



CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION  
CNPA Services, Inc.

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January 12, 2011

Honorable Leland Yee  
California State Senate  
State Capitol Room 4074  
Sacramento, California 95814

RE: Sponsor SB 8 (Yee)

Dear Senator Yee:

I am writing on behalf of the California Newspaper Publishers Association to express the Association's support and co-sponsorship with the California Faculty Association of your SB 8. SB 8 would require quasi-public entities that are designated as auxiliary organizations on campuses of the University of California, the California State Universities, the California Community Colleges and the statewide foundation of the California Community Colleges to comply with the California Public Records Act (CPRA).

The measure contains an express provision that would allow donors or volunteers to protect their name, address and telephone number from disclosure as long as they don't receive, in a quid pro quo arrangement, any item that is worth more than \$500 or serve as a director on the auxiliary's board.

Auxiliary organizations supporting California State University and University of California campuses have relied on a loophole in the California Public Records Act (CPRA) to shield their activities from public view. Auxiliaries operate bookstores, sports facilities, arenas, theaters, charitable foundations, student centers and parking facilities on virtually every public university campus. These organizations provide government services and collect fees all while operating under the auspices of the universities.

In a case involving CSU Fresno, an appellate court ruled that even though "an auxiliary is a state controlled corporation that should be subject to the CPRA," the law defined state agencies too narrowly. The court said that while the auxiliary could not be considered a state agency under existing law, the legislature should act to close the loophole, California University Fresno Assn., Inc. v. Superior Court (2001) 90 Cal. App.4<sup>th</sup> 810.

In its opinion, the appellate court pointed out, "We are fully cognizant of the fact that our conclusion seems to be in direct conflict with the express purposes of the CPRA – **to safeguard the accountability of government to the public . . .**" (p. 830 of the opinion). The court invited the Legislature to address the anomalous result saying, "The legislature's decision to narrowly define the applicability of the CPRA, balanced against its sweeping

goal to safeguard the public, leaves us scratching our judicial heads and asking, 'What was the legislature thinking?' In many ways **the association can be characterized as a 'state-controlled' corporation that should be subject to the CPRA.**" (p. 830 of the opinion).

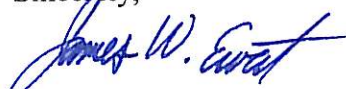
Opponents of requiring auxiliaries to comply with the CPRA have argued that public access would have a "chilling effect" on a Foundation's ability to raise money by reducing the pool of donors and the size of gifts. This argument ignores the fact that local community college foundations have operated under the CPRA for decades with little, if any, impact on their fundraising efforts. Additionally, the transparency required by SB 8, rather than creating a chilling effect on donors, would instead provide donors with the assurance that their gifts are not being mismanaged, subject to self dealing or used for purposes other than those intended.

The chilling effect argument also presumes that donors do not want to be acknowledged or recognized for their generosity. If you take a quick glance at the websites operated by any of the Foundations that would be subject to the CPRA under this bill, you will notice many of their donors are not only identified but prominently displayed.

SB 8 would bring quasi-public auxiliaries in from the shadows and is consistent with the legislature's longstanding commitment to open and transparent government as well as Article I, Section 3 of the state constitution added by Proposition 59 by 83% of the state's voters in 2004.

CNPA applauds your leadership in protecting the rights of the public to know what its government institutions are doing on its behalf. We look forward to working with you to obtain the Governor's signature on SB 8.

Sincerely,



James W. Ewert,  
CNPA Legal Counsel

cc: Ron Redfern, CNPA President, Publisher, The Press-Enterprise  
Karlene Goller, CNPA Governmental Affairs Committee Chairwoman, Vice President and Deputy General Counsel,  
*Los Angeles Times*  
Jack Bates, CNPA Executive Director  
Thomas W. Newton, CNPA General Counsel  
Ben Palmer, Counsel, Senate Judiciary Committee  
Mike Petersen, Counsel, Senate Republican Caucus