alhambra
CHAMBER OF COMMERCE

May 9, 2016

Honorable Lorena S. Gonzalez
Chair of the Assembly Appropriations Committee
Capitol Office
P.O. Box 942849, Room 2114
Sacramento, CA 94249-0080

Dear Chair Gonzalez,

As proposed, AB 1828 (Dodd) presumes that a donation or behested payment of even $1 to any nonprofit organization (including in-kind goods and services) – or a payment by the nonprofit of a portion of the cost for an event that has a governmental, charitable, or legislative purpose, in which the Members of the Board of Equalization, including the State Controller ("Members") are partnering, hosting, co-hosting, or sponsoring with that nonprofit – influences the vote of the Members in decisions on tax matters brought to the Board by a donor to the nonprofit.

In essence, the measure's presumption is that behested payments of any amount influence the vote of Members of the Board, but not those of the Governor, Legislators, Judges, and Commissioners, neither of which is true. The proponents of this bill admit that there is no evidence of any wrongdoing or illegal activity by any BOE Member, nor any evidence that a charitable donation to a nonprofit influenced a Member's decision on an adjudicatory matter. Nevertheless, this measure would have the effect of prohibiting the Board, its Members, and the State Controller from publicizing, partnering, hosting, or co-hosting any events with nonprofit organizations – including schools, community-based organizations, civil rights groups, business associations, health organizations, unions – which have a charitable, governmental, or legislative purpose.

This bill contains provisions that would restrict the fundraising capacity of all nonprofits in the State in the following ways:

- Changes the definition of the term "contribution" to now include "behested payments," which actually have no relationship to campaign matters and are not contributions. Rather, behested payments allow a Board Member to request

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donations to a nonprofit to help support a charitable, governmental, or legislative event;

- Expands the definition of a "behest" by a Board Member as the mere "implication, suggestion, mention of, or consent to" a donation to a nonprofit, - making the nonprofit responsible for ensuring that all donors file behested payment reports with the BOE;

- Exposes the Board and its Members to great risk if they seek to partner in or publicize nonprofit events that have a charitable, governmental, or legislative purpose, including, but not limited to, events hosted by civic organizations, churches, foundations, employee associations, and others; and the risk would effectively prohibit Members from volunteering on nonprofit boards or commissions to co-host events, or even being listed on event communications that imply collaboration, support, or fundraising assistance;

- Board-sponsored events would be negatively impacted: such as the Volunteer Income Tax Assistance Program, Nonprofit Seminars, International Symposiums, Campaign Against Poverty Initiative, Connecting Women To Power Conferences, Career Development Program, Workshops, State Job Fairs, Pathway to Success events, Senior Citizen Empowerment Conferences, College Grant & Scholarship Program events; in effect, this bill would severely restrict the public service of the Board of Equalization and State Controller to nonprofits and residents in the underserved community;

- Since the Board administers over 32 different tax and fee programs, adjudicates FTB income tax appeal matters, oversees local property tax matters, sets value on public utilities and railroads, and approves welfare exemptions, rent stabilization, etc., this measure would impact every individual and business in the State of California who would contribute or donate to nonprofit organizations; and

- It redefines behested payments by a Board Member as "contributions" – thereby requiring the reporting and tracing of all donors and sponsors of an event in which a Member is involved, resulting in a "reporting nightmare" for all nonprofits, their donors and sponsors, and for the BOE and its Members.

The "reporting nightmare" for all nonprofits, their donors and sponsors, and BOE Members is a serious and costly problem. As mentioned, a behested payment to a nonprofit organization (in support of a charitable, governmental, or legislative event involving a Board Member), from a company or taxpayer which is an "agent, party, or participant"

with a case that might come to the Board one year before or three months year after the donation, must be reported to that Board.

Failure to do so could be considered a misdemeanor, and failure of the Board Member to disqualify himself is a misdemeanor. If a Board Member is seeks to return a behested payment or donation in order to avoid being disqualified from voting on a matter, the nonprofit will be forced to return the money to the donor who helped to pay for the expenses of an event, or sponsored the event – even if it was in the form of in-kind goods and services.

From a practical standpoint, this places an enormous administrative, as well as economic, burden on the nonprofit – both in terms of reporting and in terms of discouraging donors. It would also be a great financial and accounting challenge for nonprofits to actually return the money to contributors when a Board Member is required to do so in order to vote.

Highly egregious is the fact that the bill's language adds additional reporting obligations onto private entities and individuals who seek to make behested payments to support worthy philanthropic causes, *even after their receipt of a decision on an adjudicatory matter they have had before the Board.* It "post-regulates" a taxpayer's donations, 3 months after their matter has been adjudicated by the Board. This imposes a tremendous and unfair burden on all taxpayers, individuals, businesses and nonprofits. These added reporting responsibilities will further discourage donors who had or will have any business before the Board from contributing to nonprofits, regardless of their need, thereby further impacting the nonprofits financially at their bottom line.

Worst of all, this bill is particularly burdensome on nonprofits who serve minority and underserved communities, where they do not have the benefit of corporate executives and celebrities to donate and support their public welfare work. As a result, they often rely on elected officials, church leaders, unions, and civil rights organizations for support. In a recent study, sociologist Samuel Perry (2013) found that ethnic minority fundraisers were suffering as a result of their lack of social networks and connections to wealth, indicating that race and social capital seem to be problematic and limiting for ethnic minorities who run and operate charitable organizations. This measure would compound these challenges – and effectively prohibit Board Members from serving on nonprofit boards and commissions – in that their service could be construed as "a conflict" and a potential violation of law.

The measure fails to take into account that fundraising for nonprofit entities is a competitive and complicated process that generally requires committed individuals and leaders who have a history of civic, governmental, and humanitarian experience consistent with the predetermined mission of the organization and potential donors. And

although suggestions or encouragement to donate by elected officials may help, they are not determinative of funding in the final analysis.

This bill is an unfortunate reaction to the unsubstantiated paranoia of a very small, but vocal, minority, holding that behested payments to nonprofits by elected officials, including the Governor, Judges, Commissioners, Legislators and, in this case, Board Members, are inherently bad and that the public welfare of the greater majority who benefit from the public service of elected officials through their partnership with nonprofits should be set aside.

Although not a direct impact on nonprofits, this bill has the potential of disrupting and altering the adjudication of the cases before the Board, in that it would allow employees of donors to cancel out the vote of a Member without his/her knowledge by donating even a small amount to a nonprofit holding an event where the Member is a co-host or deemed a partner. Without the timely knowledge of the donation to the nonprofit, the Member would be disqualified from voting on a matter, leaving less than the full five-Member Board to make the decision. The cumulative results over time could be devastating to the general funds relied upon by nonprofits.

In summary, the Legislature in the past has wisely recognized the greater good of allowing elected officials, including Board Members, Judges, Legislators, Commissioners, and the Governor who are subjected to strict disclosure, accountability, contribution limits, and reporting requirements to help address the poverty and ills of our communities by serving on nonprofits, partnering with them in events in performing our humanitarian service to the public, provided that their activities are fully disclosed and transparent. And the current law accomplishes these objectives. It is for these reasons that I respectfully request that you oppose this legislation.

Thank you for your consideration of this matter.

Sincerely,

Owen Guenthard
Legislative Director
Alhambra Chamber of Commerce