August 24, 2021

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

RE: Opposition to SB 459 (as amended 7/6/2021)

Dear Senator Allen:

The Institute of Governmental Advocates ("IGA") remains opposed to SB 459 (as amended 7/6/2021).

As you may know, IGA was formed after the enactment of the Political Reform Act in 1974 to protect the constitutional rights of its lobbyist members and their clients to "instruct their representatives [and] petition government for redress of grievances" as provided for in section 3(a) of article I of the California Constitution. In litigation undertaken by IGA to protect this constitutional right, our Supreme Court has warned that the government must have a compelling interest when seeking certain disclosures relating to constitutionally-protected activity and that such disclosures must be drawn with "specificity" to avoid arbitrary and unnecessary infringement of the constitutional right to petition government (See, e.g. *Fair Political Practices Commission v. Superior Court, and Real Party in Interest the Institute of Governmental Advocates* (1979) 25 Cal.3d 33; *Institute of Governmental Advocates v. Younger* (1977) 70 Cal.App.3d 878). As presently drafted, we believe that SB 459 impermissibly encroaches on this constitutional right. Indeed, the current version of the bill is so poorly drafted that it would be impossible to implement or comply with, thus violating the specificity demanded by the Supreme Court.

As a matter of public policy, IGA believes that the current reporting system adequately provides the public with detailed financial information regarding lobbying activity in California as well as identification of the "matters lobbied" by lobbyists, lobbying firms, lobbyist employers and others. SB 459 ("the Bill") intrudes into information that is not connected to actual financial disclosure. For example, the Bill would require the disclosure of amounts "to be paid" to a lobbyist, rather than disclosure of amounts actually paid to a lobbyist. There are serious constitutional questions that arise from this requirement alone.

Moreover, the bill now requires almost immediate disclosures during the last 60 days of a legislative session. It is clear that this requirement will require the Secretary of State and Fair Political Practices Commission to design a new form for such a report and a new process for the receipt and public display of such a report. As we have noted from the outset, the Secretary of State is attempting to update its current reporting system. Adding new forms and processes immediately after the new system goes live will inevitably interfere with the Secretary's ability to stabilize and modify the new system at its infancy.

Lastly, the new disclosure provisions relating to "issue lobbying advertising" are still hopelessly vague and burdensome. Just today, the staff of the Fair Political Practices Commission alerted the Commission that substantial and costly litigation is likely to occur if these provisions are enacted. A copy of the staff memo is attached, but the cost estimate was stated as follows:

> Cost Estimate: FPPC – 2 PRC I and 1 Commission Counsel ($387,000 in the first year and $336,000 ongoing), plus additional potential litigation costs ($120,00-$200,000); SOS – costs pending

IGA has discussed these matters with you and your staff over the last several months and appreciate your courtesy in listening to our concerns. However, we believe there are still many technical flaws in the Bill and that there is no public policy basis for the new disclosure requirements.

Thank you for your consideration of this important matter.

Sincerely,

Thomas W. Hiltachk,
General Counsel,
Institute of Governmental Advocates

cc: Honorable Lorena Gonzalez, Chair
Assembly Committee on Appropriations