



April 29, 2016

Assemblywoman Lorena Gonzalez
Chair
Assembly Appropriations Committee
State Capitol
Sacramento, CA 95814

RE: Opposition to Assembly Bill 2855 (Frazier)

Dear Assemblywoman Gonzalez,

We, the undersigned leaders of leading nonprofit organizations in California, respectfully urge you and the other members of the Assembly Appropriations committee to vote no on Assembly Bill 2855 by Assemblyman Jim Frazier. We have attached a letter signed by nearly 500 charity leaders which articulates the primary policy concerns with AB 2855. In addition to those concerns, there are serious fiscal considerations associated with the implementation of AB 2855 for the State of California and tens of thousands of nonprofit organizations here and elsewhere.

To be clear, California's nonprofit organizations are transparent and support transparency. Maintaining the high degree of trust we enjoy with the public and our supporters is a top priority. California nonprofits are already required to disclose financial information, salaries, programmatic accomplishments, percentages spent on fundraising and on administration, and much more. The federally required documents are readily available to the public free at www.guidestar.org. The California Attorney General provides easy online access to the California forms of nonprofits and a notice of whether a nonprofit is up-to-date on all its filings. In fact, the analysis of the bill conducted by the policy committee notes multiple disclosures already required including tax-exempt status and percentages of requested gifts that would be tax-deductible as well as limitations on fundraising expenses. AB 2855 adds unnecessary requirements which impugn an already highly transparent community.

The Office of the Attorney General would be tasked with turning AB 2855's vague requirements into regulations (through a promulgation effort), enforcing those regulations by monitoring the websites and solicitations of charities based in California and beyond. AB 2855 also directly requires the AG's office to create a new web page to "develop and publish on the Attorney General's Internet Web site, which contains information about charities, informational materials containing consumer rights and protections and charity research resources to allow donors to become informed about a charity before making a decision to give."

The impact of AB 2855 – and thus any effort to ensure compliance with its requirements – would be far-reaching. AB 2855 would require every charity to include what feels to nonprofits like a "warning label" on their website in a "prominent" location and also requires nearly every document they produce to direct donors and others to the state's top law enforcement's website. Mandating content in the ways proposed by AB 2855 would be expensive and burdensome, and would detrimentally interfere with nonprofits' ability to communicate with their constituents and the public. AB 2855 arguably compels speech in an unconstitutional manner by dictating specific content to be included on nonprofit websites and documents and seems ripe for challenge on this basis.

Some of the costs the State of California – particularly to the Attorney General's office -would incur to implement AB 2855 include:

- Developing and publishing the mandated information;
- Developing new administrative regulations to determine how to practically enforce the statute;
- Redesigning the charitable registration renewal form (RRF-1) to include an additional compliance statement;
- Undertaking educational initiatives to make charities aware of the new statute's requirements;
- Auditing charities for compliance or responding to and investigating complaints about non-compliance;
- Answering questions from out-of-state charities regarding compliance, particularly with regard to passive "Donate" buttons on websites not explicitly targeted to solicit donations from California residents, but accessible by Californians via internet; and,
- Defending AB 2855 from litigation prompted by constitutional concerns.

All of these costs are exacerbated by the quantity of organizations required to comply with AB 2855 and the vastness of the documents affected. The California Attorney General defines a charity as: "If the organization is classified as a California nonprofit public benefit corporation or has received federal tax exemption under Internal Revenue Code section 501(c)(3), it is a charity. Under the traditional common law definition, charitable purposes include relief from poverty, advancement of education, religion and other purposes beneficial to the community." According to the IRS, there are 113,128 501(c)(3) public charities in California, not including the tens of thousands of charities located outside the state which engage in charitable solicitations here.¹

Given the state's definition of "solicitation for charitable purposes," a large percentage of the documents produced in connection with running a charity would be implicated.² AB 2855's provisions would apply to any charity – regardless of where they are based – that solicits donations from Californians. So, every outgoing piece of mail from any charity in the world would have to include this unnecessary disclosure. Every invoice from a preschool, every

invitation to a pancake breakfast, every email with a “donate now” link, every letter about symphony tickets, every newsletter, flyer, and so forth, from any nonprofit would be affected. It’s also problematic for online services such as Facebook, Instagram and Twitter where users do not control the headings or the order of what is displayed. Out of state charities may have a very difficult time customizing the content of their emails to Californians who are on their lists. AB 2855 does not articulate what the consequences are for non-compliance, but some fear it could jeopardize their tax-exempt status.

All this could add up to a hefty price tag for the state and taxpayers. And of course AB 2855 saddles all of the state’s charities – big, medium and small – with a harmful and confusing disclosure requirement, adding to their costs of doing business and taking time and resources away from their delivery of services to Californians in need or in crisis and jeopardizing donations thanks to AB 2855’s suggestion of wrong-doing by conscientious organizations.

CalNonprofits, a statewide policy alliance of more than 10,000 nonprofits in California, is so serious about the need for transparency and disclosure that is meaningful and strongly enforced, that they supported three recent pieces of legislation (all referred to in the Assembly Privacy and Consumer Protection committee analysis):

- CalNonprofits worked with Assemblymember Irwin and Attorney General Kamala Harris on last year’s AB 556 which strengthened disclosure requirements for charity fundraisers and established a longer statute of limitations for enforcement against fraud.
- Similarly, CalNonprofits worked with Assemblymember Feuer on AB 2327 and did not oppose its enhanced penalties for violations of the Nonprofit Integrity Act and designation of Attorney General authority to suspend charitable registrations of organizations in violation.
- CalNonprofits also supported SB 2015 by Senator Sher in 2000 which increased the AG’s enforcement reach including imposition of late fees, suspension, revocation and ability to impose criminal penalties against charities for violations of the Uniform Supervision of Trustees for Charitable Purposes Act.

AB 2855 should be rejected on both policy and fiscal grounds and we urge you on behalf of the entire charitable sector in California – the fourth largest employer in the state – to hold AB 2855 in your committee or vote no when it is heard.

Please don’t hesitate to reach out to us with any questions or concerns you may have. Thank you for your leadership and service to the State of California.

Sincerely,



Nancy Berlin
Policy Director
California Association of Nonprofits
(CalNonprofits)



Pete Manzo
President and CEO
United Ways of California



Hedi Jalon
Executive Director
California Fire Foundation



Christy Bouma
Governmental Advocate
California Professional Firefighters



Sharon Ellis
Chair, Board of Directors
Habitat for Humanity California



Janice Jensen
Chair, Legislative Committee
Habitat for Humanity California



Andrew Cheyne
Policy Director
California Association of Food Banks



Elizabeth Goldstein
President
California State Parks Foundation



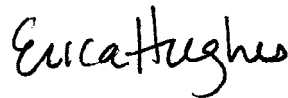
Mike Bober
President & CEO
Pet Industry Joint Advisory Council



Brandy Kuentzel, Esq.
General Counsel and Advocacy Director
San Francisco SPCA



Courtney Fern
California State Director and Community
Relations Liaison
The Humane Society of the United States



Erica Gaudet Hughes
Executive Director
State Humane Association of California

Attachment

cc: Members of the Assembly Appropriations Committee
Assembly Speaker Anthony Rendon

Tiffany Garcia, Department of Finance
Robert Sumner, Office of the Attorney General
Jennifer Fearing, Fearless Advocacy, Inc.
Kevin Pedrotti, J K Pedrotti., Inc.
Jason Schmelzer and Karen Lange, Shaw Yoder Antwih
Nicole Wordelman, Platinum Advisors
Kathy Mossburg, MVM Strategy Group

¹ <https://www.irs.gov/Charities-&-Non-Profits/Exempt-Organizations-Select-Check>

² California Business & Professions Code 17510.2: (a) As used in this article, “solicitation for charitable purposes,” means any request, plea, entreaty, demand, or invitation, or attempt thereof, to give money or property, in connection with which any of the following applies: (1) Any appeal is made for charitable purposes; (2) The name of any charity, philanthropic or charitable organization is used or referred to in any such appeal as an inducement for making any such gift; (3) Any statement is made to the effect that the gift or any part thereof will go to or be used for any charitable purpose or organization; (4) The name of any organization of law enforcement personnel, firefighters, or other persons who protect the public safety is used or referred to as an inducement for transferring any money or property, unless the only expressed or implied purpose of the solicitation is for the sole benefit of the actual active membership of the organization.