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INDUSTRY MANUFACTURERS COUNCIL

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July 6, 2016

Honorable Lorena Gonzalez Chair
CA Assembly Appropriations Committee
Capitol Office, Room 2114
Sacramento, CA 94249

RE: Senate Bill 816 (Hill)

Dear Assembly Member Gonzalez,

The Industry Manufacturers Council represents over 2500 businesses which employ over 70,000 people in the City of Industry. We are concerned about SB 816 (Hill).

SB 816 discriminates against businesses and small contributors with limited funds and public access to the political process. The contribution limits in this measure would be the lowest in the nation, and the restrictions it places on small contributors are so onerous that they impede the ability of small contributors to participate in the political process, as well as the Board of Equalization's administrative hearing process, without risk of violating this law and with greater complication that other similarly positioned contributors. Accordingly, we find that this measure has three major constitutional, fairness, and equity flaws.

First, the bill violates the Constitution

In *Randall v. Sorrell, 548 U.S. 230 (2006)*, the Supreme Court found that Vermont's limits on contributions were so restrictive as to violate the First Amendment. The Court held that the contribution limits in the Vermont law were lower than those upheld in *Buckley v. Valeo, 424 U.S.1 (1976)* or in any other Supreme Court decision, that they were the lowest in the country, and that they were not indexed to keep pace with inflation. SB 816 is a more egregious violation of political free speech, in that it reduces the contribution limit to $100 from the current Kopp Act restriction of $249 – already the lowest contribution limit in the nation for statewide elected officials – without valid cause. This is also a direct violation of the equal protection to which every citizen and elected official is entitled.

Second, the bill violates the Equal Protection Clause

The bill will effectively establish a formidable fundraising barrier for any individual entering into a campaign for a Board of Equalization seat without a pre-established network of donors, thereby further burdening any candidate who is not already an office holder. For example, it will

give candidates for the Senate and Assembly a distinct advantage over BOE candidates, in that they can raise $4,200 without being disqualified from voting on any matter (or being accused of a conflict of interest) - and they can thereafter transfer their funds to a campaign committee for Board of Equalization, if they choose. Conversely, Members of the Board who sought another office would be subject to the provisions in this bill but their opponent seeking the same office would not.

In the Supreme Court case of *Davis v. Federal Election Commission, 554 U.S. 724 (2008)*, Justice Samuel Alito noted that the court had never upheld the constitutionality of a law imposing different contribution limits for candidates competing against one another.

Accordingly, SB 816 violates due process, equal protection, and political free speech in that it fails to place the same contribution restrictions on all candidates and contributors, e.g., for judgeships or Senate and Assembly seats – even those who may later transfer those funds to a campaign committee for a Board of Equalization seat.

Under the Civil Rights Act of 1866, SB 816 violates the "due process" clause and equal protection provisions of the Fifth and the Fourteenth Amendments, which guarantee equal rights to all citizens, and that no class should be singled out. SB 816 does not treat all California elected officials or the citizens who contribute to them equally, but singles out BOE members and their contributors only, with no justification or compelling reasons. Other elected officials with similar duties, and even more authority, responsibilities, and influence – e.g., judges, commissioners, and legislators – are not similarly restricted, despite the countless articles about their appearance of influence/corruption and conflicts of interest. The 2012 Corruption Risk Report Card gave California low marks in punishing corruption, including a "C-" in judicial accountability. See http://uscommonsense.org/research/depth-look-public-corruption-california/.

Third, the bill again violates the Constitution

The bill would unreasonably burden contributors and Board members. It proposes to implement a law that impedes the rights of citizens to participate in the political process, and violates the equal protection clause of the U.S. Constitution, by assuming that contributions to members of the Board and the State Controller influence their votes, while much larger contributions to legislators (who have been periodically accused of violating a variety of laws) are left unregulated as though there is no influence of legislators' votes.

In support of this action, the measure erroneously presumes that the adjudication duties of the members of the Board of Equalization are not significantly different from that of judges. However, in accordance with Government Code sections 15609-15609.5, the decisions of the BOE do not have the finality of a court or other adjudicatory agency, as the BOE is an "administrative" adjudicatory body, exempt from the Administrative Procedures Act, whose decisions are subject to a *de novo* appeal by a taxpayer to any California superior court. The decisions of judges, legislators, other constitutional officers, and many commissioners are far more precedential and impactful than those of the BOE. Yet, even judges have a relatively relaxed contribution cap and are allowed to accept up to $1,500 from any party or lawyer in a proceeding that is before the court, in contrast to the provisions of this bill.

The other erroneous assumption behind this measure is a recycled news story carrying a false perception by one BNA reporter that members of the Board are able to aggregate contributions of $249 and avoid the conflict of interest provisions in the Quentin L. Kopp Act, which assumption is legally and factually wrong. As advised by the Fair Political Practices Commission, the current Quentin Kopp Act requires all contributions to a Board member from a

party or participant and his/her agent to be aggregated in order to determine whether the total contribution is $250 or more within one year of the case being heard. As such, the rationales behind this measure are false.

In *McCutcheon v. Federal Election Commission 134 S. Ct. 1434 (2014)*, the Supreme Court found public interest must be more than the mere perception of political corruption. Even in *McConnell v. Federal Election Commission, 540 U.S. 93 (2003)*, the Court found that any "perception" must be factually supported, and was evidenced there by (1) scientific opinion polls measuring public perception of corruption, and (2) by forty years of survey data of public attitudes toward corruption in government.

In addition, per *Citizens United v. Federal Election Commission, 130 S. Ct. 876 (2010)*, the Supreme Court reversed McConnell, stating, "This Court now concludes that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." Justice Kennedy wrote in the majority opinion, "That speakers [contributors] may have influence over or access to elected officials does not mean that those officials are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy." Justice Kennedy stated that they were not persuaded by the rationale for distinguishing between the wealth of individuals and corporations; nor were they sympathetic to the anti-corruption argument.

We agree with the courts and other studies that campaign contributions do not necessarily influence the votes of elected officials, and the perception or appearance of influence does not make it so. Study after study support that most elected officials, including members of the BOE, base their votes on their party line, the law, the facts, and their personal value system. However, if the sponsor and author of SB 816 (Hill) are correct regarding their rationale for establishing this public policy – that contributions influence the vote of elected officials – then in order to assure equal protection, freedom of speech, and due process equally to all citizens, this measure should not only regulate the members of the Board of Equalization and State Controller, but should be amended to include judges, commissioners, all constitutional officers, and the legislature.

Sincerely,

Ronald Whittemore
Executive Director
Industry Manufacturers Council