

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ANIMAL WELFARE INSTITUTE, <u>et al.</u>,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 03-2006 (EGS/JMF)
)	
FELD ENTERTAINMENT, INC.,)	
)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF DEFENDANT FELD ENTERTAINMENT, INC.'S
MOTION TO JOIN THE HUMANE SOCIETY OF THE UNITED STATES
AS A PARTY PLAINTIFF AND NOTICE OF HEARING**

EX. 23



39 of 95 DOCUMENTS

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The Non-profit Times

October 1, 2006

SECTION: Pg. 1(4) Vol. 20 No. 19 ISSN: 0896-5048

ACC-NO: 153705288

LENGTH: 3293 words

HEADLINE: Getting the message to lawmakers gets expensive: changing minds is costing millions more these days;
Statistical data

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BODY:

The Humane Society of the United States (HSUS) has more than 9.5 million members on its mailing lists; in other words, almost one in 30 Americans. The Washington, D.C.-based nonprofit has utilized those contacts around the nation to help pass 70 bills at the state level, in addition to getting 20 ballot initiatives approved during the past 15 years.

"We're very active in state capitals across the country," said HSUS President Wayne Pacelle. "We have a very vibrant, active program. Certainly it's a major commitment and we're very engaged on a number of levels," he said, mainly because lawmakers often are reluctant to confront some issues because of the influence certain industries wield.

Nonprofits are trying to make sure that lawmakers confront issues, if lobbying expenditures are any indication. Some of the more active nonprofits on The Hill have seen their expenses rise dramatically the past five years (see the accompanying chart on page 4). Having a substantial lobbying presence in Washington, D.C. and on the state level is no longer a luxury. It's a cost of doing business.

"We want to get at the root causes of problems and not just address the symptoms," Pacelle said. "We believe there should be standards in society for the appropriate treatment of animals. Not all these matters should be left to individual conscience."

A bill that would upgrade to a felony the crime of transporting animals across state or national lines for fighting purposes has more sponsors than any piece of legislation except the Social Security bill, according to Pacelle.

"Our intention is to build a powerful and enduring political organization for animal protection in this country. I think we've got all the tools to achieve that," he said.

During the summer of 2004, HSUS created a 501(c)(4) organization, the Humane

Getting the message to lawmakers gets expensive: changing minds is costing millions more these days; Statistical data
The Non-profit Times October 1, 2006

Society Legislative Fund (HSLF), to put even more resources into lobbying but also to get involved in elections, something that 501(c)(3) organizations are not allowed to do.

"It's been happening for a long time; (c)(4)s are not a new idea," Pacelle said. "The interest groups and corporate entities adjust to the rules and generally find a way to operate and serve their political ends."

The difficulty for 501(c)(3)s, he said, is the limit to what they can spend on lobbying, as well as restrictions on getting involved in elections.

"We spend probably less than 5 percent on policy--our members probably want us to do more of it," Pacelle said, since they recognize that "through the enactment of public policies, you have long-term solutions to the problems associated with animal abuse."

HSUS employs about five in-house federal lobbyists, plus state legislative coordinators and grassroots coordinators who organize their constituency. In addition to HSUS and the HSLF, Pacelle founded on his own a separate, non-affiliated Political Action Committee (PAC), forming a "constellation of organizations" that will address policies around the country.

The legislative fund will be operational for this fall's Congressional midterm elections and expects to have a budget of between \$3 million and \$4 million next year. The non-affiliated PAC, Humane USA, spends an estimated \$500,000 per election cycle, Pacelle said. For the first time, the HSUS operated under the "substantial activities test," with an increased proportion of its budget going toward lobbying. He estimated that of its \$145 million budget, about \$2 million to \$2.5 million was spent on lobbying in Fiscal Year 2005 after years of holding steady at \$1 million annually. According to its Lobbying Disclosure Act (LDA) report filed with the clerks of the U.S. Senate and House of Representatives, HSUS spent approximately \$1.34 million on federal lobbying during 2004.

HSUS merged last year with The Fund for Animals of New York City and in September announced a merger with the D.C.-based Doris Day Animal League, which will continue to exist as a 501(c)(4). Mergers "make us bigger and stronger in general, to influence public and corporate policy more significantly," Pacelle said, "kind of to be the go-to group if you want to get something done for animals."

The American Cancer Society (ACS) is regularly near the top of the list of nonprofit lobbying expenditures and it also has another lobbying organization, the American Cancer Society Cancer Action Network (ACS CAN) which spent \$560,000 on its own last year.

Most of the advocacy work of ACS is done through its sister organization, a 501(c)(4) formed in 2001, that mobilizes its members.

"It allows us to be even more active as we go into the future. It's still a small part of what we do," said Daniel E. Smith, national vice president of government relations for ACS. The network does lobbying and some electoral work, and is planning to do electoral programs, he said. The organization will not endorse candidates but it will publish voter guides describing where candidates stand on specific issues. ACS will remain nonpartisan when providing information to citizens about cancer and letting people make up their own mind, he said.

"In the future, that organization will grow, and become a very, very important force politically in the fight against cancer," Smith said of ACS CAN.

"We believe that forming a sister organization is an important way for us to be able to be important players in the public policy arena," Smith said. It's important to do it, the law allows it, and more organizations will do it over time, he said, adding that it's a common practice in many other sectors.

"Most believe it's an important function of what we do and expect us to be representing the interests of patients and survivors when important decisions are being made at the governmental level," Smith said.

Last year, ACS took on S. 1955, which made it to the floor of the U.S. Senate but was defeated. The bill could have reduced health care coverage for mammograms

Getting the message to lawmakers gets expensive: changing minds is costing millions more these days; Statistical data
The Non-profit Times October 1, 2006

and colorectal screenings. Now, in all but one state, health insurance companies are required to cover mammograms, and in 19 states colorectal screenings.

ACS mobilized more than 100,000 donors to take action, sending emails, making thousands of telephone calls and organizing local events to spread the word about S. 1955.

"We're finding among donors, they've become even more energized, they see this as more important work of the network. It's integral," Smith said. "When we do this, it's governmental advocacy, but it's also lobbying; I don't see a big distinction. We're lobbying government directly or indirectly to take action."

ACS also has helped to increase tobacco excise taxes in 42 states since 2002. Smith said that every time cigarette prices increase 10 cents, usage declines by 7 percent among kids and 4 percent among adults.

"Our mission dictates that we reach out and work on a number of issues," Smith said.

For The American Heart Association (AHA), the additional paperwork and documentation involved in creating a separate lobbying organization outweighed the increased lobbying activities and other advantages. Much of what the AHA does is make sure that federal money continues to go toward cancer research.

"So much of health issues are regulated by legislation at the state and federal levels," said David Livingston, corporate secretary and general counsel for the Dallas-based nonprofit. AHA spent almost \$3.4 million on lobbying, according to its Form 990 for Fiscal Year 2005. Of that total, about \$1.34 million was direct federal lobbying, according to its LDA report.

Though there are pros and cons to creating a sister organization, Livingston said the AHA last year decided to continue its lobbying activities through its main nonprofit. A 501(c)(4) "wasn't worth the administrative cost and potential public confusion."

Nonprofits must create a separate corporate infrastructure and board for the 501(c)(4), as well as keeping documentation that the resources of the 501(c)(3) are not being used by the (c)(4). For instance, Livingston said, if the two organizations share a building, the (c)(4) is required to document that it's paying the fair market value for its portion of the building, staff or equipment.

"I've seen more of that being done," Livingston said of nonprofits creating 501(c)(4) organizations. "I think that perhaps reflects more of an interest in being involved in the actual campaigns. Also, with the proliferation of different types of nonprofit organizations, people focus on areas of their particular interest," he said.

"Those that want to be more involved in political campaigns, (c)(4) is the way to go" he said, or forming a PAC. "Given the nature of our mission, most of our advocacy initiatives can be accomplished through the (c)(3) approach," such as lobbying for specific legislation and activity focused on influencing regulatory agencies.

Most of the AHA's activities are local, pushing for non-smoking ordinances or increasing state tobacco taxes. "Those are pretty major initiatives for us," Livingston said, most of which occur at the state and local level.

AHA sponsors an annual Lobby Day, when volunteers attempt to cover all congressional districts in a day or two, focusing on funding and similar activities while other volunteers address issues of importance within state legislatures.

The National Institutes of Health (NIH), under the federal Department of Health and Human Services (HHS), assigns the federal money that goes to funding research in the United States. "The federal government is far and away the largest funder of research in the country. We have an interest in research funding the National Institute of Health at a robust level," he said, to maintain and increase funding, like other health organizations.

"There are so many important and emerging areas of research that need to be funded," Livingston said.

Getting the message to lawmakers gets expensive: changing minds is costing millions more these days; Statistical data
The Non-profit Times October 1, 2006

In the wake of the Jack Abramoff scandal this year, the perception may be that lobbyists are greasing public officials and paying for extensive junkets to help influence legislation. Abramoff allegedly used his Capital Athletic Foundation (CAF) to pay for Scotland golf trips for a Congressman, among other political activities. He was sentenced to almost six years in prison and ordered to pay more than \$20 million in restitution after pleading guilty to conspiracy, fraud and tax evasion related to his lobbying activities in Washington, D.C.

Methodology

There are two types of lobbying. Grassroots lobbying involves an appeal to the general public while direct lobbying would not. For example, a nonprofit asking members of the public to contact public officials about a certain bill would be grassroots lobbying. Direct lobbying would have lobbyists contacting public officials.

Nonprofits report all their lobbying activities--grassroots and direct--on their Form 990, and if they spend more than \$24,000 in a six-month period on direct lobbying, they also must file the LDA report.

Talk to some nonprofits and lobbying is not what they do. To them, it's more like advocacy or education of government officials or the public. Or, maybe it's just all a matter of semantics. That might be one reason why some nonprofits handle most lobbying internally, employing professional lobbying firms only in specific circumstances.

Shay Bilchik, president and CEO of the Child Welfare League of America (CWLA), sees his group's role as more a facilitator or information provider, rather than outright lobbyist. "It's more an informational resource," he said, drawing a line between specific pieces of legislation and advocacy and education of issues.

For example, CWLA advocates broadly for more investment in the child welfare system, to improve how it operates, the outcomes it gets and to reduce caseloads that are too high; simply put, more resources.

"That translates one step down to a piece of legislation that comes out of Congress. We try to mobilize membership around supporting or opposing legislation," Bilchik said.

"Care and feeding of the membership on all levels keeps them focused on the work," he said, which is "why our voice is the premier voice...in terms of an advocacy tool."

There's "a certain amount of danger in hiring a lobbying firm, Bilchik said, since there's always the potential to "lose sight or control of your voice. There are excellent lobbying firms out there, but the best way to make sure your voice is heard is to do it yourself."

Most small nonprofits can't afford much in the way of lobby assistance, but in a way, sometimes the best kind of lobbying for nonprofits is lobbying themselves with their own focus, said Rick Cohen, executive director of the National Committee for Responsive Philanthropy (NCRP) until last month.

"I'm not always sure that members of Congress are swayed by K Street lobbyists carrying their briefcases on Capitol Hill and saying they speak for nonprofits," Cohen said. "Some of the best lobbying work has been done by nonprofits. There's an authenticity in it that often impacts people on Capitol Hill. It shows people care enough, that they want to take the extra effort to talk to Congress, or staff, and make their case. It may not be as slick as high-priced lobbyists but often the cogency and caring in the message does wonders."

The American Red Cross (ARC) has used lobbying firms in the past, "but we've weaned ourselves off of outside folks" said Neal Denton, vice president of government relations and public policy.

"The best people to deliver the message for Red Cross are Red Crossers," he said. "They're the best storytellers. If you're looking for powerful messengers, our own local Red Crossers are much more powerful messengers than a hired professional."

ARC has two people on state issues, three on federal issues and another two who handle federal agency issues, Denton said.

Getting the message to lawmakers gets expensive: changing minds is costing millions more these days; Statistical data
The Non-profit Times October 1, 2006

That's not to say that nonprofits shun lobbying firms, or can't afford them. The ARC will hire a lobbying firm for a particular issue, if it's looking to impact a piece of legislation in a specific committee that it's not familiar with. With a lobbying firm, "you instantly have that expertise and context," Denton said.

Grassroots lobbying has increased over the years because it's so effective, as well as being cost effective through the use of email and the Internet, said Elizabeth Heagy, president of the Center for Lobbying in the Public Interest (CLPI) in Washington, D.C.

There was an obvious increase in nonpartisan and get-out-the-vote activities during the presidential election in 2004, she said, but since there's no presidential election this year there probably will be a drop in those kinds of activities.

"501(c)(3)s are becoming more educated about what they can do during election season," Heagy said, as calls to CLPI for technical advice also increase at that time of year. "People are worried about not crossing the line."

A joint study by CLPI, OMB Watch and Tufts University indicated that some of the barriers to nonprofits lobbying is confusion about what is and isn't allowed, as well as a lack of expertise and capacity to add lobbying to their work. "A lot of nonprofits are overwhelmed doing direct service work" Heagy said, "it's tough to build new capacity."

"Certainly, there are perceived barriers for nonprofits not lobbying," said Perry Wasserman, managing director of 501c Strategies, a division of The Vivero Group, which represents CLPI and other nonprofits on The Hill. The rules are so complicated, that's another barrier to civic participation and advocacy for lobbyists, he said, adding that the key is to follow the law.

While confusion may be one obstacle for nonprofits, another is the idea that funders might be turned off by a nonprofit lobbying.

"Funders get concerns about their money getting used," Heagy said, which is probably more a concern with high-profile organizations that are active in lobbying.

Many foundations still tell nonprofits that they are not permitted to lobby with foundation grants, citing legal arguments, said NCRP's Cohen. "The reality is, there's no legal risk to foundations as long as nonprofits follow the rules.

"Some of the major change nonprofits wrought in this country was not through public education, but standing up for specific pieces of legislation and arguing the point with officials," Cohen said. "That doesn't mean electioneering, but taking a strong stance," he said, citing the Voting Rights Act as an example.

Nonprofits "often represent voices that wouldn't be heard in the voices of Congress if not for nonprofits carrying out their legal ability to lobby," Cohen said.

Lobbying reform took center stage after the Abramoff scandal broke in the spring. A significant change that reform legislation might bring lies in the Senate version of the bill, which would require for the first time the disclosure of grassroots lobbying, Wasserman said. Nonprofits already disclose grassroots lobbying on Form 990 and could "get them a louder voice on The Hill" if other groups had to disclose those expenditures.

"I think we're gonna see a compromise on lobby reform legislation. The question then becomes how exactly does this reform legislation affect nonprofits," he said.

Most reforms will level the playing field for nonprofit advocates, versus those who are able to use large sums of money to gain access to decision makers, Denton said.

"We gain access to decision-makers because we're the ARC, and we do good work in their communities," he said. "But sometimes that's not enough."

In recent years, Congress has made some attempts to ensure that federal funds are not used to lobby. The House passed the Federal Housing Finance Reform Act (H.R. 1461) last year, which included a provision that disqualifies nonprofits from grants under an Affordable Housing Fund if they engage in voter registration activities,

Getting the message to lawmakers gets expensive: changing minds is costing millions more these days; Statistical data
The Non-profit Times October 1, 2006

electioneering, certain grassroots advocacy or lobbying during the grant period of the year before the grant. The Senate version of the bill (S. 190) was never passed.

"These are red flags," Bilchik said of legislation that might curtail nonprofits' advocacy efforts. In the current environment on The Hill, there's a mood of greater accountability and monitoring, he said, however, "at appropriate times, people need to push back. At some point, you infringe on the basic principle of democracy. Drawing the proper lines in those cases are really important."

The consistent conservative complaint is that lobbying is something that takes away from the sector in terms of service delivery, Cohensaid, popping up occasionally in efforts to restrict lobbying and registration rights.

Certain members of Congress "don't like the idea of nonprofits lobbying or don't like the notion of what many nonprofits lobby about, he said."

Growth In Lobbying Expenditures

	2000	2005
AARP	\$4,000,000	\$36,302,064
American Cancer Society	\$540,000	\$2,040,000
American Heart Association	\$509,021	\$1,340,000
Easter Seals	\$160,000	\$160,000
United Jewish Communities	\$89,000	\$542,708
American Red Cross	\$110,000 *	\$480,000
World Wildlife Fund	\$240,000	\$480,000
Juvenile Diabetes Foundation	\$280,000 *	\$474,000
March of Dimes	\$452,843	\$460,000
Humane Society of the U.S.	\$1,480,000 **	\$140,000

Source: U.S. Senate Office of Public Records,
<http://sopr.senate.gov/>

* connotes numbers from 2001, the last available

** includes all lobbying, whereas 2005 was federal only

LOAD-DATE: November 30, 2006