California Arts Advocates (CAA), a nonprofit 501c(4) organization founded in 1996, and Californians for the Arts 501c(3), est. 2007, are the only comprehensive, multidisciplinary organizations focused on advancing and building public awareness of the value and impact of arts, culture and creativity across California.

With over 15,000 active subscribers and hundreds of members representing thousands of artists and arts and cultural organizations, we take on opportunities and challenges that no single organization or artist can represent alone. Our mission is to ensure that the arts are accessible to all Californians; are an ongoing part of the public dialogue and to encourage Californians to care about the arts as a critical component of their own lives and the lives of their communities. We fight for arts resources and policies that benefit our members and all residents of California. We also work as state captains to Americans for the Arts on Federal Advocacy and with WESTAF in the Western Arts Advocacy Network.
CAA is a 501(c)4 organization with a 25 person board, a small staff and a lobbyist Jason Schmelzer, Partner in Shaw Yoder Antwih, Schmelzer & Lange. We are powered by memberships and WESTAF.

From 2003-2014, funding for the CAC, the state arts agency was $1 million. Over the last 6 years, our advocacy efforts have helped to increase funding in California by over 800 percent.

In 2019-2020 CA received largest increase in state arts funding in 20 years, $10 Million ongoing increase to $26 million plus $27.5 in one time capital grants.

In 2020-21 pre-Covid, Gov. Newsom included $10 million in 1x funds for cultural districts & disaster preparedness and Assms. Gonzalez/Smith introduced $20 million for small budget orgs to comply with AB 5.
CAAA - Lobbying

- In the final 2020-21 budget for CAC is protected at $26 million during the COVID 19 crisis and the state facing a budget deficit of $54 billion.

- In 2019-20 CAA worked with Senate Labor and several legislators for exemptions to be included in AB5 for workers providing services to the arts and creative sector.

- In 2020-21, CAA worked with advocates, union leaders and legislators to continue to identify issues and impacts for our sector.

- CAA supports AB 2257 but asks that next year continue to leave room for more amendments and funding.
New Legislation

• Note: In February of 2020 there were over 35 pieces of legislation introduced to repeal or amend AB5 including AB 1850, Gonzalez(D) follow up/clarifying AB5; AB1928, Kiley(R) Repeal AB5(voted down 2/27); SB 881 Jones(R), exempt musicians; SB 1039, Galgiani (D), create a 3rd classification of independent workers; SB 1236, Stern (D), placeholder

• At the close of session, Follow up legislation to AB 5, only AB 2257 (Gonzalez) and AB 323 (Rubio) remain
AB 323 would (1) extend an existing exemption for newspaper distributors from the ‘ABC Test’ from January 1, 2021 to January 1, 2023, and (2) grant a preference to local news organizations, including ethnic and community news organizations, when state agencies are placing marketing and outreach advertisements.

AB 2257 has exemptions for some musicians, performing artists and specialized performers teaching master classes and includes fine artists and other professional services as outlined in AB 5 and a modification to B2B.
AB 2257 (b) (1) Subdivision (a) and the holding in Dynamex do not apply to the following occupations in connection with creating, marketing, promoting, or distributing sound recordings or musical compositions, and instead the holding in Borello shall apply to all of the following:
(A) Recording artists, subject to the below.
(B) Songwriters, lyricists, composers, and proofers.
(C) Managers of recording artists.
(D) Record producers and directors.
(E) Musical engineers and mixers engaged in the creation of sound recordings.
(F) Musicians engaged in the creation of sound recordings, subject to the below.
(G) Vocalists, subject to the below.
(H) Photographers working on recording photo shoots, album covers, and other press and publicity purposes.
(I) Independent radio promoters.
(J) Any other individual engaged to render any creative, production, marketing, or independent music publicist services related primarily to the creation, marketing, promotion, or distribution of sound recordings or musical composition.
This subdivision shall not apply to any of the following:
(A) Film and television unit production crews, as such term is commonly used in the film and television industries, working on live or recorded performances for audiovisual works, including still photographers and cinematographers.
(B) Publicists who are not independent music publicists.

c (1) Subdivision (a) and the holding in Dynamex do not apply to a musician or musical group for the purpose of a single-engagement live performance event, and instead the determination of employee or independent contractor status shall be governed by Borello, unless one of the following conditions is met:

(A) The musical group is performing as a symphony orchestra, the musical group is performing at a theme park or amusement park, or a musician is performing in a musical theater production.
(B) The musical group is an event headliner for a performance taking place in a venue location with more than 1,500 attendees.
(C) The musical group is performing at a festival that sells more than 18,000 tickets per day.
2) This subdivision is inclusive of rehearsals related to the single-engagement live performance event.

(3) As used in this subdivision:
(F) “Single-engagement live performance event” means a stand-alone musical performance in a single venue location, or a series of performances in the same venue location no more than once a week. This does not include performances that are part of a tour or series of live performances at various locations.

(G) “Venue location” means an indoor or outdoor location used primarily as a space to hold a concert or musical performance. “Venue location” includes, but is not limited to, a restaurant, bar, or brewery that regularly offers live musical entertainment.
JUST ADDED: determination of employee or independent contractor status shall be governed by Borello:

(1) An individual performance artist presenting material that is their original work and creative in character and the result of which depends primarily on the individual’s invention, imagination, or talent, given all of the following conditions are satisfied:

(A) The individual is free from the control and direction of the hiring entity in connection with the performance of the work, both as a matter of contract and in fact. This includes, and is not limited to, the right for the performer to exercise artistic control over all elements of the performance.

(B) The individual retains the rights to their intellectual property that was created in connection with the performance.

(C) Consistent with the nature of the work, the performer sets their terms of work and has the ability to set or negotiate their rates.
(D) The performer is free to accept or reject each individual performance engagement without being penalized in any form by the hiring entity.

(2) In all events, the terms and conditions of any current or future collective bargaining agreements or contractual agreements between the applicable labor unions and respective employer shall govern the determination of employment status.

(3) This subdivision does not apply to an individual participating in a theatrical production, or a musician or musical group as defined in subdivision (c).

Added to Professional Services;

A specialized performer hired by a performing arts company or organization to teach a master class for no more than one week. “Master class” means a specialized course for limited duration that is not regularly offered by the hiring entity and is taught by an expert in a recognized field of artistic endeavor who does not work for the hiring entity to teach on a regular basis.
(1) If an individual acting as a sole proprietor, or a business entity formed as a partnership, limited liability company, limited liability partnership, or corporation ("business service provider") contracts to provide services to another such business or to a public agency or quasi-public corporation ("contracting business"), the determination of employee or independent contractor status of the business services provider shall be governed by Borello, if the contracting business demonstrates that all of the following criteria are satisfied:

(A) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
(B) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business. **This subparagraph does not apply if the business service provider’s employees are solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses.**
(C) The contract with the business service provider is in writing and specifies the payment amount, including any applicable rate of pay, for services to be performed, as well as the due date of payment for such services.
Business to Business Exemption
(excerpted from Sara Boyns, Esq. of Fenton + Keller presentation 1/24/20)

Requires a “bona fide business-to-business contracting relationship.” If a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation (“business service provider”) contracts to provide services to another such business (“contracting business”), the Borello test will apply if the 11+ requirements of the business-to-business exemption are met.

The requirement that is most difficult to satisfy for many businesses is the one that requires that the services are provided to the contracting business’s business, not the customers of that business. So in most arts settings, the performers or artists will be providing services to the audience (“customers”), not directly to the hiring business, and the business-to-business exemption will not apply.
• We encourage the State and private funders to acknowledge there is a financial and administrative impact, as much as 30-40% increase in expenses, to make the appropriate changes to be in compliance with AB5. There is clear need for funding, technical assistance and resources for the changeover.

• We are aware there was not enough time between Dynamex and AB5 for case law to be determined and there is still much to be clarified in AB5. We encourage lawmakers to take into consideration the arts and culture sector as the corrections bills to AB5 including AB2257 and others are written
Advocacy Efforts

• We advocated in February for California Arts Council to address some of the urgent issues with existing unencumbered monies. We presented at the February 5 CAC meeting and made the following recommendations.

• To address the pressing issues, we respectfully asked CAC to create an emergency grant to provide funds to arts organizations and artists to be in compliance with AB5 including the hiring of consultants for Human Resources management, Employment lawyers, Insurance and more. It is not realistic to expect all of this to come in pro bono support or boards/staff.
Advocacy Efforts

• We respectfully asked CAC to create an emergency grant fund to offset immediate costs of increased operating costs for current programs/seasons that have already been announced and budgeted for 2020.

• We also recommended a new grant program for general operating support for ongoing funds to aid in the transition and the new cost to do business in order for organizations to continue to deliver valuable programs to communities.

Then COVID 19…
What are our common goals?

• We need **increased private & public investment** in the arts in order for arts to be accessible for all Californians and to build systems for a sustainable, supported and prospering industry. **Arts and culture have been systemically undercapitalized.** We need to advocate for significant funding.

• Artists should be valued for their work and there needs to be a **paradigm shift from starving artist to thriving artist.** We need to stop perpetuating arts as an unrealistic career option and create models that are sustainable with fair wages and benefits.
• Even before AB 5, many of our small budget non-profit arts organizations were financially fragile and struggling to be sustainable. Many of the programs are in culturally specific communities serving people of color and low income neighborhoods.

• Without these subsidies, arts programs would only be available to those who can afford a high-ticket price or private tuition. Educational and outreach programs without funding cannot be delivered at a low cost or free.

• We need significant funding to achieve diversity and inclusion for arts to survive and thrive equitably across CA.
What can you do?

• Visit our resource page for more information https://www.californiansforthearts.org/ab-5

• Join our mailing list for latest news and action alerts http://www.californiansforthearts.org

• Let your local state elected officials know about the unintended consequences of AB5 on your business or livelihood. See template on our resource page.

• Volunteer on our AB 5 Follow up planning group to address next steps.

• Support our efforts by joining our our organization!
Effective Advocacy

10 Steps to Effective Advocacy

1. State your Goals, (what is the change you want to see?)
2. Identify Targets (for whom are you doing this)
3. Identify Resources (capacity, funding, time)
4. Identify Partners/Opponents
5. Know the Process, Be Informed, (who are the decision makers?)
6. Design Messaging Campaign/Case/Storytelling/Data
7. Determine Tactics and Build your Advocacy Plan (how to measure success)
8. Organize, Show Up, Be Consistent
9. Be Flexible
10. Be Hopeful

Advocacy comes in many forms, from the disrupters to the negotiators, everyone has a story to tell and a roll to play if passion is your guide and change is your goal.
Raise your Voice for the Arts

JOIN US! Contact: Julie Baker,
membership@californiansforthearts.org