the choir" with the human tendency to choose easy targets: "It is so much easier to carry on activities within the circle of those who agree and encourage you than it is to break out and find potential proselytes, that the day-to-day routine and pressure of business tend to shunt those more painful activities aside."⁸³

Later, Dexter maintained that lobbying unfriendly or uncommitted legislators not only makes no impact, but might really harm a cause. He argued that lobbying efforts directed at legislators who oppose the lobbying group's stances might motivate the legislator to argue against the group and even rally additional supporters of her stance against the lobbying group's cause.⁸⁴

In 1963, Hayes⁸⁵ claimed that interest groups act as Bauer, Pool, and Dexter described because interest groups must prove their relevance to the public, and they do so by demonstrating that they have access to the House.⁸⁶ A group's visible access to legislators keeps its members in and helps find new members. According to Hayes, keeping legislators accessible is more important to a group than "winning" (e.g., changing the stance of a given legislator), which is why groups will work on improving their access powers and avoid creating antagonism against the group because, as noted, antagonizing groups might lose their access routes and subsequently lose the perks it involves (e.g., partaking in committees' discussions).⁸⁷ According to this view, having access to legislators is clear indication that a group is relevant and, therefore, important.⁸⁸

The bulk of explanations presented above maintains that lobbying has little or incalculable impact and refers to the assumption that legislators have their stances and lobbyists address them because of those stances. It is further assumed that interest groups seek to avoid

81. That view was shared in LEWIS ANTHONY DEXTER, HOW ORGANIZATIONS ARE REPRESENTED IN WASHINGTON 52-54 (Bobbs-Merrill, 1969).

82. RAYMOND A. BAUER, ITHIEL DE SOLA POOL & LEWIS A. DEXTER, AMERICAN BUSINESS AND PUBLIC POLICY: THE POLITICS OF FOREIGN TRADE (Atherton Press, 1963).

83. *Id.* at 353.

84. BAUER, POOL & DEXTER, *supra* note 82, at 352-53; *see also* DEXTER, *supra* note 81, at 143-44.

85. MICHAEL T. HAYES, LOBBYISTS & LEGISLATORS: A THEORY OF POLITICAL MARKETS 18-25 (1981).

86. *Id.*

87. *Id.*

88. *Id.* at 86.

confrontation (following Dexter's "easy target" argument)⁸⁹ and thus lobbying is actually unilateral: legislators are lobbied by groups that agree with them, not by rival groups.

According to Austen-Smith and Wright, these conclusions leave the key question unanswered: Why should anyone even bother lobbying? Similarly, if lobbying impact on legislators is negligible and if groups rarely make an impact, why is the number of interest groups constantly on the rise?⁹⁰

Austen-Smith and Wright offered an alternative interpretation of that view which, they believe, answers the above questions.⁹¹ According to them, organizations lobby both friendly and unfriendly legislators where lobbying the former is both a strategic and preventive move.⁹² Assuming there are interest groups on both sides, the Austen-Smith and Wright theory expects only one group to pre-intend to invest resources in lobbying—the one that legislators would vote against in the absence of lobbying.⁹³ That group makes lobbying efforts, attempting to convince legislators to change their stances and—in an equilibrium, on average—legislators are convinced. In any case, groups whose views are upheld by legislators to begin with have no incentive to make lobbying efforts, unless the opposite group makes such efforts. Since lobbying is expensive, if the opposing group makes no lobbying efforts, legislators will anyway vote according to their original stances. In such cases, it is clear that the group whose views legislators support without lobbying lacks the incentive to lobby.

As a result, if two groups should choose to lobby the same legislator, the theory expects the opposing lobbying group to exclusively engage in prevention—i.e., in providing information aimed at balancing out the potential impact of the other group on the legislator's stance. Furthermore, according to the Austen-Smith and Wright theory, counteractive lobbying improves the reliability of both groups, and thus legislators are not forced to verify arguments because such a situation provides them with more reliable information.⁹⁴

This argument is weak because disclosure is bilateral. This model lowers the cost of obtaining information about other lobbyists and their activities, but at the same time it makes them expose information about their own activities. Disclosure-imposing apparatuses can serve lobbyists

89. BAUER, POOL & DEXTER, *supra* note 82, at 353.

90. Austen-Smith & Wright, *supra* note 23.

91. *Id.*

92. *Id.* at 245-46.

93. *Id.*

94. *Id.*

only if the cost of espionage and information gathering exceeds the (direct and indirect) costs of self-disclosure. It may further be argued that lobbyists with sufficient resources to independently obtain information would rather avoid such apparatuses, which deprive them of their relative edge. Also, lobbyists with sufficient resources are—according to the public-choice approach—the stronger lobbyists, those who can influence decision-makers. If their impact on the process is crucial and they have no interest in promoting mechanisms that harm their relative edge, one may make arguments against the validity of this explanation.

In summary: Given this characteristic, information about a lobbying group is essential for any group that engages in counteractive lobbying. Regulation that exposes Ga's decision to lobby saves Gb's espionage expenses and helps it decide whether or not to lobby without these expenses.⁹⁵

*C. Third Explanation: Legislators' Interest—
Increasing the Credibility of Obtained Information*

This explanation argues that legislation that imposes disclosure duties on lobbyists and threatens to punish them for noncompliance with these duties could encourage lobbyists to avoid making false reports, which largely spares legislators of the need to verify information that lobbyists provide.

As noted, legislators invest in the procurement of information, but profit when they increase their re-election chances.⁹⁶ In this exchange, they can always choose between collecting the data themselves and having lobbyists help them obtain the data they need before they make a decision that best serves them. Information gathering has its cost; which is why (from the legislators' point of view) lobbyists offer the effective option of obtaining information without paying for it directly. Yet, the indirect procurement of information from lobbyists might potentially collect a toll in terms of information reliability: lobbyist-provided information might be unreliable or even misleading.

One way of increasing the reliability of such information is verifying it. If legislators always verified information, lobbyists would always be reliable; but constant verification entails high expenses on the legislators' part, and legislators would rather avoid that. In equilibrium cases, a delicate balance exists between the legislators' trust and

95. See *supra* Part III.B.

96. Eric Rasmusen, *Lobbying When the Decisionmaker Can Acquire Independent Information*, 77 PUB. CHOICE 899, 899 (1993).

lobbyists' reliability in which lobbyists never know for certain whether legislators trust the information they had sold them, while legislators are never certain that they can trust the lobbyists.⁹⁷ In addition to the self-verification of information as a direct means of establishing reliability, it may be argued that the regulation of lobbying might serve the same end and lower the lobbyists' incentive to provide misleading and false information. The regulation of lobbying that includes transparency and disclosure duties, and sanctions if violated, could motivate lobbyists to avoid false reports because they need to protect their reputation—an expensive commodity—in several ways.

First, if regulation bans false or misleading reports and names sanctions if the bans are violated, it is a direct incentive. Harm to the reputation of lobbyists who violate such regulation is immediate and anchored in a law. In Lithuania, for example, the law states that lobbying is illegal when, among other things, lobbyists deliberately mislead an elected official or civil servant by citing misleading facts or circumstances while attempting to promote, amend, or nullify legislation.⁹⁸ Such regulation directly encourages lobbyists to avoid false reports.

Comparative law, however, reveals that similar regulation in most countries does not address bans on false or misleading reporting and mainly discusses registration duties and the need to disclose information such as the lobbyists' names, the names of the group or individual they serve, the lobbied issue, and the identity of the lobbied legislator.⁹⁹ It may be argued that such regulation does not directly encourage lobbyists to file reliable reports, but one cannot argue that it offers indirect incentives to doing so. When regulation does not directly address the reliability of reported information—which is the majority of cases—the explanation of the existence of an incentive for avoiding unreliable information is rather more complicated. Suppose that as part of her efforts, a lobbyist provides a legislator with false information and that the latter uses that information to make legislative moves while extending that information to other legislators. In such cases, there is a good chance that the falsehood of that information will be revealed whether or not regulation exists. Yet, when this area is regulated so as to require the disclosure of the identity of the lobbyist, her senders, and the lobbied party and issue, the costs of disclosing the identity of the lobbyist (and her connection with the lobbied party and issue) are far

97. *Id.* at 912.

98. For a review of the Lithuanian law, see CHARI, HOGAN & MURPHY, *supra* note 1, at 71-76; Naveh, *supra* note 11, at 65-70.

99. Naveh, *supra* note 11, at 11-81.

lower than if the area were unregulated. The source of the false information is also revealed at low cost and thus regulation of this kind increases the chance it would harm the reputation of the lobbyists and their senders. That kind of regulation, therefore, could motivate lobbyists to avoid risking providing unreliable information.

Another possible explanation of the association between regulation that requires registration and disclosure (even if not directly addressing information reliability) and the lower costs of information could rely on Austen-Smith and Wright model, presented as part of the second explanation above.¹⁰⁰ According to that explanation, the reliability of information presented to legislators is higher when the said legislators are simultaneously lobbied by two groups with conflicting stances. In that model, a group's decision to lobby unfriendly legislators is independent of whether another group lobbies them or not, but the decision to lobby friendly legislators does follow from the moves of the opposite lobbying group.¹⁰¹ The information about the activity of the group whose stance conflicts with the legislator's (before lobbying) is essential for the group with which she sides. Legislation that mandates disclosure and reporting reveals that essential piece of information to the group that sides with the legislator without or at low costs. Thus, such legislation might potentially increase the number of cases in which legislators are lobbied by both groups.

To establish this argument, two points need to be explained: One pertains to the very statement that the reliability of information increases when the legislator is lobbied by two opposing groups; the other pertains to the underlying assumption that the decision on whether or not to lobby a legislator depends (partly or fully) on knowing that another group is already doing that.

Referring to the first point, studies have shown that legislators are more informed on their voters' preferences when they are lobbied (even if by one group) than when they are not, and they vote more "correctly" when lobbied.¹⁰² This is even more true when legislators are lobbied by two opposing groups since that improves the legislators' chances of obtaining full information,¹⁰³ potentially increasing the number of their "correct" votes.

As for the second point, the assumption that the decision on whether or not to lobby a given legislator depends (partly or fully) on

100. See *supra* Part III.B.

101. Austen-Smith & Wright, *supra* note 50, at 33-34.

102. Austen-Smith & Wright, *supra* note 23, at 245-46.

103. Austen-Smith & Wright, *supra* note 50, at 34; Austen-Smith & Wright, *supra* note 23, at 245-46.

knowing that another group is already doing that is based on the Austen-Smith and Wright model (extensively discussed above).¹⁰⁴ The argument here is highly intuitive: when one group lobbies a legislator, the two maintain conflicting views. The opposite group has nothing to gain from trying to convince that legislator who supports its stance and will vote in its favor, even in the absence of counteractive lobbying. As noted, the latter group would be motivated to lobby that legislator only if the other group does that; hence the decision to lobby is independent of whether the opposing group makes lobbying efforts.¹⁰⁵ As may be recalled, lobbying carried out in reaction to lobbying by another group whose stances conflict with the legislator's is known as counteractive lobbying. Regulation that imposes disclosure and reporting duties signals to friendly lobbyists that the legislator is being lobbied by the opposite group and might subsequently change her stance. Such information, when obtained freely and thanks to legislation, improves access to information, which increases the probability of bilateral lobbying, which improves the reliability of the information provided and lowers the legislator's chances of making an "incorrect" decision. In such cases, legislators will turn to lobbyists to help her make a "correct" decision. Simultaneous lobbying by the two parties is expected to make legislators decisions come closer to the stances of constituents.

Furthermore, as noted in the first explanation above, the barrier that obstructs entry into the lobbying market, which the regulation created, improves the lobbyists reputation, which is a greater incentive for protecting it.¹⁰⁶ The cost of regulation increases the cost of the lobbying process and, therefore, increases the value of lobbyists' reputation as well.

According to this argument legislators can therefore benefit from regulation that includes incentives for lobbyists who maintain their reputation by, for example, creating a direct incentive (punishing for false reports) or an indirect one (raising the cost of lobbying). Such regulation should motivate lobbyists to offer reliable information since they feel their reputation might suffer otherwise. On the other hand, making lobbying too costly might significantly impair the resources that lobbyists allocate for obtaining information, and a group's motivation to lobby—which is undesirable for legislators. Finding the balance between the incentive and the right price of lobbying or obtaining information is no simple matter. It seems that it is no accident that Lithuania is the only

104. See Austen-Smith & Wright, *supra* note 50, at 34; see also *supra* Part III.B.

105. Austen-Smith & Wright, *supra* note 50, at 34.

106. See *supra* Part III.A.

country that directly punishes for false reports and that such regulation is not easily accepted by other countries.¹⁰⁷

In summary, legislation will not guarantee that lobbyists abstain from making false reports, but might make providing false or even partial information less lucrative, which should increase the probability of reliable reporting. In light of the assumptions presented earlier—that legislators’ resources are limited and, though they could verify the information they receive on their own, they avoid that or do it at low costs, using those who had processed the information—it would seem that legislation could serve as an effective enforcement tool that instructs lobbyists’ conduct. Thus, the entry barrier that regulation could create increases the value of lobbyists’ reputation which, in itself, could support the necessity of regulation.

*D. Fourth Explanation:
Lowering Costs Associated with Legislators’ Work*

This explanation states that the regulation of lobbying could lower the costs associated with legislative work, including the obtainment of information that could motivate legislators to promote legislation that regulates lobbying and serves them. This explanation may be established on a model developed by Richard Hall and Alan V. Deardorff.¹⁰⁸ Unlike ordinary models that view lobbying as an exchange trade (procurement of electorate)¹⁰⁹ or a convincing practice (informative signaling),¹¹⁰ Hall

107. CHARI, HOGAN & MURPHY, *supra* note 1, at 71-76.

108. Hall & Deardorff, *supra* note 10, at 71.

109. When lobbying is viewed as a barter deal, the key element is the mutual benefits that result from the interaction between lobbyists and political entities. According to that view, which is the foundation of the interest groups theory, interest groups are opportunistic and rational rent-seekers. The basic assumption of models that are common in political science and economy is that representatives of interest groups and legislators are busy seeking mutually beneficial deals; interest groups want to promote their interests by introducing or preventing legislation, while legislators generally seek campaign funds. Interest groups’ agents are instructed to execute barter deals, but money—not information or lobbyists’ arguments—is the relevant changeable that instructs behavior. For more on the issue see generally David Austen-Smith, *Interest Groups: Money, Information and Influence*, in PERSPECTIVE ON PUBLIC CHOICE 296 (Dennis Mueller, ed., Cambridge Univ. Press, 1996); Rebecca Morton & Charles Cameron, *Elections and The Theory of Campaign Contributions: A Survey and Critical Analysis*, 4 ECO. & POL. 79 (1992).

110. Papers published after “lobbying” was defined as exchange trade or barter deals argue that lobbying is actually a strategy of convincing others. Lobbyists have information that legislators desire. The strategic transfer of that information is in the heart of their relationship. This approach relies on a basic assumption according to which, the distribution of information between lobbyists and legislators is asymmetrical. The latter are guided by their need to be reelected and thus wish to make the “correct” decisions to attain that goal. To do so, legislators wish to vote “correctly”—namely, promote stances that their constituents support. Lobbyists, at the same time, hold relevant

and Deardorff say lobbying is a form of strategic subsidy and works for legislators when, in fact, lobbying is not meant to change the minds of unfriendly legislators, but to help friendly ones promote their goals.¹¹¹ According to their model, lobbying lowers the costs associated with working and gathering data and intelligence for legislators who were strategically chosen by lobbyists to pursue those ends.¹¹² The model focuses on the limited budgets of legislators, which becomes less limited through lobbyist work that helps them attain more. Thus, while literature that deals with signaling¹¹³ focused on lobbyists as providers of information and exchange theories focused on trading¹¹⁴ in preferences, the Hall and Deardorff model mainly addressed the legislators' budget line and presented lobbying as a form of office services that lobbyists offer to legislators.¹¹⁵

According to that model, lobbyists target friendly legislators because they would rather allocate their resources to serving legislators who are most likely to use them to promote the lobbyists' goals.¹¹⁶ In other words, interest groups procure expensive information that could serve legislators and strategically distribute it to influential legislators who can advance their interests.

Hall and Deardorff maintain that understanding lobbying as subsidy resolves quite a few anomalies that other models ignored.¹¹⁷ For

information that legislators do not have; hence lobbying is a mechanism through which information is transferred to legislators. Legislators may obtain that information alone, which requires investment on their part, but they have no real incentive to do that because their resources are limited and because lobbyists are experts on the issue at hand. Yet, if legislators never checked the information, lobbyists would not be motivated to be reliable and thus would not really impact the legislators' moves. If they examined the information, lobbyists would always be reliable, but legislators would not require their services; or their constant reliability would eliminate the legislators' motivation to check them, and so on and so forth. An equilibrium is based on a delicate balance between the legislators' trust and lobbyist reliability, so that the latter never know if the information they provide is checked by legislators, who are never able to fully trust the lobbyists. Thus, legislators sometimes check and verify information on their own, while lobbyists sometimes offer partial or erroneous information. Eric Rasmusen, *Lobbying When the Decisionmakers Can Acquire Independent Information*, 77 PUB. CHOICE 899, 910-12 (1993).

111. Hall & Deardorff, *supra* note 10, at 69, 72.

112. *Id.* at 69.

113. JOHN MARK HANSEN, *GAINING ACCESS: CONGRESS AND THE FARM LOBBY, 1919-1981*, at 11-13 (1991); KAY SCHLOZMAN & JOHN TIERNEY, *ORGANIZED INTERESTS IN AMERICAN DEMOCRACY passim* (New York: Harper and Row, 1986); Austen-Smith, *supra* note 109, at 315-17.

114. See generally Arthur T. Denzau & Michael C. Munger, *Legislators and Interest Groups: How Unorganized Interests Get Represented*, 80 AM. POL. SCI. REV. 89 (1986); Richard L. Hall & Frank W. Wayman, *Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees*, 84 AM. POL. SCI. REV. 797 (1990).

115. Hall & Deardorff, *supra* note 10, at 73-76.

116. *Id.*

117. *Id.* at 72-76, 78-80.

example, it answers Milbrath who argued that legislators only heed lobbyists who tell them what they want to hear and concluded that the latter do not gain much.¹¹⁸ That failed to explain why lobbyists invest so much and why there is constantly more of them. When lobbyist activity is examined in subsidy terms, this is answered: Lobbyists invest in lobbying because that makes legislators more accessible to them. That accessibility is due to the fact that lobbyists can subsidize legislators' information and labor costs. Lowering the price of the product (labor and information) makes legislators more available and easier to influence.

The model is based on five assumptions, which are based on "existing information" on the legislators.¹¹⁹ According to the first assumption, for legislators to impact on policies they have to invest great efforts in the legislation process.¹²⁰ The efforts can include attending committee meetings,¹²¹ filing bills or amendments,¹²² creating or breaking up coalitions, conducting negotiations, and convincing other legislators to support their desired cause.¹²³ In any event, the issue is the *ongoing efforts* made ahead of a vote, not the act of voting itself.

According to the second assumption, as generally presented above, legislators' resources—staff, time, information, and labor—are limited and constantly lacking, which is why legislators cannot address all the required issues and make maximal progress in them.¹²⁴

The third assumption is that for every given term in office, legislators care more about their general impact, not only in a specific issue. Thus, legislators are interested in a variety of issues simultaneously (often following their constituents' diversified issues).¹²⁵

118. MILBRATH, *supra* note 75.

119. Hall & Deardorff, *supra* note 10, at 72-76. Some of these assumptions are mentioned as basic in the beginning of the chapter that explains the paradox.

120. RICHARD L. HALL, PARTICIPATION IN CONGRESS 6-7, 25-27 (Yale Univ. Press, 1996); GREGORY WAWRO, LEGISLATIVE ENTREPRENEURSHIP IN THE U.S. HOUSE OF REPRESENTATIVES 25-44 (Univ. of Michigan Press, 2000); Lawrence C. Evans, *Influence in Congressional Committees*, in CONGRESSIONAL POLITICS 155, 156-58 (Christopher C. Deering, ed., Chicago, 1989).

121. RICHARD F. FENNO, CONGRESSMEN IN COMMITTEES 1 (1973); KENNETH A. SHEEPSLE, THE GIANT JIGSAW PUZZLE: COMMITTEE ASSIGNMENTS IN THE MODERN HOUSE 35-62 (Univ. of Chicago Press, 1978).

122. BARBARA SINCLAIR, THE TRANSFORMATION OF THE U.S. SENATE 180-84 (Johns Hopkins Univ. Press, 1989).

123. R. DOUGLAS ARNOLD, THE LOGIC OF CONGRESSIONAL ACTION 88-89, 115-16 (Yale Press, 1990); GARY W. COX & MATHEW D. MCCUBBINS, LEGISLATIVE LEVIATHAN: PARTY GOVERNMENT IN THE HOUSE 115-56, 256 (Univ. of California Press, 1993).

124. Hall & Deardorff, *supra* note 10, at 72.

125. Evans, *supra* note 120.

According to the fourth assumption, legislators prioritize issues they wish to promote,¹²⁶ but choosing those issues also requires resources such as consulting stakeholders, studying the direction and power of constituents' preferences, and so on. Legislators' preferences are reflected in that model through the level of their readiness to move ahead on one rather than on other issues (i.e., resources that legislators invest in issue X are detracted from resources they could invest in issue Y).

According to the fifth assumption, when compared with legislators, lobbyists are experts.¹²⁷ Legislators care about a variety of issues all at the same time, while lobbyists focus on relatively few issues in which they have more time, experience, and expertise than legislators.

Based on these five assumptions, the key components of the theory are presented within the framework of a relatively simple microeconomic system where, as noted above, lobbyists can impact on the legislators' budget lines, not on the parameters that comprise their benefit function. Thus, if a legislator L needs to address issues A, B, and C, group G that wishes to promote issue A (by filing a bill, for example) collects all the information needed for writing that bill, drafts the bill for L, and helps her promote A while allocating fewer resources than L would have been required to invest otherwise.¹²⁸ At the same time, legislators may make use of lobbyists' resources to promote issues they have not prioritized because they need resources for independent studies of issues they care about and wish to directly invest their resources in them to avoid making erroneous decisions on these matters.

So far, we explained why legislators are interested in lobbying, but how can legislation that speaks of disclosure and transparency duties help legislators subsidize their resources? To answer that we need to consider a few additional points that arise from the model and are described as potential projections or hypotheses. The first point, mentioned above, pertains to lobbyists who lobby their allies (legislators whose stance corresponds with the group's) since they use the resources for work that promotes their goal, not against it.¹²⁹ According to the second point, lobbyists lobby their stronger allies harder, when "strong"

126. RICHARD L. HALL, PARTICIPATION IN CONGRESS 55-56 (Yale Univ. Press, 1996); WAWRO, *supra* note 120, at 45-48.

127. KEVIN M. ESTERLING, THE POLITICAL ECONOMY OF EXPERTISE: INFORMATION AND EFFICIENCY IN AMERICAN NATIONAL POLITICS 44-45 (Univ. of Michigan Press, 2004).

128. It may be argued that a group that promotes issue A helps legislators allocate resources to promote issues B and C that may have not been promoted otherwise. In other words, subsidies offered by one group free legislator resources for dealing with issues that might have been neglected otherwise.

129. *See supra* Part III.D.

speaks of the marginal desire of the legislators to pay for advancing toward the policy they share with the group. In this point, lobbyists invest in the most yielding issues. According to the third hypothesis attributed to this model, stronger lobbying efforts make allies invest more efforts in promoting the issue. Another point pertains to interest groups that promote public, not private issues: being lobbied by groups that have no resources to offer legislators or help their re-election can increase their allies' efforts and participation. According to Berry, such groups believe they have an edge over legislators, in terms of research and information attainment, mainly thanks to their reputation as providers of reliable and precise information.¹³⁰ More often than not, these groups initiate researches on their own accords, and it is reasonable to assume that the media would cover their reports more than they do with information provided by corporations, trade unions, or financial players.¹³¹ Furthermore, public-interest groups may not have actual resources to pay legislators, but they have the power to collect prices from legislators by exposing information about their conduct, which might harm their re-election chances. These groups' self-portrayal as reliable could help them deal with the public as well.

It may be argued that regulation that imposes transparency and the exposure of lobbying-related data—such as lobbied issues and the identities of the lobbying and lobbied parties—lowers legislators' costs of obtaining specific information about their rivals and competitors, which frees more resources for the lobbying stage. Thus, regulation could help legislators receive larger subsidies because some of the lobbyists' resources are channeled toward that end. This claim, therefore, is true only if the costs of espionage are higher than the cost of revealing information as required by regulation.

Subsidies may be enlarged in several additional ways. Based on the aforementioned hypotheses—whereby lobbying makes other lobbyists address legislators, and the former seek the strongest possible allies—legislators may use regulation as a tool that makes them appear as worthy allies. As regulation exposes lobbyists' ties with them, they could signal to other lobbyists that they are strong and cooperative allies who promote laws. This, in turn, can make additional lobbyists reach out to them, which could increase the labor and information subsidies they receive.

130. WILLIAM P. BROWNE, *CULTIVATING CONGRESS: CONSTITUENCIES, ISSUES AND INTERESTS IN AGRICULTURAL POLICYMAKING* 143 (Univ. of Kansas Press, 1995). See generally JEFFREY M. BERRY, *THE NEW LIBERALISM: THE RISING POWER OF CITIZEN GROUPS* (Brookings Press, 1999).

131. BERRY, *supra* note 130, at 120-42.

*E. Fifth Explanation: Lobbyists' Interest—
Lowering Legislators' Extortion Abilities*

The fifth explanation of the alleged paradox of regulating lobbying through legislation focuses on minimizing the legislators' ability to extort lobbyists. Fred McChesney developed a model that conflicts with viewing politicians as mysterious and passive players, known as the Rent Extraction Model.¹³² According to McChesney, politicians are not mere "brokers" who distribute wealth in response to competing political demands, but individual players who make demands and threats that other players respond to.¹³³ The view of politicians as rent seekers (of votes, campaign donations, etc.) is lost in a model that portrays them as passive players who serve as brokers, going between groups that demand and compete for rent.¹³⁴ McChesney maintains that politicians have other ways than creating rent to profit: They may demand the votes of constituents or money and in return offer the rents that create the "welfare rectangle" of Stigler's original model, but they may also gain by threatening to impose costs on private market parties (and then eliminate the threat as part of a deal), which is a form of political extortion.¹³⁵

The McChesney concept detracts nothing from the traditional rent-extraction model. In fact, it supports the traditional model and even expands it by acknowledging the existence of alternative sources of political gains.¹³⁶ Stigler's original paper refers to this aspect as reflected in the state's inherent ability to threaten private rents. Stigler said:

The state—the machinery and power of the state—is a potential resource or threat to every industry in the society. With its power to prohibit or compel, to take or give money, the state can and does selectively help or hurt a vast number of industries . . . Regulation may be actively sought by an industry, or it may be thrust upon it.¹³⁷

McChesney, therefore, stated that a political position grants a semi-proprietary right not only to rents from legislation, but also to imposing costs.¹³⁸ Thus, politicians may gain by exercising their right to impose legislative restrictions on private players. When a politician threatens to

132. FRED S. MCCHESENEY, *MONEY FOR NOTHING: POLITICIANS, RENT EXTRACTION, AND POLITICAL EXTORTION* 20-42 (Harvard Univ. Press, 1997).

133. *See id.* at 26, 27, 29.

134. *See id.* at 37.

135. Fred S. McChesney, *Rent Extraction and Rent Creation in the Economic Theory of Regulation*, 16 J. LEG. STUD. 101, 104 (1987).

136. *See id.*

137. *See* Stigler, *supra* note 2, at 3.

138. *See* McChesney, *supra* note 135, at 103-17.

tax a certain industry, that industry is motivated to protect its capital and is willing to pay the legislator sums that could equal the sum of money it might lose if so taxed. Thus, legislators can profit from making threats or exercising their right to impose costs on market players that might slice rent from the capital they are making from or investing in their industries.

McChesney's take on the rent-seeking process conflict is the customary view. He maintains that because tables do turn, politicians are motivated to stop being passive and actively extort benefits.¹³⁹ According to the rent-extortion approach, legislators may initiate bills in an attempt to extract benefits from organizations or the public that the bill might harm and, when they receive those benefits, they withdraw their bills.¹⁴⁰ In fact, this is a form of threat that the threatened party is willing to pay a certain price for its removal. In this model, politicians are independent players with individual demands to which private players respond.¹⁴¹

Once a politician is perceived as an independent player under regulation, her goal function can no longer be viewed as having a single value. That politician will maximize the scope of her returns by comparing the marginal value of returns from votes, donations, bribery, and other personal-gain sources. These are positive functions not only of personal benefits she gives away, but also of costs she agrees not to impose. A strategy of avoidance costs could assume several forms. The clearest form may be a decision to re-regulate an industry that had been permitted to form a cartel or a monopoly. Should a politician decide now to restrict or revoke that permit unexpectedly, the reaction to the loss of wealth expected in the future would be immediate. The politician, who was not party to the original agreement between that industry and the government, would not be motivated to follow the rent-creating deal, unless she is properly compensated. Thus, the very validity of the original agreement may be used as a threat with which rent can be extorted. Additional threats that could extort rent are threats to lower prices¹⁴² or increase costs,¹⁴³ for example. According to McChesney's model, lax constitutional protection of rights in a small country could be fertile ground for rent extortion.¹⁴⁴

139. *See id.* at 105.

140. *See id.* at 107-09.

141. *See id.* at 109-12.

142. For an economic analysis of price slicing in that case see *id.* at 112-15.

143. For an economic analysis of cost hikes see *id.* at 115-17.

144. *See id.* at 109.

The rent-extortion model may be grounds for two arguments why regulation is good for lobbyists. First, disclosure and reporting duties make the extortion of lobbyists by legislators rather difficult because such extortion might be revealed to the public. Regulation that requires information about agreements with legislators immediately exposes the lobbied issue and the existence of communication between lobbyists and legislators. The legislators know that with that information they might be more easily exposed.

In a hypothetical situation, a legislator filed a bill suggesting to tax a certain industry and explaining why, but then withdrew it. The lobbyists' registrar, however, shows that a lobbyist for that industry had lobbied the said legislator, attempting to encourage the latter to withdraw the bill. That is then revealed to the public through the media which, in this case, did not have to pay for that information. Such cost-free exposure could force legislators into caution when dealing with lobbyists. Yet, such regulation makes it hard for the lobbyists to bribe legislators and for the same reason. Thus, if the lobbyist's cost of extortion is higher than the benefit of bribing the legislator, it explains why lobbyists may want regulation.

The second argument based on the rent-extortion model that could explain why lobbyists may want regulation introduced says that lobbyists, particularly those who represent strong organizations, fear extortion. Attempting to detract from the legislators' ability to extort them, lobbyists who work for competing organizations may join forces and present legislators with a final product, a "legislation package" they can live with, as a cartel.¹⁴⁵ In turn, legislators might react to such moves with attempts to extort all the parties to that agreement by offering side benefits to those who would break away from the partnership and desert it. The disclosure duty might expose those benefits, and thus could stabilize the agreement and guarantee its implementation. It is clear, therefore, that the legislated disclosure duty imposed on the parties weakens the legislators' ability to extort the parties when the latter are in agreement, so legislation could serve as a tool that enforces agreements between rival interest groups.

For the sake of this argument, we need to distinguish between situations in which the lobbying parties' stances are in extreme opposition and situations in which these stances are neither identical nor absolutely contradictory. In the first case, the polarity of interests and positions of the competing parties makes it less likely that the parties would join forces and create a legislation package. This would make it a

145. *See generally id.*

zero-sum game in which each party is motivated to lower the profits of the opposition so as to maximize its own. For example, an anti-abortion lobbyist loses if a bill permitting abortions is introduced and vice versa.

In situations where the interests and positions of the competing parties are not contradictory or even absolutely the same (as in mixed strategy games), the parties would seek a result that would maximally benefit all the players without harming one. This situation could lend itself to the formation of a cartel pertaining to the desired legislation.

Further clarification is required when the parties meet more than once. There is a difference between one-time lobbying and situations in which parties lobby against each other time and again. In that respect, it is reminiscent of repeated games situations in which the same players play against each other repeatedly many or an endless number of rounds; or one game in which the parties engage each other in a single round.

The question of whether players engage in a single game or in numerous and repeating games is relevant to the desertion issue. The temptation to desert is greater in single game situations because deserters could highly benefit from such a deviation in the short run. Such situations facilitate legislators’ efforts to extort a party to an agreement and make it desert. Regulation that helps legislators expose deserters, as stated above, might detract from the benefits that deserters gain because exposure might harm their reputation, which in turn could impact on their ability to make similar agreements with potential partners in the future. Thus, in situations of repeating games in which all players know they would be immediately punished for desertion in the next round,¹⁴⁶

146. This argument may be likened to a multiple-rounds prisoner’s dilemma game in which the parties play the same game over and over without a predetermined horizon (i.e., without naming one round as last). Unlike in the original game where players play the game only once, here the parties may decide to engage in strategic and egalitarian cooperation. In the original, single-round game, players could benefit from cooperation too, but when there is equilibrium, both choose to desert. Below is an example of a single-round prisoner’s dilemma game (the figures denote years of imprisonment—player 1 on the right):

Player 1		Player 2	
		Confessed	Did not confess
Player 1	Confessed	3 , 3	5 , 0
	Did not confess	0 , 5	1 , 1

The basic assumption in this game is that no party has the power to force the other to pledge not to confess in advance. In this case, clearly both players would confess. If Player 2 does not, Player 1 believes she should confess because then she would be set free and not spend a year in prison. If Player 2 confessed, Player 1 would rather confess too because that would slice her term from 5 years (if she does not confess) to 3 years. Thus from her point of view, Player 1 should always confess. Player 2 would analyze the situation in the very same way and, as a result, both Players confess and both serve 3 years, though if they cooperated and said nothing, they would spend only 1

that knowledge should stabilize the agreement to a certain extent, but players in a single-round game lack that knowledge.

In summary, regulation that requires disclosure could help legislators detract from lobbyists' ability to extort them. One argument maintains that such regulation could more easily reveal the extortion to the public and, assuming that legislators want to be reelected for office, knowing that would diminish their motivation for extortion. Another argument states that lobbyists may wish to join forces and present legislators with agreed-upon legislation products. Reacting to such coalitions, legislators might attempt to extort the parties to the agreement by offering them side benefits if they deserted the agreement. The disclosure duty might expose those side benefits and actually stabilize and guarantee the agreement. Thus, the disclosure duties that apply to all parties by law could weaken the legislators' ability to extort lobbyists who are in agreement among themselves. It has been found, therefore, that the regulation of lobbying could serve as a tool enforcing agreements between rival interest groups.

IV. FINAL NOTES

This Article offered five theoretical explanations that point at benefits that legislators and lobbyists could gain from legislation that regulates lobbying.¹⁴⁷ Assuming that the two parties make "deals," this Article focuses on the advantages both parties to a deal can attain when lobbying is regulated and shows some alleged benefits. Yet, pointing at these benefits does not necessarily nullify the benefits the public could gain from the regulation of lobbying through legislation. Such a move could regulate the relationships between decision-makers and those whose job it is to change their minds. Regulation is not designed to deny all access to decision-makers, but attempts to define how lobbying can be done without introducing conflicts of interests or biased influence.

year in prison.

Yet, if the parties play the same game repeatedly and have no predetermined final horizon, they may choose to cooperate so as to attain the best result for them. Tit for Tat is one form of potential cooperation strategy in which players collaborate in the first round and, from the second round on, each follows the strategy their rival chose in the previous round. Robert Axelrod has shown that a Tit for Tat strategy yields the best results for all playing parties. This means that players must never desert first, respond immediately and firmly when the other deserts, and remain willing to cooperate in games subsequently to the other player's desertion. For more on this matter see ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* 57-69 (Basic Books, 1984).

For a definition and discussion of the Tit for Tat strategy see AVINASH DIXIT, SUSAN SKEATH, & DAVID REILEY, *GAMES OF STRATEGY* 345-81 (New York, 2d ed., J. Repcheck ed., 2004).

147. See *supra* Part III.

Such legislation may follow from the desire to minimize the ability of certain groups to influence decision-makers' stances. The (rather few) relevant empirical studies conducted often came up with conflicting results, but a 2010 study conducted in the U.S.¹⁴⁸ showed that there is a connection between the regulation of lobbying by legislation and the degree of interest groups' influence on legislators. That study concluded that when countries expanded the regulation of lobbying, the influence of interest groups declined.¹⁴⁹ Similarly, when regulation barriers were lowered, the influence of interest groups on legislators expanded.¹⁵⁰ It should be stated that the study did not address the nature of that influence and its impact, but only showed a link between the regulation of lobbying and independent legislation.

Another empirical study examined the impact of lobbying regulation through legislation on the variety of groups that engage decision-makers.¹⁵¹ That study examined the veracity of a claim that the regulation of lobbying and the extent to which it is imposed creates entry barriers that might lead to discrimination against certain interest groups, presumably the stronger ones.¹⁵² The study findings show that the impact of regulation on the diversity of groups is negligible.¹⁵³ As noted in the first argument above, existing empirical studies that pertain to the impact of regulation on the number of registered lobbyists present conflicting results.¹⁵⁴

Another important issue pertains to the distinction between lobbyists and their clients in the specific context of lobbying regulation. The alleged paradox presented and described here focuses on the interests of legislators and lobbyist since comparative law shows that regulating legislation in the field imposes duties on them (on the government side, some parties impose such duties not only on legislators, but also on civil servants and other elected officials).¹⁵⁵ For example, the duties of registration, reporting, and disclosure apply to lobbyists, while restrictions on cooling periods and on the receipt of benefits apply to decision-makers. The violation of these regulations

148. Joshua Ozymy, *Assessing the Impact of Legislative Lobbying Regulations on Interest Group Influence in US State Legislatures*, 10 ST. POL. & POL'Y Q. 397, 409-14 (2010).

149. *See id.* at 414.

150. *Id.* at 411-14.

151. *See generally* Virginia Gray & David Lowery, *State Lobbying Regulations and Their Enforcement: Implications for the Diversity of Interest Communities*, 30 ST. & LOCAL GOV'T REV. 78 (1998).

152. *Id.* at 80-88.

153. *Id.* at 89-90.

154. *See supra* Part III.A.

155. CHARI, HOGAN & MURPHY, *supra* note 1; *see* Naveh, *supra* note 11, 65-70.

yields sanctions imposed only and exclusively on the perpetrating side. Thus, this Article addressed the independent interests of these parties.¹⁵⁶ Though it may be true that such legislation might indirectly impact interest groups and the public as a whole, this Article asks: How can legislation that imposes duties on both legislators and lobbyists be promoted even when these parties have the power to prevent or resist its enactment?

The discussion in this Article made no distinction between lobbyists' and their senders' (clients) interests since the arguments herein assume that organized and represented organizations (unlike the unorganized and unrepresented public) share interests. In this respect, these interests are even identical: both the lobbyists and their senders wish to improve their access to and influence on decision-makers while lowering the costs of these actions. Reference to the field of lobbying here (and elsewhere in the relevant literature) is the same as reference to an industry or organized and represented groups. Lobbyists and their clients are viewed as an industry that benefits from its moves vis-à-vis decision-makers (or legislators in this case). In itself, that industry should oppose any regulation that imposes costs, disclosure and reporting duties, and sanctions. In that sense, its interest is not scattered but coherent. And yet, though this industry is claimed to be powerful, the regulation of lobbying is introduced in a growing number of countries. The above explanations attempt to shed light on the optional benefits of such legislation for both legislators and lobbyists.¹⁵⁷

A distinction between lobbyists and their clients, however, could yield several additional ideas concerning interests pertaining to the regulation of lobbying through legislation. The explanations of the lobbyists' interests in such regulation presented in this Article—lowering the costs of obtaining information and minimizing the legislators' extortion powers—apply also to their clients since both lower the costs of lobbying for them as well. Yet, one can conceive of those clients' independent interests in promoting legislation that regulates lobbying. For example, such regulation could lower the costs of supervising interest groups and their lobbyists. Such supervision is complex. Laws that include sanctions motivate lobbyists to protect their reputation. That interest becomes even stronger when lobbying is viewed as an occupation that wishes to please two target audiences—the lobbyists' clients, and the decision-makers who pay lobbyists by allowing them better access to them, which could bring the lobbyists

156. *See supra* Part III.

157. *See generally supra* Part III.

new clients and improve the value of their reputation.¹⁵⁸ According to this approach, lobbyists attempt to satisfy decision-makers and their clients, all at the same time. Viewing lobbyists as having independent interests increases the inherent threat of director-representative relations that characterize the relationships between lobbyists and their clients. That threat makes supervising lobbyists' operation more necessary, and regulation could satisfy that.

One can conceive of another interest that strong interest groups may have for the regulation of lobbying through legislation. A lobbyist's decision on whether or not to represent an interest group can be viewed as an important signal directed at legislators, but also at strong interest groups. From the decision-makers' point of view, lobbyists lower the chances of them making wrong decisions and invest in votes that yield them no electorate gain, and help legislators understand when the number of people and groups that can benefit from their decisions is large enough to create such gain. The government has only partial information concerning the size of the group and the potential gain it could produce. Lobbyists help the government obtain such information and decrease the uncertainty that accompanies decisions it makes.¹⁵⁹ Governments benefit groups when they believe their expected profits exceed the costs of such benefits. From the interest groups' point of view, they address the problem of the free participant and the difficulty of forming organizations. Lobbyists help them address these problems and could minimize them. When lobbyists represent interest groups, it is a signal for decision-makers that the lobbyists believe these groups could potentially yield, or else they would not represent them.¹⁶⁰ In such situations, groups gain too because the presence of lobbyists indicates that the groups have value, which improves the chances that decision-makers would respond to their demands. On the other hand, when lobbyists refuse to represent an interest group, decision-makers can conclude that the lobbyists expect that group to provide low yield. In any event, the presence of a lobbyist, according to this view, is a valuable signal for both parties. Strong interest groups may want to promote the regulation of lobbying because, as part of that regulation, the relations between lobbyists and interest groups are made public.¹⁶¹ That signal has

158. That approach appears in the literature. See, e.g., Scott Ainsworth & Itai Sened, *The Role of Lobbyists: Entrepreneurs with Two Audiences*, 37 AM. J. POL. SCI. 834 (1993).

159. Daniel Weiser, *Why Lobbying Is Legal and Important in the U.S.*, INVESTOPEDIA, <https://www.investopedia.com/articles/investing/043015/why-lobbying-legal-and-important-us.asp> (last updated Apr. 30, 2015).

160. *Id.*

161. *Lobbyists, Interest Groups, and Power*, LOBBYIT (Feb. 24, 2015), <http://lobbyit.com/lobbyists-interest-groups-and-power>.

value for strong interest groups that may wish to promote the regulation of lobbying to show their value publicly, which in turn could improve their chances of succeeding in interactions with decision-makers.¹⁶²

When considering opening the lobbying market to competition, it would seem that lobbyists and their clients have conflicting interests. Regulation that creates significant barriers that hinder entry to the lobbying business might minimize competition, which conflicts with the interests of their clients. Competition serves the lobbyists' clients since it improves the quality of the product while lowering its cost. Conversely, lobbyists who promote regulation could try to create stronger barriers, which should help them minimize competition and form an alleged cartel.

Either way, given that existing regulations apply to lobbyists and decision-makers, this Article focuses on their interests in promoting legislation that imposes costs on them.¹⁶³

Finally, one may wonder whether lobbying is even effective and whether lobbyists make a difference at all. Empirically, this is a very challenging question because the effective measurement of lobbyists' activities involves very many elements that are hard or impossible to isolate.¹⁶⁴ Thus, the literature that attempted to answer that question should be viewed critically while understanding the difficulty of examining that issue. The attempts to appreciate the actual extent of lobbyists' influence as they appear in the literature addressed issues such as international trade,¹⁶⁵ financial legislation,¹⁶⁶ budget allocation,¹⁶⁷

162. A study by Ainsworth and Sened created a model that examines the balance created when groups are represented and not represented by lobbyists. Ainsworth & Sened, *supra* note 158, at 837-53. Among other things, their paper showed that the presence of lobbyists serves as a signal that lowers or improves the value of a group. *Id.*

163. See *supra* Part III.B, D.

164. John M. De Figueiredo & Brian Kelleher Richter, *Advancing the Empirical Research on Lobbying* 1-47 (Nat'l Bureau of Eco. Research, Working Paper No. 19698, 2013).

165. See generally Kathy Baylis & Hartley Furtan, *Free-Riding on Federalism: Trade Protection and the Canadian Dairy Industry*, 29 CAN. PUB. POL'Y 145 (2003); Jeffrey M. Drope & Wendy L. Hansen, *Purchasing Protection? The Effect of Political Spending on U.S. Trade Policy*, 57 POL. RES. Q. 27 (2004); Sean D. Ehrlich, *The Tariff and the Lobbyist: Political Institutions, Interest Group Politics, and U.S. Trade Policy*, 52 INT'L STUD. Q. 427 (2008); Kishore Gawande, Pravin Krishna & Marcelo Olarreaga, *Lobbying Competition Over Trade Policy*, 53 INT'L ECON. REV. 115 (2012); Kishore Gawande, Pravin Krishna & Michael J. Robbins, *Foreign Lobbies and U.S. Trade Policy*, 88 REV. ECON. STAT. 563 (2006); Seung-Hyun Lee & Yoon-Suk Baik, *Corporate Lobbying in Antidumping Cases: Looking into the Continued Dumping and Subsidy Offset Act*, 96 J. BUS. ETHICS 467 (2010); Grasse Nathan & Brianne Heidbreder, *The Influence of Lobbying Activity in State Legislatures: Evidence from Wisconsin*, 36 LEGIS. STUD. Q. 567 (2011); Andrey Stoyanov, *Trade Policy of a Free Trade Agreement in the Presence of Foreign Lobbying*, J. INT'L ECON., Feb. 2009, at 37; Samia Costa Tavares, *The Political Economy of the European Customs Classification*, 129 PUB. CHOICE 107 (2006).

166. See generally Scott Gehlbach, *The Consequences of Collective Action: An Incomplete-*

taxation,¹⁶⁸ immigration policies,¹⁶⁹ and more.¹⁷⁰ The literature showed that in the issues examined, lobbying is effective (though that fluctuates).¹⁷¹ It may be argued that lobbyists believe their actions are effective and that the situation would have been worse without them. It would seem that the key question here is whether lobbyists or their clients believe that lobbying is effective (and not whether lobbying is objectively effective). Evidence of whether that happens can be found in data that speak of the large sums of money invested in lobbying or the large number of lobbyists that operate in various countries.¹⁷²

To conclude this Article, we could say that the regulation of lobbying through legislation is constantly expanding. When we analyze the legislation market with economic models, we see that such regulation is made possible because it creates benefits for both legislators and lobbyists. This Article attempted to shed light on these benefits, which renders it innovative. The explanations presented here attempted to add another aspect when observing the regulation of lobbying—an aspect that should help understand what goes on behind the scenes and allow for the association of regulation and the interests of players in the field of legislation.¹⁷³

Contracts Approach, 50 AM. J. POL. SCI. 802 (2006); Yael V. Hochberg, Paola Sapienza & Annette Vissing-Jørgensen, *A Lobbying Approach to Evaluating the Sarbanes-Oxley Act of 2002*, 47 J. ACCOUNT. RES. 519 (2009); Atif Mian, Amir Sufi & Francesco Trebbi, *The Political Economy of the US Mortgage Default Crisis*, 100 AM. ECON. REV. 1967 (2010); Frank Yu & Xiaoyun Yu, *Corporate Lobbying and Fraud Detection*, 46 J. FIN. QUANTITATIVE ANALYSIS 1865 (2011).

167. See generally John M. De Figueiredo & Brian S. Silverman, *Academic Earmarks and the Returns to Lobbying*, 49 J. L. ECON. 597 (2006); Diana Evans, *Before the Roll Call: Interest Group Lobbying and Public Policy Outcomes in House Committees*, 49 POL. RES. Q. 287 (1996); Leif Helland, *Lobbying with Conflicting Interests: Norwegian Local-Central Relations*, 47 EURO. J. POL. RES. 184 (2008); Christine A. Kelleher & Susan Webb Yackee, *A Political Consequence of Contracting: Organized Interests and State Agency Decision Making*, 19 J. PUB. ADMIN. RES. THEORY 579 (2009).

168. See generally Brian Kelleher Richter, Krislert Samphantharak & Jeffrey F. Timmons, *Lobbying and Taxes*, 53 AM. J. POL. SCI. 893 (2009).

169. See generally Giovanni Facchini, Anna Maria Mayda & Prachi Mishra, *Do Interest Groups Affect US Immigration Policy?*, 85 J. INT'L ECON. 114 (2011).

170. For an extensive examination of the issue see FRANK R. BAUMGARTNER ET AL., *LOBBYING AND POLICY CHANGE: WHO WINS, WHO LOSES, AND WHY* 190-91 (U. Chicago Press, 2009).

171. See De Figueiredo & Richter, *supra* note 164.

172. For data see Ctr. for Responsive Pol., *Lobbying Database*, OPEN SECRETS, <http://www.opensecrets.org/lobby> (last visited Feb. 3, 2019).

173. See *supra* Part III.