



Constitutional Scholars: Warren's Lobbying Tax May Violate Constitution

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Presidential hopeful Elizabeth Warren's new anti-lobbying plan may infringe on free speech rights, according to several legal scholars.

Sen. Warren (D., Mass.) released a plan to target lobbyists with additional disclosure requirements, as well as "a new tax on excessive lobbying that applies to every corporation and trade organization that spends over \$500,000 per year lobbying our government." Some constitutional scholars are skeptical such a tax—which goes up to 75 percent of total spending—could survive a Supreme Court challenge. The First Amendment's guarantee of the right of all citizens "to petition the Government for a redress of grievances" applies to paid advocates, according to Hans von Spakovsky, a senior legal fellow at the conservative Heritage Foundation.

"[Warren] completely forgets and ignores the fact that lobbying is a First Amendment right," von Spakovsky told the *Washington Free Beacon*. "The First Amendment says that you have a right to petition the government for a redress of grievances. That's what lobbying is, and her idea that it's somehow evil is just wrong. It's a basic constitutional right."

The Warren campaign did not respond to a request for comment.

Other scholars echoed von Spakovsky's concerns. Michael Barone, a resident fellow at the pro-free market American Enterprise Institute, said he could "see an argument that says this proposal would penalize the exercise of First Amendment rights," comparing it to "a confiscatory tax on newspaper." Trevor Burrus, a research fellow for the libertarian Cato Institute's constitutional studies center, concurred, saying "Sen. Warren has essentially proposed a tax on that fundamental right." He accused the Democratic presidential hopeful of attempting to "squelch political speech."

"She pushed for stricter regulations on banks and home loans, and then pushed—'lobbied' one might say—for the creation of the CFPB," Burrus said. "In short, Warren apparently believes in lobbying when she does it, or when it is done for causes she believes in. Her lobbying tax proposal would very likely be declared unconstitutional. The Constitution doesn't permit transparent attempts to squelch political speech."

Other legal scholars said the proposal would be appropriate. Ilya Shapiro, director of Cato's Constitutional Studies Center, said the lobbying tax is above board. While the policy might be misguided, Shapiro said, it is no different from excise taxes—taxes on goods and services—that

are legal and imposed on those who purchase legal aid, political advertisements, and other speech-related services.

"Assuming there's federal jurisdiction in the first place—meaning that it affects interstate commerce—I don't really see a constitutional problem with it," he said. "There's special kinds of taxes on different kinds of products, alcohol for example, around the country. So this would be just one more of those."

Von Spakovsky said Warren's motivation for adopting such a reform could imperil its chances of surviving in court. He said an excessive excise tax, levied with the explicit intent of curbing certain forms of speech, would still be illegal.

"If an excise tax becomes excessive and burdensome, you are restricting the ability of individuals to engage in their First Amendment rights to lobby the government," he said. "And I think this goes too far in that direction that it does raise very serious constitutional issues."