

April 9, 2009

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Obama:

We represent non-profit organizations engaged in public policy advocacy on a broad range of vital issues, including ethics in government. We wish to state at the outset that we strongly support your efforts to address the corrupting influence of money and corporate lobbying on government. This is a serious problem and we applaud your commitment to address it. We also appreciate your efforts to promote broad participation in government.

We are concerned, however, that the new Executive Order on ethics and lobbying is harming non-profit organizations and the public interest in ways that you clearly did not intend. We also believe that this can be corrected without undermining the fundamental objectives of the Executive Order.

For these reasons, we believe it is critical that either as written or as applied the Executive Order acknowledge and clarify the *fundamental difference between civic engagement for public purposes and lobbying to advance pecuniary self-interests*. When citizens work for better public policies, whether seeking to end torture, promote affordable health care, fight for equality under the law regardless of race, gender or national origin, demand action on climate change or to achieve other vital goals in the broad public interest, they can and should "lobby" the government. The interests of ordinary Americans are under-represented in the public policy arena and such advocacy should be fostered rather than penalized or discouraged.

Many charities and social welfare organizations have staff members registered under the Lobbying Disclosure Act (LDA), which makes no distinction between seeking private financial advantage and lobbying in the public interest. The LDA was designed to promote transparency regarding all lobbying. We support that objective.

Our concerns focus on the aspects of the Executive Order that go beyond requiring transparency and penalize non-profit organizations which have registered in good faith under the LDA and have contacted government officials for a public purpose. This part of the Order actually contravenes its purpose and is causing serious unintended harms. Among other things, the Executive Order imposes a two-year ban on serving in any federal agency that a registered non-

profit advocate lobbied. Thus, for example, providing the Consumer Product Safety Commission with a report on dangerous imported toys would bar a registered non-profit advocate from working there for two years without a waiver. Likewise, a registered non-profit advocate who lobbied the Bush State Department on torture cannot work for the Obama State Department for two years.

In practice the Executive Order actually amounts to a permanent ban on government service for any person who continues to lobby for the public good. To start the two-year clock ticking they have to stop speaking to government officials about toy safety or torture and do something else for two years. During the interim, policy makers are deprived of these individuals' expertise. This was not the goal of the Executive Order and is actually inconsistent with your efforts to elevate the public interest.

The Order is already resulting in a number of public policy harms which will only grow if they are not corrected. First, it is driving talented individuals interested in serving in government out of public interest organizations and making it more difficult for these organizations to recruit them. This is not hypothetical -- non-profit organizations report that it is already happening. Forcing civic-minded individuals to forgo advocacy for the public good from outside the government in order to preserve their ability to serve the public through government work was not the purpose of the Order. Hampering the ability of non-profits to recruit talented individuals is clearly an unintended consequence of the Order.

Second, the Order will chill the flow of valuable information to government. Non-profit advocates perform a vital service when they provide information to the federal government, but they will now be penalized for doing so. Many individuals and groups will decide it is not worth the cost. Again, non-profit organizations report that this is already happening.

Third, the Executive Order, ironically, will cause a drop in information available to the public about lobbying. Non-profit organizations have routinely "over-reported" and "over-registered" under the LDA. They support the goal of transparency and have nothing to hide. In response to your Order, however, organizations are now scrutinizing their staff registrations, closely examining the LDA "triggers" and "de-registering" staff members or even their entire organizations, where consistent with the law. According to experts on the non-profit field, your Executive Order is transforming the attitude toward the LDA from "when in doubt, report" to "don't report unless clearly required." Obviously, decreasing transparency was not the intent of the Order.

Finally, the Order is having the effect of discouraging public interest lobbying by non-profit organizations at a time when our nation needs their expertise and input the most. Despite their well-established First Amendment right to do so, non-profit organizations and their philanthropic supporters are already skittish about participating in policy debates. You have recognized that the change America needs must come from the bottom up. Now more than ever, we need to encourage, not stifle, civic and community participation in shaping and implementing public policy.

These problems can be fixed without undermining the important purposes of your Executive Order. Indeed, we believe that increased non-profit civic engagement -- including public interest lobbying for a non-pecuniary, public purpose -- is critical to our democracy. Charitable and social welfare organizations must be at the policy table as we shape and implement solutions to our huge challenges here and abroad. For all of the foregoing reasons, we respectfully request that you clarify the Executive Order without delay.

Sincerely,

Alliance for Children and Families

American Cancer Society, Inc.

American Cancer Society Cancer Action
Network, Inc.

The Foundation for AIDS Research

Center for Lobbying in the Public Interest

Center for National Security Studies

Consumers Union

Samuel A. Worthington*
President and CEO, InterAction

Freedom House

Government Accountability Project

Human Rights Watch

Leadership Conference on Civil Rights

National Security Archive

OMB Watch

Open Society Policy Center

United Neighborhood Centers of America

David Cohen*
Senior Fellow, Civic Ventures

* Signing in their individual capacity.