

***IN DEFENSE OF TAXPAYER FUNDED LOBBYING:
SECURING AN AFFIRMATIVE RIGHT TO INTERGOVERNMENTAL
COMMUNICATION***

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I. INTRODUCTION

Local governments' right to advance their interests before state and federal officials is under attack. Local governments have paid private citizens to lobby state and federal governments since the 19th century,¹ but in recent years a wave of anti-lobbying provisions have come before state legislatures at the instigation of national activists who believe that "lobbying with taxpayer funds is toxic to principles of limited government."²

Whether an individual is considered a "lobbyist" depends on the venue before which the individual practices, but federal, state and local governments have all determined that an individual is acting as a lobbyist when they are paid to influence public policy through direct contact with government officials.³ Lobbying is an indispensable element of the legislative process in which individuals communicate their needs and advocate on behalf of clients before elected representatives and other decision makers at the local, state and federal level.⁴

Communities' ability to influence policymakers at the Federal level has become increasingly important in recent years due to the disparity in funding available to state and Federal governments.⁵ This disparity has resulted in the perception of increased

¹ See *Allen v. Cerro Gordo County*, 34 Iowa 54 (Iowa 1871) (allowing the expenditure of country funds to lobby for the disposition of federally controlled swamp lands in Iowa); see also *infra* Section II.

² See BENJAMIN BARR, *YOUR TAX DOLLARS AT WORK: THE IMPLICATIONS OF TAXPAYER-FUNDED LOBBYING* 3, The Goldwater Institute, January 2007, available at: <http://goldwaterinstitute.org/sites/default/files/Your%20Tax%20Dollars%20at%20Work.pdf> [*hereinafter*: *Your Tax Dollars at Work*].

³ See Section 3 of the Lobbying Disclosure Act of 1995 (PL 104-65); see also New Hampshire Revised Statute Annotated 15:1; Los Angeles Municipal Code §§ 48.02.

⁴ See 35 A.L.R.6th 1; see also

⁵ See ELIZABETH MCNICHOL, PHIL OLIFF, AND NICHOLAS JOHNSON, STATES CONTINUE TO FEEL RECESSION'S IMPACT, March 2012, Center for Budget and Policy Priorities, available at: <http://www.cbpp.org/files/2-8-08sfp.pdf>

competition for grant funding and direct aid to communities.⁶ As a result, the number of local governments that employ federal lobbyists has increased nearly three-fold in the last decade, from around 400 in 2000, to over 1,100 in 2012.⁷ Spending on these efforts has increased at a corresponding rate, rising from \$27.7 million in 1998 to roughly \$77.4 million in 2010.⁸

The rise in lobbying expenditures by local governments has resulted in a wave of legislative proposals that would deny municipal and county governments the right to use public funds to make their case before state and federal officials.⁹ Proponents of these bills argue that taxpayer funded lobbying disfranchises individual citizens by allowing local officials to use money citizens paid in taxes to advocate for programs that they oppose.¹⁰ In reply, municipal advocacy groups argue that their lobbying efforts have a “vital educational role” and that these bills would “muffle the voice of local government.”¹¹

Despite a long-term judicial trend that supports local governments’ right to use public funds to engage in lobbying activity, without specific local constitutional

(indicating that Federal funding made available through the American Recovery and Reinvestment Act 2009-2011 made up 40% of projected state budget shortfalls in 2009, 2010, and 2011).

⁶ See JC Reindl, *Finizio Hopes to Sell Council on Lobbyist, Grant Writer*, The Day, January 9, 2012, available at: <http://www.theday.com/article/20120109/NWS12/301099965/Finizio-hopes-to-sell-council-on-lobbyist-grant-writer>; see also *infra* Section III, B (regarding the impact of state balanced budget amendments on funding availability during periods of reduced tax receipts).

⁷ See “Analysis of Lobbying Disclosures of the Senate Office of Public Records,” March 7, 2012, available at: www.eastpointstrategies.com/LocalEntitieswithFederalLobbyists.xlsx.

⁸ See Zachary Newkirk, *Tiny Towns Spend Big Bucks on Lobbyists to Reap Federal Government Riches*, Open Secrets Blog, May 4, 2011, available at: <http://www.opensecrets.org/news/2011/05/tiny-towns-spend-big-on-lobbyists-to-reap-federal-government-riches.html>.

⁹ See *infra* note 81 and accompanying text.

¹⁰ See Newkirk, *supra* note 8.

¹¹ See New Hampshire Municipal Association, *Bill Would Prohibit All Municipal Lobbying*, LEGISLATIVE BULLETIN, January 20, 2012, available at: <http://www.nhlgc.org/attachments/nhma/Bulletins/2012Bulletin-5.pdf>.

protections state police powers leave these entities vulnerable to activist-driven legislative initiatives.¹² The rapid expansion of municipal lobbying efforts over the past decade amply demonstrates localities' associated interest in taking advantage of increasingly scarce state and federal funding. Therefore, local governments should respond to these challenges decisively by seeking a statutorily or constitutionally guaranteed right to use public funds to support or oppose legislative or regulatory actions at higher levels of government.

Section II of this paper provides essential background information, discussing states' power to regulate local activity, the long-term judicial trends defending local expenditures for lobbying activity, and potential Constitutional constraints at the federal level. Section III describes the expansion of local lobbying over the last decade and corresponding efforts to limit these expenditures. Section IV outlines the potential avenues that local governments may take to guarantee their right to use public funds to advocate for their interests before state and federal officials. The paper concludes by urging local governments to advocate for state constitutional provisions guaranteeing their right to expend public funds to advocate for legislative and regulatory policies that would benefit their citizens.

¹² See *infra* Section III, B.

II. JUDICIAL BACKGROUND

In the modern era, all states and the federal government regulate lobbying of legislatures and executive branch officials to some degree.¹³ Because of the layered nature of our federal system, the level of government that the lobbyist interacts with has traditionally maintained jurisdiction over their activities.¹⁴ However, local governments that lobby state and federal officials may face regulation at multiple levels because of states' general police power and limited nature of the powers delegated to some local governments.¹⁵

This section will outline the current legal framework within which local governments operate when using public funds to lobby state and federal officials. It describes the historical transition from a period when courts prohibited the expenditure of public funds for legislative advocacy to the modern era in which courts largely accept arguments that taxpayer funds can be used to support lobbying activity intended to achieve a lawful public purpose.¹⁶ It also discusses potential Constitutional concerns and the application of state legislative and constitutional mandates.

¹³ See Jan Witold Baran et al., *Corporate Political Activities 2008: Complying with Campaign Finance, Lobbying & Ethics Laws*, Practising Law Institute, at 254 (2008) (noting that all states regulate, to some degree, lobbying of state legislators, including attempts to influence the passage or defeat of legislation and, often, executive approval or veto of legislation); see also *supra* note 3 and accompanying text.

¹⁴ See Alan N. Fernandes, *Ethical Considerations of the Public Sector Lobbyist*, 41 McGeorge L. Rev. 183, 188 (2009).

¹⁵ See *United States v. Lopez*, 514 U.S. 549 (1995) (noting that state powers are expansive and include any powers not specifically delegated to Congress).

¹⁶ See *infra* Section II, B.

A. JUDICIAL DEVELOPMENT: DILLONS RULE, STRICT CONSTRUCTION, AND SPECIFIC AUTHORITY

In the late 19th and early 20th centuries, the majority of state courts in America held that contracts entered into by local governments in order to influence state and federal lawmakers were void in the absence of specific statutory authorization allowing them to do so.¹⁷ The strict construction of local authority applied by these courts was first applied by the Court of Appeals of Kentucky in relation to federal lobbying in 1878.¹⁸

In *Henderson v. Covington*, the Court of Appeals of Kentucky considered whether the city council of Covington had the right to appropriate city funds to pay lobbyists to advocate before the state legislature and Congress.¹⁹ Finding that the city council had no right to appropriate revenues to lobby for expanding its authority, the court went on to hold that delegations of state authority to local governments must always be strictly construed.²⁰ Further, it relied on Dillon's Rule to find that local governments "can exercise no powers but those which are conferred upon them by the act by which they are constituted."²¹

Similarly, in *Field v. Shawnee*, the Oklahoma Supreme Court relied on Dillon's Rule to void a contract for lobbying service where it held that the purpose of that service was not in furtherance of a town's authorized authority.²² Specifically, the court

¹⁷ See David Morgan, *The Use of Public Funds for Legislative Lobbying and Electoral Campaigning*, 37 Vand. L. Rev. 433, 436 (1984).

¹⁸ *Henderson v. Covington*, 77 Ky. 312 (Ky. 1878) (holding that the City of Covington had no power to appropriate money to lobby the state legislature to grant it the authority necessary to build a bridge to neighboring Cincinnati, OH).

¹⁹ *Id.*

²⁰ *Id.* at 314.

²¹ *Id.* (citing *Dillon on Municipal Corporations* at section 55).

²² See *Field v. Shawnee*, 7 Okla. 73, 75 (Okla. 1898)

concluded that the town of Shawnee had no right to contract with a lobbyist to persuade the Secretary of the Interior to locate a railroad line near the city.²³

During this period, courts applied similar logic when reviewing contracts to lobby state officials. In *DeVaughn v. Booten*, the Supreme Court of Georgia noted that the state's Civil Code specifically outlined the purposes for which counties could expend tax monies.²⁴ Because the court did not believe that lobbying fit within the code's exception for litigation, it held that Macon County could not pay an attorney to oppose a state legislative initiative intended to create new county comprised of some of the most valuable land in Macon County.²⁵

Courts were also clear that the necessity for precise statutory authorization extended beyond counties and municipalities, to include public entities with limited governing powers. Notably, even while acknowledging the absence of corrupt intent and the potential benefits to its business, the Supreme Court of Washington held that the Port of Seattle "has no power to expend public money for propaganda to influence legislative action."²⁶ This decision came as no surprise as it built on an earlier decision by that court that in the absence of "clear statutory authority" it would be "against public policy"

²³ *Id.* at 78.

²⁴ *See De Vaughn v. Booten*, 146 Ga. 836, 837 (Ga. 1917) (noting that the only purposes for which a county in Georgia could lawfully levy and collect taxes for at the time was "for educational purposes; to build and repair public buildings and bridges; to maintain and support prisoners; to pay jurors and coroners, and for litigation, quarantine, roads, and expenses of courts; to support paupers, and pay debts heretofore existing; to pay the county police, and to provide for necessary sanitation.").

²⁵ *Id.*

²⁶ *Port of Seattle ex rel. Dunbar v. Lamping*, 135 Wash. 569, 574 (Wash. 1925)

for an irrigation district “to use public money to influence the action of representatives of the people, either in Congress or the legislature.”²⁷

State courts determined that local governments could only expend funds in support of authority either expressly or impliedly granted to them by constitutional provisions or legislative acts well into the 1930s.²⁸ However, these decisions did not preclude local governments from obtaining general legal or litigation services rather than lobbying assistance. While the difference was clear in *DeVaughn v. Booten*, where the Georgia Civil Code allowed counties to expend funds only for “litigation” rather than legal services,²⁹ other cases suggest that courts used subjective criteria to distinguish between the two.³⁰

In some states, it appears that courts upheld contracts on the cusp between legal and lobbying services so long as the local governments’ representatives were not specifically hired to unduly influence Members of Congress and that their conduct was “above board.”³¹ In *West v. Coos County*, the Supreme Court of Oregon held that a contract with an attorney was not a lobbying contract because it not appear that “the plaintiff was employed to exert his personal influence with individual members of

²⁷ State ex rel. Rice v. Bell, 124 Wash. 647, 650 (Wash. 1923)

²⁸ See *Cleveland v. Artl*, 62 Ohio App. 210 (Ohio Ct. App., Cuyahoga County 1939) (holding that a municipal council had no authority to expend municipal funds for the purpose of sending a committee to the state capitol to urge the Governor to submit a program to the legislature).

²⁹ See *DeVaughn v. Booten supra* note 24.

³⁰ See *infra* note 31-32 and accompanying text.

³¹ See *West v. Coos County*, 115 Ore. 409 (Or. 1925); see also *Kemble v. Weaver*, 200 Iowa 1333 (Iowa 1925) (holding that counties employment of attorneys to secure lands from the state was “above board” and not “lobbying”).

Congress” and that the “proceedings were aboveboard and for the purpose of furthering and protecting the interests of Coos County in a legal manner.”³²

In direct contrast to the general trend demanding explicit statutory authority, in at least one instance a court accepted the argument that local governments’ right to lobby state and federal officials was implicit to other grants of authority. In *Allen v. Cerro Gordo County*, the Iowa Supreme Court determined that the county’s express authority to acquire and maintain property resulted in the implicit authority to contract as necessary to perfect its title.³³ In doing so, the court rejected a challenge to county’s decision to hire a lobbyist to work with Congress to complete the transfer of swamplands that were promised to the county twenty years earlier in 1850.³⁴ While upholding the county’s contract, the court argued that “[i]t would be an anomaly in the law to allow an individual to acquire property and deny him the means of preserving or protecting it.”³⁵

B. EXPANDING IMPLICIT AND EXPLICIT AUTHORITY FOR LOCAL LOBBYING EXPENDITURES

By the mid-20th century, courts began to revise their analyses in light of home rule provisions adopted in many states that granted cities general police powers subject to enumerated restrictions, effectively limiting the application of Dillon’s Rule.³⁶ These courts, and some in states without home rule provisions, upheld local lobbying expenditures by recognizing local governments’ implicit authority to expend public funds

³² See *West v. Coos County* *supra* note 31.

³³ See *Cerro Gordo County* at 67.

³⁴ *Id.* at 58.

³⁵ *Id.* at 60.

³⁶ See *Hays v. Kalamazoo*, 25 N.W.2d 787, 791 (Mich. 1947) (noting that Michigan’s home-rule law that passed in 1944 provided local governments with a “general grant of rights and powers, subject only to certain enumerated restrictions, instead of the former method of only granting enumerated rights and powers definitely specified”).

to advocate for state and federal legislation that served a public purpose within their jurisdiction.³⁷

The Supreme Court of Michigan's decision in *Hays v. Kalamazoo* is demonstrative of this trend.³⁸ In *Hays*, the court denied plaintiffs challenge to the city's right to use public funds to support the Michigan Municipal League, rejecting arguments that the expenditures violated a state constitutional provision requiring that taxes only be spent for a public purposes.³⁹ In its decision, the court noted that what constitutes a "public purpose" is contingent on societies current views, requiring a case-by-case analysis, but that it generally includes any government action that promotes the "public health, safety, morals, general welfare, security, prosperity, and contentment" of the citizens within the jurisdiction of the local government taking action.⁴⁰

While finding that the Kalamazoo city council's decision to fund the state municipal league met this public purpose requirement, the court noted that the Michigan constitution of 1908 provided cities and villages with greater powers of self-government and that the municipal league's lobbying concerned issues of direct interest to the city.⁴¹ Further, the court held that local officials have "broad discretion in promoting the welfare

³⁷ See *infra* notes 40-41, 53 and accompanying text.

³⁸ See *Hays v. Kalamazoo* at 796.

³⁹ See *id.* at 796. (noting that Article 8 of the Michigan constitution provided in part that "no city or village shall have power to abridge the right of elective franchise, to loan its credit, nor to assess, levy or collect any tax assessment for other than a public purpose").

⁴⁰ *Id.* at 790-791.

⁴¹ See *id.* at 791.

of their communities” and that discretion extends to the manner in which they represent its views before the legislature regarding “public questions of local interest.”⁴²

Notably, although the municipal association’s representation of its members interest before the state legislature would fit most modern definitions of lobbying,⁴³ the court in *Hays* felt the need to distinguish lobbying contracts from the type of legislative educational activities and testimony provided by the municipal association.⁴⁴ In doing so, it incorporated a presumption offered by other state courts that “lobbying contracts” were against public policy, but that policy advocacy only constituted lobbying if it required a representative to use personal influence or illegal means, rather than testimony or educational submissions before appropriate committees, to achieve its desired ends.⁴⁵

In 1948, the Arizona Supreme Court joined this “trend of modern judicial opinion” in *Glendale v. White*, in which it held that the city of council of Glendale had the discretion to determine that joining the Arizona Municipal League furthered a public purpose.⁴⁶ Further, in *Glendale*, the court overturned prior precedent in Arizona to hold that a local government’s determination that an expenditure served a public purpose was subject to a deferential abuse of discretion standard of review.⁴⁷ As a result, the Arizona court effectively allowed local governments to lobby state and federal officials regarding

⁴² *Id.* at 793.

⁴³ *See supra* note 3 and accompanying text.

⁴⁴ *See Hays v. Kalamazoo* at 796.

⁴⁵ *Id.*

⁴⁶ *See Glendale v. White*, 67 Ariz. 231, 237 (Ariz. 1948)(quoting RULING CASE LAW, Volume 19, at page 721 that “[t]he trend of authority in more recent years has been in the direction of permitting municipalities a wider range in undertaking to promote the public welfare or enjoyment”).

⁴⁷ *Id.*

issues affecting them so long as their efforts were not obviously in opposition to the public interest.

Another modern trend has been the delegation of explicit statutory authority allowing local governments to expend public funds to influence state and federal policy decisions. This trend has been most apparent in California, where Section 50023 of its Government Code allows local governments to “aid the passage of legislation which the legislative body deems beneficial to the local agency or to prevent the passage of legislation which the legislative body deems detrimental to the local agency.”⁴⁸

Section 50023 is an unquestionably valid delegation of state authority to local entities and the local government’s right to implement its authority by appointing or hiring a third party to act as a lobbyist has been upheld by California Courts in *Lehane v. City and County of San Francisco*.⁴⁹ In that case, the court rejected claims by the city’s association of police officers that the city’s decision to fund legislative lobbying by the League of California Cities represented an unconstitutional delegation of its authority.⁵⁰ Instead, the court found that because the city had the ability to make its own views known to the legislature it had not breached the delegation doctrine’s proscription on

⁴⁸Cal Gov Code § 50023 (2012) (providing that “The legislative body of a local agency, directly or through a representative, may attend the Legislature and Congress, and any committees thereof, and present information to aid the passage of legislation which the legislative body deems beneficial to the local agency or to prevent the passage of legislation which the legislative body deems detrimental to the local agency. The legislative body of a local agency, directly or through a representative, may meet with representatives of executive or administrative agencies of state, federal, or local government to present information requesting action which the legislative body deems beneficial to, or opposing action deemed detrimental to, such local agency. The cost and expense incident thereto are proper charges against the local agency”).

⁴⁹ See *Lehane v. City and County of San Francisco*, 30 Cal. App. 3d 1051, 1054 (Cal. App. 1st Dist. 1972)(Pet’n for hearing by the Supreme Court of California denied)

⁵⁰ *Id.*

delegating final decision-making authority.⁵¹ In addition to these arguments, the *Lehane* court also rejected Constitutional arguments related to freedom of speech and association that are discussed further in subsequent sections of this paper.⁵²

What constitutes a public purpose was expanded in a more recent analysis by the Supreme Court of Georgia. In *Peacock v. Georgia Municipal Association*, the court again relied on a home rule provision allowing the expenditure of public funds by counties in Georgia that engaged in lobbying activities through the Georgia Municipal Association.⁵³ In doing so, the court reasoned that effective cooperation between state and local governments required local officials to be able "to represent the views of the constituents to law-making bodies in regard to pending issues affecting the political subdivision."⁵⁴ The court further opined that if a majority of voters disagreed with the positions that their local officials took during the legislative lobbying process, then they could simply remove those officials via the electoral process.⁵⁵ The court noted its own past precedent limiting counties right to expend funds to influence voters directly.⁵⁶ However, it distinguished those cases by arguing that a local government spending tax money to influence voters is "far different from the expenditure of tax monies to inform and influence the General Assembly" because influencing voters has a significant potential for corruption as a method to "perpetuate a local administrator's power."⁵⁷

⁵¹ *Id.*

⁵² See Section II, C. discussing *Lehane* at 1055.

⁵³ See *Peacock v. Georgia Municipal Asso.*, 247 Ga. 740, 742 (Ga. 1981)

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

Considering the preceding cases in concert, it appears clear that there is a modern trend allowing local governments to use public funds to influence state and local decision-making that has an impact on programs and policies over which the local government has authority. This trend is most evident in states where local governments enjoy a heightened measure of home rule, but might also apply in states without home rule so long as the local government's lobbying relates to a program over which they have been delegated statutory authority.⁵⁸ While they are widely accepted, local lobbying contracts are still subject to judicial review and will be struck down if their proponents fail to demonstrate their public purpose or if they appear to violate public policy by demonstrating corruption.⁵⁹ In addition, despite to potential home rule protections, local governments right to engage in lobbying efforts are universally subject to state or federal preemption.⁶⁰

C. CONSTITUTIONAL CONSTRAINTS AND THE GOVERNMENT SPEECH DOCTRINE

As noted during discussion of the *Lehane* case, past opponents of municipal lobbying have claimed that these expenditures violate their first amendment rights to free speech and association.⁶¹ Similarly, modern proponents of municipal lobbying bans claim that by using taxpayer funds to support lobbying activity, local governments

⁵⁸ See *supra* notes 36-37 and accompanying text for discussion of home rule provisions and associated public purpose spending limits.

⁵⁹ See *supra* notes 40-41, 53 and accompanying text (discussing public purpose requirements); see also *supra* note 57 (noting that acceptable use of taxpayer funds for a public purpose would be void if the contract called for or resulted in corrupt activities in contravention of public policy).

⁶⁰ See BRIFFAULT, *supra* note 81 at 317 (describing state sovereignty and preemption of local control); see also Morgan, *supra* note 17 at 436..

⁶¹ See *Lehane* at 1055.

infringe on their right not to be associated with the local government's view.⁶² However, the court in *Lehane* gave short-thrift to these arguments, holding that a government's expenditure of funds to an entity that engages in legislative advocacy was not an infringement so long as it was for a proper purpose.⁶³ While it has not specifically applied the concept to local lobbying, in recent years the Supreme Court has closely considered the speech rights attributable to governments and has developed the "Government Speech" doctrine to respond to these contentions.⁶⁴

The Supreme Court most recently applied this doctrine in *Pleasant Grove City v. Summum*, in which it held that "the placement of a permanent monument in a public park is best viewed as a form of government speech not subject to scrutiny under the Free Speech Clause."⁶⁵ However, the Courts prior holding in *Johanns v. Livestock Marketing Association, et. al*, provides essential background and more relevant analysis because it relates to government sponsored issue advocacy.⁶⁶

In *Johanns*, the Livestock Marketing Association and Nebraska Cattlemen challenged the Secretary of Agriculture's implementation of the Beef Promotion and Research Act of 1985.⁶⁷ The Association and Cattlemen alleged that a government sponsored ad campaign, paid for via a targeted tax assessment, violated their first

⁶² See Steve Macdonald, *Where the Heck is My Damn Lobbyist*, GRANITEGROK (February 21, 2012), <http://granitegrok.com/blog/2012/02/where-the-heck-is-my-damn-lobbyist-hb-1342> (arguing that citizens' points of view are suppressed when money they've paid in taxes is spent to advocate for legislative action they oppose).

⁶³ See *Lehane* at 1056.

⁶⁴ See *infra* Section II, C. (discussing the development and application of Government Speech doctrine in federal case law).

⁶⁵ See *Pleasant Grove City v. Summum*, 555 U.S. 460, 465 (2009)

⁶⁶ See *Johanns v. Livestock Marketing Association*, 544 U.S. 550 (2005).

⁶⁷ *Id.*

amendment rights by forcing them to subsidize private speech that they disagreed with.⁶⁸

In rejecting this contention, the Court articulated the central basis of the Government Speech doctrine described in *Summum*, that “[t]he Free Speech Clause restricts government regulation of private speech; it does not regulate government speech.”⁶⁹

Further, in *Johans*, the Court articulated a flexible standard regarding what constitutes government speech.⁷⁰ In doing so, the Court distinguished *Johanns* from previous cases in which had ruled that governments could not require individuals to support institutions that espoused policy positions they disagreed with.⁷¹ Specifically, it held that it is government speech when the “government sets the overall message to be communicated and approves every word” and that the government “is not precluded from relying on the government-speech doctrine merely because it solicits assistance from nongovernmental sources in developing specific messages.”⁷²

While the Court has previously acknowledged the fact that governments may sometimes use revenue derived from taxes to promote policies that are opposed by some taxpayers, it has held that this is necessary to govern effectively.⁷³ Further, it has suggested that if the majority of the government’s constituents object, they have the

⁶⁸ *Id.* at 553.

⁶⁹ *See Summum* at 467 (quoting *Johanns* that “the government’s own speech...is exempt from First Amendment scrutiny”).

⁷⁰ *See Newton v. LePage*, 2012 U.S. Dist. LEXIS 40051 (D. Me., 2012) (concluding that under *Johanns*, the degree of governmental control over the message controls the analysis).

⁷¹ *See Johans* at 559 (quoting the Court’s holding in *Abood v. Detroit Board of Education*, 431 U.S. 209, 259 (1977) that “compelled support of a private association is fundamentally different from compelled support of government”).

⁷² *See Id.* at 561-2.

⁷³ *See Johans* at 574 (Souter, J., dissenting)(“To govern, government has to say something, and a First Amendment heckler's veto of any forced contribution to raising the government's voice in the 'marketplace of ideas' would be out of the question”)

opportunity to elect new officials who can oppose or overturn the policies implement over their objections.⁷⁴

Ultimately, *Johanns* stands for the proposition that governments have a right to speak in furtherance of legitimate public policy goals and can do so using public funds without violating the speech rights of citizens, so long as in doing so the government maintains control over the content of its messages.⁷⁵ In the lobbying context, this means that so long as the government controls the lobbyists message, or is free to withdraw its support, then its expenditure of taxpayer funds does not violate the First Amendment rights of taxpayers.

III. EXPANDING LOCAL LOBBYING AND CONSERVATIVE BACKLASH

While local governments' lobbying state and federal officials is not a new concept, the total number of localities engaged in this activity has increased sharply in recent year.⁷⁶ This expansion arises due to the confluence of two related phenomena; (1) a reduction in local revenue attributable to the country's current economic malaise and (2) a corresponding increase in federal spending combined with the elimination of earmarks, the traditional method by which lobbyists have supported local governments via federal appropriations.⁷⁷ The rapid expansion of local lobbying has raised the ire of fiscal

⁷⁴ See *Id.* at 575 (quoting *Board of Regents v. Southworth*, 529 U.S. 217, 229 (2000)).

⁷⁵ See *Id.* at 577.

⁷⁶ See *supra* notes 6-8 and accompanying text.

⁷⁷ See *supra* note 5; see also Brett Neely, *What are Minnesota's Cities, Counties Getting from Lobbying in Washington?*, Minnesota Public Radio, May, 24 2011, <http://minnesota.publicradio.org/display/web/2011/05/23/minnesota-lobbying/> (noting that municipal lobbying is not new, has been widespread, and has traditionally focused on earmarks); Luke Rosiak, *Localities turn to K Street for*

conservatives, who argue that these expenditures are a duplicative waste of taxpayer funds that increase the power of local government to the disadvantage of citizens who are actively engaged in the political process.⁷⁸ This section begins by discussing the transformation of local lobbying efforts in the last decade and goes on to highlight a sampling of the policies aimed at reducing local lobbying expenditures that have been proposed or implemented across the country.

A. THE GROWTH OF LOCAL LOBBYING

The need for additional revenue has driven the rapid expansion of local lobbying during the last decade.⁷⁹ The drive to increase local revenue by securing federal funding arises because, unlike the Federal Government, the vast majority of states have adopted constitutional limits on their ability to incur debt, resulting in the need to respond to reduced revenues by cutting spending or increasing taxes.⁸⁰ While the need for outside assistance may be more pronounced, the core reasons that local officials choose to pay association dues or hire representatives to lobby state and federal officials, rather than doing so themselves in their elected capacity, remain the same. These include the limited time available to small governments' managers to travel to state or federal capitals; the level of time and technical expertise necessary to compete for grant funding

Protection, Fear Federal Budget, Washington Times, September 13, 2011, available at: <http://www.washingtontimes.com/news/2011/sep/13/localities-turn-to-k-street-for-protection/print/> (reporting that concern about equitable distribution of Stimulus money led to a ban on earmarks, and resulted in local governments retooling their lobbying efforts to obtain competitive funding).

⁷⁸ See *Your Tax Dollars at Work* *supra* note 2.

⁷⁹ See Dave Levinthal, *States and Municipalities Aggressively Lobby Federal Government for Scarce Aid*, September 3, 2009, <http://www.opensecrets.org/news/2009/09/state-and-municipal-politicos.html>; see also McNichols, *supra* note 5 at 1 (indicating that the recession that started in 2007 and continues today caused the largest collapse in state revenues on record).

⁸⁰ See RICHARD BRIFFAULT AND LAURIE REYNOLDS, *CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW* 816 (7th ed. 2009)

opportunities; and the desire to influence state governments' imposition of mandates on local government.⁸¹

Small local governments spend far more per citizen than their larger counterparts to influence federal funding decisions. Even in a relatively small state like Minnesota, at least a dozen cities and counties spend more than twenty thousand dollars a year on federal lobbying.⁸² In fact, Minnesota's state auditor reports that in 2009 seventy-eight local governments reported hiring staff or contract lobbyists at a cost of nearly \$8.9 million.⁸³ These expenditures make up a significant portion of local budgets and result in significant disparities in per capita lobbying expenditures. Consider the remarkable comparison of Galena, Alaska, one of a dozen small towns in Alaska who employ lobbyists, and the City of Los Angeles, California. In 2010, both cities disclosed sixty thousand dollars in federal lobbying expenditures.⁸⁴ In Galena, those funds represented \$127.66 of taxes from each of its 470 citizens, while Los Angeles spent just 1.5 cents per a resident.⁸⁵

When questioned regarding the necessity for these expenditures, Galena's mayor was adamant regarding the need for lobbying for his town to remain solvent and pointed out its return of twenty-five dollars in federal spending per a dollar in lobbying.⁸⁶ While local officials in other regions have had less success, they appear to blame their lobbyists

⁸¹ See *supra* notes 83-102 and accompanying text.

⁸² See Neely, *supra* note 77.

⁸³ See Rebecca Otto, 2009 LOCAL GOVERNMENT LOBBYING SERVICES, State of Minnesota Office of the State Auditor (2009), available at: http://www.osa.state.mn.us/reports/gid/2009/lobby/Lobby_09_report.pdf.

⁸⁴ See Newkirk *supra* note 8.

⁸⁵ *Id.*

⁸⁶ *Id.*

for being ineffective, not the concept itself, and have actually called for increasing their expenditures to achieve the desired results.⁸⁷ Given that large municipalities have also received significant funding outlays from the Federal Government, analysts and critics argue persuasively that all local governments lobby, but that the senior officials from larger local entities have the time and transportation budgets necessary to do so directly, allowing them to largely avoiding the public disclosures required by outside consultants.⁸⁸ In contrast, cities like Galina, with an administrative staff of three and a part-time city council and mayor who are paid \$50 or less a month, simply do not have the person-hours or travel budget available to take advantage of this loophole.⁸⁹

The Congress responded to public concerns regarding intergovernmental lobbying and resulting potential for inequitable distribution of federal funding by banning earmarks, the process by which Members of Congress worked with the House and Senate Appropriations Committees to direct funding to their preferred recipients.⁹⁰ However, the competitive grant funding processes embraced as an alternative to earmarks, which included state administered block grants as well as federally controlled programs, have

⁸⁷ See *Id.* (quoting a Louisiana Parish Council Member that even though the parish's lobbyists were "not doing an effective job" the parish would need to increase its lobbying in the future because the "federal government sometimes [is] dragging its legs.")

⁸⁸ See Levinthal, *supra* note 79 (noting that the amount actually spent on inter-governmental lobbying is likely significantly higher than is reported annually because mayors, city council members, city managers and other such officials are exempt from federal lobbying disclosure rules); see also City News Service, *Villaraigosa in D.C. Lobbying for Federal Funds*, March 4, 2012, <http://venice.patch.com/articles/villaraigosa-in-d-c-lobbying-for-federal-funds> (reporting on the Mayor of Los Angeles' efforts to secure federal funding for city transportation projects).

⁸⁹ See Galina Alaska, Staff & Council, http://www.ci.galina.ak.us/index.asp?Type=B_BASIC&SEC={B7D54ABA-61C7-46D9-AB02-A3D0CC98D277}; see also Galina Municipal Code, §§2.04-2.08, available at: http://www.ci.galina.ak.us/index.asp?Type=B_DIR&SEC={DAE04963-0852-4746-BFEC-01627D5D8206}&DE={EDCE4D9B-B228-4882-A49D-A487025C26D0} (providing for the local government's composition and compensation scheme).

⁹⁰ See Rosiak, *supra* note 77.

simply resulted in localities refining their contracts to focus on the executive agencies charged with distributing these funds.⁹¹

This trend was evident in proposals recently brought before the City Council of New London, Connecticut, where the mayor requested that the city appropriate funds to hire a federal lobbyist and grant writer in order to take advantage of state and federal grant programs.⁹² While New London, a city of just 28,000, is already a dues paying member of the Connecticut Conference of Municipalities, which employs seven state lobbyists, the Mayor has argued that the city needs its own independent representatives to ensure that it takes full advantage of competitive funding opportunities.⁹³

Opponents of the plan argue that the city already has elected officials in state government to represent its needs. However, supporters argue that the need for part-time legislators to balance constituencies and the technical nature of competitive grants, requires the city to hire a professional representative.⁹⁴ Notably, these arguments appear to have significant public support and securing funding for these two positions was a major plank in the mayor's election platform.⁹⁵

Beyond funding opportunities, since the 19th Century local governments have on consistently attempted to employ lobbyists to influence state decisions that have a direct impact on areas under their jurisdiction.⁹⁶ While these attempts have generally come

⁹¹ *See Id.*

⁹² *See Reindl, supra* note 6.

⁹³ *See Id.*

⁹⁴ *See Id.*

⁹⁵ *See Id.*

⁹⁶ *See Henderson, supra* note 18; *see also DeVaughn v. Booten, supra* note 24 (Macon county attempted to influence state decision regarding formation of a new county out of a portion of its territory).

under the auspices of statewide municipal or county association,⁹⁷ ad hoc arrangements have been developed in response to specific concerns.⁹⁸ This was recently true in Maryland, where four counties recently cooperated to hire a lobbyist in the hopes of influencing the state's comprehensive new land-use scheme, Plan Maryland.⁹⁹ The counties in question have joined together to fund a lobbying effort because they are concerned that the plan might impose standards meant for urban areas on more rural areas of the state.¹⁰⁰ In order to avoid this outcome, the counties have hired a lobbyist to push the legislature towards judicial review of the plan while engaging the Maryland Planning Department by replying to the department's request for comment regarding Plan Maryland's impact on their communities.¹⁰¹

While the underlying motivation for local governments to employ lobbyists has remained consistent, the need for federal funding to offset reduced revenues has resulted in such a significant rise in lobbying expenditures that fiscal conservatives in some states are actively working to limit local governments' right retain these lobbyists.

B. THE CONSERVATIVE BACKLASH

The rise in local lobbying expenditures has resulted in push back by political activists who are opposed to what they see as the involuntary use of tax dollars to support

⁹⁷ See *supra* note 94; see also *Cleveland v. Artl*, *supra* note 28; *Hays v. Kalamazoo*, *supra* note 33; *Glendale v. White*, *supra* note 40; *Peacock v. Georgia Municipal Asso.*, *supra* note 53.

⁹⁸ See Heather Keels, Washington County Joins in Hiring Lobbyists to Protect Interests, Herald-Mail.com, http://articles.herald-mail.com/2011-11-01/news/30348402_1_septic-systems-commissioners-president-terry-baker-commissioner-ruth-anne-callaham.

⁹⁹ See *Id.*

¹⁰⁰ See *Id.*

¹⁰¹ See *Id.*

an agenda specific to government, rather than citizens.¹⁰² While these groups have responded by seeking various legislative mandates, ranging from reporting of municipal lobbying expenditures to an outright ban on local governments' lobbying,¹⁰³ intellectually their position is based on the notion that local governments are using public funds to argue in favor of opinions that are opposed by the public at large.¹⁰⁴ Further, institutional opponents like the Goldwater Institute in Arizona claim that taxpayer-funded lobbyists seek only to advance the fiscal well-being and growth of their government client, and as a result do not necessarily act in the public interest.¹⁰⁵ Notably, while these groups blocked lobbying through judicial action and had limited success in New Jersey and other states limiting lobbying by state agencies, not a single bill or ballot measure that limits local governments' discretion to hire lobbyists has successfully passed into law in the last decade.¹⁰⁶

Perhaps the most popularly known successful effort amongst activists was Americans for Prosperity's successful suit challenging lobbying by the Texas Association of Counties (TAC) in 2007.¹⁰⁷ In that case, members of the fiscally conservative

¹⁰² See Newkirk *supra* note 8 (quoting conservative activist Grover Norquist that "taxpayer dollars should [not] be used for this purpose at all. Taxpayer dollars are not voluntary").

¹⁰³ See Star-Ledger Editorial Board, *Towns Should Not Be Paying Lobbyists to Influence NJ State Government*, NJ.Com, April, 30, 2010, http://blog.nj.com/njv_editorial_page/2010/04/towns_should_not_be_paying_lob.html (calling for the passage of state legislation in New Jersey that would require municipalities to file a report when they a lobbyist); see also New Hampshire House Bill 1342, Prohibiting state and local governments from using funds to employ a lobbyist, <http://www.gencourt.state.nh.us/legislation/2012/HB1342.html> (legislation introduced and subsequently defeated in New Hampshire that would have prohibited all state and local lobbying expenditures).

¹⁰⁴ See *Your Tax Dollars at Work*, *supra* note 2 at 9.

¹⁰⁵ *Id.*

¹⁰⁶ See *infra* notes 1070-125 and accompanying text.

¹⁰⁷ See Peggy Venable, *Taxpayers Win One for the Gipper; TAC Loses Lawsuit*, CitizenWatchdogs.com, March 2008, http://www.citizenwatchdogs.com/index.php?view=article&catid=13%3Atax-news&id=209%3Ataxpayers-win-one-for-the-gipper-tac-loses-lawsuit&format=pdf&option=com_content; see also Peggy Venable, *Taxpayer-funded*

grassroots organization successfully sued Williamson County, Texas, alleging that it was in violation of Texas Local Government code 89.002, which prohibits counties from paying association dues where the association directly or indirectly influences or attempts to influence the outcome of any legislation pending before the legislature.”¹⁰⁸ As a result, a state district court issued an injunction against TAC continuing to lobby the state government with county dues, but the association has avoided these strictures by ending its dues program in favor of service-based fee model to fund its activities.¹⁰⁹

New Jersey began implementing local lobbying reform measures after a 2009 report by the State comptroller called for governmental agencies to report to the Election Law Enforcement Commission (ELEC) their hiring of outside lobbying firms.¹¹⁰ As a result, the executive and legislative branches of the state’s government have each responded to concerns regarding the extent of local lobbying expenditures. On the legislative front, a bipartisan bill offered by Senators Loretta Weinberg (D-Bergen) and Tom Goodwin (R-Mercer) would require lobbyists to file annual and quarterly disclosures with the state’s Election Law Enforcement Commission.¹¹¹ This bill has not yet been reported out of committee. More dramatically, soon after taking office Governor Chris Christie issued Executive Order 15, which directs that "all existing contracts between State Authorities and lobbyists or legislative agents shall be terminated

Lobbying: Taxman v. Taxpayer, Insider Online, 2005,
<http://www.insideronline.org/archives/2005/fall/taxpayers.pdf>.

¹⁰⁸ See *Taxpayer-funded Lobbying: Taxman v. Taxpayer*, *supra* note 107 at 26.

¹⁰⁹ See *Taxpayers Win One for the Gipper*, *supra* note 107.

¹¹⁰ See Jeff Brindle, *New Jerseyans should know county and municipal dollars spent on lobbying*, NewJerseyNewsRoom.com, August 17, 2010, <http://www.newjerseynewsroom.com/commentary/new-jerseyans-should-know-county-and-municipal-dollars-spent-on-lobbying>.

¹¹¹ See Star-Ledger Editorial Board, *supra* note 103.

as soon as is legally permissible."¹¹² This divided outcome is indicative of the modern trend towards limits on state agency lobbying while local governments retain the authority to use taxpayer funds to influence state and federal decision makers.¹¹³

Similarly, in 2008 the Kansas legislature considered a bill that would have required municipalities to report government expenditures to associations, groups, or individuals engaged in lobbying activities.¹¹⁴ This legislation received significant support from Americans for Prosperity, which conducted a poll that reportedly found that 72 percent of Kansas voters were against allowing local governments and state agencies to hire lobbyists.¹¹⁵ However, this legislation ultimately died in committee and has not been reintroduced.¹¹⁶

Proponents of these measures have been as unsuccessful at passing ballot initiatives as they have been getting legislation out of committee. In 2008, the citizens of South Dakota considered the South Dakota Open and Clean Government Act, which would have banned taxpayer-funded lobbying. Voters rejected the measure soundly, 64.7% to 35.3%.¹¹⁷ In 2010, Alaskan voters rejected the Alaskan Anti Corruption Act by

¹¹² See Brindle, *supra* note 110.

¹¹³ See LIMITATIONS ON PUBLIC FUNDING FOR LOBBYING, National Conference of State Legislatures, December 2011, <http://www.ncsl.org/legislatures-elections/ethicshome/50-state-chart-limits-on-public-funds-to-lobby.aspx> (indicating that 11 states ban state agencies from engaging in lobbying activity).

¹¹⁴ See Bob Weeks, *Testimony Against Taxpayer-funded Lobbying*, February 18, 2008, <http://wichtaliberty.org/kansas-government/testimony-against-taxpayer-funded-lobbying/>

¹¹⁵ See Americans for Prosperity, *Survey: Kansas Voters Disagree with Taxpayer Funded Lobbying; Prefer Reducing Spending to Tax Increases*, June 2008, <https://www.americansforprosperity.org/survey-kansas-voters-disagree-taxpayer-funded-lobbying-prefer-reducing-spending-tax-increases#ixzz1rcJQ19Le>

¹¹⁶ See Kansas Votes, 2008 House Bill 2775; Requires Cities to Report Lobbying, <http://www.kansasvotes.org/2008-HB-2775> (indicating that the bill was reported to the Kansas House on March 26, 2008 with a recommendation to pass the bill as amended during committee deliberations).

¹¹⁷ See South Dakota Open and Clean Government Act, Initiated Measure 10 (2008), [http://ballotpedia.org/wiki/index.php/South_Dakota_Open_and_Clean_Government_Act_\(2008\)#cite_note-1](http://ballotpedia.org/wiki/index.php/South_Dakota_Open_and_Clean_Government_Act_(2008)#cite_note-1)

a similar margin.¹¹⁸ That proposal would have prohibited lobbying by all public organizations and affiliated persons, imposed a class A misdemeanor on those who violated the act¹¹⁹.

Most recently, Republican activists in New Hampshire introduced House Bill (HB) 1342, legislation to “prohibit the use of state or local funds to support a lobbyist.”¹²⁰ As with previous initiatives in Alaska, North Dakota, Kansas and elsewhere,¹²¹ this initiative has received significant support from libertarian and fiscally conservative grassroots organizations.¹²² Advocates for this bill argued that publicly paid lobbyists “supercede and replace the voice of citizens.”¹²³ Meanwhile, opponents like the NH Municipal Association, argued that it would “muffle the voice of local government” and shut down “organizations [that] perform a vital educational role.”¹²⁴ As with other legislative initiatives, HB 1342 was defeated soundly in committee (12-2) with the

¹¹⁸ See State of Alaska 2010 Primary Election, Official Results, <http://www.elections.alaska.gov/results/10PRIM/data/results.htm> (indicating that the ballot initiative failed 60.78% to 39.22%).

¹¹⁹ See Pat Forgey, *Alaska Municipal League Warns of “Gag” Initiative*, Juneau Empire, May 14, 2010, http://juneauempire.com/stories/051410/sta_638917867.shtml.

¹²⁰ See House Record, February 22, 2012, http://www.gencourt.state.nh.us/house/caljournals/calendars/2012/houcal2012_14.html.

¹²¹ See *supra* notes 107-14 and accompanying text.

¹²² See New Hampshire Liberty Alliance, Discussion Forum, <http://forum.nhliberty.org/index.php?topic=3569.0>; see also New Hampshire Families for Education, *HB 1342 Prohibiting Taxpayer Money from Going to Associations Which Hire Lobbyists*, January 2012, <http://nhfamiliesforeducation.org/content/hb-1342-prohibiting-taxpayer-money-going-to-associations-which-hire-lobbyists> (arguing that “Public funds should not be used to hire lobbyists who work in opposition to legislative initiatives submitted by citizens); Americans for Tax Reform, *ATR Urges All New Hampshire Legislators to Join Pledge Signers in Taking Higher Taxes off the Table* <http://www.atr.org/atr-urges-all-new-hampshire-legislators-a6672> (indicating that HB 1342 sponsor Steve Vaillancourt is a signatory to the groups anti-tax pledge); Republican Liberty Caucus of New Hampshire, *JR Hoell*, <http://rlcnh.org/candidates/jr-hoell/> (describing HB 1342 sponsor JR Hoell as a “liberty minded” activist for constitutional principles).

¹²³ See New Hampshire Families for Education, *supra* note 122.

¹²⁴ See New Hampshire Municipal Association, *supra* note 11.

majority claiming that it would stifle speech and the minority arguing that it forces a minority of citizens to pay for the advocacy of the majority.¹²⁵

Notably, despite their repeated failures, fiscal activists continue to push for state legislation that would limit local government's right to hire lobbyists to advocate for their interests. Faced with these ongoing challenges, local governments should go on the offensive to secure an affirmative right to engage in taxpayer funded policy advocacy before state and federal officials.

IV. ADOPTING A CONSTITUTIONAL OR LEGISLATIVE SOLUTION

As activists continue to challenge taxpayer funded lobbying, the present political environment presents local governments and municipal associations with an opportunity to secure a constitutional or statutorily guaranteed right to employ lobbyists. The public's support for local decision-makers' right to contract with lobbyists is evidenced by activists continuing failure to secure passage of legislation that would prohibit local governments from contracting for state and federal lobbying.¹²⁶ Local governments should take advantage of this support to press for the adoption of a legislative scheme that guarantees their right to use public funds to engage in intergovernmental lobbying.

A. CONSTITUTIONAL OPTIONS

Because states have plenary power to alter or abolish local authority, first glance suggests that the most effective means to grant local governments the right to engage in

¹²⁵ See House Record, *supra* note 116.

¹²⁶ See *supra*, III, B. highlighting activists continuing failure to pass legislation that would prohibit local governments from using taxpayer funds to contract with lobbyists to advance local interests at the state and federal level. .

local lobbying activity would be to craft a specific constitutional amendment to that effect.¹²⁷ However, state governments have historically been loath to grant such specific powers to local governments, instead opting to adopt broad home rule provisions that grant local governments autonomy to act in the absence of specific authorization, but subject to the potential for legislative preemption.¹²⁸ Notably, this latter limitation means that home rule provisions would not withstand the type of state ban on taxpayer funded lobbying envisioned by conservative activists because even broad grants of sovereign power are still preemptable under by applicable state laws.¹²⁹

B. A STATUTORY SOLUTION

If properly drafted, a statutory solution represents the best way to guarantee local governments' right to use taxpayer funds to conduct intergovernmental lobbying because it would provide the type of specific authority necessary to avoid a legal challenge based on either Dillon's Rule or the notion that lobbying does not meet a state's public purpose requirement.¹³⁰ In addition, a properly tailored bill could gain popular support by prohibiting the unpopular practice of state agencies employing lobbyist.¹³¹ Instead, it could be specifically tailored to authorize lobbying expenditures by local governments

¹²⁷ See BRIFFAULT, *supra* note 81 at 279; see also *Piper v. Meredith*, 110 N.H. 291 (1970) (noting that "towns are but subdivisions of the State and have only the powers the State grants to them").

¹²⁸ See BRIFFAULT, *supra* note 81 at 317; see also *supra* notes 36-38 (describing the atypical home-rule provisions adopted as Article 8 of the Michigan constitution).

¹²⁹ See *Council Bluffs v. Cain*, 342 N.W.2d 810, 812 (Iowa 1983); see also *supra* notes 117-22.

¹³⁰ See *supra* notes 22, 40 and accompanying text.

¹³¹ See *supra* notes 111-2 and accompanying text.

and could grasp the middle ground necessary to secure passage into law by incorporating the type of disclosure scheme sought by activists in Kansas and New Jersey.¹³²

Local governments seeking an example to emulate need look no farther than Section 50023 of the California Government Code.¹³³ This section has withstood challenges under both state and federal questions.¹³⁴ In addition, after 40 years of judicial review, it stands within a comprehensive regulatory scheme that sharply delineates between legal lobbying, intended to voice local governments concerns, and illegal electioneering that would amount to taxpayer funded propaganda.¹³⁵

Local governments can undercut the efforts of activists seeking to ban taxpayer funded intergovernmental lobbying by advocating for the passage of compromise legislation that incorporates public disclosure provisions. In doing so, they would take advantage of Americans' distaste for state mandates on local entities and ensure that they retain the ability to use public funds to educate state and federal officials regarding their communities' needs.¹³⁶

V. CONCLUSION

Despite long-term trends that support local governments' rights to support inter-governmental communication efforts via public funds, without specific local

¹³² See *supra* notes 110, 114 and accompanying text.

¹³³ See Cal Gov Code § 50023 *supra* note 48.

¹³⁴ See *Lehane, supra* note 48.

¹³⁵ See League of California Cities, TAKING IT TO THE STREETS: LEGAL ISSUES ON LOBBYING THE LEGISLATURE, April 1995, available at: http://www.cacities.org/resource_files/7920.info-advocacyrules11-24-03.pdf (describing the laws governing California cities participation in the state and federal legislative processes).

¹³⁶ See *supra* notes 117-119 (indicating that over 60% of voting citizens in Alaska and South Dakota rejected proposed state limits on local lobbying expenditures).

constitutional protections, state police powers leave these entities vulnerable to activist-driven legislative initiatives aimed at reducing local governments ability to use tax dollars to engage in lobbying activities. The rapid expansion of municipal lobbying efforts over the past decade amply demonstrates localities' associated interest in taking advantage of increasingly scarce state and federal funding. Therefore, local governments should respond to these challenges decisively by seeking a statutorily guaranteed right to use public funds to support or oppose legislative or regulatory actions at higher levels of government.

PLEDGE OF HONESTY

“On my honor, I submit this work in good faith and pledge that I have neither given nor received improper aid in its completion.”

 /s/
Andrew H. Emerson
G45830220

WORD COUNT CERTIFICATION

“I certify that this paper contains 8,297 words.”

 /s/
Andrew H. Emerson
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