



**El Monte/South El Monte
Chamber of Commerce**

March 29, 2016

Honorable Shirley Weber
Chair of the Elections and Redistricting Committee
Capitol Office
P.O. Box 942849, Room 3123
Sacramento, CA 94249-0079

Re: Opposition to AB 1828 (Dodd) Kopp Act Amendments: Negative Impact on Nonprofit Organizations and Their Donors.

Dear Chairperson Weber:

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 the terms "party," "participant," and "agent" doing business before the Board to include "any unrelated employee" of an "agent, party, or participant," regardless of whether that employee worked on the matter currently before the State Board or was responsible for bringing the client to the firm; e.g., the janitor, security guard of a large company, or the housekeeper of an "agent, party, or participant";
- A behested payment of any amount to a nonprofit made by a party, participant, or agent (or an employee thereof) with a matter before the Board – even \$1 – would disqualify the Members from voting on an adjudicatory matter of the Board one year before the donation was made and one year after the date of the vote;
- 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 values 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 when the BOE, its Members including the State Controller are involved; and

- Because the measure 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 resulting “reporting nightmare” this measure would create for all nonprofits, their donors and sponsors, and BOE Members is a serious and costly problem. As mentioned, a donation of \$1 to a nonprofit organization (in support of a charitable, governmental, or legislative event involving a Board Member), from any employee of a company or taxpayer which is an “agent, party, or participant” with a case that might come to the Board one year before or one year after the donation, must be reported to the Board.

Failure to do so could be considered an illegal act; and failure of the Board Member to disqualify himself would be an illegal act. Further, if a Board Member is required to return a behested payment or “contribution” 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 a charitable, governmental, or legislative 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 (when made at the behest of a Member), long after their matter has been adjudicated by the Board. This imposes a tremendous and unfair burden on all taxpayers, both individuals and businesses; and, as indicated above – even employees of businesses. These added reporting responsibilities will 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

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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. The author cites a recent article (stimulated by one BNA reporter) alleging that behested payments to a charitable nonprofit by Space X, an employer that donated in support of a governmental/educational event to help women start businesses and secure jobs, somehow influenced the board’s decision to approve a property tax exemption rule previously enacted into law by the Legislature. The article was factually incorrect, in that the rule simply clarified the legislation and was approved unanimously by all five Members pursuant to the recommendation of the Board’s Legal Counsel.

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

