



PRESIDENT
NAN ARON

CHAIR
PAULETTE MEYER

August 25, 2021

The Honorable Ben Allen
California State Senate
State Capitol Building, Room 4076
Sacramento, CA 95814

Re: Concerns about SB 459 (as amended 7/6/2021)

Dear Senator Allen,

Alliance for Justice (AFJ) thanks the Committee for this opportunity to comment on SB 459.

AFJ is a national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society. AFJ's Bolder Advocacy program is the nation's leading resource for nonprofits and foundations on the legal framework for nonprofit advocacy efforts, providing definitive information, resources, and technical assistance that encourages nonprofit organizations to fully exercise their rights to be active participants in the democratic process. A nonprofit ourselves with staff in both Northern and Southern California, we are not a law or lobbying firm, but rather we provide legal and capacity-building support to nonprofit organizations to empower them to advocate in line with their missions and in compliance with the law. Since 2004, we have worked with over 1,800 small, medium, and large nonprofit organizations in California.

California nonprofits are trusted messengers and representatives for the public because they are the vehicle by which community members organize themselves to have a seat at the table. These groups report their lobbying to the state as required and we help them understand their duty to do so. **However, every time additional reporting requirements are created for additional kinds of expenses, it poses a risk to smaller, less resourced nonprofits by creating additional opportunities to make mistakes and fail to comply.** This discourages communities who are already marginalized from participating more fully in state decision making.

We have concerns that this well-intentioned bill may have unintended consequences on nonprofits advocating in line with their charitable and social welfare missions in California.

1. Lack of clarity regarding 24-hour reporting under section 86117(c)(2) would chill participation by smaller, cash strapped nonprofits.

This bill would require certain lobbyist employers and \$5000 filers to file reports within 24 hours of communicating with a state official in the last 60 days of the legislative session. Section 86117 (c)(1) and (2) state:

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(c) (1) During the period beginning 60 days before the date the Legislature is scheduled to adjourn in a calendar year for the interim recess or final recess, a person described in Section 86115 [lobbyist employers and \$5000 filers] shall file a report within 24 hours of retaining a lobbying firm to influence legislative action during those 60 days, including the amount to be paid to the lobbying firm pursuant to a contract for lobbying.

(2) A person described in paragraph (1) shall file a supplemental report within 24 hours of engaging in direct communication with an elective state official, agency official, or legislative official on behalf of that client for the purpose of influencing legislative action.

It is unclear **who** would have to file the supplemental reports referred to in section 86117(c)(2). Who is the bill referring to when it says “a person described in paragraph (1)”? Is it only lobbyist employers who hire a lobbying firm during the specified 60-day period? Would it apply to lobbyist employers who have retained a lobbying firm at some other time but whose staff members communicate directly with state officials during the specified period? Does it refer to a lobbying firm that is retained during the specified timeframe? The reference to a client makes it seem that the section is referring to a firm rather than a lobbyist employer.

It is unclear **when** supplemental reports referred to in section 86117(c)(2) would have to be filed. If these supplemental reports are only required for activity that occurs during the 60-day period described in (c)(1), it would help to specify that here.

Furthermore, it is unclear **how often** 86117(c)(2) requires a supplemental report. Does the section mean that one supplemental report is due within 24 hours of when direct communication first occurs (as seems to have been intended from what I can gather) or does it require a supplemental report within 24 hours **each time** a covered person communicates with a state official? We encourage the legislature to ensure that only one 86117(c)(2) supplemental report would only be required for each lobbyist employer each year.

The plain language of the statute does not answer these questions and leaves open the possibility that an indeterminate group of lobbyist employers or lobbying firms would have to file a report within 24 hours **every time** they communicate with a state official for the purpose of influencing legislative action. Surely this was not the intent of this section, as such a rule would have a dramatic chilling effect on political speech.

2. Additional reporting for “Issue Lobbying Advertisements” may pose unreasonable burdens on nonprofits who are not paying for advertising but rather communicating with their constituencies by email, text, or through online platforms.

This bill would require lobbyist employers and \$5000 filers who authorize and pay for “Issue Lobbying Advertisements” to provide additional information in quarterly reports, to file additional reports if they spend over \$5000 in a quarter, and to include certain disclaimer language in such advertisements.

One challenge that nonprofits will face with regard to this new category of activity is that the definition of “issue lobbying advertisements” in section 86119 goes beyond paid advertising to include grassroots communications made by email or text and general or public communication made on an online platform. We appreciate the fact that staff time does not count toward the \$5000 filing threshold, but there are still many questions as to what types of messages count and how to value them for the purposes of determining what types of filing may be required. We suggest limiting this definition to paid advertising.

We urge you when considering this bill to think not only of how these additional reporting requirements would apply to people who have ample resources to hire attorneys and file reports but of the vast majority who do not. There will always be interests with enough money to hire professionals to be on call every day to be able to comply with 24- and 72-hour reporting requirements. **But additional reporting mandates, new**

types of expenditures that must be reported, and ever shorter deadlines create risks and potential liability for smaller nonprofits that sometimes discourage them from engaging at all. Through hundreds of conversations with nonprofits working to improve their communities every year, we see that increasingly complex reporting has a chilling effect on nonprofits weighing in with decisionmakers about how their communities will be impacted by new proposed laws and rules as well as discouraging nonprofits from communicating about legislation and administrative proposals with their constituencies.

We respectfully request that you not move SB 459 to the floor without resolving these ambiguities and challenges.

Sincerely,

A handwritten signature in black ink that reads "Nona Randois". The signature is written in a cursive, flowing style.

Nona Randois
California Director

cc: Honorable Lorena Gonzalez, Chair
Assembly Committee on Appropriations