

# Limitations on Lobbying and Other Political Activities by Education Foundations

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Presented by:  
Janet Bubert  
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# Regulation of School District Advocacy

# Prohibitions for School Districts

- A school board is prohibited from using state or local funds or other district resources to **electioneer for or against any candidate, measure, or political party**. Tex. Educ. Code § 11.169.
- An officer or employee of a political subdivision, including an independent school district, is prohibited from knowingly spending or authorizing the spending of **public funds for political advertising**. Tex. Elec. Code § 255.003(a).



# Restrictions on Political Activity by Exempt Organization

# Prohibition on Political Activity

- An exempt organization – aka 501(c)(3) organization – is prohibited from directly or indirectly **participating in or intervening in a political campaign** on behalf of a candidate for office.
- Prohibition includes:
  - **Contributions** to political campaign funds
  - **Public statements** of position (**verbal or written**) made on behalf of the organization in favor of or in opposition to any candidate for public office

# Political Activity - Nonpartisan Exceptions

- Certain **voter education activities** conducted in a non-partisan manner do not constitute prohibited political campaign activity.
- Other activities intended to encourage people to participate in the electoral process, such as **voter registration** and get-out-the-vote drives, are not prohibited activities if conducted in a **non-partisan manner**.
- A **candidate forum** where all candidates are invited to speak, and the organization is not endorsing a particular candidate likely will not be considered prohibited political activity.

# Determinations of Prohibited Activity

- Whether an organization is participating or intervening, directly or indirectly, in a political campaign on behalf of or in opposition to any candidate for public office depends upon all of the facts and circumstances of each case.
- An activity that appears neutral on its face may violate the prohibition if conducted in a bias manner.

# Voter Education, Registration, & Voting Drives

- Education Foundation sets up a booth at the school district's college fair, where students and staff can register to vote.
- The signs and banners in and around the booth give only the name of the Foundation, the date of the next upcoming local election, and notice of the opportunity to register.
- No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation. The Foundation is not engaged in prohibited political campaign intervention.



# Voter Education, Registration, & Voting Drives

- Using the same scenario ...
- What if the Foundation volunteers do not express any opinion about the candidates in the upcoming election, but if someone stopping at the booth expresses a preference for a particular candidate the Foundation favors, the volunteers are offering additional information about polling locations or free rides to voting locations on election day.
- This **change in the manner** in which the booth is operated likely **results in political campaign intervention**.

# Activity by Organization Leaders

- Free expression on political matters by leaders of organizations **speaking for themselves**, as individuals, is not prohibited.
- Organization leaders cannot make partisan comments in official organization **publications** or at **official functions** of the organization.

# Candidate Appearances

- Candidates invited to an organization's function in their capacity as a candidate.
- Candidate invited to attend an organization's function in another role unrelated to their candidacy.
- Candidate attending an organization's function on their own that is open to the public.

# IRS Regulation on Legislative Activity

# IRS Restrictions on Legislative Activity

- An exempt organization may participate in activities attempting to **influence legislation** (commonly known as **lobbying**).
- Lobbying activities must represent only an **insubstantial** part of the organization's activities or there is a risk of losing exempt status.

# IRS Restrictions on Legislative Activity

- **Legislation includes** action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure.
- It **does not include** actions by executive, judicial, or administrative bodies.

# IRS Restrictions on Legislative Activity

- **Direct lobbying**: communication with a legislator (or other government official or employee who participates in the “formulation of legislation”) that expresses a view on specific legislation.
- **Grassroots lobbying**: communication with the general public that expresses a view on specific legislation and includes a “call to action”:
  - Encouraging public to contact a legislator;
  - Providing address or other contact information for a legislator;
  - Including a mechanism to communicate with a legislator; or
  - Identifying one or more legislators who are opposed or undecided.

# Defining “Substantial”

- Generally, no bright line rule for determining “substantial”
- Based on **consideration of a variety of factors**, including:
  - Expenditures devoted by the organization to the activity
  - Time or physical effort expended on behalf of the organization (by both compensated and volunteer workers)
  - Importance to the organization’s overall activities
  - Frequency of the organization’s legislative activities
- As little as 5% of the organization’s overall activities may be enough to be considered “substantial.”



# IRS Restrictions on Legislative Activity

- An exempt public charity that wants to increase its opportunity to participate in legislative activity may consider a **501(h) election**.
- Such designation allows the organization to maximize and calculate lobbying limits based on the organization's total exempt purpose expenditures for the year – may increase allowable limit to up to 20% of overall expenditures.
- Still limits “grassroots” lobbying to 25% of the total amount allowed.
- Allows some exceptions to activities that constitute lobbying (certain types of research, technical assistance, self-defense, broad issues)

# State Law Regulation of Lobbying

# Texas Government Code Definition of Lobbying

- Lobbying is direct communication with a member of the state legislative or executive branch to influence legislation or administrative action if the communication meets a statutory threshold and does not fit into an exception to the lobbying definition. Tex. Gov't Code § 305.003.
- No grassroots lobbying that triggers state law regulation.

# Texas Government Code Registration Requirements

- No state law regulation on how much lobbying an organization engages in.
- Instead, Government Code mandates that **individual advocates** track their lobbying activities and **register** if certain thresholds are met.

# Texas Government Code Registration Requirements

Registration obligation triggered by individual's:

- receipt of **compensation** or reimbursement (not including travel, food, lodging, etc.) that meets current threshold for a calendar quarter; or
- lobbying **expenditures** that meet the applicable threshold for a calendar quarter.

Current thresholds for 2025:

- \$1930.00 per quarter for compensation
- \$970.00 per quarter for expenditures

# Texas Government Code Registration Requirements

- **Compensation** includes any received for time spent preparing to lobby.
- **Expenditures** include those that benefit a state officer or employee (or immediate family member) made for the purpose of engaging in lobbying communication.

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# Organizational Audit

# Audit of Organization's Advocacy Activity

## Some **Key Questions to Consider:**

- Does the organization support or oppose legislation, by contacting legislators to support the organization's views?
- Does the organization support or oppose legislation by urging the public to contact legislators to support the organization's views?
- Is the organization familiar with and in compliance with Texas and local lobbying registration requirements?
- Has the organization made the 501(h) election?
- Does the organization engage in partisan political activity?



Questions?  
Janet.Bubert@uwlax.com  
817.439.9905

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uwlax.com