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## Breach of Faith: How Local Governments Are Using Your Tax Dollars Against You

### Key Points

- The right to petition is a constitutional right that ensures elected representatives hear from more than a select few supporters or special interests. It is intended to empower citizens, not the government.
- Governments do not have rights. Governments have powers. Only people have rights.
- Despite the constitutional order, Texas local governments frequently hire registered lobbyists to advocate for their causes at the statehouse. This practice promotes bad policy and frustrates people's free exercise.
- In 2021, local governments spent as much as \$75 million on external lobbying activities.

### Introduction

The U.S. Constitution guarantees citizens certain fundamental rights, like the right to ask government officials to fix problems or change public policy. More specifically, the First Amendment expressly provides that “Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The right to petition, as it is known, is one of the most important freedoms enumerated in the Bill of Rights. It ensures that elected representatives hear from more than a narrow sect of powerful supporters or special interests—and it empowers everyday people with the authority to communicate directly with officeholders. As a result, the quality of the policymaking process is greatly improved. “By being forced to acknowledge and respond to petitions from ordinary persons, officials become better informed and must openly defend their positions, enabling voters to pass a more informed judgment” ([Inazu & Neuborne, n.d., para. 9](#)).

In practical terms, an individual might exercise his or her right to petition in many different ways. One scholar notes that “Lobbying, letter-writing, e-mail campaigns, testifying before tribunals, filing lawsuits, supporting referenda, collecting signatures for ballot initiatives, peaceful protests and picketing: all public articulation of issues, complaints and interests designed to spur government action qualifies under the petition clause” ([Newton, 2002, para. 27](#)). This foundational right is not limited to individuals alone but also extends to private organizations, like unions, chambers of commerce, and certain nonprofit organizations. Individuals and groups seeking to exercise their right to petition have a multitude of venues to choose from as well. The Supreme Court has made this point on many occasions, including in *California Motor Transport Co. v. Trucking Unlimited* ([1972, para. 7](#)) in which the majority wrote that this right extends to “the approach of citizens or groups of them [in relation] to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to the courts, the third branch of Government.”

Yet 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 itself.

## Data from the Texas Ethics Commission show that local governments spent as much as \$75 million in 2021 to hire registered lobbyists to promote their agenda in Austin.

It is an essential truth of American political philosophy that “government has no rights—only people have rights—government has powers” ([DeVore, 2018, para. 12](#)). This point is reiterated by the scholar James Bovard ([2000, para. 18](#)) who writes that “Government does not have rights in itself, but only possess such powers as are necessary to safeguard and uphold the rights of the citizens.” Of course, these apologies originate from the Declaration of Independence which, in defense of natural rights, long ago contended “That to secure these rights, Governments are instituted among Men, deriving just powers from the consent of the governed” ([U.S. National Archives and Records Administration, n.d. para. 2](#)). Thus, in the American experience, the purpose of government is to protect people’s rights to life, liberty, and property—and its powers and authority are in service of that goal. Wherein government actions become sufficiently violative of those ends, “it is the Right of the People to alter or to abolish it, and to institute new Government” ([para. 2](#)).

The system established by the Framers of the Constitution is one in which citizens are the master and government the servant. Within this framework, the former has privileges and prerogatives while the latter has powers and positions. The former is to be served; the latter exists to provide the service. It is critical that readers fully appreciate this dynamic as it plays a central role in an important public policy debate unfolding in the Lone Star State that involves using tax dollars to lobby for more government.

### In the Texas Context

At the Texas Legislature, citizens’ right to petition is being hindered by a practice whereby governmental entities spend public money to hire registered lobbyists to advocate for and against specific legislative proposals. These pro-government advocacy efforts are routinely at odds with private citizens’ liberties and finances.

Legislative lobbying of this type is practiced exclusively by local governmental entities (i.e., cities, counties, school districts, and special districts). The reason why it is local government-specific is that state law bars state agencies from using public money to engage in lobbying activities. Per [Section 556.005 \(a\)](#) of the Texas Government Code, “A state agency may not use appropriated money to employ, as a regular full-time or part-time or contract employee, a person who is required by Chapter 305 to register as a lobbyist. Except for an institution of higher education as defined by Section 61.003, Education Code, a state agency may not use any money under its control to employ or contract with an individual who is required by Chapter 305 to register as a lobbyist.” Nor may a state agency appropriate public funds toward the payment of membership dues for an organization that retains the services of a Chapter 305 registered lobbyist, with minor exceptions. State agencies that violate these restrictions are subject to budget reductions of an amount not to exceed \$100,000 per violation. No similar requirements are put upon local governmental entities.

State law further restricts state agency lobbying activities at the Legislature by disallowing advocacy altogether. [Section 556.006](#) of the Government Code states: “A state agency may not use appropriated money to attempt to influence the passage or defeat of a legislative measure.” Hence, state agencies themselves are prohibited from attempting to influence the direction of legislation. Again, local governmental entities find themselves excluded from any similar limitation.

In a policy environment devoid of any meaningful statutory or constitutional restrictions, local governments have dedicated tremendous resources toward legislative lobbying. Data from the Texas Ethics Commission (TEC) show that local governments spent as much as \$75 million in 2021 to hire registered lobbyists to promote their agenda in Austin ([Texas Ethics Commission, n.d.](#)). This figure excludes the salaries and activities of in-house lobbyists, also known as intergovernmental relations personnel, as well as membership dues and other monies paid to pro-government associations, like the Texas Municipal League, the Texas Association of Counties, the Texas Association of School Boards, and others. Thus, the \$75 million spent by local governments to lobby is only a partial account—albeit an important one. Local government lobbying expenses have increased significantly since the Foundation’s previous examination of TEC data in 2017, which found “as much as \$41 million” was spent to carry it out ([DeVore, 2017, para. 5](#)).

At whatever level of expense, the practice of using tax dollars to lobby for more government is concerning for several reasons. First, as a general matter, Texas public policy should not permit one part of government to petition another part of government for a “redress of grievances,” or some approximation of it. Governmental entities have no right to such privilege under the Constitution nor is their advocacy in legislative affairs prudent. After all, government agents that lobby duly elected representatives are detracting from the ability of private persons to speak with and influence those same elected officials. What’s more, registered lobbyists have the means and the motive to make (pre- or post-session) campaign contributions to the elected class, which creates opportunities for impropriety and raises thorny questions. These concerns are magnified in light of the volume of activity underway.

Second, the aim of local lobbying efforts is predominantly toward greater spending, more regulatory authority, and larger government. Consider the legislative agendas adopted by many of the state’s largest local governments. For instance, the 2023 legislative priorities of the city of Austin (2022) include opposing spending limits (p. 3), fighting reasonable tax restraints (p. 3), thwarting debt transparency (p. 4), promoting corporate welfare (p. 6), undoing election integrity reforms enacted last year (p. 9), and a vague charge to “Support legislation that promotes equity for residents of Austin including pay-equity, education equity, housing equity, and health-equity” (p. 6). Likewise, the 2023 legislative agenda of the city of Houston (2022) proposes to expend public resources to advocate for “common sense gun regulations” (p. 2), “legislation strengthening local governments’ [environmental] regulatory authority” (p. 3), increased public education spending (p. 4), and Medicaid expansion (p. 4). In yet another example, the 2023 legislative program of the city of Dallas (2022) directs taxpayer-funded resources toward mandating sales price disclosure for residential and industrial properties (p. 1), seeking after new “revenue streams” (p. 1), and securing appropriations for “Dallas parks, trails, and playgrounds” (p. 2). Many other examples exist, but the goals are oftentimes the same—to grow the size and scope of government. This aim is antithetical to the political preferences of a majority of the Texas electorate, as evidenced by a myriad of state and local election results.

Third, progressive politicians tend to represent the lion’s share of those who engage in publicly funded advocacy efforts. Consider one relatively recent research study

(Goldstein & You, 2017, p. 5) which found that “cities which are more liberal than their states are more likely to lobby, while cities which are more conservative than their states are less likely to lobby.” This finding means that a particular political perspective tends to be over-represented at state legislatures where local matters are concerned. As a result of this misperception, policymakers may decide to advance the modern progressive movement’s goals and agenda thinking that it represents the majority opinion when, in fact, it does not.

In combination, these three concerns have prompted the filing of numerous pieces of legislation over the past few years to address the practice of using tax dollars to hire lobbyists.<sup>1</sup> While most of the measures ultimately failed to pass, the bills advanced far into the legislative process and garnered broad support. Looking ahead, there remains strong interest among both the public and policymakers, meaning that the issue is likely to be broached again at the Legislature in 2023.

## Recommendations

Texans’ constitutional right to petition their policymakers is under duress from local governments that use public funds to hire registered lobbyists who apply their know-how at the Legislature to promote governmental interests. In such an environment, the average Texan seeking a redress of grievances is put at a significant disadvantage in terms of knowledge, network, and ability to influence the passage or defeat of legislative measures. The status quo is incompatible with certain constitutional ideals and requires substantive reform.

### *In the Ideal*

On principle, policymakers ought to ban local governments from employing registered lobbyists directly and indirectly. One way to enact such a restriction is to apply the same standards that *already* exist for state agencies to local governments. For example, [Section 556.005](#) of the Texas Government Code might be amended to read:

Sec. 556.005. EMPLOYMENT OF LOBBYIST. (a) A state agency **or a political subdivision** may not use **public [appropriated]** money to employ, as a regular full-time or part-time or contract employee, a person who is required by Chapter [305](#) to register as a lobbyist. Except for an institution of higher education as defined by Section [61.003](#), Education Code, a state agency **or a political subdivision** may not use any

<sup>1</sup> Prominent bills filed in the recent past include, but are not limited to, HB 281 (2019); HB 433 (2019); HB 3680 (2019); HJR 86 (2019); SB 29 (2019); SB 82 (2019); SB 702 (2019); SB 703 (2019); SB 1614 (2019); HB 749 (2021); HB 3687 (2021); SB 10 (2021); SB 234 (2021); and SB 1879 (2021).

money under its control to employ or contract with an individual who is required by Chapter [305](#) to register as a lobbyist.

(b) A state agency **or a political subdivision** may not use **public [appropriated]** money to pay, on behalf of the **governmental entity [agency]** or an officer or employee of the **governmental entity [agency]**, membership dues to an organization that pays part or all of the salary of a person who is required by Chapter [305](#) to register as a lobbyist. This subsection does not apply to the payment by a state agency of membership fees under Chapter [81](#).

Another, broader approach is to expand the general state agency prohibition on legislative lobbying, located in [Section 556.006](#) of the Texas Government Code, to also include political subdivisions. Thus, an amendment to existing state law might read:

Sec. 556.006. LEGISLATIVE LOBBYING. (a) A state agency **or a political subdivision** may not use **public [appropriated]** money to attempt to influence the passage or defeat of a legislative measure.

(b) This section does not prohibit a state **or local** officer or employee from using **public [state]** resources to provide public information or to provide information responsive to a request.

A third way to eliminate the influence of publicly funded professional lobbyists is to amend [Section 556.0055](#) of the Texas Government Code that governs local lobbying expenditures—albeit only those expenditures made with state monies. This section of code could be rewritten as such:

Sec. 556.0055. RESTRICTIONS ON LOBBYING EXPENDITURES. (a) A political subdivision or private entity **that receives state funds** may not use **public [the]** funds to pay:

- (1) lobbying expenses incurred by the recipient of the funds;
- (2) a person or entity that is required to register with the Texas Ethics Commission under Chapter [305](#);
- (3) any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (2); or

(4) 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.

(b) A political subdivision or private entity that violates Subsection (a) is not eligible to receive additional state funds.

These are just a few of the ways in which to craft a comprehensive local lobbying prohibition. Many other approaches exist (for instance, see the previous list of bills filed in 2019 and 2021). To be sure, there is not a lack of solutions. Rather, inaction on the issue seems to stem from the constellation of pro-government actors who benefit from the status quo. Consider that any effort to ban local governments from employing registered lobbyists risks being opposed by every city, every county, every school district, and every special district as well as the Austin lobby itself. In other words, the opposition is both numerous and influential. Thus, resolving this issue satisfactorily in the future might well require an incremental approach.

#### *A More Pragmatic Approach*

Admittedly, there is great difficulty in passing a comprehensive local lobbying ban that applies to all taxing unit types, even if that is the ideal. Hence, it may be prudent to achieve the intended policy reform gradually. One example of this approach is the introduced version of Senate Bill 10 ([2021](#)), which proposed to “prevent the governing body of a county or municipality from spending public money or providing compensation in any manner to directly or indirectly influence or attempt to influence the outcome of any legislation pending before the legislature” ([SB 10 Bill Analysis, 2021, p. 1](#)). As evidenced by the text, the effect of the bill would have been limited to cities and counties only, leaving school districts and special districts unaffected. By narrowing the scope of the bill to focus only on certain types of political subdivision, a reform-minded policymaker might also limit the size and severity of any pro-government opposition. If and when such a measure were passed, reformers could then shift their focus to other jurisdiction types and call for similar requirements to be imposed.

Another way to make incremental progress is to improve the availability of information related to local lobbying expenditures—the operative theory being that increased transparency will yield greater demand for accountability in how public monies are used. One recent measure that proposed transparency improvements was Senate Bill 1879 ([2021](#)), which sought to address the fact that “there is no

statute requiring local governmental entities to explicitly state the expenditures made on behalf of lobbying activities during the legislative session” ([SB 1879 Bill Analysis, 2021, p. 1](#)). To remedy the deficiency of easily accessible information, the bill would have “amend[ed] the Local Government Code to require the Texas Ethics Commission (TEC) to develop a new electronic filing application to allow certain reports required by this bill to be filed electronically and to be searchable on the Commission’s Internet website” ([SB 1879 Fiscal Note, 2021, p. 1](#)). Hence, taxpayers would have been provided with a new searchable database containing useful information with which to prompt their local elected officials about the need for registered lobbyists, their specific legislative activities, and the public’s return on investment. Unfortunately, the measure did not pass; however, there is another opportunity in 2023 to attempt to pass a good government measure like this again.

In truth, there are many ways to slow or stop local governments from using tax dollars to hire lobbyists. Past legislative measures as well as the proposals presented in this paper prove as much. The real challenge in 2023, if there is one, is to muster and maintain the political will necessary to enact meaningful reform. This may be made easier by the fact that as more and more Texans have learned about the practice and its implications, a great many are ready for bold, conservative changes, if for no other reason than to ensure that their right to petition policymakers for a redress of grievances may be practiced free of government interference. ★

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