



PHILANTHROPY CA

An Alliance of Northern California, Southern California and San Diego Grantmakers

April 16, 2019

The Honorable Mark Stone
Chair, Assembly Judiciary Committee
State Capitol
Sacramento, CA 95814

Subject: AB 1712 (Wicks), as amended March 28 – Oppose Unless Amended

Dear Chair Stone:

On behalf of Philanthropy California, we regretfully **oppose AB 1712 (Wicks) unless amended**. This bill is scheduled for hearing in the Assembly Judiciary Committee on Tuesday, April 23, 2019.

As organizations representing a diverse cross-section of philanthropies, we share the author's concerns about ensuring that charitable dollars support nonprofits. We have mutual interests in ensuring a healthy, vibrant charitable sector working together to support community-led solutions to the pressing problems that Californians face. However, while well intentioned, AB 1712 precipitates unintended consequences that likely will depress charitable giving because of the bill's lack of safeguards to public charities.

Donor-advised funds (DAFs) hold irrevocable charitable gifts, which are owned by a sponsoring public charity, defined in the bill as DAF sponsors. Sponsoring public charities must be charitable organizations under section 501(c)(3) of the Internal Revenue Code that are not private foundations. To maintain charitable status, organizations must abide by rules prescribed by the Internal Revenue Service (IRS), including adhering to the Johnson Amendment, a longstanding federal law that prohibits nonprofits from engaging in partisan, political activity.

We are supportive of the bill's requirements to develop regulations related to the disclosure of the existence of policies regarding inactive/dormant DAFs and descriptions of such policies. DAF sponsors already must disclose recipients of DAF grants and must submit a copy of their Form 990 returns to the state Attorney General under Section 12586 of the Government Code.

However, as written, the bill provides broad statutory authority to create regulations requiring disclosure of any information related to DAFs. The creation of a new expansive

regulatory framework for DAFs would impose significant administrative burdens on DAF sponsors, particularly smaller public charities. For example, regulations could be developed that would require specific details of each fund held by a public charity. As a result, many public charities – including those who are committed to advancing equity for California’s diverse communities – would be forced to divert resources from community-focused grantmaking to ensure compliance with new regulations.

Amendments that would address these concerns would include:

- On page 7, line 10: Striking out “individual” and replace with “aggregate”
- On page 7, line 14: Striking out the phrase “including, but not limited to any of” and replace with “based on.”

We also share the author’s and sponsors’ interests in oversight of DAFs. However, existing federal regulations and state law already address many of these concerns. DAFs cannot legally support political activity. Under federal law, DAFs cannot provide tax-exempt support for non-charitable purposes such as political action committees (PACs) and can only support the charitable activities, but not political activity, of 501(c)(4) organizations. If a DAF makes a grant for a non-charitable purpose, the DAF sponsoring charity is subject to a 20 percent excise tax penalty. Additionally, fund managers who knowingly approve improper grants are personally subject to a 5 percent excise penalty under existing federal tax law.

Furthermore, as a part of their tax filing DAF sponsors must report to the IRS the charitable purpose of any grant made to a non-public charity, such as a 501(c)(4), so that the IRS has an opportunity to review those grants and to confirm they support charitable activities. If impropriety is found, the IRS can:

- a) Disallow deductions for charitable contributions under Internal Revenue Code section 170 for payments to the fund;
- b) Impose excise taxes on sponsoring organizations and managers of donor-advised funds;
- c) Impose excise taxes on donor advisors or managers of donor-advised funds; and/or
- d) Deny or revoke the charity's 501(c)(3) exemption.

Additionally, all DAFs and DAF grants are subject to the oversight and approval of the staff and boards of the public charities that sponsor the DAF program. Sponsoring public charities are subject to oversight by the state Attorney General.

Philanthropy California, an alliance of Northern California, San Diego, and Southern California Grantmakers, has more than 600 foundation members across the state. Our community of philanthropists and funders work in partnership with community leaders and nonprofits to make a difference in California. We serve as the forum for the exchange of

ideas, improve cooperation among funders, and increase our knowledge of community problems to tackle critical issues and achieve shared goals.

Our community of grantmakers support important efforts related to foster care youth, housing, justice reinvestments, homelessness, afterschool programs, and access to healthcare – among many other policy areas. This has included working together in response to the devastating wildfires that afflicted families across the state and directing support to funds that assist first responders, including firefighters.

If you have any questions or comments, please contact Seyron Foo, Director, Public Policy and Government Relations at seyron@socalgrantmakers.org or by phone at (213) 680-8866 ext. 221.

Thank you for your consideration

Sincerely,



Ellen LaPointe
President and CEO
Northern California
Grantmakers



Debbie McKeon
President and CEO
San Diego Grantmakers



Christine Essel
President and CEO
Southern California
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CC:

Honorable Members of the Assembly Judiciary Committee
The Honorable Buffy Wicks, Assembly Member, District 15