

Managing Political Power in Public Policy Mediations

BY SUSAN L. PODZIBA

OVER THE PAST FEW DECADES, consensus-building processes such as public policy mediations have become increasingly integrated into traditional government structures. As a result, government and stakeholder representatives have had increasing opportunities to discuss public issues and negotiate the language of a variety of public documents, ranging from city charters to government regulations.

The primary success of improved integration with government—nowadays the processes themselves are often explicitly authorized or endorsed by government legislation, agencies or actors—is the improved actionability of the negotiated agreements. Not surprisingly, this increased integration has brought increased exposure to the political pressures and power dynamics inherent in governing activities.

Political power is not intrinsically good or bad. But because it is a significant factor in public policy mediations, it is important for mediators and participants alike to understand the dynamics of political power and its effect on consensus-building processes.

Of course, most decisions in public policy mediations lack significant political controversy, and are made through deliberative discussions that allow participants to combine the differing perspectives and interests of government and affected groups with the relevant expert information and public concerns. On controversial issues, however, political power and influence may also be asserted to promote or delegitimize a process and to support or oppose specific proposals.

Political power has affected public

policy mediation and consensus-building processes in both positive and negative ways. As illustrated in the following case studies, government agencies and participants can become increasingly effective at achieving successful public policy mediations by understanding how to exert and manage political power.

Government champion protects process

The Chelsea Charter Consensus Process illustrates how those who expect to lose power as a result of a consensus agreement may attempt to undermine the process. It also illustrates how strong executive support for the consensus process can counteract such destructive efforts and also encourage successful negotiations.

The City of Chelsea, Mass., was placed in state receivership as a result of corruption and fiscal mismanagement. Under state legislation, the receiver was accountable to the governor but otherwise had absolute authority over all decisions affecting Chelsea. Part of his assignment was to recommend a new form of government to replace Chelsea's 1903 Charter, which had been amended in the intervening years by more than two thousand special acts.

In order to draft the new charter, the receiver, Lewis "Harry" Spence, initiated a public consensus process. He understood that creating a functional and sustainable democratic government required deep engagement by all residents of Chelsea, not only supporters of the clique that ran City Hall prior to receivership.

Significant public input was obtained by holding a series of community meetings run by local residents, trained by the mediation team to serve as facilitators, in a variety of venues, including local clubs, housing developments for the elderly and schools, as well as through ward meetings and call-in cable television

shows. That public input enabled the charter preparation team—which was selected through a transparent process that included clearly identifiable, understandable, supportable and public criteria—to incorporate their fellow residents' preferences as they deliberated over and decided the actual text of the city charter.

Full political support from the government representative who initiated the process (the receiver) had an extremely positive influence on the Chelsea process. First, Spence used his authority to create and protect the team's deliberative public conversations. Second, his prompt, unequivocal and coordinated responses to political attacks on the process helped enable the team's success.

At every opportunity and at every public meeting throughout the nine-month process, Spence repeatedly told the people of Chelsea that if they reached consensus on a charter and approved it in a special election, he would propose their consensus draft to the governor. Even when the charter preparation team made decisions with which he disagreed, such as electing school committee members at-large rather than by district, he respected the team's choice in order to support the community's need to grapple with difficult issues as it increased its ability to self-govern.

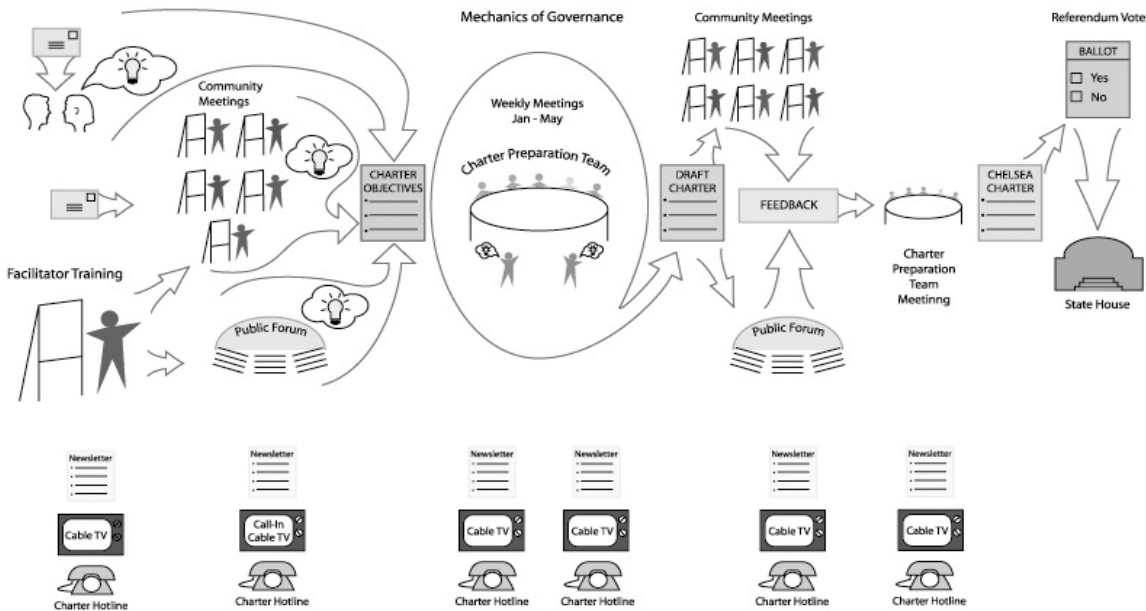
In addition, Spence protected the charter process from political attacks by those who feared their own powers would be curtailed under a new charter developed by an engaged citizenry. For example, one elected alderman announced that he had been at the State House and had seen the new Chelsea Charter already being printed, thus allegedly proving that the entire charter consensus process was a fraud.

Later, another alderman told the *Chelsea Record* that someone had left a copy of the new charter in her mailbox. The newspaper's headline the next day read "Charter is a done



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CHELSEA CHARTER CONSENSUS PROCESS



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deal,” even though the charter left in the mailbox was an outdated draft that had been rejected by the receiver and the Chelsea Board of Aldermen’s Subcommittee on Governance a year before the consensus-building process had even begun.

In response to these political attacks, the receiver and his staff, the mediation team and the charter preparation team coordinated actions to protect the integrity of the process. The receiver wrote a letter to the charter preparation team stating that he remained committed to the result of their negotiations.

Team members, in turn, wrote letters to the editor of the *Chelsea Record* debunking the accusations, sought public apologies from the aldermen, and went to televised aldermen’s meetings to update the public on the charter issues that had been resolved and the options under discussion for those that remained outstanding.

The Chelsea process suggests two important lessons concerning political power in public policy mediation processes. First, a powerful champion for the process is a great asset. Second, the process must sustain its integrity, sometimes through forceful responses to political attacks.

A powerful champion who understands the value of the deliberative process can contribute to participants’ sustained commitment by assuring them that the results of their efforts will be implemented and, when necessary, by providing political protection. The receiver valued the Chelsea process because he believed that it would lead to a city charter tailored to Chelsea’s unique character and circumstances, and that engaging Chelsea’s citizens in its creation would teach them norms of self-governance and ultimately protect the city from future corruption and mismanagement.

Nevertheless, if the integrity of the process is compromised, or even suspected of being compromised, the effort will likely fail. In working with groups that contain and seek to integrate a wide range of political perspectives, there is a great deal of opportunity for suspicion and skepticism. Political enemies of the Chelsea charter process sought to exploit this environment to delegitimize the process.

As this case study shows, attacks meant to create doubt regarding the integrity of the process must be met with immediate and carefully planned responses to re-assert comfort and se-

curity for participants and the public as well as to deter future attacks. By doing so, the charter preparation team weathered all attempts to undermine its work.

Seeking politicians’ guidance, approval

Regulations to implement the 1998 Amendments to the Higher Education Act of 1965 (HEA), were drafted through a process called negotiated rulemaking, commonly called “reg neg.”¹ The student-loan reg neg process illustrates the positive effects of broad-based political support for public policy mediations, along with the benefits of seeking legislators’ opinions and administrators’ approval during deliberations.

Before 1998, the U.S. Department of Education had voluntarily used reg neg to write some of its student-loan-program rules. The process was so successful in producing timely, clear and legitimate rules, that as a result of lobbying by stakeholders, Congress mandated reg neg in later HEA amendments, including those creating the direct-loan program. Fortunately, the Department of Education did not respond antagonistically to the move from voluntary to mandatory negoti-

ated rulemakings.

As in most reg negs, the vast majority of issues were decided under the political radar, with participation from legislative and executive authorities. Student loan programs involve technical and tedious accounting as well as monetary concerns. These issues were negotiated until balance was found among the interests of the industry, student, school, college and university representatives.

Other issues were more politically sensitive. Stakeholders unhappy with the results of their lobbying efforts on substantive issues at the statutory level sometimes sought a second bite at the apple by trying to influence the regulations interpreting that statute.

To ensure that the regulations accurately reflected congressional intent, the negotiation teams consulted regularly with both legislative and executive personnel. Reg neg committees often reviewed congressional conference proceedings and questioned sponsoring legislators' staff, who regularly attended reg neg meetings. They also consulted the Secretary of Education to determine what packages of options and compromises the secretary would support.

Other political issues could not so easily be integrated into the process. For example, a work group including parents of student victims of violent crime generated passionate discussion, but no agreement. No consensus was reached regarding student-loan forgiveness for students claiming death or disability, either, due to an inspector general report indicating high levels of fraud in disability claims. In the end, the issue seemed to require a stronger response from the Department of Education than was acceptable to some stakeholders.

The student-loan reg neg process provides lessons about the integration of executive and legislative power into public policy mediation processes. Mandatory reg neg processes have the potential for creating antagonism to the process from within administrative agencies, but do not necessarily do so. When leaders of administrative agencies see benefits to the process,

they are more likely to embrace it. In addition, legislative interpretations of congressional intent are welcome to many participants because they see this as a means to protect gains achieved through lobbying efforts at the congressional level.

Backlash against political pressure

Two additional public policy mediations illustrate failed efforts by negotiators to direct power from the conventional political sphere into the negotiations. In one case, a negotiator contacted a senator with whom he often worked closely. It is impossible to know what the negotiator actually requested, but the senator's office called all the other committee members to strongly urge support for a particular proposal. The committee members were outraged by what they perceived as undue political pressure instigated by a team member. Ultimately, this negotiator apologized and the proposal was rejected.

In another case, a political appointee seemed to promise support to some negotiators for particular proposals. Since these stakeholders expected complete satisfaction of their interests on these issues, they were unwilling to engage in negotiations, despite other stakeholders' dissent on their proposals. As a result, final consensus language was not achieved during this process.

These cases suggest that attempts to directly influence individuals through the perceived use of political pressure may backfire in an open, transparent process of diverse stakeholders. In any event, if unilateral action is possible, it is unlikely that a public policy mediation process will be initiated.

Vulnerability to external events

The Driver's License/Personal Identification Cards (DL/ID) Reg Neg illustrates how political circumstances indirectly occurring outside the negotiations themselves can significantly affect a public policy mediation process. The DL/ID Reg Neg was mandated under the 9/11 Act to develop a proposed rule establishing minimum

federal standards for individuals to obtain state-issued driver's licenses and personal identification cards.

Following the first of five scheduled meetings, the negotiations were suspended because the legislation authorizing the reg neg was repealed. President Bush signed into law the Emergency Supplemental Appropriations, Defense, Global War on Terror, and Tsunami Relief in 2005. Attached to that legislation was the Real ID Act, which the Senate had previously rejected, and which repealed the section of the 9/11 Act that mandated the reg neg.

The discontinued reg neg had been intended to provide a forum for state issuers of driver's licenses and other relevant stakeholders to raise and respond to concerns about cost, regulatory flexibility, privacy and civil liberties, residency requirements and timing for implementation. The Real ID Act provided particular answers to these questions, thereby denying the deliberative forum for balancing advantages and disadvantages of various options to states and other relevant stakeholders.

Political influence helps, hinders

Public policy mediation and consensus-building processes, though still used infrequently, have become integrated with and affected by traditional governance structures. Government officials, stakeholders and the general public have become more sophisticated in their efforts to initiate, mandate and participate in public policy mediation processes based on the usefulness of this tool as a forum for furthering their overall interests.

Political power can be used to both support and undermine these processes. To increase their likelihood of success, process participants and public policy mediators need to discern and manage the political power dynamics inherent in these deliberative processes.

Endnote

¹ The HEA Reg Negs were co-facilitated with Howard S. Bellman.