

California Common Cause  
430 S. Garfield Ave., Suite 418  
Alhambra CA 91801

*Via email CommAsst@fppc.ca.gov*

May 7, 2024

**Re: Three bills Amending Government Code Section 84308 (Contributions to Agency Officers)**

Dear Chair Silver and Commissioner Baker,

First, we would like to thank you and your staff for your diligent work over the past 18 months in implementing SB 1439 (Glazer, 2022), which amended Gov. Code Sec. 84308 and the Levine Act.

Second, as your agenda packet notes, there are currently three bills that seek to amend Section 84308: SB 1184 (Glazer), AB 2911 (McKinnor), and SB 1243 (Dodd). California Common Cause (CCC) would like to share our thoughts, reflections, and concerns on these bills.

**SB 1181 (Glazer).** As proposed, SB 1181 would require that an agenda for local proceedings include a notice regarding the disclosure requirements of the Levine Act pertaining to recent campaign contributions by those with a financial interest. Our staff has been collaborating with Senator Glazer's office on this bill. Over the past several weeks, we have engaged stakeholders, including representatives from local governments tasked with implementing SB 1439, with the goal of identifying reasonable amendments that strike a balance between the goals of the pay-to-play restrictions and the administration of local government. We are committed to finding workable solutions that uphold the intent of Sec. 84308 and address the administrative and implementation hurdles local agencies have voiced. We would welcome partnership with the Commission and its staff in this endeavor.

**SB 1243 (Dodd) and AB 2911 (McKinnor).** California Common Cause is currently opposed to both AB 2911 (McKinnor) and SB 1243 (Dodd), as in print, because they water down the recently passed pay-to-play protections of SB 1439. We have outlined our concerns below.

*Increasing the Contribution Limit*

CCC opposes both SB 1243 and AB 2911's proposed change to Sec. 84308's contribution limit, which ranges from \$1,000 in SB 1243 to \$1,500 in AB 2911. We believe that the proposed contribution limits, which amount to a four- to six-fold increase, are too high. California Common Cause is not categorically opposed to any increase in the limit and are engaging stakeholders to identify a contribution limit that is appropriate. Preliminarily, we believe a doubling of the contribution limit in Sec. 84308, to \$500, would likely be acceptable.

*Aggregation of Contributions*

CCC opposes SB 1243's end to the long-standing practice of aggregating campaign contributions of parties, participants, and agents. We believe that eliminating the aggregation rule would invite bad actors to "max out" their contributions to local government officials through multiple channels to

several times the limits that are being proposed. Ending the aggregation of contributions has the potential to undermine the entire purpose of the Levine Act.

#### Changes to Applicable Period of Contribution Limit

CCC opposes SB 1243's proposed change to the period during which Sec. 84308's contribution limit applies, from 12 months to nine months "before the date a final decision is rendered." For matters with a lengthy application process, i.e. longer than nine or 12 months, this change would allow for large contributions to be made while a matter is pending.

#### Creating an Industry Exemption

CCC is categorically opposed to SB 1243's exemption for real estate developers from disclosure, contribution limits, and all other portions of the law, under certain conditions. Not only does such an exemption create a loophole that permits the sort of pay-to-play activity that the Levine Act seeks to stop for an industry that was at the center of several of the scandals that motivated SB 1439, but, additionally, creating a different set of rules for a single industry without meaningful justification is simply bad policy.

#### Legal Impermissibility

As you know, Section 10(c) of Article II of the California Constitution states that a ballot measure, like the Political Reform Act, may only be amended by the Legislature when the ballot measure language permits it. And of course, per Gov. Code Sec. 81012, the PRA states that it "may be amended to further its purposes."

The express purposes of the PRA are set forth in Sections 81001 and 81002. Along with other purposes, the Act envisions that "in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided." (Gov. Code § 81002(c).) The Act also dictates that it "should be liberally construed to accomplish its purposes." (Gov. Code § 81003.) Thus, SB 1439 in 2022 was directly in line with the Act's original purposes. This was confirmed by *Family Business Association of California v. FPCC* in 2023, the unsuccessful challenge to SB 1439.

*Howard Jarvis Taxpayers Assn. v. Newsom* (2019) 39 Cal.App.5th 158, citing *Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, explains when a legislative measure can be interpreted as *not* furthering the purposes: "[A] legislative amendment that alters and conflicts with a fundamental purpose or primary mandate of an initiative does not further the purpose of the initiative and is invalid." (*Id.* at 174.) We believe the reworking of the PRA contemplated in these bills and discussed above "alters and conflicts with a fundamental purpose" of the PRA, namely, ensuring that "officials should be disqualified from acting in order that conflicts of interest may be avoided."

Further, *Howard Jarvis Taxpayers Assn.* holds that an amendment can also be understood to not further an initiative's fundamental purpose or primary mandate if it takes "a significantly different policy approach" and thus "undermine[s] the specific rules" of the original law. (*Id.* at 172.) SB 1243 and AB 2911, as written, do exactly this, making them vulnerable to legal challenge if passed without substantial amendments.

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We hope the Commission shares our concerns surrounding these issues and welcome your engagement and questions. Thank you again for the attention and care you have provided to the implementation of SB 1439 and to these matters generally.

Sincerely,

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