

To \_\_\_\_\_:

We understand that the Governor's Office is asking the Dept. of Finance to take another look at potential costs of AB 2844 in light of the various final amendments made to it since the initial Finance analysis (the copy of I have is undated but it must have been sometime in July).

I'm sure Finance is fielding a lot of such requests, and I know hundreds of bills are on the table, so we'd like to give you our input specifically on this question, based on our having closely followed the bill through all its twists and turns.

From what we hear, the main question identified is whether removal of the specific AG role of receiving and investigating complaints would reduce or even eliminate the estimated costs that came from that office. The short answer is clearly not.

- The second Senate Appropriations analysis, dated Aug. 11, came after amendments that deleted the AG role. But it makes clear that the burden of receiving and investigating complaints previously assigned to the AG would now fall mostly on DFEH, perhaps some other agencies. What's important is that it won't disappear -- and as we have discussed, the complaints will surely come, regardless of the office that will need to deal with them. (See below for more on this.)
- Unstated in the Aug. 11 analysis but logically inevitable is that with the mandate for enforcement and prosecution for perjury (false certification of discriminatory "policy") unchanged by the amendments, it would still fall on the AG and/or local prosecutors, so this potential cost would not diminish either.
- Therefore, though the later analysis doesn't cite a number as was provided by the AG for the earlier (Aug. 1) Senate Appropriations analysis (\$625,000 a year) when the entire workload would have landed there, there's no reason to conclude it would be any less just because the same workload would be spread among various offices.
- The huge potential cost of \$140 million a year cited in both Appropriations analyses has nothing to do with the AG's role or lack of it. It stemmed from Finance's analysis: "The Department of General Services (DGS) indicates this bill would result in unknown, potentially significant costs to the extent that there are contractors who would be unable to make the required certification. In general, exclusion of bidders from contracts can result in higher contract prices, and thus higher costs to the state and local governments." To "unable," we would add "unwilling," due to the risk of criminal prosecution based on the extremely vague description in the bill of what is prohibited. As the ACLU noted in its letter of opposition (attached here for your convenience), the bill would "likely deprive the state of responsible business partners, leaving only the most careless as potential state contractors. Moreover, this sweeping certification could well be costly – both because the state would artificially exclude qualified bidders and contractors, and because those businesses careless enough to be willing to sign such a certification may be more troublesome business partners." Though the ACLU was in part focused on the bill's careless language, which some read (though clearly the author never intended) as requiring certification that a potential contractor had never

committed discrimination, the point remains valid even after a technical amendment revised the phrase: The potential crime's vagueness would surely still deter reputable contractors from bidding for state work, especially if they consciously engage in socially responsible screening regarding where they invest and provide their services.`

- Other costs of unspecified amounts that would be borne by other agencies, as listed in the Senate Appropriations analysis, would not change as a result of dropping the explicit AG mandate.

Finally, we want to reiterate that regardless of estimated costs, the bill's entire purpose remains an unconstitutional effort to stifle a vital conversation regarding policies of other countries and U.S. foreign policy. The language about discrimination and the purported mandate to investigate and possibly prosecute entities that commit it is wholly a subterfuge that contributes nothing whatsoever to efforts against actual discrimination.

This can be seen in the persistent statements by authors and outside proponents of AB 2844 themselves about their true goals.

- On the one hand, to reassure other legislators (and now the governor) about constitutionality, they say the bill targets only someone who is committing unlawful discrimination under existing California law. That of course makes AB 2844 a wasteful redundancy.
- On the other hand, they say, for instance, that it targets "boycott of any nation based on discrimination" (Sen. Block in the floor debate), and that it is " 'another tool in our toolbox' in the fight against BDS," according to a prime sponsor, the Israeli-American Coalition for Action (IAX), whose spokesman promised that it would be "used to halt discriminatory boycotts against Israel."
- California law does not protect Israel or any other country from discrimination -- only its own residents. But such declarations are important in understanding what remains the proponents' purpose, which is to promulgate the false notion that political boycott or divestment campaigns aimed at exposing and changing Israeli policies constitute unlawful discrimination. The strategy is clearly to then cite AB 2844 in flooding state agencies with complaints to score propaganda points and to intimidate their political adversaries. As Brooke Goldstein, director of the Lawfare Project, a central player in the nationwide effort to promote bills like AB 2844, declared recently regarding their purpose: "The goal is to make the enemy pay and to send a message, a deterrent message, that similar actions such as those that they engage in will result in massive punishments."
- For the proponents of AB 2844, it matters not to which state agency those complaints will go; at the very least, they will need to be investigated. Even if they are all ultimately dismissed without prosecution, the chilling effect at the heart of AB 2844's purpose will have been achieved.

To sum up: The fight against unlawful discrimination is too important to be misused for ulterior motives, especially when the goal is to silence opposing points of view -- all at the cost of wasting of valuable state resources.

Thanks for your attention to this.

David L. Mandel, for the Coalition to Defeat AB 2844.