

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

SB 1101 (Padilla) – As Amended: May 27, 2014

AS PROPOSED TO BE AMENDED

SENATE VOTE: 32-1

SUBJECT: Political Reform Act of 1974.

SUMMARY: Prohibits a member of or candidate for the Legislature from soliciting or accepting a campaign contribution during the last month of each year's legislative session, or during the time period between May 14 and June 15. Specifically, this bill:

- 1) Prohibits a person from making a contribution to member of or a candidate for the Legislature, and prohibits a member of or candidate for the Legislature from soliciting or accepting a contribution, during the following periods:
 - a) In each year, the time period between May 14 and June 15 of the same year;
 - b) In each odd-numbered year, the period from the date 30 days preceding the date the Legislature is scheduled to adjourn for a joint recess to reconvene in the second year of the biennium of the legislative session to the date that adjournment occurs; and,
 - c) In each even-numbered year, the time period between August 1 and August 31.
- 2) Permits each house of the Legislature to take any disciplinary action it deems appropriate against a Member of that house who violates the provisions of this bill, including, but not limited to, reprimand, censure, suspension, or expulsion.
- 3) Provides that this bill does not prohibit a contribution made to, or solicited or accepted by, a member of or candidate for the Legislature for purposes of that person's candidacy for an elective state office that is to be voted upon at a special election.
- 4) Contains a severability clause.
- 5) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

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 the Director of the Department of Finance to provide the May revision to the Governor's budget to the Legislature on or before May 14 of each year, which is to include

all of the following:

- a) An estimate of General Fund revenues for the current fiscal year and for the ensuing fiscal year;
 - b) Any proposals to reduce expenditures to reflect updated revenue estimates; and,
 - c) All proposed adjustments to the Governor's budget.
- 3) Prohibits an elected state officer or candidate for elected state office from accepting a contribution from a lobbyist, and prohibits a lobbyist from making a contribution to an elected state officer or candidate for elected state office, if that person is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer.
- 4) Limits campaign contributions to candidates for elective state office as follows:
- a) To a candidate for elective state office other than a candidate for statewide elective office, no person may contribute more than \$4,100 per election and no small contributor committee may contribute more than \$8,200 per election;
 - b) To a candidate for elective statewide office other than a candidate for Governor, no person may contribute more than \$6,800 per election and no small contributor committee may contribute more than \$13,600 per election;
 - c) To a candidate for Governor, no person or small contributor committee may contribute more than \$27,200 per election.
- 5) Requires the FPPC to adjust these contribution limits biennially to reflect any increase or decrease in the Consumer Price Index.
- 6) Provides for administrative, civil, and criminal penalties for violations of the PRA.

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

COMMENTS:

- 1) Author's Amendments: In response to questions and concerns raised when this bill was debated on the Senate Floor, the author of this bill committed to amend it to do the following:
 - a) To make the fundraising blackout periods proposed by this bill applicable to non-incumbent candidates for the Legislature; and,
 - b) To specify a date certain for the start (May 14) and the end (June 15) of the fundraising blackout period around the time that the Legislature is considering the state budget for the succeeding fiscal year, instead of having that fundraising blackout period start on the date of the release of the May revision to the Governor's budget, and end on the date that the

Legislature passes a budget.

In addition to these amendments, the author is also proposing an amendment to add a severability clause to this bill.

Due to upcoming committee deadlines, these author's amendments were unable to be amended into the bill prior to the committee's hearing. This analysis reflects these proposed author's amendments.

2) Purpose of the Bill: According to the author:

The California legislature is the most powerful state legislative body in the United States. With a "GDP" approaching two trillion dollars, California is by far the largest economy among our 50 states and the 8th largest economy in the world. Because California is such an important market force...decisions made in California's State Capitol are often felt well beyond our borders. Recognizing this, a multitude of interests actively seek to influence the fate of thousands of pieces of legislation that work their way through California's Capitol each year.

Meanwhile, members of the legislature regularly raise campaign funds to support their re-election efforts.

It is the perceived confluence of campaign contributions and legislative votes that erodes the public's faith in the legislature's ability to keep the two separate. This is of particular concern toward the end of the legislative session as the fate of hundreds of bills is decided while fundraisers abound.

SB 1101 would create a fundraising blackout period in California. It would prohibit solicitation or acceptance of campaign contributions by a member of the legislature from the time of the budget revise through the budget vote and the last 30 days of the legislative session.

The blackout period would be in place during critical budget votes and at the end of legislative session when large volumes of bills including last minute "gut and amend" measures are up for votes.

3) Blackout Periods in Other States: According to information from the National Conference of State Legislatures, 29 states place restrictions on giving or receiving campaign contributions during the legislative session. Of those 29 states, 14 prohibit or restrict only *lobbyist* contributions made during the legislative session, including California, which prohibits individuals who are registered to lobby before the legislature from making contributions to any legislator or any candidate for state legislature at any time, not just during the legislative session.

Fifteen states (Alabama, Alaska, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Nevada, New Mexico, Tennessee, Texas, Utah, Virginia, and Washington) have contribution blackout periods that apply to contributions made by individuals or organizations other than lobbyists. The length of the blackout period generally runs the length of the legislative

session, though in some cases the blackout period extends for a certain time period before or after the legislative session, and in some cases there are exceptions to the blackout periods as an election approaches.

- 4) Contribution Limits: Proposition 34 was placed on the November 2000 ballot through passage of SB 1223 (Burton), Chapter 102, Statutes of 2000. The proposition, which passed with 60.1% of the vote, revised state laws on political campaigns for state elective offices and ballot propositions. Proposition 34 enacted new campaign disclosure requirements and established new campaign contribution limits, limiting the amount that individuals could contribute to state campaigns. The findings of Proposition 34 noted that the measure would, "minimize the potentially corrupting influence and appearance of corruption caused by large contributions by providing reasonable contribution and voluntary expenditure limits." It was the stated intent of the people in Proposition 34 to enact reasonable contribution limits so that campaign contributions would not be so large as to permit the campaign contributions to have a "corrupting influence." If Proposition 34 is achieving its stated goal, this measure should be unnecessary.
- 5) Contribution Blackout Period and First Amendment Concerns: 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." The Buckley court was cautious to note that not all campaign contribution limits would be constitutionally permissible, however, writing "[g]iven the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy." The Supreme Court has repeatedly upheld its ruling in Buckley.

One issue presented by this bill is whether its provisions would prevent candidates from amassing the resources necessary for effective advocacy and whether the state's interest in prohibiting campaign contributions to Legislators is sufficient to justify this limit on contributors' and candidates' free speech rights.

In at least four states, state or federal courts have struck down laws that prohibited legislators from receiving campaign contributions while the legislature was in session. In 1990, the

Florida State Supreme Court ruled in State v. Dodd (1990) 561 So.2d 263, that a state law that prohibited a candidate running for legislative office or a statewide office from accepting or soliciting a campaign contribution during a regular or special session of the Legislature was "unconstitutional for its overbroad intrusion upon the rights of free speech and association." The court found a number of defects to the Florida law, including that it placed restrictions on candidates "who could not possibly be subject to a corrupting quid pro quo arrangement," and that "by focusing entirely on the legislative session, the Campaign Financing Act fails to recognize that corrupt campaign practices just as easily can occur some other time of the year." Additionally, the court found that the contribution blackout period would cut off "the flow of resources needed for effective advocacy during a crucial portion of the election year," in violation of the test established in Buckley.

The United States District Court for the Eastern District of Missouri, Eastern Division considered a similar contribution blackout period in Shrink Missouri Government PAC v. Maupin (1996) 922 F. Supp. 1413. Unlike the Florida law, Missouri's Campaign Finance Disclosure Law only applied during a regular session of the legislature and it did not prohibit the *solicitation* of campaign contributions during a legislative session, but otherwise was substantially similar to the Florida law. The Maupin court ruled that Missouri's blackout period "severely impacts on a candidate's ability to expend funds which in turn impinges upon the rights of individual citizens and candidates to engage in political debate and discussion."

Two other federal courts reached similar conclusions in 1998. The United States District Court for the Eastern District of North Carolina, Western Division in North Carolina Right to Life v. Bartlett (1998) 3 F.Supp.2d 675, struck down a North Carolina law prohibiting lobbyists from making contributions to legislators and candidates for state legislature during a legislative session. The court ruled that the North Carolina law "prevent[ed] candidates from amassing the resources necessary for effective advocacy," in violation of the test established in Buckley. The United States District Court for the Western District of Arkansas, Fayetteville Division in Arkansas Right to Life v. Butler (1998) 29 F.Supp.2d 540, struck down an Arkansas law that prohibited statewide elected officials and legislators from accepting any contribution 30 days before, during, and 30 days after any regular session of the Legislature. The court concluded that the Arkansas law was unconstitutional because "it does not take into account the fact that corruption can occur at any time, and that only large contributions pose a threat of corruption." Unlike the Florida, Missouri, and North Carolina laws, the Arkansas law did not apply to non-state officeholder candidates for state office, but only to elected state officials.

The provisions of this bill are distinguishable from the laws in Florida, Missouri, North Carolina, and Arkansas in that it does not apply during the entire legislative session, but only during certain portions of the legislative session. Nevertheless, this bill could be susceptible to a constitutional challenge based on issues raised in these decisions.

- 6) Uneven Playing Field: One of the amendments being taken by the author in this committee today would make the contribution blackout periods imposed by this bill applicable to non-incumbent candidates for state Legislature. This amendment was intended to avoid creating an uneven playing field, where sitting members of the Legislature were prevented from raising campaign funds during certain times of the year, while their opponents were not

subject to the same limitations. While this amendment does help reduce the potential for such an uneven playing field, it does not eliminate that potential entirely. Sitting members of the Legislature who are running for an office other than state Legislature (e.g., for local or statewide office), and who are running against other candidates who are not members of the Legislature could be put at a disadvantage compared to their opponents, since the contribution blackout period would apply to the member of the Legislature, but not to other non-member candidates for offices other than state Legislature.

- 7) Other Elected State Officers: The author contends that a fundraising blackout period is needed in order to put distance between the giving of political money and the taking of governmental actions during certain times in the legislative process. Legislators are not, however, the only elected state officials that are involved in governmental actions that are taken during that period of the legislative process. In particular, the Governor develops the budget that is considered by the Legislature, is directly involved in negotiations with legislative leaders over the state budget, and has the authority to sign or veto the budget, including line-item veto authority with which the Governor may reduce appropriations in the budget. It is not uncommon for members of the Legislature to negotiate with the Governor over the contents of legislation toward the end of session, and after the Legislative session adjourns, the Governor has 30 days to decide whether to sign or veto hundreds of bills that have been passed by the Legislature (this period of time is commonly referred to as the "bill signing period"). While other state officials are not *as* directly involved in the legislative process, it is nonetheless commonplace for statewide elected officials and members of the Board of Equalization (BOE) to advocate before the Legislature both publicly and privately, including sponsoring, supporting, opposing, and seeking amendments on bills and budget items. If there is a need to put distance between the giving of political money and the taking of governmental actions during certain times in the legislative process, as the author contends, then it may be appropriate to limit the fundraising activities of other elected state officials during these time periods as well.

The committee may wish to consider whether this bill should be amended to apply to statewide elected officers (including the Governor), members of the BOE, and candidates for those offices. Additionally, the committee may wish to consider whether this bill should be made applicable to the Governor during the bill signing period.

- 8) Statewide Primary Election & Special Elections: One of the fundraising blackout periods proposed by this bill—the period between the time the May revision is released until the time a state budget is passed by the Legislature—almost certainly will include the date of the statewide primary election and the two to three weeks prior to the primary election in even-numbered years. Limiting fundraising during this crucial campaign period could put Legislators at a significant fundraising disadvantage in relation to other candidates who are not subject to the blackout period.

Additionally, while this bill contains an exception to the blackout periods in a situation where a candidate is running for elective state office at a special election, this bill does not include similar accommodations for candidates who are running for an office other than state office at an election that is held during a blackout period, or shortly after the conclusion of a blackout period. Such a policy could prevent candidates for local office, for instance, from being able raise campaign funds during a crucial campaign period.

To address these concerns, committee staff recommends that this bill be amended to provide that the fundraising blackout periods will not apply to a candidate in the last 30 days prior to an election at which that candidate will appear on the ballot.

- 9) Senate Rule: On June 9, 2014, the Senate adopted SR 44 (De León & Steinberg), which amended the Standing Rules of the Senate for the 2013-14 Regular Session by imposing campaign fundraising blackout periods similar to those contained in this bill. Unlike the provisions of this bill, however, the blackout periods in SR 44 apply only to the solicitation and acceptance of campaign contributions from lobbyist employers. SR 44 does not prohibit Senators from soliciting or receiving campaign contributions during the blackout period from individuals or entities who are not lobbyist employers. The rule enacted by SR 44 becomes effective on August 1, so it was not in effect for this year's budget process, but it will be in effect for the last month of session.

Because SR 44 adopted a Senate rule, rather than enacting a statute, it cannot and does not apply to members of the Assembly or to non-member candidates. Additionally, a violation of the contribution blackout period enacted by SR 44 is punishable only by disciplinary action taken by the Senate, and is not subject to the criminal, civil, or administrative penalties that generally apply for violations of the PRA.

- 10) Urgency Clause and Suggested Amendment: As noted above, this bill contains an urgency clause, and would go into effect immediately upon enactment. In light of the Legislative calendar, it is unlikely that this bill could be signed into law prior to the adjournment of session this year, and thus, it is unlikely that the contribution blackout periods proposed by this bill could be in effect this year. On the other hand, making such a significant change to campaign finance law in an election year and having that change go into effect immediately could create confusion, and could hamper the implementation and enforcement of the law. To address these concerns, committee staff recommends that this bill be amended to remove the urgency clause.
- 11) Previous Legislation: AB 2622 (Smyth) of 2010, which failed passage in this committee, would have prohibited members of the Legislature from accepting campaign contributions from June 16 until the budget bill was passed by the Legislature.

AB 1411 (Torrico) of 2009, would have prohibited a member of the Legislature from participating in any campaign fundraising activity from July 1 until August 15 or the date the budget bill was passed by the Legislature and sent to the Governor, whichever occurred first. AB 1411 died on the inactive file on the Assembly Floor. AB 1411 was not heard in this committee.

AB 16 (Huff) of 2005, would have prohibited contributions to members of the Legislature and the Governor between the time that the Governor presented the May revision to his or her budget proposal and the time that a budget was enacted. AB 16 failed passage in this committee.

- 12) 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 League of Conservation Voters (prior version)

League of Women Voters of California (prior version)

MapLight (prior version)

Pane & Pane Associates, Inc. (prior version)

Opposition

None on file.

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