

Date of Hearing: April 29, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 700 (Gomez and Levine) – As Amended April 14, 2015

SUBJECT: Political Reform Act of 1974: advertisement disclosures.

SUMMARY: Provides that a specified disclaimer, if it is required to appear in a video advertisement concerning a ballot measure, must appear continuously during the advertisement. Specifically, **this bill:**

- 1) Requires a disclaimer that "(spokesperson's name) is being paid by this campaign or its donors," when it is required to appear in an advertisement concerning a ballot measure, to be shown continuously if the advertisement is a video advertisement.
- 2) Declares the intent of the Legislature to enact legislation that would implement a California Disclose Act to ensure that advertisements that seek to persuade voters to cast a vote in favor or against ballot measures do not mislead voters as to who is funding the campaign that paid for the advertisement.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Requires a committee that makes an expenditure of \$5,000 or more to an individual for his or her appearance in an advertisement to support or oppose the qualification, passage, or defeat of a ballot measure, to do both of the following:
 - a) File a report within 10 days of the expenditure identifying the measure, date of the expenditure, name of the recipient, and amount expended; and,
 - b) Include the following statement in the advertisement in highly visible roman font shown continuously if the advertisement consists of printed or televised material, or spoken in a clearly audible format if the advertisement is a radio broadcast or telephone message:

"[Spokesperson's name] is being paid by this campaign or its donors."

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

COMMENTS:

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

The amendments to AB 700 reflect the changing methods in the ways Californians communicate with one another and receive their information relevant

to their lives. The internet continues to grow in its use as an information and news medium. Campaigns have taken note of the changes in the media used by voters and have taken to the net with ever increasing financial resources.

AB 700 addresses the growing use of videos for purposes of campaign messaging on the internet, and extends the same disclosure requirements for those messages as those campaign messages on television.

- 2) **"Paid Spokesperson" Requirements:** In 2000, the Legislature passed and the Governor 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.

One of the provisions of Proposition 34 established new reporting and disclaimer requirements for ballot measure advertisements that featured paid spokespeople. Under those provisions, if a committee makes an expenditure of \$5,000 or more to an individual appearing in the advertisement, the advertisement is required to include a disclosure statement that the spokesperson is being paid by the campaign or its donors. The committee is also required to file a specified report in connection with any such advertisement.

It appears, however, that these requirements have only rarely been triggered for ballot measure advertisements. While these "paid spokesperson" requirements have been in place for more than 14 years, no report has ever been filed with the Secretary of State in accordance with those requirements, though committee staff is aware of at least one instance in which a "paid spokesperson" report was filed in connection with a local election. The lack of reports filed pursuant to those provisions could indicate that it is relatively rare for ballot measure campaigns to pay individuals for their appearances in advertisements.

- 3) **"Disclose Act":** As detailed above, the first section of this bill declares the intent of the Legislature to implement a "California Disclose Act." The provisions of this bill as it was most recently amended, however, do not contain any of the major provisions that have been included in previous legislation that has been referred to as the California Disclose Act. Furthermore, the bill declares the intent of the Legislature to enact legislation that is wholly unrelated to the current substantive contents of this bill. In light of those facts, and given the letters that have been submitted in support of and in opposition to this bill, it appears likely that the current provisions of this bill are nothing more than placeholder language, and are unrelated to the bill's ultimate objective.

Specifically, the Legislature has considered three measures in the last two legislative sessions that were titled or otherwise commonly referred to as the California Disclose Act. AB 1148 (Brownley) and AB 1648 (Brownley) of the 2011-2012 legislative session were both commonly referred to as the California Disclose Act, while SB 52 (Leno) of the 2013-2014 legislative session was titled the California Disclose Act. All three measures broadly sought to change the content and format of disclosure statements that are required to appear on political advertisements in a manner that would require the largest contributors to the committee funding the advertisement to be more prominently displayed. Additionally, all

three measures sought to establish extensive new rules for determining which contributors would be required to be disclosed as contributors on a campaign advertisement. Moreover, the language that appeared in the introduced version of this bill was similar to language that has appeared in prior bills that were referred to as the California Disclose Act, and in fact, the introduced version of this bill declared the intention of the Legislature to enact legislation to implement a California Disclose Act that is "consistent with the provisions of [SB] 52 of the 2013–14" legislative session.

Because this bill does not currently contain substantive provisions similar to those in SB 52 or other prior attempts to enact a "California Disclose Act," this analysis does not examine the policy questions or considerations presented by such proposals. Nonetheless, both the supporters and opponents of this bill (as detailed below) seem to believe that this bill subsequently will be amended to include provisions similar to those in previous versions of the California Disclose Act. In fact, a letter in support of this bill from the sponsor of the bill acknowledges that the current version of the bill makes only "technical changes relative to disclosure under the Political Reform Act," but also notes that if the bill's "intent is implemented, it will significantly strengthen disclosure requirements for ballot measure ads." If it is the author's intent to amend this bill at some point in the future to more closely resemble previous legislation that has been referred to as the California Disclose Act, those amendments would be considerably broader than, and inconsistent with, the substantive provisions of the current version of this bill.

- 4) **Television vs. Video and Technical Amendments:** As noted above, existing law already requires the "paid spokesperson" disclosure statement, when it is required to be included in an advertisement, to be shown continuously if the advertisement consists of televised material. This bill further provides that "[i]f the advertisement is a television or video advertisement, the statement shall be shown continuously." While existing law does not explicitly address the duration for which the disclosure statement is required to appear in a video advertisement that is *not* televised (for example, a video advertisement on the Internet), televised advertisements are already covered by existing law. As a result, the language added by this bill relating to television advertisements seems to be duplicative. If it is the committee's desire to approve this bill, committee staff recommends a technical amendment to eliminate that duplication.
- 5) **Arguments in Support:** The sponsor of this bill, the California Clean Money Campaign, writes in support:

The California Clean Money Campaign is pleased to sponsor AB 700, the *California DISCLOSE Act*. If its intent is implemented, it will significantly strengthen disclosure requirements for ballot measure ads. Just as a lobbyist looking for your vote on a bill would never mislead you as to who his client is, neither should the voters be misled as to who is asking for our votes when we cast them on ballot measures.

Campaign spending on ballot measures has reached unprecedented levels. More than \$640 million was spent in California on ballot measures in 2012 and 2014, almost all of it by donors obscured by misleading names and buried in fine print.

Although it is essential for individuals and organizations to be able to communicate effectively with voters, it's equally important that voters not be deceived about who paid for the ads they see.

AB 700 currently makes technical changes relative to disclosure under the Political Reform Act, but also provides the following:

It is the intent of the Legislature to enact legislation that would implement a California Disclose Act to ensure that advertisements that seek to persuade voters to cast a vote in favor or against ballot measures do not mislead voters as to who is funding the campaign that paid for the advertisement.

Achieving this goal is essential to everything we care about in the era of Citizens United in which billionaires and other special interests can pass or kill ballot measures by drowning the electorate in deceptive advertisements while hiding who really paid for them. Even duly passed and signed laws are subject to referenda that can be put on the ballot and passed by Dark Money groups whose misleading ads fool voters into voting against their best interests.

- 6) **Arguments in Opposition:** In opposition to this bill, the Service Employees International Union (SEIU), California State Council, writes:

The original and contemplated premise of [this] bill was to enact language consistent with Senate Bill 52 (Leno), also called the Disclose Act, which failed during the 2013-14 Regular Session of the legislature. That proposal sought to increase reporting requirements for political advertising disclaimers while adding devastating accounting requirements that would severely hinder the ability to engage in fundraising and the political process....

During the 2013-14 Regular Session of the legislature, the Governor enacted Chapter 16, Statutes of 2014 (SB 27/Correa) and Chapter 9, Statutes of 2014 (AB 800/Gordon), that created new requirements to prevent individuals, organizations, or other[s], from hiding behind a veil of secrecy when engaging in political activity in California, and allows detailed audits of campaign committees during an election cycle, respectively. Each of these statutes have worked as intended...

AB 700 would propose to impose new and untenable restrictions that are so one-sided on their effect among specific groups engaged in political activity that they might be deemed unconstitutional, as noted in the Committee's analysis of SB 52. In addition, AB 700 would significantly interfere, or upend the success of the new statutory requirements imposed by SB 27 and AB 800, that have remedied the lack of disclosure in political advertisements.

Although AB 700 has recently been amended, the underlying intent of the bill remains the same as to a likely continuous, successive, and unending reporting scheme that would have a devastating effect on political committees wanting to engage in political activity.

- 7) **Previous Legislation:** SB 27 (Correa), Chapter 16, Statutes of 2014, established conditions under which a multipurpose organization that makes campaign contributions or expenditures is required to disclose names of its donors.

AB 800 (Gordon), Chapter 9, Statutes of 2014, made numerous significant changes to the PRA, including permitting the FPPC to audit any record required to be maintained under the PRA to ensure compliance with the PRA prior to an election, even if the record or statement has not yet been filed.

AB 510 (Ammiano), Chapter 868, Statutes of 2014, requires an advertisement relating to a ballot measure to include a specified disclaimer if it includes an appearance by an individual who is paid to appear in the advertisement and it communicates that the individual is a member of an occupation that requires licensure or specialized training.

- 8) **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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Clean Money Campaign (sponsor)

In addition, the California Clean Money Campaign submitted copies of petitions signed by approximately 2,000 individuals in support of AB 700. However, those petitions urge support for a bill that "mandates clear and prominent disclosure of the true funders behind ballot measure...ads," which the current version of this bill does not do. As a result, it is unclear whether those signatures reflect support for the current version of the bill.

California Church Impact
California Common Cause
LabelGMOs.org
Lutheran Office of Public Policy – California
MapLight
Money Out Voters In
National Council of Jewish Women California
Public Citizen
Redwood Empire Business Association

Opposition

California School Employees Association, AFL-CIO
Howard Jarvis Taxpayers Association (prior version)
Service Employees International Union, California State Council

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094