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Warren R. Leiden

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THE ROLE OF INTEREST GROUPS IN POLICY FORMULATION

Warren R. Leiden*

I. INTRODUCTION

In the immigration field, as in most areas of national policy, advocacy groups play an important and sometimes essential role in the policymaking process. Often derided as “special interests” and accused of opposing the “public interest,” advocacy organizations are in fact manifestations of the public and give voice to the concerns of specific segments of it. This article will examine how advocacy groups determine policy positions and activities and the nature of their role in the making of public policy on immigration matters.

II. POLICYMAKING WITHIN ADVOCACY GROUPS

An advocacy group is a collection of people who have joined together, based on common interests, to achieve commonly sought goals. The approach and activities of most advocacy groups toward public policymaking is determined by the group’s mission, strategic goals, objectives, and strategies and tactics. Whether these elements are consciously decided and referred to or can simply be deduced from a group’s behavior, the policymaking process is a useful structure to understand how an advocacy group does or will operate.

In this discussion, “policymaking” is defined as the process of reaching a decision between competing options that will guide the subject’s behavior until another decision is made. Within many advocacy organizations, decisions on policy are often based on consensus. Thus, formal decisionmaking (e.g. by governing body vote) is often observed only where there is sharp disagreement within the group.

* Executive Director, American Immigration Lawyers Association.

A. Organizational Mission

The mission of an organization is its reason for being. That is, the reason for which the members, supporters, and staff of the organization join together.

It is not uncommon for an organization to have both a general mission stated in its legal documents and a more practical, specific mission arising from current conditions. For instance, the broad mission of the American Immigration Lawyers Association is to advance jurisprudence and the administration of justice in the immigration and nationality field and to promote the professional honor, courtesy, and development of its members. In practice, the practical mission of this association in the public policymaking arena could be stated as identifying and advocating the interest of immigration lawyers and their family, business, refugee and other clients in the development of immigration law and policy.

The mission of an organization may be so well understood within the group that it is rarely referred to specifically. On the other hand, nothing will accelerate the dissolution of an organization faster than disagreement over its basic mission. One of the occupational hazards of a Washington representative for an advocacy group is to lose sight of the group's mission and begin to act as if he or she were an "independent policy player."

B. Strategic Goals

The strategic goals of an organization are the direction in which that organization seeks to move, based on its mission. Typically, strategic goals are qualitative and identify the subjects on which a group's resources will be applied.

For instance, common strategic goals for pro-immigration advocacy groups could include the promotion of shorter waiting or processing times for adjudications, increased eligibility for immigration, improved opportunities for having cases heard on the merits, and better protections against mistake or error. Conversely, restrictionist advocacy groups might have strategic goals along the lines of reducing overall immigration, reducing opportunities to challenge deportation orders and removals, and reducing forms of eligibility for legal immigration.

Strategic goals are determined by advocacy groups in a variety of ways. Some groups simply rely on tradition or unspoken, consensual agreement. Others have a formal policy development process involving the publication of draft proposals, review and revision by key stake-

holders, leading to final adoption by the group's formal policymaking body (usually the Board of Directors).

The present federal policymaking process is adversarial in that it depends on opposition between competing interests in order to reach finite limits or restrictions. Absent some opposition, policymaking would simply lead to unchecked movement in a strategic direction. Clearly, this could not last long in a world of finite resources. As a result, all advocacy groups must resign themselves to the existence of opponents. If one doesn't exist, one will soon emerge.

C. Organizational Objectives

Strategic goals are made more concrete by the adoption of objectives. Objectives are specific outcomes that an advocacy group desires to achieve within a specific timeframe. In public policymaking, the specific timeframe is usually the policy decisionmaking period, such as a congressional session, or the two year life of a Congress, but it may be simply until a final decision is taken.

In many advocacy groups, the true objectives are rarely made public, and may even be unknown or unpublished among the members or other stake-holders of the advocacy group itself. The reluctance to publish actual objectives results in part because it would mean exposing the most sensitive evaluation of the dynamic interplay between a group's hopes and its fears—its assessment of the possible outcome of the contest between its desires and external reality. As a result, a group's objectives may remain unspoken or may be closely held by the group's leadership or advocates.

As in many adversarial situations, disclosure of one's objectives often undermines one's tactical efforts. And, as in many fields that involve advocacy and representation, it is usually in the interest of the advocate to communicate high hopes but low expectations. In the advocacy context, this translates into adopting high strategic goals, but maintaining low objectives.

Of course, as every practicing attorney knows, it is permissible and even desirable to exceed one's set objectives. Surpassing the expectations of the client or advocacy group one represents is always evidence of special success.

D. Strategies and Tactics

An organization's strategies and tactics are the plans and activities the group will undertake to achieve the objectives that will move the policymaking process in the direction of the group's strategic goals. They are the subject of action alerts, grassroots campaigns, compromises, and settlements. Although there are certain traditional methods of advocacy that are commonly relied on, public policymaking is done at the frontier of human experience—the sole measure of the value of a strategy or tactic is whether it is successful (and not in violation of law).

III. AN ADVOCATE'S VIEW OF THE THREE BRANCHES OF GOVERNMENT IN PUBLIC POLICYMAKING

A. The Congress

From an advocate's point of view, the main role of Congress is to enact laws—both substantive authorization legislation and appropriations. Oversight of the other branches of government is the secondary role of the Congress, and blowing off steam often seems to be its avocation.

It is the rare Congress member who has time to become familiar with more than one substantive subject, in addition to the usual attention given to achieving re-election. Similarly, most congressional staff are able to become expert on only one subject or are dedicated to constituent service—handling calls, correspondence, visits, and providing assistance.

In the immigration field, the most knowledgeable Congress members serve on the immigration subcommittees of the House and Senate judiciary committees. In addition, some individual Congress members may emerge in a debate with a single issue interest, such as Congress member Nancy Pelosi's sponsorship of legislation to protect Chinese students following the Tiananmen Square massacre.

Generally speaking, Congress acts by voting, not by talking. From an advocate's point of view, how a Congress member votes is what is really important, not that individual's reason for so voting. In fact, some of the strongest political coalitions are those in which Congress members vote the same way for a variety of different reasons.

As a body, Congress approaches decisionmaking as most individuals do. Sometimes its decisions are based on financial interests, sometimes for reasons of justice or its hopes, fears, or passions. In the immigration field, where political financial contributions and political action

committees are rare, Congress members are most influenced by constituent interests and media attention.

As a rule, it could be said that Congress tries to control the Executive Branch and tries to avoid being controlled by the Judiciary. Some have observed that Congress seeks to address issues, not solve them. In any event, Congress members rely heavily on their staff to produce documents and reports, to prepare speeches and talking points, and to confer with constituents and other interest groups. In turn, congressional staff rely heavily on advocacy groups, as discussed later.

B. The Executive Branch

In theory, one could describe the role of the Executive Branch as that of proposing policies to Congress, lobbying these policies through the legislative process, and deciding at the end whether to exercise the presidential veto. The Executive Branch is also a major source of information to Congress and the subject of frequent congressional oversight. With its hierarchical structure, the Executive Branch is conceivably capable of arriving at and advocating a specific policy position in a single-minded fashion. The administration is certainly heavily staffed and has intimate knowledge of its portion of the policy implementation picture.

However, in practice, the single accountability and fear of adverse political impact often work to dampen Executive Branch initiative and leadership. This is especially true in dealing with a controversial subject like immigration, where one is bound to make enemies no matter what one does.

As a result, over the past twenty years, the Executive Branch has tended to be relatively quiet in immigration policymaking, often limiting its role to commenting on congressional proposals and deciding on whether to approve or veto a final congressional product. Outside of appropriations requests, the administration, regardless of its party affiliation, has rarely asserted an immigration policy objective and led its progress to enactment.

C. The Judiciary

For most advocacy groups, the role of the Judiciary is relatively passive in public policymaking. Advocates can threaten challenges on the constitutionality of congressional proposals and can initiate lawsuits to effect implementation by the Executive Branch.

From an advocate's point of view, litigation has several values in the policymaking process. Litigation can highlight or bring attention to an issue that is ripe for congressional action. Moreover, litigation can serve to sharpen or reduce an issue to clarify the focus or choices for congressional action. Finally, litigation can define the limits of congressional authority in policymaking.

In the development of immigration and nationality law, courts have traditionally extended broad authority and discretion to Congress and have been reluctant to limit congressional power. This is especially true as the major impact of a matter travels on the continuum away from U.S. citizens to lawful permanent residents, lawful nonimmigrants, and finally to out-of-status or undocumented migrants. Similarly, the Judiciary has granted more authority and discretion to Congress as the focus of the subject moves from the interior of the United States to the borders, territorial waters, and high seas.

IV. THE ROLE OF ADVOCACY GROUPS IN PUBLIC POLICY DEVELOPMENT

A. *The Assets of Advocacy Groups*

Generally speaking, advocacy groups bring a number of valuable assets to the public policymaking arena. Members of advocacy groups often have deep and broad-based personal knowledge of the subject under consideration and are often the main source of expertise on the subject.

Many advocacy groups represent the sector of the public most likely to feel the impact of specific policymaking, so they are highly motivated to care about the issue and take action. Due to their expertise and personal involvement, advocacy groups and their members are often best able to forecast the practical consequences of abstract or technical policies.

Moreover, advocacy groups are able to act politically to assist congressional supporters and punish congressional opponents. Campaign contributions, voting and electoral support, media attention, constituent interest, flattery and scorn are only some of the tools that advocacy groups can bring to bear.

Public policy advocates are able to win other supporters to a specific proposal and can generate public support or opposition. Because they are motivated and have the capacity to act in a concerted fashion, advocacy

groups are best able to build the sort of temporary alliances necessary to win support for policy enactment.

B. Issue Identification

From one point of view, Congress can be seen as continually asking the questions, “What is important to America?” and, “On what issues must we do something?”

Advocacy groups, like opinion polls and the news media, organize public voices on the question of “what’s important” to the public and to Congress. They can also articulate the specific problems or consequences of congressional action in one way or another.

Advocacy groups bring issues to the attention of Congress by requesting hearings, providing testimony, issuing white papers, and conducting press conferences, rallies, and media campaigns.

C. Developing Solutions

Advocacy groups are often the first place that Congress members and staff turn to for assistance in analyzing and evaluating proposals and ideas. Interest groups also have the expertise to vet the work product of congressional staff and legislative counsel and present an ongoing source of scrutiny, comment, and challenges.

Advocacy groups’ advice and proposals are actively sought both on an informal level and through formal congressional hearings.

Congressional action is driven by legislative vehicles. Concerned advocacy groups’ main job is to see that relevant bills best meet their objectives. At the various stages of legislative enactment, groups will try to influence the language of the initial draft, subsequent amendments, legislative history (committee reports and floor statements), and implementing regulations.

D. Obtaining Congressional Support and Building Coalitions

A major role of advocacy groups is to identify Congress members who will support policy proposals and to secure the support of others. Overworked congressional staff rarely have the time to fully undertake the outreach effort necessary to identify other Congress members who will support or co-sponsor a specific initiative. Advocacy group

representatives can call on a volume of congressional offices and can motivate trusted constituents to weigh in with their Congress members.

Advocacy groups routinely provide draft materials—speeches, amendments, talking points, and press releases—and can arrange news media contacts. In building coalitions inside and external to Congress, advocacy groups depend on their relationships of trust and their reputation for integrity. Congress members suffer the common problem that, once they're removed from the issues with which they are personally familiar, they are at the mercy of others to know what is true and what is important. It goes without saying that most policy advocates are sincere, persuasive, and motivated. So, how is a Congress member to know who is telling the truth as they would see it? Successful relationships of trust, built over time, provide this needed credibility. However, these same close relationships also pose the danger of myopia and bias.

E. Information Sharing

It almost goes without saying that the subject of government and policymaking is about power. Information is power, so it tends to be closely held in the policymaking process. Moreover, since the policymaking process is dynamic and constantly changing, much of the relevant information is also subject to constant change.

Whether it is the schedule of hearings, mark-ups or floor debates, who is supporting what, or who will be there to vote, this sort of momentarily crucial information is what advocacy representatives and congressional staff are constantly exchanging. There is no common database, no one source or record of all information, especially in consideration of more esoteric subjects like immigration policy. Hence, advocacy groups play an important role in obtaining and passing information among the various players in the policy process.

F. Building Public Support or Opposition

Advocacy groups also play an important role in developing public knowledge of, and support of or opposition to, legislative proposals. Advocates can inform and organize constituents, and bring public attention to them through the news media. Through grassroots organizing, advocates can organize additional actions in specific communities of interest and can build coalitions based on common goals among other groups.

V. THE CHALLENGE OF ADVOCACY IN THE IMMIGRATION FIELD

Public policy advocacy in the immigration field has a number of specific characteristics. First, it is not perceived as a subject involving or affecting large amounts of money (compared with, for example, banking regulation), and therefore advocacy efforts have to rely on interest more than financial resources.

Advocacy groups interested in family-based immigration, such as religious organizations, ethnic groups, and other humanitarian associations, are notoriously under-funded. Even in employment-based immigration, the interests and vital concerns of businesses in immigration are so small in comparison to the myriad of other congressional matters they face that financial resources and attention are very limited. Similarly, advocacy on issues relating to refugees and asylum seekers is subject to the same constraints.

Second, immigration policy is almost always a “radioactive” issue. That is, it is a highly charged public debate, often teetering on the edge of ethnic and racial fears and anxieties. American history has numerous examples of instances where scapegoating new Americans and migrants provided important political opportunities, often with subsequent historical fallout.

Adding to the existing difficulties is the fact that legislation in the immigration field is highly complex and detailed, reflecting the human variety it seeks to regulate. Immigration legislation, like taxation proposals, does not lend itself to simple explanation but is easy to misunderstand.

Moreover, most Americans’ knowledge about immigration is based on the experience of previous generations, which is quite different from the immigration procedures and immigrants of the 1990s. Immigration policy is not perceived to affect most Americans or, conversely, immigration is blamed for many unrelated effects.

On the other hand, examination of immigration issues frequently leads to consideration of the most fundamental questions of who we are as “Americans” and the values we want our nation to respect and stand for. And, because its impact on real people is immediate and significant, involvement in immigration advocacy or representation can be tragically heartbreaking or profoundly rewarding.

For better or for worse, those involved in immigration advocacy tend to become impassioned on the subject and easily understand the

important contribution they are making to our nation's future, regardless of their specific views.