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## Public Health Advocacy The Basics

Research Support: Vince Young, JD Attorney

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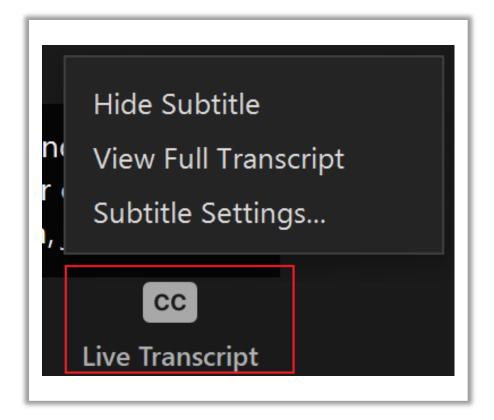
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### **ChangeLabSolutions**

## Welcome!



Sabrina Adler, JD Vice President of Law sadler@changelabsolutions.org Sarah de Guia, JD Chief Executive Officer sdeguia@changelabsolutions.org



## Our mission: Healthy communities for all through equitable laws & policies

## Welcome from APHA

# APHA

AMERICAN PUBLIC HEALTH ASSOCIATION For science. For action. For health.

## Act for Public Health

Act for Public Health is a collaborative working group that provides resources, technical assistance, and training to help push back against attempts to block public health officials' ability to do their job. This group of public health organizations and experts is applying their decades of experience in public health law and policy work to preserve public health authority and infrastructure wherever challenges arise.

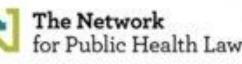
Act for Public Health is an initiative of the Public Health Law Partnership.

# Act for Public Health

An initiative of the Public Health Law Partnership



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Beasley

at Mitchell Hamline School of Law

Public Health Law Research

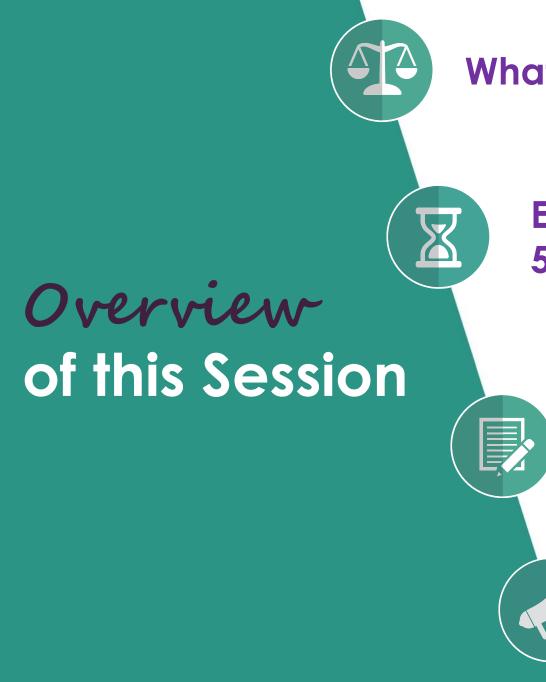
https://www.changelabsolutions.org/act-public-health

## Disclaimer

The information provided in this discussion is for informational purposes only and does not constitute legal advice. ChangeLab Solutions does not enter into attorney-client relationships.

ChangeLab Solutions is a nonpartisan nonprofit organization that educates and informs the public through objective, nonpartisan analysis, study, and research. The primary purpose of this discussion is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation.

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#### What is Lobbying?

Exceptions to Lobbying Rules for IRS 501(c)(3) Nonprofits & Federal Grantees

Political Activity on Traditional and Social Media

Key Points and Q&A



## What is lobbying?

## Philanthropy & Foundations



### IRC § 501(c)(3) Nonprofit Organizations

- The use of funds for lobbying is likely to be restricted by funders through a contract or grant
- Review contracts carefully and consult your legal counsel if needed

#### **Federal Grants**



#### Grants from federal government agencies prohibit grantees from using federal funds for lobbying.

### Lobbying: Must Include All 4 Elements

- 1. Communication with a
- 2. Government official or employee (legislative, or other who takes part in forming legislation)
- 3. Reflects a point of view on (i.e., attempts to influence)
- 4. Specific legislation

### 2 Types of Lobbying



- 1. Direct lobbying
- 2. Grassroots lobbying



## Direct Lobbying

A communication directly with a government official to influence specific legislation



#### SIGN THE PETITION

#### To all Members of US Congress:

Already an Avaaz member?

As concerned citizens, we call on you to stand for a free and open Internet and vote against both the Protect IP Act and the Stop Online Piracy Act. The Internet is a crucial tool for people in the US and around the world to exchange ideas and work collectively to build the world we all want. We urge you to show true global leadership and do all you can to protect this basic pillar of our democracy.

Email	SEND .
irst time here? Please fill out the form below.	
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Email	
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## Grassroots Lobbying

A communication encouraging the public to "take action" to influence specific legislation

### Your Turn: What Kind of Lobbying?

- A local health department official sends a letter to a state senator in support of SB 123 to pass an indoor mask mandate.
- The health department sends a letter to the members of a Health Equity Coalition urging them to write a letter to their senator in support of SB 123.
- The health department official talks to a senator about the benefits an indoor mask mandate has on minimizing the spread of COVID-19.



## Exceptions to Lobbying Rules

## Coalition building

among governments, nonprofits, the private sector, and community members to discuss problems and share ideas generally





Sharing best practices & success stories with the public or government officials

## Non-Partisan Analysis, Study, and Research

#### Non-Partisan Generally Means:

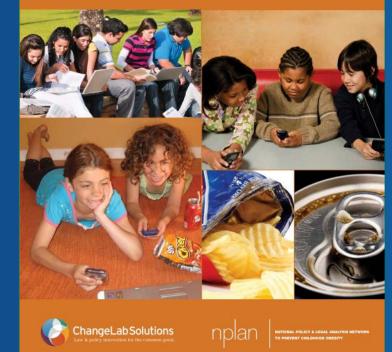
- 1. Independent, <u>balanced</u> and objective;
- 2. Fair to both sides of an issue (contains a full and fair exposition of the pertinent facts);
- 3. Allows a reader to <u>draw own independent opinion</u> <u>or conclusion</u> though author may include their own opinion or conclusion;
- 4. Conclusion is based on <u>evidence and facts</u>, not on unsupported opinion;
- 5. <u>Broadly distributed</u> to the public, and not directed to only one side of an issue.

#### Digital Food Marketing to Children and Adolescents

**Problematic Practices and Policy Interventions** 

ryn Montgomery, PhD Jeff Ch rican University Center

October 201



## Broadly Sharing Evidence-Based Policy Approaches



Model Licensing Ordinance for Healthy Food Retailers



nplan hational policy & legal analyses hetwore to prevent childhood obesity

#### Model Healthy Food Zone Ordinance

CREATING A HEALTHY FOOD ZONE AROUND SCHOOLS BY REGULATING THE LOCATION OF FAST FOOD RESTAURANTS (AND MOBILE FOOD VENDORS)

Developed by ChangeLab Solutions, a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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#### Examples

- Model ordinance for mandatory
  indoor masking
- Toolkits on improving government procurement of at-home COVID-19 testing kits along with model contracts
- Results of policy scans that summarize school district policies on hybrid schooling

#### Other Allowable Activities

- Educating the public about personal health behaviors
- Communicating to the public about health risks, their consequences, including possible policy or legislative solutions
- Talking with legislators and staff about policy and issues, including site visits to help them gain a deeper understanding of public health issues
- Working with private sector organizations on voluntary institutional changes that do not constitute public policy
- Responding to a written request from a legislative committee about evidence of program or policy effectiveness regarding a specific piece of legislation

### Exceptions to Lobbying Rules Under IRC 501(c)(3)

Even if all 4 lobbying elements are present, the following communications are **NOT** lobbying:

 Responses to a written invitation to testify about a bill (even if discussing pros and cons) or to provide technical assistance

Additionally, prohibitions on lobbying with philanthropic funds only apply to legislation and **do not** apply to:

- Regulations
- Administrative actions
- Often the decisions or actions of nonlegislative bodies like planning commissions or school boards



## Invitation to Testify or Provide Technical Assistance

At the request of a government or legislative body, you may give a technical or factual presentation of information to government decision-makers regarding specific legislation or a legislative proposal. You may provide your opinion or recommendation if the invitation requests it.

Sample request

## A written TA Request only needs to reflect the 3 requirements of the IRS.

- Written on behalf of the government or legislative body (or a subdivision);
- 2. Request for information AND recommendations;
- 3. Response will be available to ALL members of the legislative or gov't body.

Keith Nagayama State Senator District 19 Metropolis – Southwest and Downtown

123 State Capitol 13579 A Street Capitol City, New State 02589



May 14, 2014

#### VIA FIRST CLASS MAIL AND EMAIL (taprovider@publichealthexpert.org)

Susannah Vance Gopalan Staff Attorney Public Health Organization 8642 Main Avenue New Town, New State 98765

Re: Request for Technical Assistance

Dear Ms. Gopalan,

On behalf of the Transportation and Housing Division of the New State Senate Finance Committee, I request that you provide our committee with information regarding mechanisms other states have used for funding healthy housing options. Based on your expertise in this area, and the Public Health Organization's experience with these issues in other states, please provide the Transportation and Housing Division with your recommendations regarding which, if any, of these mechanisms would work in New State. As chair of the Senate Transportation and Housing Division, I will ensure your information and recommendations are made available to all members of the committee.

Thank you for your assistance.

Very Truly Yours,

#### Keith Nagayama

Keith Nagayama State Senator, District 19 Chair of the Transportation and Housing Division of the New State Senate Finance Committee Exceptions to Lobbying Rules for Government Employees Receiving Federal Funding Normal and recognized executivelegislative relationships

Participation in policymaking and administrative processes within the executive branch of same level of government



### Normal and recognized executive-legislative relationships =

- A health department **typically** provides an annual state of the health report to elected officials with recommendations for legislative action.
- State legislative liaisons **typically** consult local health agencies about pending legislation.



## Participation in policy or admin processes =

Government officials may communicate with anyone within the same government about policy or legislation

### For Example

- A state health agency liaison may discuss legislation with the governor's office.
- A county planner may discuss updates to the zoning code with the county public health department.
- A city public health department employee may discuss specific legislation with a city manager.

#### Hypothetical Exercise

A county health department receives a grant from a federal agency to develop strategies to increase vaccination uptake among county residents.

- May the county health department use federal funds to develop model legislation for cities to pass a mandate to require vaccination for entry into restaurants and bars in the county?
- May the county health department use federal funds to discuss the model legislation with county supervisors? With the cities within the county?

### Questions to Ask Yourself

- Does funding include a restriction on lobbying?
- What advocacy can I engage in that doesn't constitute lobbying?
- Which laws or rules do I need to follow for my lobbying activities?
- Are there any state or local laws that prevent me from lobbying?

#### Yikes!

## I Got It Wrong!

Did I Break the Law?

- Bill your time to a funding code that allows lobbying.
  - Government: General funds
  - Nonprofits: Unrestricted funds
- Get a proper cost accounting system in place.
- Talk to your legal counsel to understand the rules.

# What <u>can</u> you do?



- **Engage**: Get people excited about their vision for change
- Assess: What's the problem? What solutions are there?
- **Propose**: Draft a strong policy that expresses the vision
- Advocate: Identify and meet with decision makers
- Implement: Stay focused even after a policy gets adopted





## Political Activity on Traditional & Social Media

## Hatch Act: "Political Activity"

"Any activity directed at the success or failure of a political party or partisan political group, or candidate for political office."

5 CFR § 734.101

See Office of Special Counsel website: https://osc.gov/Services/Pages/HatchAct.aspx

## Hatch Act: Political Activity via Traditional and Social Media

Federal employees may not use their official capacity to engage in political activities.

Political activity is OK in a private capacity without identifying official titles or positions.

Careful!! Can be ambiguous!

## Ambiguity: Be Careful!

It's OK to have your work affiliation someplace on a Facebook page or Twitter account, but **not** associated with the political activity.

Include disclaimers on posts with personal views. Do not allow content to be viewed as work related.

More information: A Guide to the Hatch Act for Federal Employees



# Key Points and Q&A

## **Key Points**

- Lobbying is allowed, unless there are specific restrictions
- Restrictions on lobbying vary based on funding, contract language, and federal/state/local laws
- There are many allowable advocacy activities regardless of lobbying restrictions
- Carefully separate personal and professional lives
- It is important to consult your legal counsel

### Advocacy Resources

Webinar/background materials from ChangeLab Solutions

http://changelabsolutions.org/publications/webinarcomplying-anti-lobbying-rules

A Guide to the Hatch Act for Federal Employees https://osc.gov/Documents/Outreach%20and%20Trai ning/Handouts/A%20Guide%20to%20the%20Hatch%2 0Act%20for%20Federal%20Employees.pdf

National Council of State Legislatures' Chart on Laws that Limit Public Funds to Lobby http://www.ncsl.org/research/ethics/50-state-chartlimits-on-public-funds-to-lobby.aspx

National Council of Nonprofits – Everyday Advocacy https://www.councilofnonprofits.org/everydayadvocacy

Alliance for Justice: Bolder Advocacy Resource Library https://bolderadvocacy.org/resource-library/

### Public Health Authority Resources

Public Health Authority Litigation Tracking https://www.publichealthlawwatch.org/actforpubliche alth/litigationtracking

#### Public Health Authority Resources from The Network for Public Health Law

https://www.networkforphl.org/resources/topics/publichealth-authority/

#### Public Health Authority Resources from ChangeLab Solutions

https://www.changelabsolutions.org/public-healthauthority

#### Public Health Authority Resources from Public Health & Equity Resource Navigator

https://phern.communitycommons.org/topic/publichealth-authority/

## **Upcoming Events**

Monday, April 4 (1:00PM – 3:00PM EST) National Public Health Week 2022 - Kickoff Forum: Public Health is Where You Are https://www.pathlms.com/health/courses/3508 2/webinars/27855

Wednesday, April 6 (2:00PM – 3:00PM EST) National Public Health Week 2022 Twitter Chat https://www.twtvite.com/NPHW2022

Monday, April 25 to Thursday, April 28 (Baltimore, MD) 2022 Public Health Law Summit: Strengthening Protections for Community Health & Advancing Health and Racial Equity https://events.networkforphl.org/2022-summit/ Technical Assistance on Public Health Authority & Email List

#### www.changelabsolutions.org/act-public-health



## Questions?



# Thank you!

Post-training survey will follow.

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