Grassroots Advocacy and Lobbying

The First Amendment says in part that "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances."

The act of petitioning for redress of grievances has deep American roots, going back to pamphleteers like Thomas Paine's now-famous *Common Sense*. It is celebrated in our culture, from the paintings of Norman Rockwell[55] to the town council meetings on television shows, like *Gilmore Girls* and *Schitt's Creek*. In fact, the Supreme Court has said the right to petition government is "among the most precious of the liberties safeguarded by the Bill of Rights."[56]

Grassroots advocacy, also called "grassroots lobbying," is a term used to describe efforts to exercise petition rights. Grassroots advocates organize citizens, urge them to contact government officials, and educate the public in an effort to affect public policy in a classic American style. Grassroots advocacy includes activity as simple and common today as groups of people attending a city council meeting in colorful matching t-shirts to demonstrate to public officials strong public support for (or opposition to) a proposed measure.[57]

But not every decision is made in a town meeting. Some are made at the state level, far from many concerned citizens' homes and requiring other ways to organize and amplify a rallying cry. To reach larger groups of people, organizations have also used modern technology. Television and radio ads may describe a bill before the state assembly and urge citizens to call their representatives to support the measure. Other organizations, like the American Association of Retired Persons (now known simply as AARP), right-to-life groups, pro-choice groups, and Mothers Against Drunk Driving, have email lists they use to send "action alerts" about government hearings or bills that affect their core values. For many, social media campaigns are a crucial tool of modern grassroots advocacy. But no matter the technology, the goal is the same: educate and inform citizens, persuade them to care about an issue, and let elected officials know what the people want.

These groups form an important part of civic society. While their efforts don't always make the nightly news, these grassroots advocacy campaigns educate Americans about policies that make an impact on citizens' daily lives. In short, grassroots advocacy is vital to representative democracy in action.

Some states seek to regulate these organizations and their activity under grassroots lobbying laws that impose severe regulatory burdens and demand wide-ranging donor disclosure. These laws are not only highly suspect under the First Amendment; they strike at the very heart of American traditions and civic engagement.

In this portion of the Index, we do not seek to evaluate every type of state law that regulates petition rights. There are far too many. Instead, we limit our analysis specifically to some of the most widespread regulations – those that regulate grassroots advocacy directly and those that

force public reporting of supporters as a condition of lobbying. Whether states regulate or not in these two areas, and how severely they do so, serves as a proxy for how well the state respects the right to petition government.

The Supreme Court and Grassroots Advocacy

In *Buckley v. Valeo*, the Supreme Court directly addressed the "[d]iscussion of public issues"[58] – now referred to as "issue advocacy" or "issue speech." This speech, the Court held, is *precisely* what the First Amendment is designed to protect, as "there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs."[59]

In *Meyer v. Grant*, the Court emphasized this fact, particularly in the area of petitioning. The Supreme Court described the right to petition the government as "an area in which the importance of First Amendment protections is 'at its zenith.'"[60] The Court highlighted that the manner in which an individual or group exercises this right is their choice. "The First Amendment protects [individuals'] right not only to advocate their cause but also to select what they believe to be the most effective means for so doing."[61]

The Supreme Court has long demanded, therefore, a nexus between the regulatory requirements on grassroots groups and a substantially important interest from the government in the information it collects. The explicit purpose of such limits on what governments can require is to protect organizations merely discussing questions of public policy.[62] In short, citizens should not have to register with the government and detail their finances for expressing opinions on policy with their elected representatives.

State Regulation of "Grassroots Lobbying"

The states most protective of citizen petition rights – 19 of them in all[63] – have no grassroots lobbying laws. Alabama defines "lobby or lobbying" in terms of direct advocacy before a legislative or regulatory body.[64] Delaware[65] and Utah[66] have similar limitations. Wisconsin's definition of "lobbying" is ideal because it specifically *excludes* "[l]obbying through communications media or by public addresses to audiences made up principally of persons other than legislators or agency officials."[67] All these states survive – and their residents thrive – without burdening core First Amendment rights.

Other states regulate grassroots advocacy: requiring burdensome reporting and invasive disclosures of groups' finances and funding. Unlike other areas of the Index that touch on political campaigns, grassroots advocacy is far afield from traditional campaign finance law. Such statutes *directly* regulate petition rights, issue speech, speech about government operations, and the like. Quite simply, grassroots lobbying regulations should not exist at all. To the extent they do, they should impose burdens as minimally as possible.

Some states require organizations that engage in "grassroots lobbying" to register with the state and report their expenses, but do not require groups to report their contributors. Vermont does not require donor disclosure,[68] nor do the lobbying reports in Tennessee require a donor list.[69] Other states have disclosure requirements, but only for those donors who *earmarked* their gifts for specific grassroots advocacy campaigns

on pending legislation. In these states, the only individuals having their privacy violated are those who've specifically given financial support for a particular activity. For example, Washington only requires the names and addresses of donors who "contribut[ed] twenty-five dollars or more *to the ["grassroots lobbying"] campaign*."[70] Still other states, like New York, do not even allow this basic protection. It requires disclosure of all supporters who contribute more than $2,500 over the lifetime of the organization, if that group engages in grassroots advocacy.[71]

Requiring disclosure for grassroots advocacy organizations is particularly onerous. Once individual contributor information is made public, a record of a donor's support for certain causes is permanently etched into a government database and available online forever. Such reporting requirements open up individuals to harassment, threats, or financial harm simply for supporting a cause. Many supporters will choose not to give, and many advocacy groups will choose not to speak. This translates to less information heard by the public.

One way to partially mitigate the impact of grassroots lobbying laws (aside from eliminating all such laws) is to have a spending threshold for the activity that protects smaller campaigns, which may not even be aware of such requirements. For example, Minnesota's grassroots lobbying law is not triggered until an organization spends $50,000 "on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units."[72] California[73] and New York's[74] $5,000 reporting thresholds are paltry in comparison, but still manage to protect the smallest and least sophisticated speakers. Nebraska, by contrast, inexplicably has no monetary thresholds for registration and reporting of grassroots advocacy activities.[75] Groups engaged in grassroots advocacy in Nebraska must register and file burdensome reports with the government if they spend so much as a penny.

Additionally, such thresholds for reporting and disclosure should be tied to inflation so that the amount of speech protected from such laws does not diminish over time. In Montana, all thresholds for lobbying registration and reporting are indexed for inflation,[76] which means future speakers in Montana will not be more restricted than those trying to speak today.

Finally, states with grassroots lobbying laws that clearly identify what activities will trigger reporting obligations better protect issue advocacy from running afoul of these laws. One metric is whether regulation is based on speech that references specific legislation. Although grassroots advocacy laws are still objectionable, at least such states are clear about what activity is being regulated and provide some guidance for those speaking about government actions. For example, North Carolina enumerates a specific list of activities that trigger its grassroots lobbying law, including broadcast ads, direct mail campaigns, and website postings, among other methods of communicating.[77] States like New Mexico,[78] for instance, leave speakers to guess as to what speech will trigger the law. Generally, the broader the communications regulated by grassroots lobbying statutes, the larger the amount of speech that is affected, and possibly chilled. The Index penalizes these significant First Amendment burdens.

While the Index gives credit where it's due, many of these measures are minimal and do little to save laws that run roughshod over the American tradition of civic engagement. Socially conscious

groups must navigate a maze of red tape and confront the fear of being punished for violating grassroots lobbying laws. But the First Amendment was created, in large part, to protect these "political entrepreneurs"[79] who want to reach out to their representatives on topics that matter most to them. Thus, *any* grassroots lobbying law damages vital First Amendment rights, and the Index treats it accordingly.

Traditional Lobbying Regulation

Beyond "grassroots lobbying," there is an entire body of law applied to *traditional* lobbying, where someone is paid to meet with lawmakers and press a cause. The Supreme Court has not examined lobbying laws in the modern era, leaving states largely to police themselves. The Court last addressed lobbyist reporting requirements in 1954, when it determined that the First Amendment permitted the government to demand information concerning "who is being hired, who is putting up the money, and how much."[80]

This Index, however, does review and grade the 50 states on one particular aspect of state lobbying laws. When it comes to secondary disclosure – that is, identifying supporters of an organization that hires a lobbyist – those supporters' association rights are at risk. A mere "transparency" interest from the government is, therefore, inadequate to justify such an invasion of privacy. As the full Eighth Circuit recently found, far-reaching claims for "transparency" are not enough to support detailed donor disclosure reports, especially when no money was involved in the supposed lobbying.[81] States that do not have a donor disclosure law for groups that engage in traditional lobbying – either by hiring a lobbyist to engage on a policy issue or choosing to do the lobbying itself – better protect the privacy rights of citizens and advocacy groups.

As an example, New Hampshire, like the vast majority of states,[82] does not require donor disclosure for groups that have employees who lobby or hire lobbyists.[83] On the other end of the spectrum, Pennsylvania requires donor disclosure for groups that choose to lobby on an issue. This reporting requirement "also includes dues and grants received by" the lobbying entity.[84] This type of disclosure is invasive, burdensome, and misleading to the public – as it identifies individuals and groups as supportive of a particular lobbying effort that they may be unaware of or even oppose. Imagine, for example, an environmental organization that hires a lobbyist to advocate against a particular farm bill. Supporters of that organization may include farmers largely supportive of the group's environmental causes, but not the group's position on the bill in question. In such an instance, a law like Pennsylvania's would report a supporter of the bill as spending in opposition to it. It's also an inappropriate attempt at undermining Supreme Court precedent[85] and an American tradition that protects the privacy of a group's members.

By creating vast and arbitrary obstacles to expressing views on public policy, overly burdensome grassroots advocacy and lobbying laws inhibit citizens and civic and advocacy groups from exercising their right to petition the government and encouraging their fellow citizens to do the same. These laws strike at the very heart of the First Amendment's protections of speech and petition rights.