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They Lobby — You Pay

Why and How to Stop Taxpayer-Funded Advocacy

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Under a system in which no single question is submitted to the electorate for direct decision, an ardent minority for or against a particular measure may often count for more than an apathetic majority.

– Patrick Arthur Devlin, *The Enforcement of Morals* (1959)

This paper, in its entirety, can be found at <https://southwestpolicy.com/sppi03>

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Southwest Public Policy Institute | *Better living through better policy*

SOUTHWEST PUBLIC POLICY INSTITUTE

The Southwest Public Policy Institute (SPPI) is a research institute built to explore and build on sound, data-driven policies regarding education, crime, and economics that will encourage positive change in the American Southwest.

Many think tanks have fallen victim to the mentality of communicating only to the echo chamber: they only target individuals that agree with partisan messaging. SPPI's approach enables us to reach new audiences by micro-targeting constituents on issues like finance, energy, education, or public safety.

With SPPI's data-first approach and the inclusion of every state in the American Southwest in our efforts, there is tremendous potential for reinvigorating traditional American values with one motto: WE AGREE. By removing the stigma from conversations with constituents and addressing issues with solutions to solve problems, we truly believe that we can help move the American Southwest in a positive direction and set an example for the entire region to follow.

Our focus includes fostering innovative policy alternatives at the regional, state, and community levels to enhance individual initiative and entrepreneurship, broadening the role of volunteerism in confronting public problems and the sense of community among the public, government, and business.

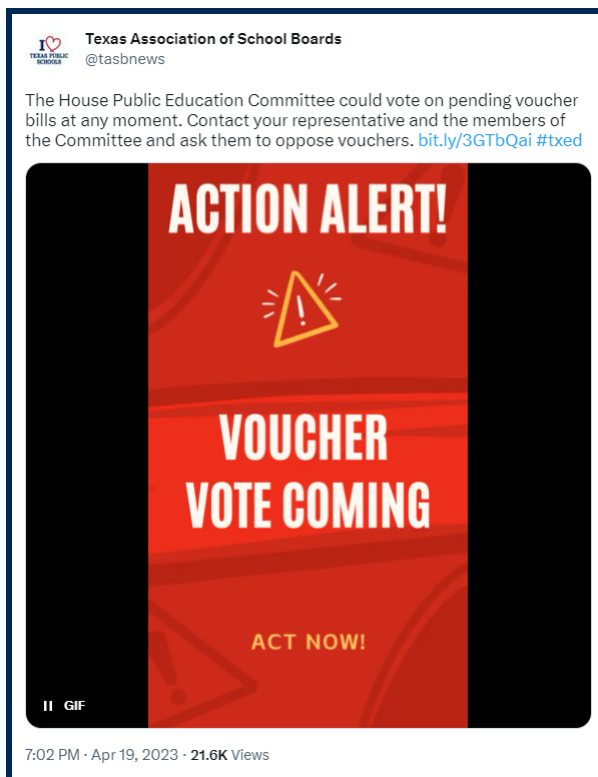
The division in America comes from the unwillingness to communicate with one another and to discuss the problems and the issues in front of us. By working together, exchanging ideas, and bringing solutions to problems we face, we can accomplish what public servants are meant to do: deliver ***better living through better policy.***

INTRODUCTION

The 88th regular session of the Texas Legislature is scheduled to conclude on May 29th. And while many bills before lawmakers in Austin have inspired heated disagreement, none has induced more animosity than SB 8, the creation of “an education savings account of \$8,000 per school year.”¹

Proponents of school choice argue that “all Texas students” should “have access to the best educational opportunities.”² Among many other accusations, opponents

claim that legislation like SB 8 is part of a nationwide plot “to undermine what Thomas Jefferson called the wall of separation between church and state, and thereby establish conservative Christian dominance over government.”³



Activists from across the ideological spectrum have pledged their endorsement of or resistance to school choice in the Lone Star State, but no combatant would dispute that the Texas Association of School Boards (TASB) is a major player in the debate. (The organization claims that SB 8 shifts “public money into a new, costly entitlement program that would mostly benefit wealthy families in urban areas to the detriment of our public schools.”⁴)

In 2018, the most recent year for which the Internal Revenue Service has made documentation available, TASB spent

\$841,250 on lobbying.⁵ Even in a state with nearly 30 million residents, the sum is considerable – it was larger, in fact, than that year’s lobbying expenditures by the Texas Oil & Gas Association.⁶

But unlike organizations that derive their revenue from voluntary contributions, TASB is funded by taxpayers.

The American Southwest contains states that are deeply red (Texas, Utah, Oklahoma), deeply blue (California, New Mexico), and somewhere in-between (Arizona, Colorado, Nevada). But lobbying by government entities is a phenomenon common to all the region's "laboratories of democracy." From tiny towns to the largest departments in state government, bureaucrats attempt to influence public policy, at taxpayer expense. It is a deeply problematic practice. And it must be stopped.

PERSUADING THE POWERS THAT BE

According to the Internal Revenue Service:

Direct lobbying refers to attempts to influence a legislative body through communication with a member or employee of a legislative body, or with a government official who participates in formulating legislation. Grass roots lobbying refers to attempts to influence legislation by attempting to affect the opinion of the public with respect to the legislation and encouraging the audience to take action with respect to the legislation.⁷

As the size of the "public" sector has grown, and much of daily life is impacted – if not controlled – by politicians and bureaucrats, efforts to influence decisionmakers have, naturally, intensified. Lobbying is now an enormous industry, targeting everyone from city councilors to county commissioners, state lawmakers to governors, members of the U.S. Congress to the occupant of the White House. And while the IRS's definition is limited to "a legislative body" and "legislation," in 1972 the U.S. Supreme Court recognized that the First Amendment right "to petition the Government for a redress of grievances" extends "to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of Government."⁸

There is no comprehensive system to track lobbying expenditures by all levels of government. But a 2022 investigation by OpenSecrets illustrates the enormity of the industry. It "documented \$3.5 billion spent on lobbying in state capitals during the two-year period from 2019 to 2020."⁹ The cost to taxpayers of governments' lobbying is a mystery, but a 2010 analysis by the Pacific Research Institute was revelatory. It found that for 2007 and 2008, "government and related taxpayer-funded lobbying represented nearly one-quarter (23.8 percent) or one in every

four dollars of lobbying in the state.”¹⁰

The public sector wields three weapons to sway the policymaking process:

- In-house personnel and resources: Officials testify during hearings, conduct press conferences, briefings, and one-on-one meetings, issue media releases and statements, write op-eds, make social-media posts, and employ full-time workers focused on “intergovernmental relations” and/or “legislative affairs.”
- Contract lobbyists: Even the smallest of government entities often find that hiring a professional influencer, or an entire lobbying firm, can yield major “wins,” such as the securing of special appropriations.
- “Membership” organizations: There are thousands of nonprofit entities that purport to “speak” for cities, counties, government educators and administrators, law-enforcement professionals, etc. Formed under federal rules for tax-exempt organizations, they derive all or a large portion of their revenue from the public purse. These trade-association-like groups exist in three forms. An entity regulated “under section 501(c)(3) of the Internal Revenue Code” is commonly called a “charitable organization,” and it is barred from attempting “to influence legislation as a substantial part of its activities.”¹¹ A 501(c)(4) group “must be operated exclusively to promote social welfare,” “must not be organized for profit,” and pursuing “legislation germane to the organization’s programs” is wholly permitted.¹² The 501(c)(6) category covers “business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues, which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual” – these entities “may engage in lobbying germane to accomplishing [their] exempt purpose.”¹³

ALL OVER THE PLACE

Here are two recent examples of taxpayer-funded advocacy for each state of the American Southwest:

- The League of Arizona Cities and Towns produced a “2023 Municipal Policy Statement” with an extensive list of legislative priorities, including



the preservation of “Residential Rental and Food Taxes” and “a state-level emergency rental assistance program.”¹⁴

- In March 2023, the Arizona Department of Environmental Quality announced the naming of Krista Osterberg “as

ADEQ’s Chief Legislative Liaison,” to “work with ... legislators in her new role on matters relating to our critical work.”

- The City of Weslaco, a small municipality in Hidalgo County, “hired a high-powered lobbyist to look after its legislative interests just days before the 88th Texas Legislature convene[d] into session,” paying him “\$7,500 a month – plus up to \$1,000 in pre-approved expenses – for the next two years.”¹⁵
- The “\$2,500 +” donors “from fiscal 2021-2022” currently listed as members of Texans for the Arts (TFT) include the City of San Antonio’s Department of Arts & Culture, the City of Dallas’s Office of Cultural Affairs, and the Cultural Affairs Division of the City of Austin’s Economic Development Department. The organization’s “primary commitment” during the 2023 legislative session is “threefold: to protect and grow the appropriations to the Texas Commission on the Arts (TCA), the state arts agency, including the TCA’s Cultural District grant program; to protect the statutory protections for the arts of the Municipal Hotel Occupancy Tax; and to respond to additional legislative opportunities that advance and strengthen



the arts, culture and creative industry across the state.”¹⁶

- In January 2023, Nevada Governor Joe Lombardo gave his first State of the State address. An official with the Nevada Association of School Administrators tweeted that it was “wonderful to be out and to see so many friends and supporters of educators.”



- At the start of 2023, Lyon County, Nevada prepared “for the 2023 legislative session with its lobbyists Steve and Mary Walker of Walker and Associates ready to track important bills and provide direction.”¹⁷
- In February 2023, Utah Arts & Museums and the Utah Film Commission promoted, and participated in, “Cultural Industry Advocacy Day” at the capitol. The event’s attendees were encouraged to “[s]peak to legislators

to build support for our bills and appropriations that positively impact our industry.”¹⁸



- At the end of the 2023 regular legislative session, The University of Utah’s vice president for government relations boasted of “a very successful year – the most the university has ever received in direct appropriations.” In total, it “received more than \$250 million in direct funding for buildings, authority to bond for up to \$600 million to build campus housing in the University Villages, and up to 5.5% raises for university employees.”¹⁹
- In January, commissioners in Eagle County, Colorado “approved a resolution for the county’s Legislative



Policy Statement.” Its priorities included funding for housing, as well as subsidies from the “American Rescue Plan Act” for behavioral health. The document also included “a policy statement from Colorado Communities for Climate Action.”²⁰

- In April 2023, the Colorado Department of Agriculture thanked four legislators – three Democrats and one Republican – for their

agreement to codify “a Right to Repair for farmers and ranchers!”

- In a February 2023 op-ed, the executive director of the California Transit Association warned that absent “dedicated operations funding, some of the state’s largest transit agencies will have to reduce service, lay off staff, and defer maintenance and modernization programs.”²¹

- In April 2023, the California Commission on the Status of Women and Girls tweeted a link to a report by the California Budget & Policy Center. The document claimed that “provider rates” for daycare workers “are inadequate,” and urged policymakers to “work to remove or significantly reform” a voter-approved spending cap “so the state can plan and make bold investments that help families be healthy and thrive.”²²



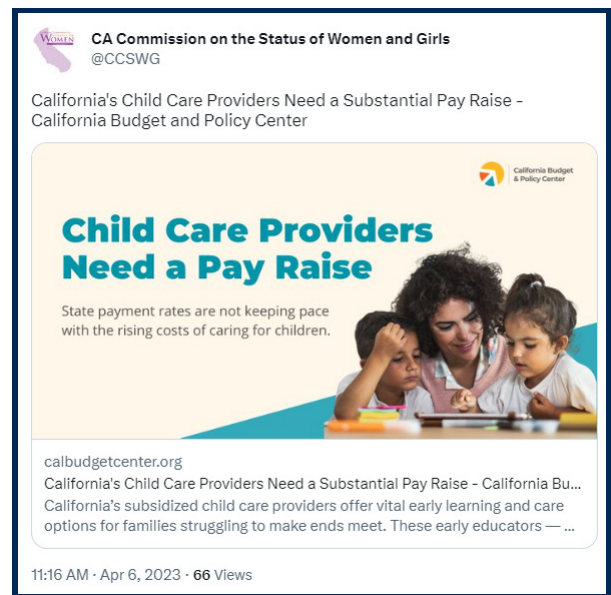
- Earlier this month, *The Oklahoman* covered House Bill 1376, legislation to “the cap for free school meals from 130% of the poverty line to 250%.” Sabina Garrett, the “child nutrition director” for Altus Public Schools, is an enthusiastic supporter:

“We’ve always had that problem where families just barely don’t qualify but that need is still there. I think it was so evident that those kids [during the pandemic] who had access to fresh fruits and vegetables were doing better in school ... and in life.”²³

- Last month, “more than 100 Oklahoma State University alumni, students and supporters” visited legislators “to advocate for sustained investment in the state’s land-grant institution.” “Capitol Cowboys Day” featured “a pep rally in the Capitol rotunda with Pistol Pete, the OSU Spirit Squad and OSU Pep Band, along with comments from OSU President Kayse Shrum, Governor Kevin Stitt and OSU Alumni Association President Ann Caine – all OSU graduates.”²⁴
- In January 2023, the Outdoor Recreation Division of the New Mexico Economic Development Department tweeted a link to a one-sided (no opponents were quoted) article in the *Santa Fe New Mexican* praising a bill to create “a \$75 million fund to draw federal money to a medley of state conservation programs among a half-dozen agencies.”²⁵
- In recent years, the New Mexico Environment Department has lobbied for the passage of a “Clean Fuel Standard.” In 2022, a top official spoke with an Albuquerque television station “about the Clean Fuel Standard Act, what it is and why it’s so beneficial.”²⁶

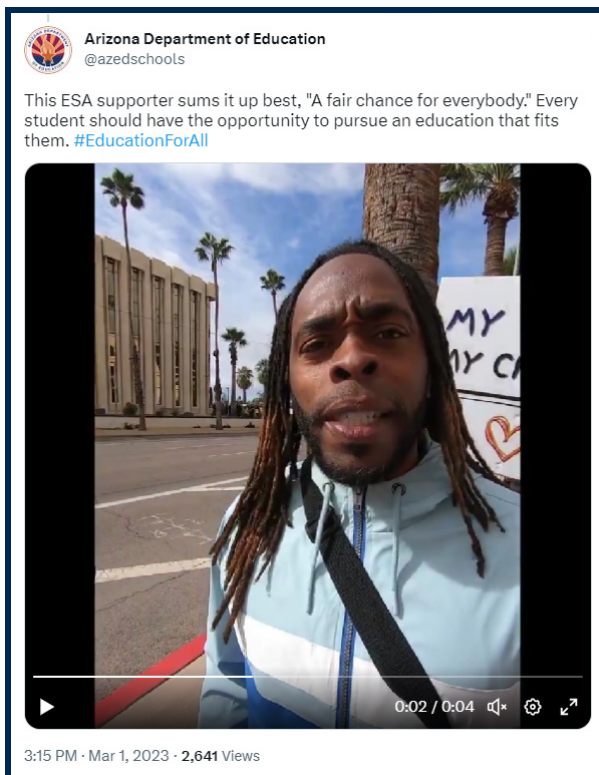
OFFENSIVE TO ALL

As the examples above indicate, taxpayer-funded lobbying often opposes the agenda of voices on the right – e.g., social conservatives and pro-taxpayer activists. But it would be a mistake to assume that the phenomenon is ideologically monolithic. The Southwest Public Policy’s survey of government advocacy in our region found many instances of public revenue pushing messages that “progressives” would surely find offensive:



- In March 2023, Colorado Governor Jared Polis announced his support for Senate Bill 23-213, designed “to overhaul the state’s land-use laws ... to increase access to affordable housing.”²⁷ The executive director of the Colorado Municipal League called the legislation “breathtaking overreach.”²⁸ A few weeks later, a “coalition of mayors in 39 cities and towns in the Denver metro region” announced its opposition.²⁹ Pitkin County – home to Aspen – sent its manager “to the state capitol ... to discuss ... concerns about the bill with legislators,” complete with “talking points’ ... that outline the county’s concerns.”³⁰ Many municipalities joined counties in adopting resolutions in opposition to the bill. Lone Tree, a small city in Douglas County, claimed that Senate Bill 23-213 “silences the voices of our residents and disregards prior decisions made by the voters, by taking away the right to be heard at public hearings on zoning matters or to use their constitutional rights of initiative or referendum to address zoning and land use matters,” and “strongly” urged lawmakers “to vote no on this unprecedented preemption of our land use and zoning authority.”³¹
- Tom Horne, the elected Superintendent of Public Instruction, runs the Arizona Department of Education and is a champion of school choice.

During the 2023 regular legislative session, the department’s Twitter account has regularly promoted education savings accounts for the Grand Canyon State.



- In March 2023, the Utah Department of Commerce’s Division of Consumer Protection praised Governor Spencer Cox, a Republican, for signing “HISTORIC SOCIAL MEDIA LEGISLATION.” (The division is now in charge of investigating “violations of the law,” and has the authority to “impose fines and civil penalties up to \$2,500 for each violation.”³²) A left-leaning First Amendment organization considers the two bills “overreaching, violative of free speech rights, pragmatically unenforceable in the final analysis

and using approaches and things like time period restrictions already found unconstitutional.”³³

- In July 2020, the Nevada Sheriffs’ & Chiefs’ Association wrote to lawmakers to ask for their “assistance in tempering the anti-police rhetoric that is jeopardizing the safety of our officers,” noting that “exceedingly few encounters with police involve force,” and condemning “members of Congress and state legislatures” for “dangerously fanning the flames of emotion by tacitly or explicitly supporting the ‘Defund the Police’ (or worse) movement.”³⁴ In February 2022, the association adopted a resolution opposing “any legislation, regulation, or administrative action that would worsen the issue of counterfeit prescription drugs by weakening our borders or legalizing the foreign drug importation.”³⁵
- In January 2023, the district attorney of Bernalillo County, New Mexico reposted a press release issued by Governor Michelle Lujan Grisham on his official website. The release quoted the DA: “I fully support a rebuttable presumption that keeps a potentially dangerous criminal behind bars when no conditions will reasonably protect the safety of those in the community. I’m asking the Legislature to make this the year we fix this.”³⁶



WHY IT MUST STOP

Whatever it espouses or disputes, intergovernmental advocacy is poisonous to principles held sacred by America’s civil religion. Unquestionably, its greatest violation is committed against the First Amendment. State coercion should not force “citizens to contribute to policies, programs, and views with which they may disagree.”³⁷ As a Texas activist put it:

*Taxpayer-funded lobbying clearly distorts the democratic process. ... Allowing the government the authority to allocate taxpayer funds for lobbying transforms government from its appropriate role as a neutral policymaker into an advocate of certain policies and ideologies.*³⁸

Writing for the majority in *Janus v. American Federation of State, County, and*

Municipal Employees, Council 31, U.S. Supreme Court Justice Samuel Alito opined:

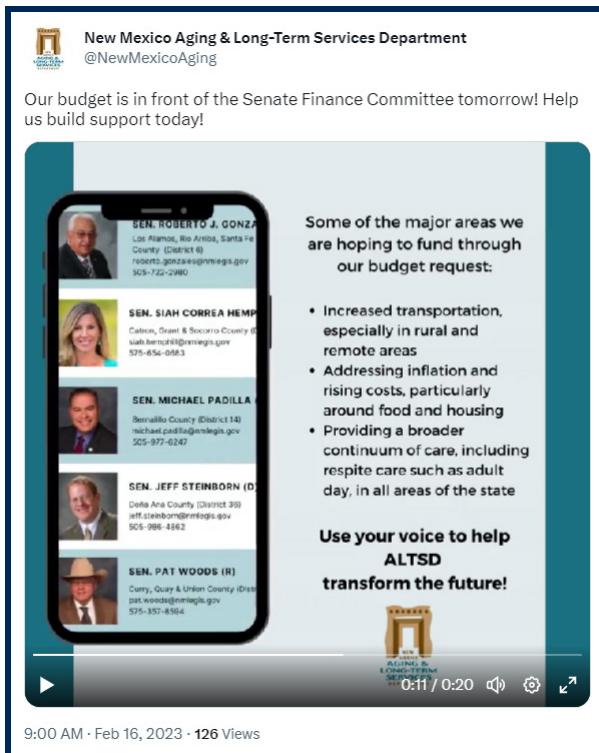
Free speech serves many ends. It is essential to our democratic form of government ... and it furthers the search for truth Whenever the Federal Government or a State prevents individuals from saying what they think on important matters or compels them to voice ideas with which they disagree, it undermines these ends.

When speech is compelled, however, additional damage is done. In that situation, individuals are coerced into betraying their convictions. Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning, and for this reason, one of our landmark free speech cases said that a law commanding 'involuntary affirmation' of objected-to beliefs would require 'even more immediate and urgent grounds' than a law demanding silence. ... Compelling a person to subsidize the speech of other private speakers raises similar First Amendment concerns.³⁹

In February 2023, the New Mexico Aging & Long-Term Services Department tweeted: “Our budget is in front of the Senate Finance Committee tomorrow! Help us build support today!” A four-image, 16-second video included contact information for each senator on the committee, and the tweet listed “major areas

we are hoping to fund through our budget request, such as “[i]ncreased transportation, especially in rural and remote areas,” “a rural food box initiative,” and “[p]roviding a broader continuum of care, including respite care such as adult day, in all areas of the state.”

It is likely that some New Mexicans do not believe the state should be expanding eldercare services. Others probably believe that the Aging & Long-Term Services Department shouldn’t exist at all – at the end of April, over 14,000 residents of the Land of Enchantment belonged to the Libertarian Party.⁴⁰ But improperly compelling speech was of no concern to whichever staffer used a taxpayer-provided social-media account to rally the bureaucracy’s loyalists.



On First Amendment grounds alone, taxpayer-funded lobbying is indefensible. But another persuasive argument against the phenomenon relates to a fundamental asymmetry between the public sector and private interests. The latter suffers from limitations that do not afflict the former. And as Thomas J. DiLorenzo and James T. Bennett argued in a book published more than a quarter-century ago: “Whenever government enters a political debate on one side it has the power and resources to drown out all opposing voices.”⁴¹ Here is why:

Individuals, private groups, and firms incur personal and private costs when they choose to lobby by themselves or through third parties; they typically only lobby to the extent that the benefits of lobbying outweigh these costs. Firms, for example, face limited resources that can be dedicated to lobbying. If lobbying activities are consistently unprofitable, the firm – responsible to its stakeholders – cannot continue to sustain these activities. Certainly, government budget limitations constrain the practice somewhat. But like most other government practices, the accounting system is not set up to measure costs versus benefits. Taxpayer-funded lobbying is simply not subject to the same level of cost-benefit analysis in the public sector as it is in the private sector, and the potential that government will continue to lobby beyond any effective limit is real.⁴²

MAKING IT STOP

Many of the challenges facing the American Southwest – e.g., substance abuse, traffic congestion, conflict over the use of federal lands – are multifaceted, and require complex, long-term policy responses.

Taxpayer-funded lobbying is not such a challenge. It can be banned, quickly and comprehensively.

Before addressing the mechanisms available for prohibition, it is important to address the oft-heard argument that ending intergovernmental advocacy amounts to censorship. The claim is specious. While “private citizens and groups of private citizens are afforded the right to petition for redress of grievances, the same entitlement does not extend to government.”⁴³ That is because no public-sector entity possesses “rights in itself, but only possesses such powers as are necessary to safeguard and uphold the rights of the citizens.”⁴⁴ Under comprehensive bans on taxpayer-funded lobbying, policemen, economic-development bureaucrats, health inspectors, game wardens, transit-system employees, corrections officers, and the like are free – on their own time, and using their own money – to influence the

decisions of elected officials and regulators. They are simply barred from using public resources to do so.

It is bitterly ironic, given TASB's muscle in Austin, that a national model for prohibiting taxpayer-funded lobbying can be found in Texas. Statutes forbid "a state agency" from using "appropriated money" to "employ, as a regular full-time or part-time or contract employee, a person who is required ... to register as a lobbyist." In addition, "membership dues to an organization that pays part or all of the salary of a person who is required ... to register as a lobbyist" are forbidden. Finally, state agencies cannot "attempt to influence the passage or defeat of a legislative measure," although "using state resources to provide public information or to provide information responsive to a request" is permissible.⁴⁵

Unfortunately for the residents of the Lone Star State, the same rules do not apply to *local* government. And it's a testament to the lobbying heft of cities, counties, school boards, etc. that attempts to extend the policy applied to state agencies to all types of nonfederal governments in Texas have failed. As the 2023 regular session comes to its conclusion in just a few weeks, bills "to ban the practice of taxpayer-funded lobbying ... have stalled in the Texas House."⁴⁶ Little wonder. At a March hearing to take testimony on one such bill, local governments fielded a veritable army of adversaries, including officials from the County and District Clerks' Association of Texas, Texas Association of Community Schools, Texas Association of School Administrators, Texas' Big City Mayors Group, Texas State Association of Fire and Emergency Districts, Justices of the Peace and Constables Association of Texas, Texas Association of County Auditors, Sheriffs' Association of Texas, and Texas Municipal League.⁴⁷

Despite the bifurcated nature of its constraints on taxpayer-funded lobbying, Texas is a standout in the American Southwest. In the region's other seven states, citizens are woefully exposed at the local and state levels. California, Nevada, and New Mexico have *no statutory restrictions* on the use of public monies for advocacy, and Arizona, Utah, Oklahoma, and Colorado have limited provisions that provide some, but nowhere near enough, protection.⁴⁸

But while elected officials in local government cannot control state law, they can take action with the authority they unquestionably command. The American Legislative Exchange Council has drafted a model ordinance for municipalities and counties to adopt. It blocks payment to "a person or entity that is required to register as a lobbyist with the state government," "any partner, employee, employer, relative, contractor, consultant, or related entity of a person for the purposes of

lobbying,” and “a person or entity that has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, ordinances, or other government policies.”⁴⁹

CONCLUSION

When taxpayer-funded entities engage in lobbying, “citizen lobbyists” are supplanted by “regiments of government, each clamoring to promote its own interests.”⁵⁰ No matter what the issue, no matter what the bill, no matter what the ordinance, no matter what the regulation, intergovernmental advocacy is always wrong. Fortunately, there are simple, constitutionally permissible tools available to address the problem.

From Tucson to Tulsa, Brownsville to Boulder, Carson City to Clovis, public funds are routinely spent to secure, for government itself, an outsized role in the policymaking process. Taxpayer-funded lobbying is opaque, expensive, and contrary to a core civil liberty. That is why it must end.

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