

Date of Hearing: June 11, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING  
Paul Fong, Chair  
SB 26 (Correa) – As Introduced: December 3, 2012

SENATE VOTE: 29-8

SUBJECT: Political Reform Act of 1974: slate mailers.

SUMMARY: Requires the text of disclaimer statements that are included on slate mailers to be larger and more prominently displayed. Specifically, this bill:

- 1) Requires the following "Notice to Voters," which is currently required to be printed on a single side or surface of a slate mailer where a candidate or ballot measure has paid to appear, to be printed instead on each side or surface of the slate mailer that includes a candidate or ballot measure that has paid to appear in the slate mailer:

**NOTICE TO VOTERS**

**THIS DOCUMENT WAS PREPARED BY (name of slate mailer organization or committee primarily formed to support or oppose one or more ballot measures), NOT AN OFFICIAL POLITICAL PARTY ORGANIZATION. Appearance in this mailer does not necessarily imply endorsement of, or opposition to, any issues set forth in this mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated by an \*.**

- 2) Increases the minimum font size, from 8-point type to 10-point type, and requires the information to be printed in black on a solid white background, instead of being in a color or print that contrasts with the background, for the following information that is required to be included in a slate mailer:
  - a) The name, street address, and city of the slate mailer organization or primarily formed committee responsible for sending a slate mailer; and,
  - b) The "Notice to Voters" described above.

EXISTING LAW:

- 1) Defines a "slate mailer" as a mass mailing that supports or opposes a total of four or more candidates or ballot measures.
- 2) Defines a "slate mailer organization" as a person who is involved in the production of one or more slate mailers, exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailers, and receives or is promised payments totaling \$500 or more in a calendar year for the production of one or more slate mailers. Provides that none of the following are slate mailer organizations:

- a) A candidate or officeholder or the controlled committee of a candidate or officeholder;
  - b) An official committee of any political party;
  - c) A legislative caucus committee; or,
  - d) A committee primarily formed to support or oppose a candidate, officeholder, or ballot measure.
- 3) Prohibits a slate mailer organization or a committee primarily formed to support or oppose one or more ballot measures from sending a slate mailer unless it contains all of the following:
- a) The name, street address, and city of the slate mailer organization or committee on the outside of each piece of slate mail and on at least one of the inserts included with each piece of slate mail in no less than 8-point type;
  - b) The "Notice to Voters," as described above, in no less than 8-point type and in a color or print which contrasts with the background so as to be easily legible.
  - c) An asterisk (\*) to designate each candidate and each ballot measure that has paid to appear in the slate mailer in the same type size, style, color, and legibility as is used for the name of the candidate or the ballot measure name or number and position advocated, provided that the asterisk is not required to be larger than 10-point boldface type.
  - d) The political party designation of a candidate appearing in the slate mailer, in no less than 9-point type, if the candidate is not running for non-partisan office and is a member of a political party differing from the political party with which the mailer appears by representation or indicia to represent.
- 4) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

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

During the November General Election, slate mailers were sent to voters that superimposed the notice to voters in a white font over a picture of an eagle's white feathers rendering the notice extremely difficult to find let alone read. SB 26 would strengthen the Political Reform Act and FPPC regulations by requiring that both the sender identification and the notice to voters are printed in larger (10-point), black type against a solid white background so they cannot be intentionally obfuscated. SB 26 would also require the notice to voters to be printed on each side or surface where any

paying candidate or ballot measure appears in the slate mailer which will make this important information more obvious and accessible.

- 2) Existing Disclaimer Printing Requirements: In support of this bill, the author references a slate mailer that was sent during the November 2012 general election in which the required "Notice to Voters" was printed in a white font over a picture of an eagle's white feathers, which made the disclaimer difficult to read. Such placement and printing of the "Notice to Voters" appears to violate provisions of existing law.

As indicated above, the PRA requires the "Notice to Voters" to be printed in "a color or print which contrasts with the background so as to be easily legible." Regulations adopted by the FPPC to implement this requirement specifically require the "Notice to Voters" to appear "on a plain background, not superimposed over an illustration or a patterned background," and require a "reasonable degree of color contrast" between the text of the disclaimer and the background. The regulations further provide that disclaimers that are "printed in black text on a white background or a similar degree of color contrast between the background and the text of the disclaimer" are examples of "reasonable degree of color contrast" for these purposes (2 Cal. Code of Regs. Section 18435.5). Because the disclaimer in the slate mailer described by the author was not printed on a plain background, and because white text on a white background does not appear to be a "reasonable degree of color contrast," it appears that the slate mailer described by the author is not consistent with the existing requirements governing slate mailers.

- 3) Constitutional Issues: In November 1996, California voters approved Proposition 208, which made various significant changes to the PRA. Many of those changes were subsequently repealed or amended through the passage of Proposition 34, which was placed on the November 2000 ballot by SB 1223 (Burton), Chapter 102, Statutes of 2000. Among the provisions of Proposition 208 that were not affected by Proposition 34, however, were provisions that required certain information and specified disclaimers to be included on slate mailers. Those provisions included a requirement that slate mailers identify any candidate or ballot measure that had paid to be included in the slate mailer with three dollar signs (\$\$\$), instead of with an asterisk (\*); a requirement that certain information and disclaimers (including the "Notice to Voters") be included on every page of a slate mailer instead of appearing at least once on the slate mailer; and a requirement that slate mailers identify contributors who gave more than \$50,000 to ballot measures.

In California ProLife Council PAC v. Scully (2001), No. Civ. S-96-1965, the United States District Court for the Eastern District of California found that those provisions were unconstitutional, and the Court permanently enjoined them from enforcement. In its decision, the Court found the slate mailer requirements to be "intrusive and extensive" compelled speech that could not be justified by the state's interests in informing voters, avoiding deception, and addressing the potential for corruption.

Opponents of this bill argue that the requirement for the "Notice to Voters" to be printed on each surface of a slate mailer that includes a candidate or ballot measure that has paid to appear in the slate mailer likely is unconstitutional in light of the court's injunction in the California ProLife Council PAC case. While this bill requires a slate mailer to include the "Notice to Voters" in multiple locations on a slate mailer in certain circumstances, which could raise similar concerns to those discussed by the California ProLife Council PAC court,

the provisions of this bill are distinguishable from the provisions that were enjoined by the court in the California Prolife Council PAC case.

The provisions of law that were enjoined in the California Prolife Council PAC case required the "Notice to Voters" to appear on *every* page of a slate mailer, while the provisions of this bill require the "Notice to Voters" to be included only on pages in the slate mailer that include candidates or ballot measures that have paid to appear in the slate mailer. Thus, under the provisions of this bill, a page of a slate mailer that did not contain any candidates or ballot measures, or that contained only candidates and ballot measures that did not pay to appear in the slate mailer, would not be required to include the "Notice to Voters," whereas that notice would have been required on that page under the law that was enjoined in the California Prolife Council PAC case.

By tying the requirement for the "Notice to Voters" to appear on a page of a slate mailer to pages that include a candidate or ballot measure that paid to appear in the slate mailer, this bill is more narrowly focused than the requirement that was enjoined by the California Prolife Council PAC court. Because candidates and ballot measures that pay to appear in a slate mailer are required to be accompanied by an asterisk in the slate mailer, requiring the "Notice to Voters" to appear on any page that includes a candidate or ballot measure that has paid to appear in the slate mailer will ensure that information about the meaning of the asterisk that accompanies the listing of that candidate or ballot measure appears on the same page as the asterisk. It is unclear whether this distinction is sufficient to protect the provisions of this bill from a court challenge in light of the constitutional concerns raised in the California Prolife Council PAC case.

- 4) Arguments in Opposition: In opposition to this bill, the American Association of Political Consultants writes:

SB 26 would require slate publishers to print a disclaimer in multiple locations on their mail. This requirement was enjoined in the Proposition 208 case. The court ruled a requirement of multiple placements of the disclaimer in slate mail represents a taking of space otherwise available for protected political speech without any advancement of a legitimate state interest in disclosure. The court found that requiring slates to print disclaimers in multiple locations singled out slate mail for treatment different from that which applies to any other political mail or any other form of political communication. SB 26 would also require that slate disclaimers be printed in 10 pt. type. The court found printing the disclaimer on the front of a slate in 8 pt. bold type is sufficient to serve the state's interest in disclosure.... Existing state law sets requirements for the size and legibility of slate disclaimers. The issues raised in SB 26 can be resolved by enforcement of existing state law. No new legislation is required.

- 5) Previous Legislation: SB 488 (Correa), Chapter 865, Statutes of 2012, requires a slate mailer that represents the position of a public safety organization to include specified information about the organization's membership, including the number of members of the organization, as specified. Earlier this year, a corporation that publishes slate mailers filed a lawsuit in federal district court challenging certain provisions of SB 488, contending that those provisions violated the First and Fourteenth Amendments to the United States Constitution.

That lawsuit is pending.

- 6) 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 Common Cause  
League of Women Voters of California

Opposition

American Association of Political Consultants  
Landslide Communications, Inc.

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