



**Kansas Local Government Senate Committee
Testimony By Peggy Venable
March 9, 2015**

Government lobbying government: taxpayer funded lobbying

Thank you, Chairman Pyle, for inviting me to come to Kansas to address this distinguished committee. It is appropriate that you hold this hearing the week before Sunshine Week. I can think of no better issue to highlight than the use of public dollars to hire lobbyists to influence public policy.

When Thomas Jefferson wrote: *“To compel a man to furnish funds for the propagation of ideas he disbelieves and abhors is sinful and tyrannical,”* he likely had no idea that the practice would become commonplace in capitols across the country.

I have asked myself: What would our Constitution look like if our Founding Fathers had hired lobbyists to negotiate, debate, and write it?

I commend you and the committee for taking time to discuss this issue.

My background

Before I begin my testimony, I believe it is helpful for the committee to know more about me and my background.

I have been involved in public policy for over 30 years. I was the first White House Liaison for the U.S. Department of Education in the Reagan Administration. From there I went to the Republican National Committee and was director of President Reagan’s re-nomination convention in 1984. Following that, I headed a public policy campaign at the Department of the Interior.

In leaving Washington, I decided to help create that momentum for change and began working for the predecessor organization of Americans for Prosperity as the first Texas director. Today, I am Senior Policy Fellow at AFP and remain AFP-Texas policy and legislative director.

The role elected officials should be playing

Elected officials have considerable influence with state legislators and with Congressional members. That influence should not be diluted by hiring lobbyists to work on behalf of any government body. Influence is built by being willing to support and defend views, working with other elected officials, being willing to be held accountable, and to listening to constituents.

Voters expect their officials to work together in the public and their constituents' best interest, not to hire lobbyists to represent them, and often to lobby against the taxpayers' interests.

How I got involved

Public sector lobbying was something I had encountered in Washington, D.C. But I was surprised to find it so prevalent in Texas.

Let me reiterate that I believe elected officials should work together in their constituents' best interests. I believe that mayors and city council members, county commissioners, school board members and other elected officials should work directly with legislators and congressional members. That's what candidates who run for office saying they will do and what I believe they are elected to do.

It was over 15 years ago when I saw my daughter's high school principal testifying during a school day on a bill which I opposed. I began to look more closely around the hearing rooms, and around the Capitol and attempted to calculate how many individuals were there on the taxpayers' dollar, and how many of those were not representing what I considered the taxpayers' best interests.

Quantifying the dollars spent

The first way to determine if a problem exists is to ask the right questions, examine the evidence and quantify the issue. Though we in Texas have a state requirement that lobbyists register and report, it is not in a searchable database and we have thousands of registered lobbyists in the State of Texas.

Several years ago, we at Americans for Prosperity, conducted a review of all taxpayer-funded lobby filings in Texas and found that well over \$50 million was spent on lobbying by local taxing entities.

Texas law on government lobbying

Taxpayer-funded lobbying has not always been around, but it has grown over time and has become more than a norm – it is a growth industry.

That was not always the case. Around the same time the Texas Association of Counties (TAC) was established in 1969, a state law was put in place in Texas which prohibited counties from joining associations that lobby.

That is one of several sections of Texas law that are relevant in discussing ethical issues regarding government sector/taxpayer-funded lobbying.

Texas Local Government Code section 556.0055 prohibits the use of state funds to pay for lobbying expenses incurred by the recipient of state funds. This is relevant in cases involving school districts: because they receive a significant percentage of their budget directly from the state.

Texas Local Government Code section 305.026(d) specifically allows other local governments to use taxpayer funds to pay dues to certain statewide associations which engage in lobbying.

Texas Local Government Code section 305.005(f)(3) states that lobbyists must disclose on whose behalf they lobby as well as who reimburses them. Because of this language, lobbyists hired by a chamber of commerce will register both the chamber and the local government, even if the local government has no official knowledge that they are being represented. This confuses the reporting of lobbying activities.

Texas Local Government Code section 89.002 states, "The commissioners court may spend, in the name of the county, money from the county's general fund for membership fees and dues of a nonprofit state association of counties if ... neither the association nor an employee of the association directly or indirectly influences or attempts to influence the outcome of any legislation pending before the legislature." This was written to prohibit county governments from using county dues to pay association dues if the association influences or attempts to influence the outcome of any pending legislation.

On the TAC website, the following is listed as "Services provided to counties by TAC" (note the 4th bullet):

- Training and continuing education for county officials and staff;
- Communications on county issues and activities;
- Research and technical assistance to help with daily operations;
- **Respected representation before both the state and federal governments;**
- Cost effective risk management services targeted to the unique needs of counties;
- Cost effective information technology services; and
- A forum to identify and resolve county issues, particularly those that require cooperation

between various elected officials.

Frederic Bastiat wrote: “When plunder becomes a way of life for a group of men in a society, over the course of time they create for themselves a legal system that authorizes it and a moral code that glorifies it.”

I believe that the use of tax dollars to hire lobbyists to influence legislation had been accepted practice – even if government codes prohibit it. While Bastiat referred to glorifying it, I believe that the media, policymakers and citizens had simply accepted it.

The lawsuit...

It appeared clear to us that TAC was operating outside the law. We called public attention to the law and expected that TAC would voluntarily come into compliance. They did not.

We called for reforms in 2005 and when The Texas legislature failed to pass reforms during regular session and two subsequent called sessions, we decided to take action.

Because I had standing in my county, I filed a lawsuit and was represented by former Texas Supreme Court Justice Steven Wayne Smith, with the Texas Legal Foundation. In the filing, the Texas Legal Foundation announced they were pleased to represent us because they believe in (their words, not mine):

- The principles of government accountability
- Limited government spending
- The rule of law
- And representation of the people through their elected representatives. “We believe that all these principles are endangered when taxpayers are illegally taxed in order to pay lobbyists to persuade the Legislature to raise taxes.”

Our object was to point out that taxpayer-funded lobbying is:

- Not consistent with our representative form of government -- elected officials should be working together in the best interest of their constituents
- A betrayal of taxpayer trust
- Distorts the democratic process
- An inappropriate use of tax dollars
- Violates public trust as lobbyists often lobby to grow government, raise taxes, increase debt
- Unnecessary as elected officials have the responsibility to stay abreast of legislative issues and whether they are paid or not is immaterial – they ran for the position
- And to bring TAC into compliance with the law and cease lobbying.

It was during the first called session in 2005 when one media outlet wrote about two announcements made that day. One announcement—when Agriculture Commissioner Susan Combs announced her candidacy for Texas Comptroller— was described as

“expected,” but the second announcement was described as having “sent shockwaves through the halls of the capitol.”

Those “shockwaves” were caused by three taxpayers filing a lawsuit against one Texas county, alleging the county illegally expended funds to join an association that lobbies.

The lawsuit is *Venable v. Williamson County*, and I was joined in the lawsuit by several Americans for Prosperity (AFP) activists who were fellow Williamson County taxpayers. The lawsuit was filed as a last resort, and it sought to force counties to comply with state law. The suit asserted that Williamson County had used general revenue funds to support county associations, including the Texas Association of Counties (TAC).

At the time, TAC employed 15 registered lobbyists and openly participated in lobbying activities. TAC has contended that their 15 paid lobbyists don’t really lobby and that TAC is in compliance with state law and dismissed me and the lawsuit as frivolous. They went so far as to feature my organization and me in their monthly magazine and wrote three articles aimed at discrediting us. More of our tax dollars at work. If that was intended to force us to back down, it was not successful.

We ended up winning the lawsuit, but the judge issued an opinion which provided the TAC with opportunity to segregate their funds and continue to lobby. My attorney filed a request for an amended ruling which was not issued. We won the lawsuit only to allow TAC to continue to go on with business as usual – even with the law on the books.

As an update, the TAC today employs 19 registered lobbyists at a cost to taxpayers of as much as \$530,000.

We at AFP have traveled the state of Texas talking about the issue and there is tremendous public support for a prohibition. Texas citizens have called for it.

The Republican Party of Texas has even put support for a prohibition on taxpayer-funded lobbying in their party platform.

I have written on the topic, including a piece in Heritage Foundation’s [Heritage Insider: The Taxman vs. the Taxpayer](#).

Leadership issued an interim charge...

We asked that an interim charge be issued – which represents an assignment by either the Speaker of the House or the Lt Governor or both – to study taxpayer-funded lobbying.

The committee was tasked to research, review and investigate the expenditures of taxpayer money by local government and school board to lobby the Legislature.

House Committee on Investigation and Ethics with House Committee on Public Education issued an *Interim Report 2006: Investigating Expenditures of Taxpayer Money by Local*

Government and School Boards to Lobby the Legislature:

<http://www.house.state.tx.us/media/pdf/committees/reports/79interim/generalinvestEthics.pdf>

The report reads, in part:

"...more fundamental question is whether these taxpayer-funded lobbying activities are democratic...a review of the positions lobbied for by local governments with taxpayer money reveals that these positions are almost uniformly in favor of increased governmental spending and authority, while public opinion surveys show that Texans are broadly and increasingly in favor of more efficient and accountable government. Taxpayers often travel to Austin to advocate for property tax reductions, appraisal caps and local tax and expenditure limitations, increased local government fiscal transparency and accountability, restraints on eminent domain authority and in "truth in taxation" disclosure requirements, only to find that their own tax dollars are being spent to hire lobbyists to lobby against those very ideas."
(page 14)

The report found it difficult to ascertain what was being advocated by local government lobbyists and to hold them accountable to citizens and how much local tax revenue is spent on lobbying.

The report identified concerns and issues but fell short of calling for action to be taken to prohibit the practice. The report did identify shortcomings in the current lobby filing process and acknowledged that the practice was problematic.

A state-by-state look at taxpayer funded lobbying ...

Taxpayer funded lobbying has gone from being a fringe issue to becoming a hotly debated topic in many state houses. Many bills or constitutional amendments have been proposed over the past decade to prevent taxpayer funds to lobby lawmakers. While there has been progress on bringing the issues to the forefront, results have often been disappointing for stewards of taxpayer dollars.

States which have restrictions of taxpayer funded lobbying include:

- **Alaska** has this prohibition for 13 state agencies that are listed in the statute;
- **Connecticut** includes state agencies and 9 quasi-public agencies in its prohibition;
- **Florida** allows full-time employees of the executive branch and universities to register as a lobbyist and represent their employer; however, these entities may not use public funds to retain a lobbyist to represent them before the legislative or executive branch.
- In **Illinois**, registered lobbyists cannot accept compensation from agencies for lobbying on a legislative action. The law provides an exception for full-time state agency employees who receive a portion of their salary in order to lobby an executive, legislative, or administrative action or for those who are contractually retained by certain state agencies.
- **Louisiana's** law prohibits an entity of state government or an employee from using state funds to lobby any matter being considered by the legislature. In practice this also

includes a ban on contract lobbyists, though the law is not specific. State employees may give factual information.

- **North Carolina** allows agencies to designate two employees as liaisons to lobby;
- **South Carolina's** ban is by executive order and applies to 13 agencies in the Governor's cabinet;
- In **Texas**, a state agency may not use state funds to hire anyone who is required by law to register as a lobbyist.
- **Utah** bans agencies from using public funds to pay contract lobbyists.
- **Virginia's** law prohibits officers, boards, institutions, or agencies from employing lobbying for compensation.

Other restrictions on using state funds to lobby:

- In **Hawaii**, individuals and organizations that receive grants may not use state funds for lobbying activities;
- In **Iowa**, a state agency may not use public funds for a paid ad or public service announcement 30 days prior to or during a legislative session to encourage specific action on a bill. Additionally, many senior state executive and legislative employees and public officials cannot lobby, unless they are designated to represent the official position of the agency or office;
- **New Hampshire** prohibits a recipient of a grant or appropriation from using state funds to lobby or influence legislation. If the recipient wants to lobby, funds that are used must be segregated from the state money;
- In **Washington**, lobbying with state funds is limited to providing information, which includes advocating an agency's official position.

In addition to Kansas, other states have begun working on the issue:

South Dakota - In 2008 the South Dakota Limits of Lobbying Initiative or Initiative 10 was on the November Ballot. The law would have banned taxpayer funded lobbying, stopped campaign donations for state contracts and created a transparency website. This effort drew support including a 10,000- signature petition drive spearheaded by Americans For Tax Reform, and while the merits of the bill seem clear, opponents were able to say the measure was not clear enough in its language and could interfere with political rights. Additionally the Governor opposed the measure and so did the South Dakota Association of Country Commissioners. The measure ultimately **failed 64% to 35%.**

Oklahoma - In 2014 Oklahoma pushed a similar bill which also would have banned taxpayer funded lobbying efforts. The bill went further and also banned state agencies which don't receive appropriations from hiring contract lobbyists and preventing anyone who was registered as a lobbyists for working for the state for two years. This bill was seen as too extreme from some members of the House **and failed** by a vote of **64-30.**

Pennsylvania - In 2013, Democrat Tina Davis introduced legislation to restrict taxpayer funded lobbying. It didn't pass. Governor Tom Wolf for his charter school proposal also wanted to restrict schools from using general funds to prevent taxpayer funded lobbying. **South Carolina** - South Carolina has been effective in preventing taxpayer funded lobbying but only to a degree. While South Carolina has restricted general funds from being used to lobby lawmakers, locally raised tax dollars and tuition dollars can still be used. This law was passed in 2012.

It takes courage to fight the system

I salute you for holding this hearing to discuss the issue. It takes courage to take on the government lobby. We are often dismissed by those benefitting from or simply comfortable with the current system.

Attempts are often made to marginalize those who challenge the status quo. But challenge it we must.

And we need both citizens and elected officials with courage and principles willing to stand up to powerful lobby associations, groups and individuals who are draining our cities, counties and schools of resources, working against what many of us consider the public interest.

Those willing to challenge the status quo are finding they are in good company.

When in the Texas House, now-Texas Attorney General Ken Paxton carried legislation to disclose taxpayer-funded lobbying. He was vice chairman of the General Investigating and Ethics Committee when he served in the Texas House when the interim report was issued on taxpayer-funded lobbying.

Texas Governor Greg Abbott included in his campaign a "Blueprint for Texas" which called for ending the practice of school districts hiring lobbyists and using public dollars to sue the state for more money.

The then-candidate Abbott's recommendation was to "Prohibit the use of tax dollars for the purpose of engaging a registered lobbyist to lobby on the behalf of a school district or the board or association thereof."

The Texas Ethics Commission notes that several school districts and their associations spent a significant amount on lobbyists during the 83rd (most recent) Legislative session. These include:

- The Texas Association of School Boards spent as much as \$400,000
- Houston Independent School District spent as much as \$245,000
- Texas Association of School Administrators spent as much as \$175,000.

Gov. Abbott's Blueprint reads: "Utilizing state tax dollars to hire private lobbyists to influence the state (and its budgetary priorities) is an abuse of the public trust.

"It is, in part, the legality of lobbyists for the entrenched interests of school districts that makes meaningful reform of Texas' public education system so difficult. These expenditures of taxpayer funds to hire private lobbyists to influence taxpayer-funded government officials should be prohibited. "

Tomorrow, you will hear from two Texas legislative leaders who have filed legislation to prohibit taxpayer-funded lobbying - Rep. Matt Shaheen and Sen. Konni Burton - and former California legislator Chuck DeVore as well as former College Station councilmember Jess Fields. Each has a unique perspective on this issue.

In conclusion

Taxpayer-funded lobbying clearly distorts the democratic process. Government should not be in the business of providing funding to give voice to points of view that may not represent the views of the majority of the taxpayers.

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. This situation produces fertile ground for abuse and shields elected officials for cities, counties and schools from the positions those government bodies are advocating.

For those who do not agree with my position, I would extend this challenge. If lobbying with tax dollars is not offensive to voters, why not provide full transparency and accountability for these lobby activities? Taxpayers have a right to know how their dollars are spent – and the issues they are spent to influence.

Pitting the tax spender against the taxpayer clearly distorts the legislative process and violates the principles of representative government. We can disagree with our elected officials and – if citizens choose – can vote them out of office. Lobbyists hired by local taxing entities have no such accountability to the voters.

Elected officials should represent us and be both transparent in their representation and accountable in the positions they take. Hiring lobbyists to do this denies both the representation and the transparency needed for accountability.

