



December 8, 2015

Jodi Remke, Chair
Emelyn Rodriguez, Senior Commission Counsel
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Ms. Remke and Ms. Rodriguez:

Consumer Watchdog applauds the Commission for taking a close look at lobbyist spending disclosures. The all-encompassing “other payments to influence” section of the current lobbyist disclosure form is ripe for abuse.

You need look no further than the end of this legislative session when the Western States Petroleum Association, “WSPA,” became the largest lobbyist employer in the state. WSPA reported a record \$6.7 million in lobbying spending in the third quarter of 2015. \$6.1 million, or around 91 percent, of that spending was reported as “other payments to influence.”

Current law requires anyone who spends at least \$5,000 to sway legislation to report it. But while they must disclose if they spent money buying a lawmaker a coffee, they can hide the fact that they spent millions on advertising campaigns as “other payments” without giving details. Under usual circumstances, these campaigns can fly under the radar with the public none the wiser.

This year, Big Oil was so brazen that we more or less know what they spent the money on: advertising. At the end of session a mailer landed in thousands of mailboxes slamming an historic climate change proposal that would have slashed petroleum use in cars and trucks in half by 2030. It was sent by a grassroots-sounding group called the California Drivers Alliance. In reality, it was paid for by WSPA.

The mailer, and others, accused Senate pro Tem Kevin de León, sponsor of SB 350, of “fighting to empower unelected bureaucrats in Sacramento, and taking away power and choice from your own constituents.” The top of the mailer warned: “Gasoline Restrictions hurt families in LA.” If the legislation passed, the mailer alleged it would make it tougher for families to drive to work or buy groceries.

After \$6.1 million in “other payments,” presumably for this misleading smokescreen, the petroleum use provisions were removed from the bill. There is no better example of the need for more transparency of “other payments” to influence lawmakers.

The proposed regulation would create new sub-categories of “other payments,” including: compensation, expenses, legislative-related services, advertising, and public affairs. We fear that the “public affairs” payment category is so broad that it could create a loophole that will swallow your effort whole.

What myriad activities could “public affairs” encompass? As staff noted: Public relations, political consulting, grassroots campaigns, coalition building, publications, and media relations. It could also include: Phone banking, canvassing, robocalls, paid spokespeople, creation or funding of “grassroots” surrogates, polling, graphic design, advertisement production, printing, event production, and strategic consultants – ie. lobbyists that don’t have to register.

An almost endless array of activities to influence lawmakers through their constituents could fall under this broad umbrella. The Commission could create a new payment code for each of these activities, however we suggest an alternative. The Commission should require reporting of subvendor payments in the public affairs category. This reporting could mirror the Form 460 Schedule G “payments made by an agent or independent contractor” reports made by campaign committees for any subvendor payment of \$500 or more. Subvendor disclosures would include: name and business, total payments during reporting period, cumulative amount during calendar year, and a payment code to describe purpose of payment. The payment codes used could mirror the existing codes used by campaign committees to report subvendors.

Public affairs generally refers to attempts to influence the public and, in a lobbyist’s case, attempts to influence a lawmaker by influencing the public. One lump sum payment to a public affairs consultant could conceal a broad variety of spending. The potential for obfuscation in this one area in which the public is itself being targeted is such that we believe more detailed reporting is necessary, especially when the additional burden on lobbyist employers is minimal. This is presumably already information that a lobbyist employer would require a public affairs consultant to record and report in the course of running a public affairs campaign.

We also support recommendations made by Common Cause and the Secretary of State’s office to require that bills lobbied be identified in connection to a payment, and that all such disclosures be electronically searchable.

Thank you for inviting our comments. We look forward to an updated rule that will increase sunshine on lobbyist spending in California.

Sincerely,

A handwritten signature in black ink that reads "Carmen Balber". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Carmen Balber

cc: Commissioner Maria Audero
Commissioner Eric Casher
Commissioner Gavin Hachiya Wasserman
Commissioner Patricia Wynn