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The Bryce Harlow Workshop on Ethics and Lobbying  
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### Lobbying and the Defense Industry

*“It has been said that politics is the second oldest profession. I have learned that it bears a striking resemblance to the first.”*

-Ronald Reagan

The right of an American to petition their government for a redress of their grievances is found in the First Amendment of the US Constitution.<sup>1</sup> The Founding Fathers recognized that the people should be able to have their interests heard and discussed by the legislature in order to ensure a just and fair government. Today, this civil duty is called “lobbying” and it is a highly lucrative industry that represents individual or groups who want to affect policy. This \$2 billion-plus annual business<sup>2</sup> has recently received a lot of media attention as it has been the target of scandal, ethics violations, and political posturing. Lobbying has been portrayed as a business devoted to the advocacy of corporate and special interests that use their wealth to unfairly influence our democratic system. The millions of dollars that flow into Washington bring up a number of political, ethical, or legal questions that surround the dealings of corporations, lobbyists, and legislators alike. One such case involves a recent \$35 million defense contract awarded to Northrop Grumman Corp. and European Aeronautic Defence and Space Co. (EADS) to build a new fleet of air fuel tankers. This decision by the US Air Force (USAF) has not been well received by some lawmakers who favor Boeing Co. for the contract. This issue is ongoing and deals with all of the questions posited above. The role of lobbyists, public officials, executive branch personnel, and the media provide an interesting analysis of the current state of domestic politics.

The defense industry in the United States is a multi-billion dollar business. Private contractors are appropriated vast sums of taxpayer money to research and develop cutting edge military technologies that are to be used by all branches of the armed forces. Boeing Co., along with Northrop Grumman, makes up two of the largest and most powerful defense contractors in the world. With so much money in play, it is logical that these companies are also some of the largest providers of political contributions and lobbying activities. In 2007, Northrop Grumman and Boeing Co. spent \$10.8 million and \$10.6 million respectively lobbying members of Congress.<sup>3</sup> Also, thus far in the 2008 Election cycle, Northrop Grumman has contributed a total of \$881,155 while Boeing Co. has contributed \$778,802 to members of both parties.<sup>4</sup> Who is on the receiving end of these contributions is an integral aspect of this specific case and why there has been heated debate.

EADS is the Paris-based subcontractor of the prime contractor, Northrop Grumman. The partnership won the \$35 million contract, meaning that the development of the new re-fueling tanker aircraft will be done overseas. The USAF found that Northrop Grumman-EADS “provided the best value for the government” as opposed to its competitor Boeing Co.<sup>5</sup> Boeing as well as members of Congress objected to this outcome, claiming that the USAF had some form of bias against the aeronautical giant. This compelled the company to file a formal protest with the Government Accountability Office (GAO) to investigate the USAF’s procedures for awarding contracts.<sup>6</sup> The Congress cannot block the USAF’s decision, but it is considering withholding funds from the Air Force budget due to political issues such as the loss of domestic jobs and national security concerns.

The questions surrounding this case are twofold – was the contract ethically awarded to Northrop Grumman-EADS *and* is the Congressional opposition to the contract based on real

national interest or due to concern for special interests? One particular politician that is at the center of this controversy is Senator John McCain. McCain has traditionally been a critic of the influence that lobbyists and special interests hold over Washington. His opposition to such practices has become part of his legacy and an aspect of his presidential platform. This makes Sen. McCain a particularly attractive target when it comes to allegations of ethical violations. Members of Congress from both parties have questioned McCain's role in the awarding of Northrop Grumman-EADS the air tanker contract. He has had a past scuffle with Boeing Co. when in 2004 he "led the congressional investigation that uncovered a bribery scandal in which top Boeing and Air Force officials went to prison or were forced to resign."<sup>7</sup> This is not the sole point of interest, however. McCain currently employs numerous current and former lobbyists who have lobbied for EADS. They joined his campaign from The Loeffler Group, a firm founded by former Republican Congressman and also McCain's national finance chairman, Tom Loeffler. He has also received campaign contributions from Northrop Grumman and EADS while receiving nothing from Boeing Co.<sup>8</sup>

Sen. McCain claims that he had no influence over the USAF's final decision in awarding the contract to Northrop Grumman-EADS despite his ties. This defense has not been well received by some critics since McCain sent two letters to Secretary of Defense Robert Gates concerning the criteria by which the Air Force would be deciding the contractor.<sup>9</sup> The criteria was changed within four days and may have resulted in giving EADS an advantage in comparison to Boeing Co.'s proposal. Sen. McCain defends his role in the matter arguing that he acted with neutrality. He is currently the ranking member of the Senate Armed Services Committee, meaning that oversight of the Department of Defense and USAF are a part of his duties. Legally and ethically, he is compelled to ensure that taxpayer dollars go towards projects

that are the most effective and beneficial. If there was a legitimate concern that the Air Force was not taking all prevailing factors into account when awarding the contract, then it is his obligation to bring that concern to light. Failing to do so would be unethical as it would be a disservice to the American people who demand a just and transparent government. Unfortunately, this case is not so black and white. McCain would be acting unethically if the political contributions as well as personal connections to EADS influenced his decision to demand a change in criteria for the air tanker contract. There is no way of proving that Sen. McCain acted inappropriately, but as Sheila Krumholz of the Center for Responsive Politics comments, "It's an interesting dichotomy. On the one hand, he's presenting himself as the crusader against special interests and yet, on the other hand, he's surrounded himself with senior advisers that are lobbyists."<sup>10</sup> Sen. McCain is held to a different standard than his Congressional counterparts because of his past statements and actions. The mere appearance of impropriety could damage his credibility and reputation.

McCain must also be careful about the people that he surrounds himself with. In this case, several former members of The Loeffler Group are active participants in his presidential campaign while the firm continues to advocate for EADS. This is a fairly common occurrence and has been described as a "revolving door" between congressional and lobbying activity. Lobbyists are able to use contacts made during their congressional employment to further gain and advantage on the competition. This is true vice-versa as well when it comes to fundraising and political contributions. Congress has attempted to address this ethical challenge through in-house rules and even legislation. One such attempt was to prohibit senior staff in both the House and Senate from lobbying their former office of Committee for one year once they leave employment.<sup>11</sup> But despite Congressional attempts to self-regulate in such areas as gifts, private travel, and earmarks, there remain many loopholes that can be exploited to achieve the same

ends as before. There are many who believe that the political revolving door will never be closed because the financial incentives to engage in this activity are far too lucrative to pass up.<sup>12</sup>

Although Sen. McCain's alleged role in the awarding of the tanker contract is still in contention, it is interesting to view where opposition in Congress is coming from. Many representatives are using the argument that giving the contract to a foreign firm would ship American jobs overseas. Boeing Co. estimated that it would create 44,000 new jobs if it was the producer of the air tankers.<sup>13</sup> The two most vocal critics of Sen. McCain and the contract are Rep. John Murtha (D-PA) and Rep. Tom Dicks (D-WA). Rep. Murtha is chairman of the House Appropriations Committee and has threatened to stop funding the program while "while members review it for bias toward France-based Airbus and for its impact on the U.S. economy and unemployment."<sup>14</sup> This appears to be a perfectly reasonable position for the congressman to take due to the allegations outlined above. However, a deeper analysis of the facts may reveal that Rep. Murtha and Rep. Dicks do not have the noblest of intentions. It has been revealed that top two recipients of political donations from Boeing Co. from 1990-2008 is none other than Rep. Dicks and Rep. Murtha.<sup>15</sup> As with McCain, this brings up a number of ethical questions.

It is possible that Rep. Dicks and Rep. Murtha doth protest too much. These Congressmen criticized Sen. McCain for being unduly influenced by special interests and lobbyists when it comes to the air tanker contract. The public criticism that they have aimed at McCain and the actions that they plan on taking to further investigate the deal could very well be deemed hypocritical. Is their opposition to Northrop Grumman-EADS and support for Boeing Co. due, at least in part, to the large amount of political contributions that they have received? As with McCain, it is difficult to gauge the level of influence that lobbyists advocating for Boeing Co. had on the Congressmen, but it could certainly be a factor in their opposition. Rep. Murtha

and Rep. Dicks (as well as others) are using the argument that McCain unfairly influenced the contract's criteria to favor Northrop Grumman-EADS. The opposing argument would be that the old criteria may have unfairly favored Boeing Co. and stifled competition for the contract. Once the new criteria was added, Northrop Grumman-EADS proposal was viewed as the best, scoring higher than Boeing in all but on key criteria, including cost, capability, and track record on other contracts.<sup>16</sup> This is compounded with Air Force Secretary Michael W. Wynne's comments to the Senate Armed Services Committee that Northrop's tanker is "clearly a better performer" than Boeing's.<sup>17</sup> This lends more evidence to the position that Rep. Murtha and Rep. Dicks are not looking at the situation objectively, but are influenced by special interests.

This particular case is a microcosm of a larger trend in contemporary American politics. All politicians depend on the political contributions of large constituencies and special interests to ensure reelection. The only way that they can receive these contributions is ensuring a "positive working environment" for their donors. Many politicians such as Sen. McCain have made a career on criticizing the influence that lobbyists and special interests have had over the political establishment. He has been one of the largest proponents of campaign finance reform and lobbyist reform in Washington yet his presidential campaign employs the most lobbyists of any presidential campaign.<sup>18</sup> As mentioned earlier, these contradictions and allegations of hypocrisy are only pertinent because of McCain's rhetoric on the issue of special interests. His relationship with EADS and the former advocates that he employs damages his credibility over the contract deal. Furthermore, the letters that he wrote to the Department of Defense are suspect. His inquiries into the Air Force's activities were not a request for a mere update or for a decision to be made. He specifically addressed and sought change for the criteria by which the contract would be awarded. The time in which McCain's letters were dealt (four days) suggests that he

wields significant power over the issue whether he would like to admit it or not. If that power was used to influence the contract in EADS' favor, then there is a serious ethical dilemma.

The McCain campaign advisors who were formerly of the Loeffler Group and other firms that lobbied for EADS are also under the ethical microscope due to Sen. McCain's actions. Their contacts with the defense contractor and their close relationship with the Senator could have had an influence on how the events transpired. There are numerous rules and laws that regulate the "revolving door" of government officials to lobbying, but the reverse revolving door of lobbyists to government is not addressed as extensively. The problem is striking a balance between an individual's freedom to seek employment and society's wishes for a fair and just government. The knowledge that former federal employees have of the Hill are invaluable to their work as lobbyists since "lobbyists need to be substantive policy experts and communications strategists able to run lobbying efforts like a sophisticated political campaign."<sup>19</sup> On the one hand, this experience gives a person a competitive advantage over their counterparts and makes a more successful lobbyist. On the other hand, it creates a situation where democratic rule can be undermined by corruption and unethical behavior. Finding a solution to this dilemma is no easy task.

Congress has attempted to pass numerous reforms in an attempt to bring ethics back to Washington. However, Dr. James A. Thurber, an expert on money and politics at American University, has commented that the Legislative Branch has failed to exercise rigorous oversight over its own ethical activity.<sup>20</sup> This revelation is as disturbing as it is predictable. Many congressmen enjoy the benefits that they receive from lobbyists and special interests. While politicians like Sen. McCain usually employ harsh rhetoric to criticize the role of money in politics, it appears that many live by the motto "do as I say, not as I do." Expecting congressmen

to self-regulate their ethical behavior when so much personal interest is involved is to the point of unreasonable. The House and the Senate could pass as many reforms as they desire, but it will not change the ethical climate in Washington because it does not address the very root of the problem – the growth and size of the federal government.

The importance that is placed on lobbying efforts is only a reflection of the government's increasing power to intrude on the larger economy. It only makes sense that private corporations such as the defense industry would attempt to influence legislation. As columnist and commentator Charles Krauthammer observed, “[y]ou wouldn’t need to be seeking advantage if the federal government had not appropriated for itself in the 20<sup>th</sup> century all kinds of powers, regulations, intrusions, and manipulations.”<sup>21</sup> If the state did not have so much control, then companies would have no reason to lobby because their industry would be regulated by the market. The reality is that the government continues to spend and continues to regulate, compelling people to lobby Congress and ensure that their interests are protected through law. From this perspective, it is difficult to place much of an ethical burden on private companies and lobbyists. As former House Appropriations Committee Democratic spokesman David Sirota stated, “[w]e shouldn’t blame companies for spending a lot of money on lobbying because it’s an investment strategy. We should blame those lawmakers who we the public empower to spend out dollars for selling off that power in exchange for campaign cash.”<sup>22</sup> Lobbyists are accountable to the company they represent and companies are accountable to their shareholders and employees. Elected representatives, on the other hand, are held accountable by their constituencies and the American people as a whole. They should be held to a different standard and should recognize the consequences of their actions.

Unethical behavior can never be prevented nor controlled. It is up to the individuals involved to make decisions based on what they feel is right. It is difficult to prove that Sen. McCain acted unethically in regards to his role in the air tanker contract. Observers can speculate, but in the end it is up to the people of the state of Arizona to decide whether his behavior is just. The democratic process that allows representatives to be voted out of office is the greatest tool that can be used to weed out those individuals who engage in unethical activities. Increased transparency of public officials and a fervent media are other aids to maintaining the integrity of American governance. It must be recognized that humans are flawed and that there will never be perfect ethical environment in Washington. A society that is based on the precepts of freedom recognizes those flaws and requires a certain level of responsibility. Lobbying, when conducted correctly, is an indispensable aspect of a democratic society. The way to combat unethical behavior in regards to lobbying is not to pass better laws, but to elect better representatives.

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<sup>1</sup> First amendment

<sup>2</sup> Vaida, Bara, Eliza Newlin Carney and Lisa Caruso. "Special Report – Potholes on K Street." *National Journal*. 25 March 2006.

<sup>3</sup> Lobbying Spending Database. The Center for Responsive Politics. 18 March 2008.

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<sup>4</sup> Top Contributors to Federal Candidates and Parties. The Center for Responsive Politics. 18 March 2008.

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<sup>5</sup> Gilmore, Gerry J. "Air Force Awards Tanker Contract to Northrop Grumman." American Forces Press Service. 18 March 2008. <http://www.globalsecurity.org/military/library/news/2008/02/mil-080229-afps04.htm>

<sup>6</sup> Wallace, James. "Boeing to protest lost Air Force tanker deal." *Seattle Post-Intelligencer*. 10 March 2008.

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<sup>10</sup> Tapper, Jake. "McCain Under Fire for Lobbyist Ties." *ABC News*. 12 March 2008.

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<sup>12</sup> Burger, Timothy J. "The Lobbying Game: Why the Revolving Door Won't Close." *Time*. 16 February 2006.

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