

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN, INC.,)
1600 20th Street, NW)
Washington, DC 20009,)
)
Plaintiff)
)
v.)
)
THE CLERK OF THE HOUSE)
OF REPRESENTATIVES)
Office of the Clerk)
U.S. Capitol)
Washington, DC 20515, and)
)
THE SECRETARY OF THE)
UNITED STATES SENATE)
Office of the Secretary)
The Capitol)
Washington, DC 20510,)
)
Defendants)
)
)
_____)

COMPLAINT FOR DECLARATORY AND MANDAMUS RELIEF

Introduction

1. In this action, Plaintiff Public Citizen seeks to compel the Clerk of the House of Representatives and the Secretary of the Senate to allow public inspection of correspondence from Cadwalader, Wickersham & Taft, in which the firm explains why it maintains that its lobbying activities are exempt from the registration and reporting requirements of the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601 (“LDA”). Plaintiff believes that these records are subject to the common-law right of public access to government records and that Defendants have no lawful reason for refusing to disclose official correspondence concerning compliance with the LDA.

Jurisdiction

2. This court has jurisdiction under 28 U.S.C. §§ 1331 and 1361.

Parties

3. Plaintiff Public Citizen, Inc., is a public interest organization headquartered in Washington, DC, that is dedicated to protecting the right of the public to participate fully in a responsive government. Public Citizen and its members obtain government records concerning lobbying activities to use in the course of monitoring government policymaking, promoting policy reform, and preparing educational reports. In particular, Public Citizen's Critical Mass Energy and Environment Program ("Critical Mass") has collected extensive information about Enron, its previous contacts with the federal government, and its influence on existing and proposed energy regulations. Critical Mass has produced reports on Enron's activities and influence on governmental policy, including "Blind Faith: How Deregulation and Enron's Influence Over Government Looted Billions from Americans."

4. Defendants, the Clerk of the House of Representatives and the Secretary of the Senate, are officials of the Congress of the United States. Defendants are charged with providing guidance and assistance on the registration and reporting requirements of the LDA, sending notices to lobbyist and lobbying firms that may not have complied with the Act, and taking steps to ensure the accuracy, completeness and timeliness of registration and reports. 2 U.S.C. § 1605.

Background

5. Under the common-law right of public access, members of the public have the right to examine government documents when the public interest in disclosure is greater than

that in government secrecy. The legislative branch, including the Secretary of the Senate and the Clerk of the House, is subject to the common-law right of public access.

6. The LDA was enacted to improve public awareness of paid lobbyists' efforts to influence public decisionmaking in both the legislative and executive branches through public disclosure of these efforts.

7. Under the LDA, lobbyists and lobbying firms subject to the Act must register with Defendants and submit semiannual reports that contain a description of the specific issues that each lobbyist has worked on, identify the Houses of Congress and federal agencies that were contacted by the lobbyist, and disclose the compensation received by the lobbyist. 2 U.S.C. §§ 1603, 1604. Defendants are required to make these registrations and reports available to the public. Id. § 1605(4).

8. In enacting the LDA, Congress found that then-existing lobbying disclosure statutes were ineffective, in part because of the absence of clear guidance regarding who was required to register and what they were required to disclose. Id. § 1601. The LDA provides that Defendants "shall provide guidance and assistance on the registration and reporting requirements of" the LDA. Id. § 1605(1).

9. The LDA requires Defendants to make inquiries "to ensure the accuracy, completeness and timeliness of registration and reports." Id. § 1605(2).

10. The LDA requires Defendants to "notify any lobbyist or lobbying firm in writing that may be in noncompliance with" the Act. Id. § 1605(7). A lobbyist or lobbying firm given notice of noncompliance has the opportunity to cure violations prior to referral to the United States Attorney for the District of Columbia for enforcement action. Id. §§ 1605(8), 1606.

Cadwalader's Lobbying Activities

11. In response to requests from Public Citizen and others, the Treasury Department has released records concerning Enron's contacts with the Department. These records show that the law firm of Cadwalader, Wickersham & Taft ("Cadwalader") lobbied certain executive agencies on Enron's behalf. These lobbying activities included efforts to influence the President's Working Group on Financial Markets.

12. Cadwalader has never registered as a lobbyist for Enron under the LDA.

13. On March 25, 2003, Public Citizen sent letters to Defendants, stating that Cadwalader had apparently failed to comply with the LDA. The letters were accompanied by copies of the aforementioned Treasury Department documents.

14. In response to the March 25 letter, Defendants separately notified Cadwalader that they had received a complaint regarding the firm's suspected noncompliance with the LDA.

15. On April 21, 2003, the Secretary of the Senate informed Public Citizen that Cadwalader had responded to this notification. The Secretary summarized Cadwalader's response as stating that "they do not employ a person meeting the definition of lobbyist because no one employed at the firm contacted a 'covered executive branch official.'" The Clerk of the House has not informed Public Citizen of the results of his inquiry.

16. Public Citizen requested that the Secretary of the Senate release the correspondence between Cadwalader and the Secretary of the Senate, but the Secretary refused to release it. On August 27, 2003, Public Citizen sent a written request that the Secretary of the Senate allow public inspection of this correspondence. On September 5, 2003, the Secretary of

the Senate again refused, stating that making the correspondence available would be contrary to “standard procedures.”

17. On September 30, 2003, Public Citizen sent a letter to the Clerk of the House, requesting that the Clerk release his correspondence with Cadwalader. The Clerk of the House has not responded.

Claim for Relief: Common-Law Right of Access

18. Plaintiffs incorporate paragraphs 1 through 17 above.

19. Because the correspondence between Cadwalader and Defendants was generated pursuant to Defendants’ duties under the LDA, it qualifies as a public record.

20. Defendants’ refusal or failure to disclose their correspondence with Cadwalader does not serve any legitimate public interest.

21. Disclosure of Defendants’ correspondence with Cadwalader would serve the public interest by providing information about whether Cadwalader has an appropriate reason for failing to register as a lobbyist for Enron.

22. Disclosure of Defendants’ correspondence with Cadwalader would also benefit the public by showing how Defendants have interpreted the registration requirements of the LDA, by revealing whether Defendants should have notified Cadwalader that it is not in compliance with the LDA, and by shedding light on the conscientiousness with which Defendants are performing their duties under the LDA.

23. The records fall within the scope of the public’s right of access to governmental records as a matter of federal common law.

24. Defendants have a nondiscretionary duty to make these records available to the public upon request.

WHEREFORE, Plaintiff prays that this Court:

(A) Declare that Defendants' refusal to release documents relating to Cadwalader's status as a lobbyist on behalf of Enron is a violation of the common-law right of public access to government documents; and

(B) Issue a writ of mandamus compelling the defendants to carry out their nondiscretionary duty to make public all of their correspondence with Cadwalader on the issue of the firm's status as a lobbyist on behalf of Enron; and

(C) Award Plaintiff its costs and reasonable attorney's fees in this action; and

(D) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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