



PRESIDENT
NAN ARON

CHAIR
PAULETTE MEYER

March 2, 2021

Rep. Zoe Lofgren
Chairperson
Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515

Rep. Rodney Davis
Ranking Member
Committee on House Administration
2079 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 1, the For the People Act.

Dear Chairperson Lofgren and Ranking Member Davis:

Alliance for Justice (AFJ) is a national association of 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society. AFJ's Bolder Advocacy program is the nation's leading resource for foundations and nonprofits who want to engage more actively and knowledgeably in the policymaking process. Through a robust training and technical assistance program, Bolder Advocacy works with thousands of tax-exempt organizations to help them navigate the legal rules so they can fully take advantage of the varied ways they can legally advocate on behalf of their communities.

While AFJ supports many aspects of the bill, there are also provisions that raise significant questions and concerns about the impact on nonprofit advocacy. AFJ is motivated by the principle that we all benefit when a diverse range of voices, including those that have historically been excluded, should contribute to the creation of public policy. We see participation in the full spectrum of advocacy, including community organizing, lobbying, voter registration, and electoral activities, as an important part of the democratic process.

Burdensome and confusing compliance requirements can result in tax-exempt organizations feeling too overwhelmed to advocate for fear of financial penalties or having to pay for costly services to ensure they do not inadvertently break the law. Alliance for Justice wants to ensure that it is not too burdensome or costly for the groups representing underserved communities to have a voice in the policymaking process.

Some portions of the legislation should be removed or narrowed to protect the first amendment rights of tax-exempt organizations, including 501(c)(3)s and 501(c)(4)s, are outlined below.

Campaign-Related Disbursements: The legislation creates a new category of regulated speech that will require increased disclosure of donors: **campaign-related disbursements (CRD)**. A **CRD** is an independent expenditure; any public communication that refers to a candidate and which promotes, supports, attacks, or opposes a candidate for office (this is known as the “PASO” standard); an electioneering communication¹; a federal judicial nomination communication; or a **covered transfer** made by a **covered organization**. The bill defines a **covered organization** as any corporation (other than a 501(c)(3)), an LLC, any tax-exempt organization that is not a 501(c)(3), a labor organization, a 527, or a super PAC. A **covered transfer** is any transfer of funds by a covered organization: to another person if the organization suggests the funds be used for a CRD (or making a transfer to another for making a CRD); in response to a request for a donation for a CRD; that engaged in discussions with the recipient of the transfer about making or paying for a CRD; or that made a CRD in an aggregate amount of \$50,000 or more in a two-year period or had reason to know that the recipient had done the same. See the attached flow charts for a more in-depth illustration of the definition of a CRD and its associated reporting requirements.

The definition of CRD is overly broad and redefines some issue advocacy and lobbying as campaign-related if the speaker is a 501(c)(4) or other covered organization, even when the advocacy has no relation to a candidate’s election or defeat. It assumes that all advertising that references an elected official who is a candidate is intended to influence their campaign and that there are no legitimate advertising campaigns aimed at influencing an elected official’s position. For example, an advertisement on CBS by a 501(c)(4) social welfare organization in Maine in October 2020 that said, “Tell Susan Collins to vote no on the confirmation of Amy Coney Barrett” would be considered a CRD even though the communication was not related to the senator’s election or defeat. Because the definition of CRD includes advocacy that supports or opposes the confirmation of a federal judicial nominee, even an advertisement that said, “We should not be confirming a justice to a lifetime seat on the Supreme Court so close to a presidential election,” would be subject to HR 1’s expanded disclosure and reporting requirements.

Further, under the electioneering communications and the PASO standards proposed, “thank you” communications and other grassroots lobbying would also be considered a CRD. For example, a statement by the same 501(c)(4) thanking Representative Sarbanes for introducing this legislation during an election cycle (which is a two-year period) would be a CRD. Virtually all members of Congress would be considered candidates as FEC regulations deem anyone raising funds for their campaign as a candidate.

In these cases, the organization airing the advertisement would be required to comply with additional onerous disclosure requirements with the FEC – resulting in additional disclosure with the Federal Election Commission for issue advocacy.

¹ An electioneering communication is any broadcast, cable or satellite communication that refers to a clearly identified federal candidate, is publicly distributed within 30 days of a primary or 60 days of a general election and is targeted to the relevant electorate. Under H.R. 1, this definition would be expanded to also include digital communications.

Likewise, the definition of “covered transfer” is too broad. There are no limitations on the expression “engaged in discussions,” so any discussion in the past could lead to a transfer of money being considered a covered transfer. The “knew or had reason to know” that the organization or entity receiving a covered transfer would make campaign-related disbursements of \$50,000 or more within a two-year time frame standard is also undefined. For example, consider a 501(c)(4) that contemplated running ads against Donald Trump in 2016, but that ultimately chose not to after discussions with a labor union. Any transfer of funds from the 501(c)(4) to the labor union in perpetuity could be considered a covered transfer under H.R. 1 and could require disclosure with the FEC.

The bill contains a confusing provision that requires organizations that make CRDs to certify that their communication was not made in coordination with a candidate or political party. It is not at all clear what implications this has for covered organizations, particularly those with affiliated 501(c)(3)s that share staff and resources. If the principles of campaign finance apply, this could prohibit covered organizations from discussing messaging and advocacy plans with their elected representatives. The intent and scope of this provision should be clarified.

Stand by Every Ad: The bill contains additional “stand by your ad” provisions that will require organizations making CRDs to make additional reporting. Depending on the medium (visual or audio) of the CRD, up to the organization’s top five funders may be disclosed to the general public. This is particularly problematic because of the expansive definition of a CRD.

A television advertisement by a 501(c)(4) thanking Representative Sarbanes for introducing this legislation during an election cycle (which is a two-year period) would be a CRD and require the organization list its five largest donors on the ad (even those donors who do not agree with the content of the specific ad). This requirement could have the unintended consequence of giving wealthy donors even more control of advocacy messages as many individuals will be reluctant to have their names attached to messages they did not approve of prior to distribution.

501(c)(4) organizations, under law, must be primarily non-electoral and are created to promote the social good. Many 501(c)(4)s, such as the Sierra Club, the Human Rights Campaign, and AARP, are publicly supported, with thousands or even millions of individual members and supporters that work with these organizations to speak out in a collective voice. Other 501(c)(4)s are not large but are instead local grassroots organizations that want to create change for their communities. Accordingly, funds to a 501(c)(4) are predominantly used for non-electoral purposes. The risk of having their names publicized could result in donors being unwilling to give to such organizations or to give less to avoid being a top donor.

Our political process has grown increasingly volatile. As we all saw on January 6, 2021, there are people who are willing to go to violent extremes in pursuit of their political objectives. Heightened disclosure could put many donors at risk, particularly those that support organizations engaged in politically divisive issues. Although the bill does contain an exception, the standard to obtain it is likely to prove unworkable and time consuming. See the attached chart for an illustration of the Stand By Every Ad provision and its disclosure requirements.

Revolving Door: The legislation creates “revolving door” restrictions on executive branch employees moving into and out of federal employment. The expansion of who would be deemed a lobbyist in the earlier sections of the bill expands the number of policy people who would be impacted by the revolving door rules, limiting the ability of knowledgeable people to work for the government. For example, if the

Dean of a public university were to lobby to prevent defunding student loan forgiveness programs, the Dean would be required to register as a lobbyist. This may prevent the Dean from moving into federal employment at the Department of Education for two years, unless the Dean were able to obtain a waiver.

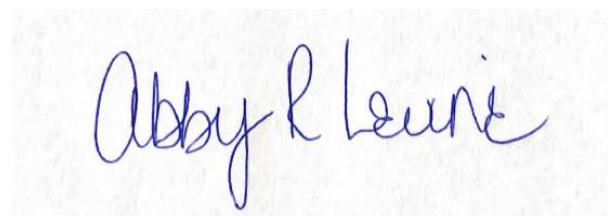
FEC and LDA Report Linking: The legislation requires linking of FEC and LDA reports. It also imposes a new requirement that financial disclosure reports filed by political committees, entities making independent expenditures, and entities making electioneering communications, indicate whether any of their contributors is a lobbyist registered under the LDA.

This provision would require a broad range of organizations—all 527s, and any organization, including a 501(c)(3) or 501(c)(4) making an independent expenditure or electioneering communication—change their fundraising practices. For instance, organizations will need to collect information on whether their donors are registered under the LDA, and file separate disclosure statements on those donors when filing disclosure reports. It is not clear what responsibility an entity would have to ensure this information is accurate as individuals could become a registered lobbyist after a contribution has been made to one of the affected entities. This could be overly burdensome to tax-exempt organizations and personally intrusive as it would require the creation of databases that list out the contributions persons registered under the LDA (which is expanded in other provisions) have made to 527s and any organizations making IEs or electioneering communications.

Expansion of Ban on Foreign Paid Communications: We share the concerns expressed by immigrant rights advocates that the bill creates onerous restrictions on the ability of non-citizens, including DACA recipients, to engage in issue advocacy, including supporting or opposing ballot initiatives. We cannot support legislation that could subject immigrant advocates to deportation for speaking out on issues that affect their lives.

Alliance for Justice believes many of the provisions in H.R. 1 are crucial to strengthening and protecting our democracy. However, care should be taken to ensure that there are no unintended consequences of the legislation, especially consequences that will hinder or prevent the advocacy activities of tax-exempt organizations, affected immigrants, or people with disabilities. The advocacy community, including 501(c)(4) organizations, has been instrumental in advocating for local communities and bringing together the voices of individuals to speak out together. We welcome the opportunity to discuss our concerns and move forward in developing this important step to securing our democracy. Please reach out to Abby Levine, alevine@afj.org, with any questions.

Sincerely,



Abby Levine
Director of Bolder Advocacy