State Health Department Employees, Policy Advocacy, and Political Campaigns: Protections and Limits Under the Law

Shannon Frattaroli, Keshia M. Pollack, Jessica L. Young, and Jon S. Vernick

Introduction
State health departments are at the core of the United States (U.S.) public health infrastructure. Surveillance to monitor trends in disease and injury; the development, coordination, and delivery of services; and public education are some of the core functions health department employees oversee every day. As such, agencies and their employees are well positioned to inform policy decisions that affect the public’s health. However, little is known about the role of health department staff — a sizeable proportion of the public health workforce — as advocates for public health policies, independent of their agency roles. Anecdotally, some health department employees with whom we have spoken expressed reluctance to engage in policy advocacy for fear of violating little known or understood agency or state rules.

This article examines the laws and agency rules for how health department employees can participate in policy development outside of their official capacity. With this information, agency leaders and other public sector employees can be supported in maximizing their contributions to advancing public health policies.

Policy Advocacy and Health Departments
Policy advocacy is important to public health, and is increasingly being recognized as an essential skill for public health professionals. For example, recently developed public health competencies now include advocacy and policy knowledge as a core aspect of training for public health professionals. In addition, schools of public health are teaching advocacy; professional associations offer advocacy materials and guidance; and the literature includes articles and texts about advocacy.

The role of state health departments in policy formulation is not well explored in the current literature. Two decades ago Sharon Williams-Crowe and Terry Aultman conducted a series of interviews with legislative relations representatives from a sample of state health departments. Borrowing from John Kingdon, their findings resulted in a profile of effective policy entrepreneurs who are a part of “a well-organized agency with talented staff,” characterized by “clear communications, effective negotiations, and active ongoing participation.” While insightful, the research focused on the culture of the profession and organizational infrastructure, and not on the legal aspects of policy advocacy. In addition, the article did not include health department employees with scientific and programmatic responsibilities, or address policies governing employee advocacy activities in an unofficial capacity as private citizens.
While there is scant literature on this topic, federal law does provide some guidance. In 1939 Congress passed the Hatch Act. With the most recent amendment, the Act restricts federal employees and state and local government employees whose salaries are fully paid by federal funds from participating in election-related activities specified by the law. While the Hatch Act establishes boundaries for public employees’ involvement in campaigns, Congress expanded the rules concerning the use of federal dollars for advocacy in 2012 with the passage of the Consolidated Appropriations Act. With this Act, Congress prohibited the use of Health and Human Services appropriated funds for “any activity to advocate or promote any proposed, pending or future federal, state or local tax increase, or any proposed, pending or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.”

This article examines the laws and agency rules for how health department employees can participate in policy development outside of their official capacity. With this information, agency leaders and other public sector employees can be supported in maximizing their contributions to advancing public health policies.

To address the dearth of literature concerning the role of state health department employees in policy advocacy, we reviewed the laws and agency rules in all 50 states that govern public employees’ participation in legislative and campaign activities. Our review included policies governing employees both in an official capacity and as private citizens.

Methods
We identified and reviewed laws in all 50 states using WestlawNext. We also collected organizational policies from state health department employee manuals and other materials publicly available through state government websites. We used a set of search terms constructed through an iterative process of reviewing an initial set of laws and abstracting commonly used terms from those laws, and regularly revising the list as we identified new laws relevant to our study aims. The final list of search terms included: advocacy, policy, lobbying, testimony, ethics, conflict of interest, state official, public official, and public employee.

We reviewed the results of the search and downloaded all laws responsive to our study aims. These laws and the employee manuals containing content that informed our study aims comprised our dataset. As a check against the completeness of the search, we compared the results against the National Conference of State Legislators 50 State Table on “Staff and Political Activity – Statutes.” As a team we reviewed the resulting documents and grouped the laws into categories based on content. We then noted key elements in each state’s policy, summarized state policies within each category, and discussed the summaries as a group to inform the findings.

Results
Our search yielded relevant policies within 48 state codes and employee manuals. Texas and New Hampshire were the two states for which our search strategy did not capture any relevant information. Of these documents, none prohibited state health department employees from participating in the legislative process in an unofficial capacity.

We identified five categories of laws and policies related to employee participation in legislative processes and campaigns: (1) state employee rights to participate; (2) laws and policies affecting participation in political campaigns; (3) restrictions on political coercion; (4) rules during ballot initiatives; and (5) laws that applied to employees based upon the employee’s position within the agency. Upon further analysis, we combined “ballot initiatives” with the “state employee rights to participate” category and “position within the agency” with the “political campaigns” category due to similarities in content, as discussed in the sections that follow.

Right to Participate
Documents from 42 states included instructions about how state employees can legally participate in legislative and campaign activities in an unofficial capacity, or language that affirms that such actions are permitted (Table 1). Ballot initiatives are legal in 24 states. Seven of the 24 states with a ballot initiative option provide information about how state employees can legally participate in ballot processes as private citizens.

Political Campaigns
Most states (n=42) define the terms under which a state employee can seek elected office or support
campaigns by separating their employment responsibilities from campaign-related activities (Table 2). In some instances, this separation required employees running for office to take a leave of absence for the duration of the campaign or to resign their position. Sixteen state policies specified different rules for employees based on their position, such as whether they were appointed or hired through a civil service process.

Political Coercion
Almost all states (n=43) restrict actions and speech that leverage a public position for political gain, either within the agency or in relations with other agencies and organizations (Table 3). Included in this category are a few broad policies that affirm the right of employees to vote without partisan pressure from their colleagues.

Discussion
This research revealed policies in almost every state governing health department employee participation in policy and campaign activities. Despite the abundance of rules on these issues, our search revealed no states with laws or written agency policies prohibiting employees from engaging in policy advocacy on their own time. Based on our review, health department employees with an interest in engaging in policy advocacy can legally do so as long as they are acting outside the scope of their health department role. In fact, guidance on this topic (found mostly under the “right to participate” category) generally affirmed employees’ ability to legally participate in politics and policymaking on their own time (Table 1). We do recognize that scenarios may arise in which employees may seek additional assurance or guidance about their ability to participate in policy advocacy on their own time, especially if their advocacy is at odds with their department’s position. In such cases, dialogue with leadership, government relations staff, or ethics committees will likely provide useful information.

As with the policy advocacy related policies, the content of policies related to employee participation in political campaigns generally concerns the need to separate employment from campaign-related activities, and does not include outright prohibitions (Table 2). Our review revealed some state policies requiring candidates for office to take a leave of absence in order to campaign. Campaigning while an employee is “on the clock,” and being compensated by the state, is expressly prohibited in many of the policies we examined, as is the use of public resources for campaign purposes (e.g., government email accounts and office supplies). These policies apply to scenarios in which an employee is running for office and those instances in which he/she is supporting another person’s campaign.

Unlike the “right to participate” and “political campaign” categories, policies included under the “political coercion” category detail prohibited activities
that constitute an inappropriate use of one’s position within an agency. Specifically, public agency employment cannot be used to advance a political agenda, and the workplace is an environment that is protected from such abuse.

Taken together, these three categories of policies (Right to Participate, Political Campaigns, Political Coercion) provide guidance for state health department employees who are interested in engaging in policy advocacy and campaigns, but unsure if the terms of their employment permit such activity or how to assure they are acting within the boundaries of permissible behavior. Based on this review, state health department employees who engage in policy advocacy and campaigning are within their rights when they use their personal time and resources to do so. Because state policies vary, familiarity with one’s own state policies is important.

**Recommendations for States**

Our review demonstrates that most states provide some formal written guidance for their employees about how to participate in the policy and political processes. The level of detail and the ease of accessibility vary among the states. We noted some exemplar state employee manuals, for example Massachusetts, that include both narrative descriptions of state policy and case scenarios of acceptable and unacceptable policy and campaign activities under the law. By providing guidance through employment-related materials that includes examples, states can facilitate access to both the existence of these policies and their practical implications for employees.

### Strengths and Limitations

Our findings are based on a review of state laws and policies identified through WestlawNext and state health department websites. The findings are not informed by any objective or subjective measure of employees’ knowledge of the policies, or the impact of the policies on their decisions about whether and how to participate in policy and campaign activities. Despite this limitation, this analysis provides the first systematic accounting of policies governing state health department employee participation in policy and campaign activities. As such, it provides important insight into

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<td>Alabama, Alaska, Arkansas, Arizona, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Vermont, Washington, West Virginia, Wyoming</td>
<td>Connecticut: “A person employed in said classified service or Judicial Department retains the right to vote as he chooses and to express his opinions on political subjects and candidates and shall be free to participate actively in political management and campaigns….no such employee shall engage in such activity while on duty or within any period of time during which such employee is expected to perform services for which he receives compensation from the state, and no such employee shall utilize state funds, supplies, vehicles, or facilities to secure support for or oppose any candidate, party, or issue in a political partisan election.” Georgia: “No rules or regulations of any state agency, department, or authority shall prohibit non-elective officers or employees of this state from offering for or holding any elective or appointive office of a political subdivision of this state or any elective or appointive office of a political party or political organization of this state, provided that the office is not full time and does not conflict with the performance of the official duties of the person as a state employee.”</td>
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<td>Hawaii, Massachusetts, Mississippi, Nebraska, Wisconsin</td>
<td>Massachusetts: “The Campaign Finance Law does not prohibit public employees from engaging in political activity, as long as such activity: 1) is not undertaken during work hours or otherwise using public resources, and 2) does not include soliciting or receiving political contributions.”</td>
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Table 3
Political Coercion, State Examples

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<tr>
<td>Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Kentucky, Louisiana, Maryland, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Utah, Washington</td>
<td>New Jersey: “A person holding a position in the career service or senior executive service shall not directly or indirectly use or seek to use the position to control or affect the political action of another person or engage in political activity during working hours.”</td>
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<td>Vermont, Wisconsin, West Virginia, Wyoming</td>
<td>Mississippi: “No State Service employee may use his or her official authority or influence to coerce the political action of a person or body.”</td>
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<td>Arizona, Hawaii, Iowa, Indiana, Massachusetts, Montana, North Carolina, North Dakota, South Carolina, South Dakota, Virginia, Vermont, Wisconsin, West Virginia, Wyoming</td>
<td>Vermont: An employee may not: Directly or indirectly command, solicit in a coercive fashion, or advise any other employee to participate in any political activity. Directly or indirectly solicit in a coercive fashion, command or advise any other employee to pay, lend, or contribute money or anything of value to a political party, candidate, committee, organization, agency or person for political purposes.”</td>
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the type of existing policies that govern health department employee participation in policy advocacy and campaign activities, and a solid foundation for additional research on this general topic.

Conclusion
State health department employees are an important part of the public health infrastructure. Based on the review of state policies and laws presented in this article, they have the latitude to engage in policy advocacy and campaign activities in their capacity as private citizens on their own time.

Acknowledgement
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References