

Date of Hearing: April 15, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 1494 (Levine) – As Amended April 7, 2015

SUBJECT: Political Reform Act of 1974: independent expenditure tax.

SUMMARY: Imposes a 10 percent tax on specified independent expenditures made in connection with candidates for elective state office or state measures. Specifically, **this bill:**

- 1) Requires any committee that is required to file campaign reports online or electronically, and that makes independent expenditures of \$1,000 or more in the last 90 days before an election in connection with a candidate for elective state office or a state ballot measure, to pay a tax at the rate of 10 percent of the amount of each such independent expenditure. Requires the tax to be paid to the Secretary of State (SOS) within five days of filing the report disclosing the expenditure.
- 2) Provides that the funds derived from the independent expenditure tax imposed by this bill shall be deposited in a fund created by the SOS for the purpose of increasing transparency in political campaigns, civic engagement, and voter registration and turnout. Requires the SOS, upon appropriation by the Legislature, to allocate those funds to the Fair Political Practices Commission (FPPC) for the purposes of increasing transparency in political campaigns and to local elections offices, through a competitive grant program, to increase voter registration and turnout. Requires the SOS to report to the Legislature and the Department of Finance by March 31 of every year on the allocation and use of these funds, and requires the SOS to post that information on his or her website.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Defines the term "committee," for the purposes of the PRA, to include any person or combination of persons who directly or indirectly makes independent expenditures totaling \$1,000 or more in a calendar year.
- 3) Defines the term "independent expenditure," for the purposes of the PRA, as an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or the qualification, passage, or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election, but which is not made to or at the behest of the affected candidate or committee.
- 4) Requires all candidates and committees who are required to file campaign reports in connection with a state elective office or state measure to file those reports online or electronically if the cumulative amount of contributions received, expenditures made, loans

made, or loans received is \$25,000 or more.

- 5) Requires general purpose committees, including political party committees and small contributor committees, that cumulatively receive contributions or make expenditures of \$25,000 or more to support or oppose candidates for any elective state office or state measures, to file campaign reports online or electronically.
- 6) Allows any committee or other person who is required to file a campaign report to file that report online or electronically, even if he or she is not required to do so. Provides that once a person or entity files a campaign report or lobbying disclosure report online or electronically, that person or entity shall file all subsequent reports online or electronically.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

This bill is intended to create a tax on expenditures by independent expenditure committees for the purpose of funding programs that will increase civic engagement, voter registration, and voter turnout.

The turnout for eligible voters in the 2014 General Election was the lowest in California's history. According to the United States Elections Project, California had the fourth lowest turnout in the nation. California has 24.4 million eligible voters, yet only 7.5 million Californians cast a ballot. Approximately 7 million eligible California voters are not even registered.

There are several reasons for this. One is the dramatic increase in independent expenditure committee spending. Several reports from regulatory agencies, academic researchers, and nonprofit watchdogs have been highly critical of independent expenditure committees.

According to California Common Sense, independent expenditure committees spent more than \$220 million on candidate races in California between 2000 and 2012. Additionally, in just the top 20 2014 legislative races, independent expenditure committees spent a staggering \$44 million.

This has resulted in a deluge of mail that voters receive from independent expenditure committees. Additionally, much of the mail is negative and there is no doubt that independent expenditure committee mailers often disenfranchise voters. This bill will require that the committees pay some of the cost of reengaging voters.

- 2) **Constitutional Issues:** This measure could be interpreted as a violation of the United States and California Constitutions' guarantees to free speech. While the right to freedom of speech

is not absolute, when a law burdens core political speech, the restrictions on speech generally must be "narrowly tailored to serve an overriding state interest," *McIntyre v. Ohio Elections Commission* (1995), 514 US 334.

State and federal courts have repeatedly held that the giving and spending of campaign money involves the exercise of free speech. The United States Supreme Court found in *Buckley v. Valeo* (1976), 424 US 1, that any "restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." The Supreme Court in Buckley ruled that expenditure limits during a campaign were unconstitutional for this reason. In the same case, however, the court upheld campaign contribution limits, noting that "[b]y contrast with a limitation on expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication."

One of the restrictions considered by the *Buckley* court was a provision that prohibited any person from making expenditures exceeding \$1,000 relative to a clearly identified candidate in a calendar year. The court noted that the effect of the provision was to "prohibit all individuals, who are neither candidates nor owners of institutional press facilities, and all groups, except political parties and campaign organizations, from voicing their views 'relative to a clearly identified candidate' through means that entail aggregate expenditures of more than \$1,000 during a calendar year." The court found that restriction to be unconstitutional, finding that the restriction on independent expenditures "fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process," while "heavily burden[ing] core First Amendment expression."

This bill does not prohibit independent expenditures, nor does it limit the amount of money that a person or committee can spend on independent expenditures. Nonetheless, by imposing a tax on independent expenditures, this bill may nonetheless heavily burden First Amendment rights, and thus may be susceptible to a constitutional challenge. While the Supreme Court has held that a "generally nondiscriminatory tax" on activity protected by the First Amendment is permissible (see, for example, *Arkansas Writers' Project, Inc. v. Ragland* (1987), 481 U.S. 221), it seems unlikely that the tax proposed by this bill would be considered to be nondiscriminatory, since it is applicable only to independent expenditures, and not to all advertising, or even to all campaign spending.

- 3) **Proposition 34 and the Growth of Independent Expenditures:** In 2000, the Legislature passed and Governor Davis signed SB 1223 (Burton), Chapter 102, Statutes of 2000, which became Proposition 34 on the November 2000 general election ballot. The proposition, which passed with 60 percent of the vote, made numerous substantive changes to the PRA, including enacting new campaign disclosure requirements and establishing new campaign contribution limits, limiting the amount that individuals could contribute to state campaigns (ranging from \$3,000 to \$20,000 per election at the time, depending on the office).

A study done by this committee in 2006 and a subsequent report by the FPPC in 2010 found that since campaign contribution limits went into effect in California with the passage of

Proposition 34, the amount of campaign spending done through independent expenditures increased by more than 6,000 percent in Legislative elections, and more than 5,500 percent in statewide elections. In hotly contested campaigns for seats in the Legislature, it is not uncommon for spending through independent expenditures to exceed the total amount of spending by all candidates in the race. On the other hand, prior to the enactment of contribution limits as a part of Proposition 34, independent expenditures were relatively rare. In the March 2000 and November 2000 elections, the last two elections that were not subject to the Proposition 34 campaign contribution limits, the total amount of money spent on independent expenditures for all legislative races was less than \$500,000. By comparison, more than \$47 million was spent on independent expenditures for legislative races in 2014.

- 4) **Independent Expenditures and Turnout:** The author of this bill contends that the increase in independent expenditures in California elections is partially responsible for low voter turnout in recent elections. The degree to which independent expenditures affect voter turnout, however, is unclear. While some academic research has suggested that negative campaign advertising can depress turnout, other research has found that negative advertising has no effect, or even a positive effect, on voter turnout. Furthermore, not all independent expenditures are negative, and some academic research has found that messages designed to mobilize voters can have a small, positive effect on voter turnout.
- 5) **Tax Applies to Certain Independent Expenditures Only:** The independent expenditure tax imposed by this bill would not apply to all independent expenditures, but instead applies only to independent expenditures that are required to be reported pursuant to a specified provision of law. That disclosure requirement applies only to independent expenditures of \$1,000 or more that are made (1) in connection with a candidate for state office or a state ballot measure, (2) in the last 90 days before the election, and (3) by a committee that is required to file campaign reports online or electronically. Independent expenditures of less than \$1,000, that are made in connection with local candidates or ballot measures, that are made more than 90 days before the election, or that are made by committee that is not required to file campaign reports online or electronically would not be subject to the tax imposed by this bill.
- 6) **Arguments in Opposition:** In opposition to this bill, the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, writes:

AFSCME appreciates Assembly Member Levine's endeavor to engage the electorate given the abysmal voter turnout in the past few elections. However, we oppose AB 1494. Though this bill is a creative attempt to engage the electorate, it does not address voter turnout because it limits the resources of those who communicate with voters in marginalized and disadvantaged communities while unintentionally, giving an advantage to the business interests and billionaires who have the resources to pay a tax on the money they spend in independent expenditure campaigns. AB 1494 would establish a regressive tax that will harm the organizations, like organized labor, who advocate for greater participation in low-income and minority communities, and would continue to shift political power away from average working men and women to the business elites.

- 7) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates,

officeholders and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

- 8) **Double Referral:** This bill is double-referred to the Assembly Revenue & Taxation Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

American Federation of State, County and Municipal Employees, AFL-CIO
California Labor Federation
California School Employees Association, AFL-CIO
California Taxpayers Association
Howard Jarvis Taxpayers Association
Service Employees International Union, California State Council

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