H.R. 1: Advocacy Impacts and Questions to Resolve

H.R. 1, the For the People Act, is an enormous, complex piece of legislation, divided into three main sections that broadly address voting, campaign finance and issue advocacy, and ethics in government. With its passage in the House of Representatives, it will now head to the Senate where it is expected to be introduced as S 1. The bill is likely to be amended in the Senate in order to increase its chances of passage.

While Alliance for Justice supports much of the bill, including its effort to protect the right of citizens to vote, to ensure the FEC can function, and ethics reforms, particularly those that are applicable to the courts, there are also provisions that raise significant concerns about the impact on the ability of nonprofits and individuals, including non-citizen immigrants, to engage in advocacy. Disability rights advocates have also expressed concerns that some of the voting rights changes could interfere with the ability of individuals with disabilities to cast a ballot in privacy.

Bolder Advocacy believes a greater understanding, and discussion, of how this bill affects nonprofits—especially 501(c)(4)s--is called for as we take this groundbreaking step to reform our democracy. Bolder Advocacy's work with thousands of nonprofits, including new and small organizations, causes us to ask questions about some of the lesser known provisions and unintended consequences that could hurt the ability of organizations to engage in issue advocacy. We think the following points should be discussed more fully, with changes and amendments considered, as the Senate takes up its consideration of the bill.

Issue Advocacy and Lobbying Communications Re-Defined

Although the bill is described as calling for enhanced disclosure of campaign-related speech, its scope affects issue advocacy and lobbying that has no relation to the election or defeat of a candidate for office. The legislation subjects some organizations to enhanced reporting and donor disclosure by creating the new term of campaign-related disbursement, which treats many of the issue advocacy and lobbying communications of 501(c)(4) and other covered organizations as campaign speech.

A New Definition for Advocacy: Campaign-Related Disbursement

Campaign-related disbursement includes any public communication which promotes, supports, attacks, or opposes a candidate for office. Virtually all members of Congress and the president would be considered candidates as FEC regulations deems anyone raising funds for their campaign a candidate. A public communication includes paid internet or digital ads, mail, phone banks, magazine or newspaper and broadcast and cable communications. The bill also defines advocacy on federal judicial nominations as a

campaign-related disbursement.

For example, if a covered 501(c)(4) or other covered organization met the requisite spending amounts, a paid twitter campaign that encouraged supporters to contact Senator Schumer to tell him to bring the For the People Act to the floor for a vote would be treated as a campaign-related disbursement that is subject to the bill's reporting and disclosure requirements.

Electioneering Communication Definition Expanded

The bill expands the definition of electioneering communications to include paid internet or digital communications. This would be a significantly expand the types of communications that trigger reporting and disclosure of advocacy communications made within 30 days of a primary or 60 days of a general election. This expansion of the electioneering communications would impact the advocacy of all organizations that engage in advocacy near an election.

Is Coordination with Political Parties and Members of Congress Banned?

The bill seemingly applies campaign finance principles that ban coordination between candidates and entities making independent expenditures that support or oppose a candidate's election to issue advocacy and lobbying to covered organizations that make CRDs. The bill contains a confusing provision that requires organizations that make CRDs to certify that their communication was not made in coordination with a candidate or political party. It is not at all clear what implications this has for covered organizations, particularly those with affiliated 501(c)(3)s that share staff and resources. If the principles of campaign finance apply, this could prohibit covered organizations from discussing messaging and advocacy plans with their elected representatives. The intent and scope of this provision should, at minimum, be clarified.

Stand By Every Ad with Top Donor Disclosures

H.R. 1 contains additional "stand by every ad" provisions that will require organizations making campaign-related disbursements to disclose donors. Depending on the medium (visual or audio) of the campaign related disbursement, up to the organization's top five funders may be disclosed to the general public in the ad's content, without regard to whether the donor's actually earmarked contributions for the ads in question. A television advertisement by a 501(c)(4) thanking Representative Pelosi for introducing this legislation during an election cycle (a two-year period) would be a campaign-related disbursement and require the organization to list out its five largest donors. Requiring donors to be disclosed in advocacy communications could subject named individuals to harassment and threats and would turn the focus of advocacy communications to the speaker as opposed to the message. It could also have the unintended consequence of giving wealthy donors greater control over nonprofit advocacy and messaging.

New Compliance Requirements for Nonprofits

The disclosure and reporting requirements create onerous and burdensome compliance burdens for affected nonprofits. Provisions for transparency should not be burdensome

to the point of discouraging advocacy. H.R. 1 will require affected organizations to collect detailed information on donors, timing of contributions of contributions and expenditures, and make detailed reports on their advocacy expenditures. While that may seem trivial, we have already seen groups choose not to speak out on certain state bills or ballot measures because of the complex, expensive, confusing reporting. Although certainly not the intent, there will be a disparate impact of this: the very grassroots, people of color-led groups whose voices are underrepresented will be hurt the most by this and will be the groups that opt out or face the biggest penalties.

No Process to Obtain a Donor Disclosure Exemption

While the bill contains an exemption from reporting donors if "the inclusion of information would subject the person to serious threats, harassment, or reprisals,' there is no process to obtain the exemption or further clarifying information. In practice, this standard is likely to prove unworkable as there is no way to show something would happen. Looking to FEC history on exempting donors, the Socialist Workers Party has been able to obtain an exemption from disclosing its donors, but only because it is a minor party with no chance of success. Organizations should not feel confident that their situation or the concerns of their donors would result in an exemption from disclosure.

Expansion of Lobbying Disclosure Act

The legislation expands the definition of lobbyist to include employees who do not engage in direct lobbying, thereby increasing the reporting burden of organizations that are registered under the LDA. The requirement to register as a lobbyist under the LDA is expanded to include "any individual who for financial or other compensation provides legislative, political, and strategic counseling services" which are used to support lobbying activities.

The provision would effectively turn any employee of an organization that is registered under the LDA into a lobbyist if any of their work in some way supports or contributes to an organization's lobbying efforts. This broad expansion of the definition of lobbyist could even include other consultants, such as pollsters or messaging consultants. Further, as legislative, political, and strategic counseling services are undefined, it would create confusion over what activities and consultants would be covered by the provision. For example, a 501(c)(3) staff person who drafts talking points that is used in a lobbying communication may be considered an LDA lobbyist as that work does support the organization's lobbying efforts. This may also require non-employee consultants to register and disclose if they provide covered services to an LDA registrant. These newly defined lobbyists would also be subjected to revolving door restrictions which are expanded in H.R. 1.

New Restrictions on Non-Citizen Advocacy

The bill expands the prohibition on foreign paid communications and could subject non-citizens that engage in issue advocacy to deportation. The bill creates onerous restrictions on the ability of non-citizens, including DACA recipients, to engage in issue advocacy, including supporting or opposing ballot initiatives. For example, a DACA recipient would be prohibited from contributing to a ballot measure committee in Arizona that was supporting an initiative to allow DACA recipients to pay in-state tuition to attend

community college. Similarly, a DACA recipient would also be prohibited from contributing to or being a member of the board of directors of a 501(c)(4) that endorsed pro-immigrant candidates.

It Is Time To Talk About Amendments to H.R. 1

As H.R. 1/S. 1 makes it way through the legislative process, changes to the bill will almost certainly be made. Now is the time to consider what changes should be made as the bill takes another step closer to becoming law. Bolder Advocacy supports much of H.R. 1, however, care should be taken to ensure there are no unintended consequences of the legislation, especially consequences that will hinder the advocacy activities of tax-exempt organizations or put immigrant advocates at risk. It is time to have a fuller discussion of the bill's nuances, its impacts on nonprofit advocacy, and which provisions should be amended.