

**A Theoretical Foundation for
Assessing Principal-Agent Problems in Lobbying Ethics and an Empirical Test**

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Interest Groups & Advocacy
6(October 2016): 272 – 289

Presented at the Annual Meeting of the Southern Political Science Association, San Juan, Puerto Rico, 2016.

Abstract

The lobbying industry is frequently held out as the most unethical part of the American political system, corrupting the governing system for the benefit of special interests at the expense of the public interest and thus in need of stern regulation, if lobbying must be permitted at all. But what does it mean for a lobbyist to be “unethical,” or “ethical” for that matter? Is there such a thing as ethical lobbying? In this paper I argue that theoretical models of how lobbying works and Constitutional protections of the profession, taken together, provide a foundation for determining what kinds of lobbying might be considered ethical, and why lobbyists frequently slide into ethical gray areas. I then use data from interviews conducted with lobbyists working on six issues over a period of four years to empirically test explanations as to why lobbyists might behave in a way arguably unethical. Finally, I end the paper by speculating on what might be done to constrain lobbyists into behaving ethically.

Keywords: lobbying, ethics, interest groups, principal-agent, information asymmetry, advocacy

Americans do not trust lobbyists. A 2013 poll found that 83% believed elected officials were more interested in helping the “special interests” represented by lobbyists than their own constituents.¹ It is not hard to understand such cynicism. In 2014 the lobbying industry spent \$2.41 billion advocating for interest groups and corporations in Washington, DC, and well-heeled contributors gave \$3.67 billion the same year to re-elect their lawmakers “friends” to office.² Lobbyists also seem to act with impunity, often ignoring the laws regulating their profession, when they even bother to learn what those laws are (Rehr 2012). The 2005 corruption trial of lobbyist Jack Abramoff, who ripped-off his clients, showed that people cannot even trust their own advocates. How can anybody trust paid representative-agents who feel free to deceive them? Where are their professional ethics? Nowhere apparently. When the American League of Lobbyists, a professional association for lobbyists, tried to create a code of ethics based on the idea that lobbyists should give their clients the most honest representation possible, lobbyists shrugged and the effort was abandoned (Dwoskin 2012; Hartnett 2015).³

What, though, does it even mean to talk about ethical lobbying? While some frame it around a notion of lobbying for the public good, I argue that lobbyists are ethical only when they advocate for positions on issues *exactly* reflecting the wishes of just the people they represent, whether those principals are corporate CEOs or people in interest groups. This is because the only legal justification lobbying has comes from the First Amendment, which protects it if it involves honestly petitioning on behalf of citizens. Unfortunately lobbyists are often not faithful to the interests of their employers. Nor is it easy for them to be faithful, given that their success depends on the goodwill of powerful lawmakers. To explain this, I develop a principal-agent model of lobbying where lobbyists are pressured by legislators and competitor groups to make compromises, but are also constrained at times by the people they represent. Analyzing the

decisions of eighty-three lobbyists on six issues, I find evidence that lobbyists frequently are pressured into advocating for positions at odds with what their employing principals wanted. They often get away with it because their members and clients depend on them to know what is going on, the problem of information asymmetry. I conclude with suggestions for reform to help reduce the ethical problem created by this unequal principal-agent relationship so that lobbyists can fulfill their First Amendment-protected role.

Lobbying and the Constitution

The whole notion of regulating lobbying, as opposed to say banning it, assumes there must be some idealized form of it that is important to protect. Deviations from this ideal, whatever it is, are therefore dangerous and must be dissuaded with regulation. In many white-collar professions, associations determine ideal forms of conduct, which they reinforce with canons of ethics and sanctions for violating those ethics.⁴ With the American League of Lobbyists failing to convince lobbyists to voluntarily adhere to an ethical code, responsibility for policing the profession falls to government. But what ethical standard should government use when designing such regulations? What is ethical lobbying? Lobbyists themselves claim their profession is protected by the Constitution's First Amendment (e.g., Susman 2008; ABA 2011), which is why it cannot be banned, so it makes sense to look there for the basis of a definition.

The last two clauses of the First Amendment – that Congress cannot make a law banning “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” – capture the two fundamental aspects of interest group politics. The right to peaceably assemble, of course, is the freedom to engage in collective action. It is the other, however, petitioning government for a redress of grievances, which justifies and thus protects

lobbying. The petitioning clause has a long history in the English common law, making it perhaps the oldest right Americans enjoy. Signing Magna Carta in 1215 obligated King John and his successors to answer petitions for redress from any lord of the realm feeling aggrieved by royal authority (Holt 1992). By holding the king accountable for his actions, petitioning became nothing less than the foundation of the rule of law. Growing parliamentary representation in the 13th and 14th centuries extended petitioning, and thus accountability, beyond the nobility. When the Glorious Revolution brought constitutional government to Great Britain in 1688, petitioning for redress became a basic right of all Englishmen (Lawson and Seidman 1999).

The right to petition came to America through the royal chartering of colonial governments, where decisions on petitions were often used by colony legislators as the basis for both judicial verdicts and general laws (Higginson 1986). In 1776 Thomas Jefferson framed the Declaration of Independence as a list of petitioned grievances against King George III, arguing that the king's failure to provide redress, or even acknowledge receipt of the petitions, annulled the social contract and legitimized revolution. Jefferson's protégé James Madison believed petitioning to be so important that it and the right of assembly formed the original draft of the First Amendment (Higginson 1986, 156). So Americans today have the constitutional right to petition government, but because today's government is so big and complicated, citizens seem to need professional petitioners to do it on their behalf. Thus lobbying, as lobbyists like to remind their critics, is nothing less than professional petitioning on behalf of American citizens (Jankowsky 2006; Allard 2008). It is also nothing more.

While the U.S. Supreme Court held in *NAACP v. Patterson* (1958) that the First Amendment's freedom of assembly clause indeed does guarantee the right of people to overcome collective action problems and form interest groups for political representation, it has

not always been willing to protect the right of these groups, or any lobbyists they hire, to advocate for the people they represent. In fact the Court in 1874's *Trist v. Child* found no protection at all for lobbying. In this case, lobbyist Linus Child argued that his contract with one N.P. Trist promised him 25 percent of all monies procured from his lobbying of Congress for the payment of a claim Trist had against the government. After a few private meetings with lawmakers, Child persuaded Congress to pay Trist. Trist refused to share, and Child sued him. Unfortunately for Mr. Child, the Court decided that lobbying was morally offensive, no different from murder and sacrilege. Child's suit failed because his depraved acts of lobbying could not possibly entitle him to a cut of Trist's money. The First Amendment was never mentioned.

The Amendment was, however, front and center nearly a century later when the Court again evaluated the lobbying profession in the wake of Congress's first serious attempt to control it in 1946 with the Federal Regulation of Lobbying Act. In *Rumely v. the United States* (1953) the Court held that lobbying could not be banned because the First Amendment protected lobbyists as professional intermediaries linking citizens to their government. While Congress could regulate lobbying to protect itself and society from corruption, lobbyists were constitutionally protected as professional petitioning agents. The Court gave an even stronger affirmation to First Amendment protection the following year in *Harriss v. the United States*.

Arguably the Court's most definitive endorsement of lobbying protection came in *Eastern Railroad v. Noerr Motors* (1961). The Pennsylvania Motor Truck Association claimed that the competing Eastern Railroad Presidents' Conference had illegally hired a public relations firm to bolster its anti-trucking lobbying efforts. The Court, however, held that this was perfectly legal as long as the lobbying did not lead to a monopoly violating anti-trust laws. Any organization's lobbying, whether direct or indirect through a PR firm, was constitutional under the First

Amendment's petitioning clause because it helped lawmakers gain information about crucial constituencies that they needed to make good economic policy.

The Court's interpretation of the petitioning clause is the only legal protection lobbying has so it is the only standard against which lobbying behavior can be judged as ethical. It is protected when its practitioners petition on behalf of citizens, helping lawmakers better understand and thus address the concerns of different social and economic interests as required by the social contract. Consequently, lobbying is ethical when lobbyists accurately and honestly tell lawmakers *exactly* what policy outcomes their principals want and nothing more, regardless of whether their employers are individual citizens, interest group members, or corporations. Any change of position without the principal's explicit approval, any substitution of the lobbyist's personal interests for those of the employing citizens, sacrifices the constitutional protection and renders the lobbying unethical, even if the change ultimately benefits those citizens.

While the rapid growth of lobbying in Washington, state capitals, city halls, and county courthouses have led to greater concerns about lobbying, few scholars appear concerned about faithful representation. Instead most concerns regard the sheer amount of money in lobbying (Kaiser 2009), the tendency of elected officials to cash-in on their connections as they become lobbyists (LaPira and Thomas 2014; Lazarus, McKay, and Herbel 2016), and failure to comply with the Lobbying Disclosure Act and the Honest Leadership and Open Government Act (Rehr 2012), laws that cannot even capture the link today between lobbying, campaign financing, and public relations consulting (Susman 2006; Gerken and Tausanovitch 2014). Many state lobbying laws are even more opaque than Washington (e.g., Newmark 2005; Ozymy 2010; Flavin 2015). Almost nobody, though, is concerned about the problem of lobbyists being unfaithful agents for citizen principals, perhaps because there is no clear evidence that the problem exists.

Pressures and Counter-Pressures

Before looking for evidence of unfaithful lobbying, it is worth asking why would a lobbyist ever lobby for policy outcomes at odds with their member or corporate principals' interests, risking their reputations and careers? The answer begins with being clearer about a lobbyist's motives. Scholars too often fail to distinguish between lobbyists and the interest groups or corporations they represent, assuming advocates and organizations are one and the same when it comes to interests, motivations, and actions. Perhaps this was justified when lobbying was more of a passive activity. Milbrath's study of lobbyists in 1963 found them to be fairly independent of their employers because of sheer geographic distance, but for this very reason most lobbyists' primary job was just to keep their employers informed about goings-on in Washington, a finding re-confirmed years later by Schlozman and Tierney (1986). Clients wanted to keep an eye on Washington, and lobbyists were happy to be paid to do it.

The first scholar who appears to have taken seriously the idea that lobbyists' motivations might be distinctly different from the people they represent, or at least wanted to represent, was Salisbury in his 1969 paper on exchange theory. Here he argued that lobbyists and members have fundamentally different motivations for forming interest groups. Members want the select material benefits of membership that lobbyists must provide, while lobbyists want long, lucrative careers. Lobbyists, Salisbury realized, serve member interests only to the extent that doing so advances their own career interests.

Ainsworth and Sened followed up on this insight in 1993, arguing that not only are lobbyists agents with motivations separate from their employing principals, but the nature of lobbying means they are often influenced by competing motivations that strain the integrity of the principal-agent relationship. Lobbyists, it has long been known, gain access and influence by

convincing elected officials that supporting the lobbyists' employers in turn helps those lawmakers achieve their own goals (Hansen 1991; Austen-Smith 1993), but Ainsworth and Sened realized that the needs of interest group members or clients may not always align with those of the legislators with whom the lobbyist has built relationships. Group members or clients provide employment, but legislators control access to the policymaking process. Therefore, Ainsworth (1997) further argued, it tends to be more important for lobbyists to keep their legislator allies happy than their employing principals. If lobbyists must choose between the interests of legislators controlling access or their employing principals, the former often win-out. Principals may not even know their lobbyist-agents have gone rogue.

Kersh (2000; 2002) argues that this prioritizing of legislator needs and goals over employer interests occurs with alarming regularity. In his field on healthcare policy, he saw lobbyists exploit their employers' ignorance of Washington politics to help lawmakers move legislation advancing policy compromises and personal goals that hardly reflected the wants of lobbyists' principals. He even interviewed a lobbyist who *admitted* to putting the needs of legislators over clients (2000, p. 247). Principals rarely find out because it is hard and expensive to monitor their agents; they are too dependent on these agents for information on what is going on. The very information-providing role Milbrath found to be a normal part of a lobbyist's job actually allows them to quietly serve somebody else's interests without getting caught.

The corruption trial of lobbyist Jack Abramoff in 2005 revealed just how easy it is for lobbyists to exploit this control of information to rip-off clients, finally attracting scholarly attention to the problem of information asymmetry. The problem is that agents can exploit principals because the latter depend on the former for knowing what is happening, which undercuts the claim of lobbyists to be legitimate providers of representation (Stephenson and

Jackson 2010). Drutman (2015), and Lowery and Marschetti (2012), argue that lobbyists use this information advantage to perpetuate lucrative careers, convincing employers there are major issues in need of expensive lobbying when a closer look might reveal that the problems are not quite so big and urgent. While Schiff et al. (2015) find little evidence of wildly over-charged clients, the larger message is clear - if interest groups and corporations are spending millions each year to buy representation in Washington, the buyer had better beware.

But are lobbyists actually advocating for positions on issues other than those their employers desire? As long as lobbyists must maintain portfolios of relationships with powerful lawmakers to have profitable careers, then conflicts of interest are almost inevitable. Former legislators are so successful in the lobbying market precisely because they have these relationships (LaPira and Thomas 2014). Consequently, it may be more important for lobbyists to stay in the good graces of key lawmakers by helping them advance their interests than be myopic advocates for client interests when those interests conflict, especially when lobbyists can slip out of this rock-and-a-hard-place by exploiting their information asymmetry advantage over clients. When push comes to shove it is hardly surprising that lobbying ethics, faithful representation in the face of adversity, is the first casualty.

A Model of Lobbying Under Pressure

For a clearer idea of when and why lobbyists might support policy outcomes different than those their members or clients prefer, I sketch a simple model of lobbying for positions on issues. The model rests on Salisbury' (1969) assumption that lobbyists are analytically distinct from the people or institutions they represent. They are goal directed in that they want long, lucrative advocacy careers, which I further assume is defined by each lobbyist's ability to

influence the lawmaking process on behalf of more and wealthier clients. The more powerful, highly placed legislators with whom a lobbyist has built influential and enduring relationships, the greater the lobbyist's market value. This also means the key to a successful lobbying career is building and maintaining this relationship portfolio. Since this is hard to do in an environment like Washington, DC where there are far more lobbyists than legislators, keeping legislator allies happy becomes each lobbyist's overriding motivation.

These assumptions are still not enough to claim that lobbyists face ethical challenges by supporting legislator allies at the expense of group members or clients because there should not often be a difference. Legislators are also goal directed in that they want to be re-elected and enact desired policies (Mayhew 1974; Dodd 1977). Washington, however, is a cacophony of noisy information, much of it useless to legislators who then need to structure reliable information sources to get what they need and dispense with the rest (Kingdon 1973). Lobbyists gain access by helping legislators cope with this chaos, selling themselves as reliable sources of useful information on the desires of key constituencies and financial supporters. Hansen (1991), for instance, described agriculture lobbyists gaining access by bringing agriculture-state legislators clear constituent demands, policy solutions to those demands, and promises to give lawmakers credit for enacting those solutions on election day, all of which forms the basis for the theory of information exchanged for access (Austen-Smith 1993; Wright 1996; Lohmann 2003). Providing this support helps legislators help themselves by helping the lobbyist's members or clients; everyone's desires are simultaneously satisfied and the lobbyist has behaved ethically.

Ethical challenges arise for lobbyists because their legislator allies are often under pressure themselves to support policy positions at odds with the desires of key constituencies and supporters. Representative democracy and legislative governance depends on building

consensus and majority coalitions. Presidents and legislative leaders therefore pressure individual lawmakers to support positions different from the outcomes preferred by their own supporters as represented by their lobbyist allies. In other words, the need to enact policy in a majority-rule system requires broad support for compromise positions. Since lobbyists are conduits to key constituencies, legislators often need them to also support compromise positions, and then either sell those compromises to group members and clients or use the information asymmetry advantage to fudge the magnitude of the position change or just not mention it at all. Empirically this means the greater the pressure from legislator allies to support a position at odds with the one preferred by members or clients, the greater the likelihood the lobbyist will do so.

The need to stay on the good side of legislator allies makes compromising group member or client positions tempting. Information asymmetry makes it possible, but not always. While members and clients generally depend on their lobbyists to keep them informed about goings-on in Washington, they may be harder to deceive, and more willing to punish their lobbyist if deception is uncovered, when they feel intensely about an issue. They may be willing to invest the time and resources to track the issue themselves, and, consequently, keep tabs on their lobbyist. Assuming the lobbyist knows this, he or she may resist legislator pressure. But lobbyists often represent many group members, and so are only likely to incur the wrath of legislators by refusing to support compromises when most of their principals feel strongly about the issue *and* are relatively unified in the positions they want their lobbyist to support.

I diagram in Figure 1 how this might work. The top horizontal line is the distribution of ideal policy preferences for five legislators with whom a lobbyist is allied with. The bottom line is a continuum of policy preferences for the group members a lobbyist represents, which in this case I assume are distributed in two forms of bell curves.⁵ The narrower, taller curve represents

members who feel intensely about the issue and are united, while the dashed, flatter curve is the opposite. The middle horizontal line is a continuum of positions on an issue actually supported by the legislators and the lobbyist. For their own reasons the five legislators are supporting a compromise position far to the left and pressure the lobbyist to do the same. An ethical lobbyist supports the position at the center of both curves because that position alone reflects more member preferences than any other. A less ethical, but more strategic lobbyist only supports this position when members care intensely and are united, but as the tall narrow curve gives way to the flatter curve, the lobbyist is able to take advantage of information asymmetry and shift his or her position left into Figure 1's gray area to accommodate legislators at members' expense.

---- Insert Figure 1 about here ----

Pressure from legislators may also not be the only tug on lobbyists to compromise their members' or clients' preferred positions. Holyoke (2009) finds lobbyists changing positions as they build coalitions in response to the array of interest groups competing against them on issues. Coalition politics is an important topic today (e.g., Hojnacki 1997; Heaney 2006), but what scholars often miss is that when coalitions form around issues, only one position can be collectively supported. Lobbyists must therefore compromise member policy preferences to join an issue coalition, either to avoid expensive political combat with other lobbyists or because their legislator allies are pressuring everyone to back a compromise. Either way this competition pressures lobbyists into making compromises unless constrained by members and clients.

Research Design

To learn whether lobbyists really advocate for positions other than those ideally preferred by the group members or clients they represent, considered here to be potentially unethical

behavior, under pressure from legislator allies and competing interest groups, I need three things. First, an indicator of what positions on issues lobbyists actually lobbied for that can be a dependent variable in a statistical analysis. Second, a measure of member or client ideal policy preferences independent from observations of what lobbyists lobbied for. Finally, measures of the other pressures on lobbyists from legislator allies and competing groups.

The measures all come from my work on competitive lobbying in Washington, DC (Holyoke 2011). I selected six issues Congress actively worked on from 1999 to 2002, a time frame covering two congressional cycles. The issues were selected from three policy domains: banking, environmental conservation, and agriculture.⁶ Lists of all issues taken-up in the form of active bills or rules in each domain were generated from articles in *Congressional Quarterly Weekly Report* and the *New York Times* for the four years. The issues for each domain were then divided into two categories by their degree of public salience. Salience was measured as the number of articles for each issue, with a high-salience category containing issues mentioned more than one standard deviation over that domain's mean. The others remain in a low-salience category. One issue was then randomly selected from each category.

In 2003 I interviewed eighty-three lobbyists for interest groups or corporations lobbying these issues, identified using the articles from *CQ Weekly* and the *Times*. The interviews were semi-structured with a number of open-ended questions asking about issue contexts and several closed-ended questions used to build the variables. For each issue I identified four pieces of legislation or administrative rules proposed as policy solutions to each issue-question over the four years. Each was arrayed on a simple, ordinal left-right continuum indicating whether one was more regulatory / spending heavy (liberal-left) or less (conservative-right).

I asked each lobbyist which bill or rule best reflected the way his or her members or clients wanted to see the issue resolved with policy, which allowed me to pinpoint the principal's collective ideal position. Then for each bill or rule I asked each lobbyist whether he or she lobbied for it or against it, making it possible to identify cases where lobbyists lobbied for bills or rules representing positions *not* ideally preferred by their principals. From these responses I coded a binary variable 1 if the lobbyist supported a bill at a position other than the one members or clients wanted, which is my dependent variable in the multi-variate analysis below. This also structured my data matrix so that there is one observation for each lobbyist on each of the four policy solutions to each issue.⁷ In Figure 2 I use this variable to show pretty clearly that lobbyists fairly often (35% of the time) lobbied for positions different from those their principals preferred, acting contrary to the First Amendment justification for protected lobbying.

---- Insert Figure 2 about here ----

I created a legislator pressure variable by first assuming that lobbyists are under the most pressure to change positions from ideologically aligned legislators who are themselves changing positions. For each issue I identified every legislator sponsoring or co-sponsoring a bill involved with the four policy solutions forming my left-right scale.⁸ I assumed that these are the legislators most concerned with the issue. Then I found each legislator's Poole and Rosenthal Common Space Score for the 106th and 107th Congresses and used these scores to divide them into quartiles, the liberal most quartile to most conservative. I assumed that the four quartiles correspond to the four policy proposals with legislators in the liberal-most quartile supporting the liberal-most proposal, and I assumed that lobbyists whose client ideal positions matched a proposal were allied with the legislators in the quartile also connected to that proposal's position. So, if some or all of the legislators in that quartile sponsored or co-sponsored a bill supporting a

different position, I interpreted this to mean these legislators changed their positions and pressured their ideologically aligned lobbyist to do the same. Thus the percentage of legislators in a quartile changing positions is the pressure score on the observed lobbyist. All variables are summarized in Table 1.

---- Insert Table 1 about here ----

The other explanation for why lobbyists deviate from their principals' positions is pressure from competing interest groups. Two or more groups are defined as competitors when their members collectively prefer different positions on the same issue. If each observed group is indexed as i , and every other working the same issue is j , with x_i marking the observed group's ideal position and x_j another group's position, then any pair are competing when $|x_i - x_j| > 0$. How meaningful the competitive threat is depends on the resources each can bring to an advocacy fight. If r is each group's resources, then the degree of actual competition between the two is now $|x_i(r_i) - x_j(r_j)|$. So the total competition any lobbyist faces on an issue is the sum of the spatial difference between his or her group and the sum of the others weighted by resources.

However, even if the principals' ideal positions of two lobbyists are different, if both are more liberal (or more conservative) than the position of the policy proposal in question, then presumably both want to shift the position towards them, even if they disagree on how much. Thus I further define *actual competition* as when the observed lobbyist faces another whose members' ideal position is on the other side of the position of the bill in question, designating that competitor's position as x'_j . The actual competition a lobbyist faces, c_i , changes from a policy proposal at one point in time to another later in time depending in the position of each bill. So the measure of competition used is the ratio of actual competition to the total competition that each lobbyist i could have faced on the observed proposal, with r measured as annual budget:

$$c_i = \frac{\sum |x_i - x'_j| (r'_j)}{\sum |x_i - x_j| (r_j)}$$

Every lobbyist's annual budget comes from the 2002 directory *Washington Representatives*.⁹

To fully operationalize a principal-agent model, I also needed to capture the pressure members and clients may exert over their lobbyists, overcoming information-asymmetry and holding the lobbyists back from compromising their collective interests. I asked five questions in the interviews about members / clients. One was how important the issue was to them, another was how cohesive members collectively were around a single position, another was how hard it was for lobbyists to find common ground among members, another was how flexible members were about supporting positions other than their personnel ideal, and the last was about how hard it was for members to compromise and find a common group position. All were coded 1 through 3 so that 3 meant high member interest and collective unity, and thus less toleration of their lobbyist supporting any position other than the collective ideal. I averaged the answers to these five questions for a single member / client constraint measure.

A few control variables were also created. Lobbyists may be less inclined to make compromises on issues with a higher public profile, so I coded a dummy variable 1 if this was one of the three highly salient issues. While the relationship between campaign contributions and legislative influence is murky at best (see Grenzke 1989), it may be that lobbyists for organizations contributing large amounts of money may feel less need to compromise. I therefore obtained data on the total amount of contributions each organization made from 1999 to 2002 from the Center for Responsive Politics and use it as a control variable.

The influence of organizational resources on advocacy strategies is murky, with at best a highly conditional influence (Baumgartner et al. 2009). Nonetheless, lobbyists representing stronger organizations may well feel less need to make compromises. Annual budgets are

already part of the competition measure, so for a control I use the number of in-house and contract lobbyists the group has, also drawn from *Washington Representatives*. It may also be that the age of the organization the lobbyist represents matters, for young organizations may feel more need to prove themselves by taking firmer stands on issues. *Washington Representatives* provides the founding date for all of the groups in my database, so I simply subtracted the founding year from 2000 and entered the result as a control variable. Finally, while there is little evidence that the influence of group competition or conflict increases at difference points in time and stages of the lawmaking process (Brasher 2006; Holyoke 2011, Ch. 6), I nonetheless use a simple time control variable. It is a simple indicator of whether each bill for which a lobbyist's choice is observed was the earliest in time (coded 1), second, third, or the most recent (coded 4).

Multivariate Analysis

Since the dependent variable is a simple binary indicator of whether the lobbyist supported a position other than the one ideally preferred by members or clients on an observed bill or rule, I estimated the influence of the independent variables on this observed choice using a probit model with robust standard errors.¹⁰ The estimates are displayed in Table 2. They show, at least on these six issues, that lobbyists chose to support positions other than those ideally preferred by their principal when pressured to do so by members of Congress, and under pressure from competition with lobbyists for other interest groups, lobbyists with whom they were pressured to strike deals and build coalitions. Yet such arguably unethical compromises could be prevented under intense and united pressure from principals. Vigilant citizens *can* constrain their petitioning agents when they feel strong enough about the issue and are relatively united.

---- Insert Table 2 about here ----

To get a better sense of the relative magnitudes of these pressures and constraints I graph in Figure 3 the predicted probabilities that lobbyists will support positions different from those ideally preferred by their members or clients using the interest group competition pressure, legislator pressure, and member / client constraint variables. At least on these six issues, pressures from legislator allies and competitor groups exert significant influences on the strategic decisions of lobbyists. These support the paper's key point, that the need to work with and please powerful players in Washington can pull lobbyists away from advocating for exactly what their employing principals want on issues. The predictions here also suggest that pressure from competing groups to bargain and compromise is greater than pressure from legislators. While it is beyond the ability of this analysis to untangle, it may be that legislators are also indirectly pressuring lobbyists through competitor groups, as well as these competitors independently pressuring lobbyists to compromise, which I have elsewhere labeled respectively indirect and direct competitive effects (Holyoke 2011, Ch. 2). Nonetheless, this shows that the need to maneuver the treacherous waters of national politics frequently forces lobbyists into compromises in order to achieve the goals of furthering personal careers.

---- Insert Figure 3 about here ----

The member / client variable exhibits a strong constraining effect as well, and this suggests that there really are circumstances when lobbyists do not dare support a policy position other than the one ideally preferred by the people they represent. Of course what these results cannot reveal is whether lobbyists, when they are supporting other positions, are unethically misrepresenting their members by dissembling on whether there is a difference and its magnitude, perhaps even lying to them or not telling them anything, relying on information asymmetry to protect them. That is absolutely unethical as I have defined it. Yet it may also be

true that the deviation was made only after convincing them of the merits of supporting compromise positions. That may be ethical if the principals understood and explicitly agreed.

Regulation and Reform

As I have argued elsewhere (Holyoke 2015a), lobbying for positions on issues other than those the clients or members, the principals in the principal-agent relationship, want is not itself inherently unethical. It depends on the circumstances under which the shift happens and what the principals have approved. If a lobbyist lobbied for policy positions different from what employers ideally wanted, but did so with their explicit permission, then there is no ethical problem. If not, then lobbyists are not providing representation for any collection of citizens; their actions cannot be justified and protected by the First Amendment's petitioning clause. They are not acting ethically.

While many in the lobbying industry have promoted various kinds of reforms to solve various problems, those usually involve more competition between lobbyists, pro-bono lobbying for disadvantaged populations, and roping more kinds of advocates into the existing disclosure regime under the Lobbying Disclosure Act (Krishnakumar 2007; Allard 2008; Luneburg 2009; ABA 2011). Academic proponents of reform recommend greatly increasing the public disclosure of information about lobbyists, including the use of expanded definitions of who counts as a lobbyist and what kinds of tactics should be considered as lobbying for the disclosure (Woodstock Theological Center 2002; Fernandes 2009; Gerken and Tausanovitch 2014; Yackee 2015). The article by Christine Mahoney and Lee Drutman in this issue of this journal proposes such a system, basing it on the disclosure system by the European Union (also see McGrath

2008; Greenwood and Dreger 2013). All useful, but perhaps missing the point from an ethical, First Amendment point of view.

Political theorist Jane Mansbridge (1992) once argued that lobbying is desirable when the profession's practitioners directly engage their members and clients, convincing them of the potential merits of alternative policy positions and compromises with competing social and economic interests. Her argument implicitly recognizes that the First Amendment does not make a lobbyist accountable to the public, or require him or her to consider the public good when lobbying. The petitioning clause makes them responsible solely to the people they are employed to represent, on whose behalf they are petitioning the government for a redress of grievances. I agree that more disclosure is needed regarding the lobbying profession, but it is disclosure to interest group members or clients that I think is essential, disclosure that clearly reveals the precise positions lobbyists are lobbying for at any given time on an issue.

I lay out in more detail my recommendations for reform elsewhere (see Holyoke 2015a), but briefly put they center on writing and filing position papers. All lobbyists lobbying an issue in Congress (hopefully with a more expansive definition of who counts as a lobbyist) would have to file such a paper and make it available to their members and clients. Every time they change positions, whether under pressure from the lawmakers they have hitched their stars to or as a condition of joining a coalition of competing lobbyists where everyone agrees to support a common position, the lobbyist must file an amended position paper. Moreover, because reform generally fails when the hoped-for beneficiaries (in this case group members and clients) do not make use of the information or cannot understand it (Weil et al. 2006), lobbyists would immediately have to inform their principals about any policy changes with clearly written amended position papers, and seek their explicit approval of it.

This kind of reform is certainly possible with the kind of social media technology available today. Just recently several political organizations started using private (members only) discussion groups on Facebook to solicit member input, which would also be a great way to quickly get feedback on new positions lobbyists feel they must take on issues (Travis 2015). Only by keeping members and clients informed, and involved in the decision making process, and motivating lobbyists to justify their position changes, and perhaps even educate members on the necessity of such changes, can we ensure the integrity of our system of interest group politics, making lobbying worthy of First Amendment protection. Only this way can lobbying be ethical.

Figure 1: Ethical lobbying positions and competing legislator pressure

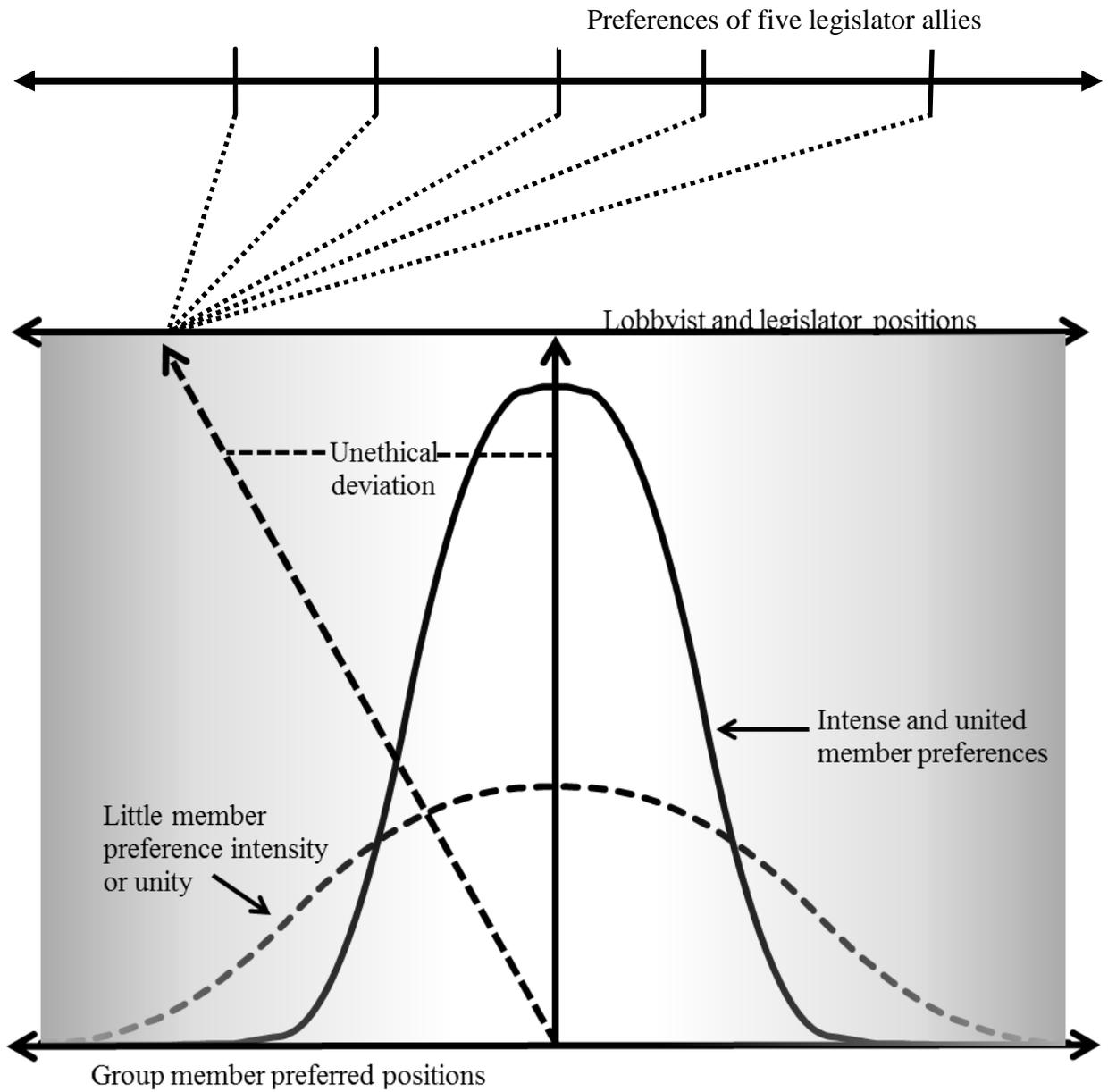


Figure 2: Percentage of times a lobbyist supported a position other than the one ideally preferred by members and clients

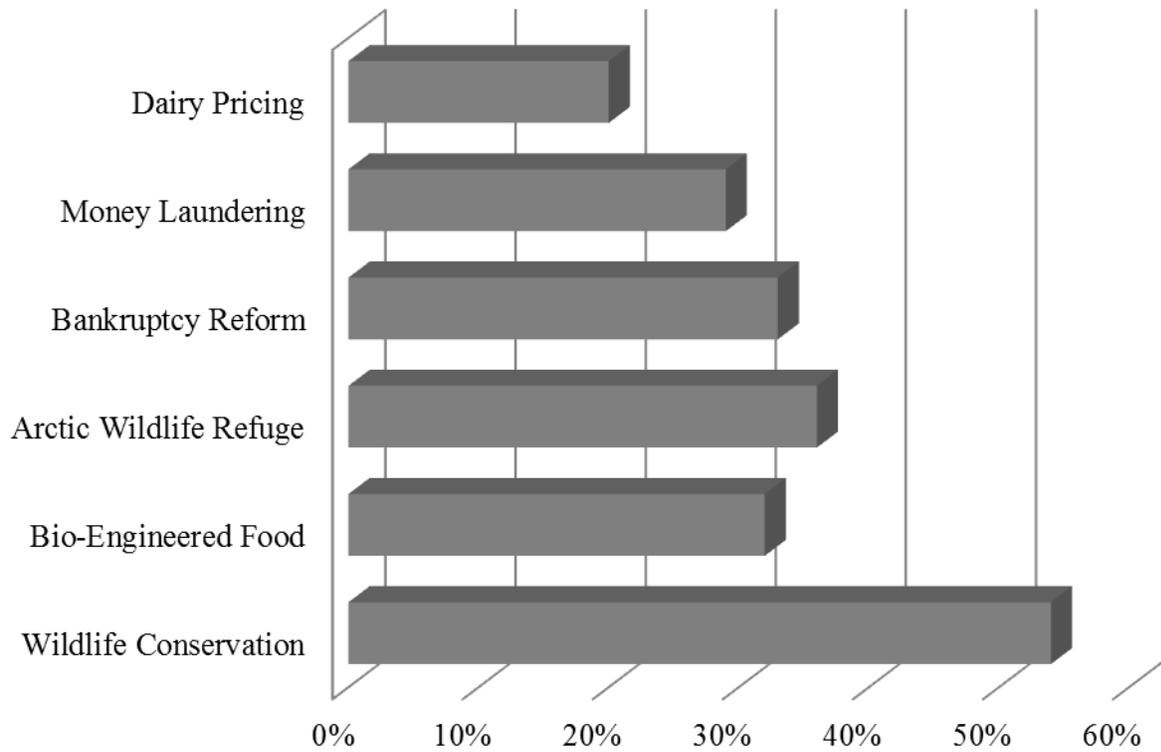


Table 1
Descriptive statistics of dependent and independent variables

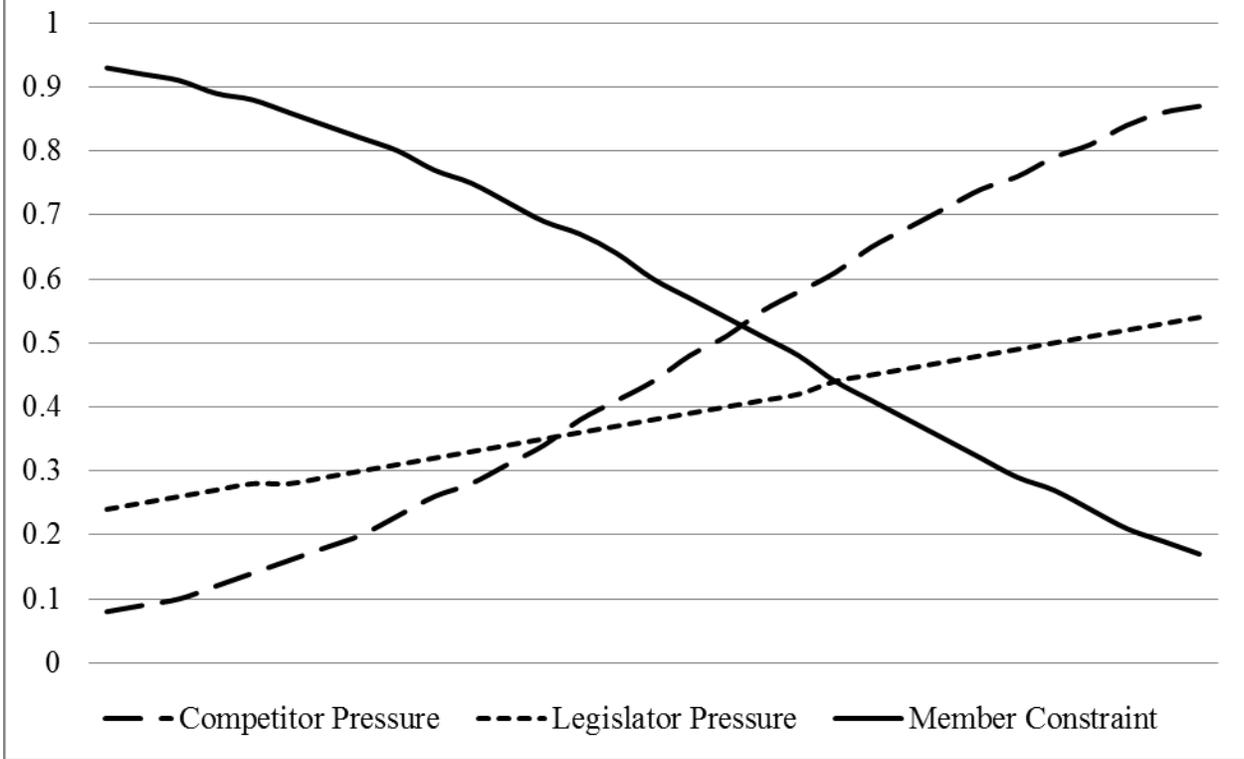
Variable	Mean	Standard deviation	Minimum	Maximum
Lobbyist supported an alternative position (dependent variable)	0.35 (mode is 0)	0.48	0	1
Interest group member or client constraint	2.46	0.45	1.2	3
Pressure from members of Congress	0.24	0.29	0	0.96
Competition from other interest groups	1.07	0.75	0	2.93
Campaign contributions	153,573	423,215	0	2,484,450
The issue is highly salient	0.53 (mode is 1)	0.50	0	1
Number of staff and contract lobbyists	9.36	7.81	1	32
Age of the interest group	50.92	34.51	2	125
Iteration of the issue	2.23	0.99	1	4

Table 2
Estimates of the Probability of Lobbyists Compromising Issue Positions

Explanatory variable	ML Estimate	Robust Standard Errors
Interest group member or client constraint	-0.84***	0.20
Pressure from members of Congress	0.80*	0.32
Competition from other interest groups	0.86***	0.14
Campaign contributions	0.01	0.01
The issue is highly salient	-0.61**	0.19
Number of staff and contract lobbyists	-0.02	0.01
Age of the interest group	0.01*	0.01
Iteration of the issue	0.08	0.09
Constant	0.39	0.63
Wald χ^2	59.80***	
Pseudo- R^2	0.22	
Log pseudo-likelihood	-141.86	
Cases correctly predicted	75%	
<i>N</i>	281	

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.005$

Figure 3
Predicted Probabilities of Lobbyists Compromising Member Ideal Policy Positions



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¹ This was the CBS / *New York Times* poll of April 24-28, 2013.

² Both of these numbers are from the Center for Responsive Politics at, respectively,

www.opensecrets.org/lobby/ and www.opensecrets.org/news/2014/11/money-won-on-tuesday-but-rules-of-the-game-changed/.

³ Today the League is called the Association of Government Relations Professionals.

⁴ Canons of ethics were tried by the American League of Lobbyists and the American Society of Association Executives, but neither caught on (Dwoskin 2012).

⁵ I make no explicit assumptions regarding the shape of the distribution of group member of employer preferences for policy outcomes. I use the Normal distribution in Figure 1 simply because it is familiar to scholars and thus the easiest way to make my point.

⁶ The three policy domains conform to Lowi's (1964) classic typology. Agriculture is distributive, environment is re-distributive, and banking is regulatory.

⁷ This would be 332 observations, but several unclear answers to questions about what lobbyists actually did on some policy proposals required me to throw out 51 observations, so $N = 281$.

⁸ This was either sponsorship or co-sponsorship of the observed bill or, in the case of an administrative rule, a bill supporting or attacking it.

⁹ This data is square-rooted because a few budgets were very large, skewing the overall data.

¹⁰ This simple probit model was not my first choice. Elsewhere I have argued that lobbyists are embedded in larger environments with many cross pressures (Holyoke 2015b). Consequently, while my observations are individual lobbyists, pressures at higher levels of analysis also ought to be considered. I therefore estimated my data using a hierarchical model incorporating both fixed and random effects. However, the likelihood ratio test to reject the null hypothesis that the simpler model was inadequate failed to be significant. So I used the simple probit model.