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ASSEMBLY BILL 1938: TAXPAYER FUNDED HEALTH PROGRAMS ACCOUNTABILITY

SUMMARY

Assembly Bill (AB) 1938 would provide that an entity that, among other things, participates in certain publicly funded health care programs is prohibited from spending revenues from those programs on ballot measure actions that are not directly related to health care.

BACKGROUND

Under federal law, the Legal Services Corporation (LSC) is a private, nonprofit, federally funded corporation that helps provide legal assistance to low-income people in civil matters. No funds made available by the LCS can be used at any time to influence the issuance, amendment, or revocation, of any executive order or similar promulgation by any federal, state, or local agency, or to undertake to influence the passage or defeat of any legislation by Congress, or by any state or local legislative bodies, or state proposal by initiative petition. (42 USC 2996f(a)(5).)

Under federal tax law, no organization can qualify for 501(c)(3) status if a substantial part of its activities involves attempting to influence legislation.

Under federal law, recipients of federal funds are not allowed to use that funding to lobby federal, state, or

local officials or their staff to receive additional funding or influence legislation.¹

The requirement that 501(c)(3) not engage in a substantial amount of lobbying was upheld in *Regan v. Taxation with Representation* (1983) 461 U.S. 540. The court ruled that the prohibition against lobbying did not violate the First Amendment.

The treasury regulation that denied business expense deductions for lobbying activity was upheld in *Cammarano v. United States* (1959) 358 U.S. 498. The First Amendment does not require legislatures to subsidize lobbying.

California Government Code Section 89001 prohibits the mailing of newsletters or other mass mailings at public expense. This statute was challenged as a violation of free speech, among other things, but the court upheld it. *Watson v. FPCC* (1990) 217 Cal.App.3d 1059

PROBLEM

Adequate housing and health care are two very important components in our society. Unfortunately, there have been documented cases where public money was used in an attempt to affect public policy unrelated to the health arena, and instead used to affect the production of new housing in California.

¹ <https://www.hhs.gov/grants/grants/grants-policies-regulations/lobbying-restrictions.html#i>

For example, the AIDS Health Care Foundation has consistently spent millions of public dollars received through Medi-Cal and Medicare to insert itself into the housing arena. While the organization and its founder have consistently conflated health and housing, arguing that its work will provide housing to people who are suffering from HIV or AIDS, the foundation’s work has done just the opposite.

For example:

Los Angeles – Measure S, originally known as the Neighborhood Integrity Initiative, was considered by voters in the City of Los Angeles in the March 7, 2017, election. It would have imposed a two-year moratorium on housing development projects. The AIDS Healthcare Foundation spent \$5.5 Million to qualify the initiative. Opponents argued that this work was counter to the foundation's mission and suggested that it was really motivated by AHF director Michael Weinstein's desire to block a development that would have dominated the view from his office window.² The Measure failed with over 70 percent of the electorate voting “no.”

CEQA Lawsuit - In 2019, the AIDS Healthcare Foundation used the California Environmental Quality Act to file a lawsuit against the City of Los Angeles, arguing that an approved – Crossroad of the World - project (which would have, among other things, provided more than 100 affordable housing units) would worsen pollution and choke the neighborhood with traffic. The court ruled against AHF.³

Misleading Flyers about SB 50 – AIDS Healthcare Foundation paid for a provocative mailer equating SB 50 with “Negro removal.” These statements, made in an attempt to stop SB 50, were counter to the San Francisco Planning Department’s statement that the bill will significantly increase affordable housing production.⁴

SOLUTION

² https://en.wikipedia.org/wiki/2017_Los_Angeles_Measure_S
³ Zahniser, *AIDS group faces third defeat in six months, with judge tossing Hollywood high-rise lawsuit*, L.A. Times (Nov. 29, 2019).

AB 1938 ensures that public resources are spent wisely and for the purposes for which they are intended in order to deter the most flagrant abuses. This bill would only apply to a nonprofit organization that has unique and extensive involvement in the health care system. Specifically, AB 1938 would only apply to an entity that does all of the following:

- Participates in the federal drug discount program in which pharmaceutical companies sell their drugs at steep discounts to participating providers that serve a significant percentage of indigent patients. The savings were intended to be used by providers to reach more eligible patients and provide more comprehensive services to patients;
- Participates in the Medicare Program; and
- Formerly participated in the Medi-Cal program as a primary care case management organization and now participates in that program as a licensed health care service plan.

SUPPORT

California Apartment Association (sponsor)

⁴ Swan, *Supporters of SB 50 fire back after ads liken housing bill to ‘Negro removal,’* S.F. Chronicle (May 6, 2019).