

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 664 (Steinorth) – As Amended April 18, 2017

SUBJECT: Political Reform Act of 1974: campaign fund expenditures.

SUMMARY: Prohibits specified family members of an elected officer or a candidate for elective office from receiving compensation in exchange for services rendered from campaign funds held by a controlled committee of the elected officer or candidate for elective office.

Specifically, **this bill:**

- 1) Prohibits a parent, grandparent, sibling, child, or grandchild of an elected officer or a candidate for elective office from receiving compensation in exchange for services rendered from campaign funds held by a controlled committee of the elected officer or candidate.
- 2) Prohibits financial or material compensation from being paid from campaign funds held by a controlled committee of an elected officer or a candidate for elective office, in exchange for services rendered, to a vendor that is majority-owned or controlled by a spouse, domestic partner, parent, grandparent, sibling, child, or grandchild of the elected officer or candidate.

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) Prohibits a spouse or domestic partner of an elected officer or a candidate for elective office from receiving compensation in exchange for services rendered from campaign funds held by a controlled committee of the elected officer or candidate.
- 3) Prohibits the use of campaign funds for an expenditure that confers a substantial personal benefit on any individual or individuals with authority to approve the expenditure unless the expenditure is directly related to a political, legislative, or governmental purpose.
- 4) Prohibits the use of campaign funds to compensate a candidate or elected officer for the performance of political, legislative, or governmental activities, except for reimbursement of out-of-pocket expenses incurred for political, legislative, or governmental purposes.
- 5) Prohibits the use of campaign funds to pay for or reimburse the cost of professional services unless the services are directly related to a political, legislative, or governmental purpose.
- 6) Provides that any person who knowingly or willfully violates the PRA is guilty of a misdemeanor.

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

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

The Political Reform Act of 1974 currently prevents "a spouse or domestic partner" of "a candidate for elective office" from receiving compensation from campaign funds in return for services rendered. However, there is nothing in the Political Reform Act that prevents candidates for public office from providing compensation to other family members of the candidate. This deficiency in the law allows candidates to provide financial or material benefit to their children, siblings, and parents, in exchange for unregulated services. This leaves room for unethical gifts of financial benefit to family members.

With the growing concern of transparency among voters, AB 664 will address concerns of abuse of campaign funds for unethical use. AB 664 would strengthen the Political Reform Act by preventing the unethical use of campaign funds by candidates for elected office. By expanding existing law to include additional family members, California can provide further oversight on the use of campaign funds.

2) **Background & Previous Legislation:** California law recognizes that ethical concerns may arise when a candidate receives a personal financial benefit from contributions received by his or her campaign, and accordingly limits a candidate's use of campaign funds on expenditures that provide a personal financial benefit to the candidate. In general, the PRA requires most campaign expenditures to be *reasonably* related to a political, legislative, or governmental purpose. Expenditures of a candidate's or officer's campaign funds that confer a substantial personal benefit on that candidate or officer, however, must meet a higher standard, and be *directly* related to a political, legislative, or governmental purpose.

In certain situations, the PRA further restricts the expenditure of campaign funds even when those expenditures are directly related to a political, legislative, or governmental purpose. For example, the PRA prohibits campaign funds from being used to compensate a candidate or elected officer for the performance of political, legislative, or governmental activities, except for reimbursement of out-of-pocket expenses incurred for political, legislative, or governmental purposes. Furthermore, the PRA limits the amount of money that a candidate may loan to his or her own campaign. Those limits were put into place due to concerns that money raised by a candidate subsequent to an election to repay that candidate's personal loan to his or her campaign committee would go into the candidate's own pocket, indirectly resulting in campaign contributions becoming a candidate's personal funds.

Similar concerns led to the recent enactment of laws that prohibit a candidate from paying his or her spouse or domestic partner for professional services rendered to the candidate's campaign committee. Under California's community property laws, any income earned by a married person while living with his or her spouse generally is considered to be community property, which is jointly held by both spouses. As a result, when a candidate pays his or her spouse from the candidate's campaign committee, the campaign committee's payment indirectly becomes the candidate's personal property. To address those concerns, SB 739

(Strickland), Chapter 360, Statutes of 2009, prohibited a spouse or domestic partner of an elected officer or a candidate for elective office from receiving compensation from campaign funds held by a controlled committee of the elected officer or candidate for services rendered in connection with fundraising for the benefit of the officeholder or candidate. Five years later, that law was expanded through the passage of AB 2320 (Fong), Chapter 902, Statutes of 2014, which prohibits an official's or candidate's spouse or domestic partner from being paid by the candidate's or official's campaign for *any* services rendered to the campaign, instead of prohibiting such payments only when the services provided to the campaign were for fundraising purposes.

- 3) **Breaking New Ground:** As detailed above, the existing restrictions in the PRA that prohibit candidates from paying family members for campaign work generally are designed to prevent those candidates from receiving a personal financial benefit from the expenditure of campaign funds. As a result, those laws regulate situations where a payment to a family member may have a direct financial impact on the candidate. Additionally, because actions that provide financial benefits to a person's spouse or dependent child may have a corresponding impact on the person, FPPC regulations generally provide that expenditures that provide a direct personal benefit to a candidate's spouse or dependent child are considered to provide a substantial personal benefit to the candidate.

This bill breaks new ground by prohibiting a candidate's campaign from hiring family members of the candidate even in situations where the payment to the family member has no corresponding financial benefit to the candidate. The author contends that existing law allows candidates to pay family members "in exchange for unregulated services," and expresses concern that this policy "leaves room for unethical gifts of financial benefit to family members."

It should be noted, however, that the expenditure of campaign funds is regulated under *existing* law, and the FPPC has advised that payments for services provided to a campaign committee generally must reflect the fair market value of the services provided (*Harden* Advice Letter, No. A-90-498). While nothing in the PRA expressly prohibits a candidate's campaign committee from hiring a family member of the candidate to perform campaign work (other than a spouse or domestic partner), to the extent that the family member was paid for work that was not actually performed, or was paid an amount that exceeded the fair market value of the work performed, the candidate could face fines and penalties under existing law.

In fact, it could be argued that the stated need for this bill—protecting against the "unethical use" of campaign funds—is more comprehensively addressed by existing law than by the approach proposed by this bill. The requirement that campaign payments must reflect the fair market value of services provided applies regardless of whether the person being paid is a family member of the candidate. This requirement ensures that all campaign funds—regardless of the recipient of those funds—are used for expenses associated with the candidate seeking or holding office. By contrast, a law that prohibits a campaign from paying certain individuals due to a concern that the candidate may be making such payments for reasons other than for fair compensation for work performed fails to address situations where a candidate may be inclined to provide a financial benefit to a person who is not a

family member. For example, nothing in this bill prohibits a candidate from hiring a neighbor, longtime friend, or godparent to work on the candidate's campaign.

4) **Arguments in Support:** In support of this bill, California Common Cause writes:

Campaign funds are held in trust for campaign and officeholding purposes, not for the personal benefit of the candidate or their family members. Actual or perceived nepotism can undermine voters' belief that elected officials are working in the public interest. Additionally, there is an opportunity for undue influence where a campaign contributor's funds can be used to directly benefit the candidate's family.

While current law prohibits a candidate's controlled committee from paying the candidate's spouse or domestic partner for campaign services, AB 664 would ensure that campaign funds also cannot be used to benefit the candidate's parent, grandparent, sibling, child, or grandchild.

5) **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

Opposition

None on file.

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