Date of Hearing: April 29, 2021

ASSEMBLY COMMITTEE ON ELECTIONS
Marc Berman, Chair
AB 20 (Lee) – As Amended March 1, 2021

SUBJECT: Political Reform Act of 1974: campaign contributions: The Corporate-Free Elections Act.

SUMMARY: Prohibits contributions from business entities to candidates for elective office. Specifically, **this bill**:

1) Prohibits a business entity, as defined, from making a contribution to a candidate for elective office.

2) Prohibits a candidate for elective office from accepting a contribution from a business entity.

3) Makes various findings and declarations, including the following:

   a) Under current campaign financing laws, there is great potential for corporate special interests to manipulate the interests and priorities of elected officials and candidates throughout the state, such that these interests and priorities do not align with the will of their constituents or the people of California.

   b) Corporate special interests routinely account for the majority of contributions to officers and candidates for state and local offices.

   c) Each year, corporations contribute hundreds of millions of dollars to campaigns for state and local offices across California. For example, in 2020 it was found that more than $785 million was spent to influence voters on ballot measures alone, with millions more spent on individual races. Many candidates, in order to stay competitive in their races, are compelled to take money from corporations.

   d) With so many campaigns funded with corporate money, it is impossible to guarantee that the will and interests of the people of California are being represented in the state over the interests of the corporations who provide this money.

   e) As corporations have an undeniable interest in matters before the state government, as well as an incontrovertible influence as large contributors, it is evident that a ban on their direct contributions to campaigns for elective office within the state is necessary.

   f) In passing such a restriction, California would join the 22 states in the United States (US) who already impose outright bans on corporations from directly contributing to campaigns for elective office.

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) Defines "business entity," for the purposes of the PRA, as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, or association.

3) Defines "person," for the purposes of the PRA, as an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

4) Establishes the following limits on a contribution from a person, other than a small contributor committee or political party committee, to a candidate for elective state office:

   a) In the case of a candidate for elective state office other than statewide elective office, $4,900 per election;

   b) In the case of a candidate for statewide elective office other than Governor, $8,100 per election;

   c) In the case of a candidate for Governor, $32,400 per election.

5) Establishes default limits on campaign contributions from a person to a candidate for county or city office at the same level as the limit on contributions from a person (other than a small contributor committee or political party committee) to a candidate for Senate or Assembly. Permits a county or city to establish its own contribution limits, which prevail over these default limits.

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

COMMENTS:

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

> What this bill aims to accomplish is not a radical idea – 22 States and the Federal Government have successfully enacted similar measures that prohibit business entities from directly financing a candidate's election for public office. Passing AB 20 will bring us in conformity with the Federal government. Many other States have pushed similar reforms through their Legislatures to restore the public's faith in democracy and addresses the systemic and perceived influence of corporate special interests over everyday people.
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> It is past time to rectify the undue influence that corporations have had in our democracy since the Supreme Court's disastrous 2010 ruling on Citizens United v. FEC. With deepening income inequality and wealthy people afforded more political influence, we must commit to our values that every person has an equal voice in the political process and reaffirm a representative democracy for the people, not corporate executives and the rich.

2) **Business Entities, Federal Law, and Other States**: As detailed above, the findings and declarations for this bill note that 22 states in the US impose outright bans on corporations

from directly contributing to campaigns for elective office. Similarly, the author of this bill notes that business entities are prohibited from making contributions to candidates for elective federal office, and contends that this bill will bring California into conformity with that federal policy. This bill, however, does not prohibit corporations generally from contributing to candidates for elective office. Instead, this bill prohibits *business entities*, as defined, from making campaign contributions to candidates for elective office, a restriction that is broader than federal law in some cases, while considerably narrower in others.

Specifically, the term "business entity" under the PRA is defined to include only entities that are *for profit* entities, while federal law prohibits all corporations—whether for profit or nonprofit—from making campaign contributions in federal elections. On the other hand, while federal law prohibits corporations from making campaign contributions, it permits certain other types of business entities to make campaign contributions. A limited liability company (LLC), for instance, may contribute to candidates for federal office if the LLC is a partnership, rather than a corporation, except in certain circumstances.

These differences have significant implications for the types of entities that are covered by this bill. While for-profit corporations would be prohibited from making campaign contributions to candidates for elective office, nonprofit corporations could continue to contribute to candidates for elective office even though they are prohibited from making contributions to federal candidates under federal law. While federal tax laws limit the ability of certain types of nonprofit organizations to make contributions to non-federal candidates (notably, charitable organizations that are organized under Section 501(c)(3) of the Internal Revenue Code are prohibited from making contributions to candidates), other types of nonprofit corporations can and do make significant campaign contributions to candidates for elective office. For example, professional and trade associations, which often are organized as nonprofit corporations under Section 501(c)(6) of the Internal Revenue Code, would continue to be permitted to make campaign contributions to candidates for elective office under this bill. Of the 22 states that prohibit corporations from contributing directly to political candidates, none of those states appear to allow nonprofit corporations that are professional or trade associations to contribute to candidates. Furthermore, the vast majority of the 22 states that prohibit corporations from contributing directly to political candidates also prohibit contributions from certain other non-individual entities, which this bill does not seek to restrict. For instance, according to information from the National Conference of States Legislatures, 20 of these 22 states also prohibit labor unions from contributing directly to political candidates.

3) **Corporate Spending in California Elections**: One of the findings and declarations in this bill specifies that "corporations contribute hundreds of millions of dollars to campaigns for state and local offices across California," and notes as an example that "in 2020 it was found that more than $785 million was spent to influence voters on ballot measures alone, with millions more spent on individual races." These findings, however, may provide an inaccurate picture of the likely effects of this bill, and of the extent of contributions from business entities to candidates for elective office in California.

Importantly, the $785 million figure cited in the findings and declarations reflects spending on *state ballot measures* in the 2020 election, not direct contributions from corporations or business entities to candidates for elective office. Nothing in this bill would restrict spending on ballot measure campaigns. Furthermore, the $785 million figure is not limited to spending

from corporations and business entities, but also includes spending by individuals, labor unions, political parties, and other entities.

By contrast, according to information from the Secretary of State's Campaign Finance Power Search function, the total amount of campaign contributions received by all candidates for elective state office in the 2019-2020 election cycle totaled approximately $185 million. This total—which is less than one-quarter of the amount spent on state ballot measures in the same cycle—includes contributions received from *all* sources, including individuals, business entities, labor unions, and political parties.

4) **Implications of This Bill Are Difficult to Determine**: Notwithstanding the author's stated purpose of attempting to address the perceived influence of corporate special interests in California elections, this bill lacks sufficient detail necessary to evaluate its effects.

   For instance, while this bill prohibits business entities from making contributions to candidates for elective office, it does not specify whether such entities are permitted to make contributions to political action committees (PACs) that contribute to candidates. If business entities *are* permitted to make such contributions, would the PAC be required to deposit contributions from business entities into a separate account with the funds in that account unavailable for making contributions to candidates? Similarly, federal law and many of the states that prohibit corporate contributions to candidates nonetheless permit a corporation to establish a PAC, and allow corporate funds to be used to pay the costs of establishing, administering, and soliciting funds for the PAC. It is unclear whether such a practice would be allowed under this bill.

   Other policy questions that are not addressed by the current version of this bill include whether a contribution made to a political party by a business entity can be used by the political party to contribute to candidates for elective office; whether a non-profit organization that receives dues payments from business entities is allowed to use those funds to contribute to candidates for elective office; and whether the provisions of this bill apply to contributions from business entities to legal defense funds, officeholder accounts, or candidate controlled ballot measure committees.

   In the absence of additional details in this bill, it likely would fall to the FPPC to provide advice and adopt regulations to answer these and other questions about how to implement this bill.

5) **Independent Expenditures**: In January 2010, the US Supreme Court issued its ruling in *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, a case involving a nonprofit corporation (Citizens United) that sought to run television commercials promoting a film it produced that was critical of then-Senator and presidential candidate Hillary Clinton. Because federal law prohibited corporations and unions from using their general treasury funds to make expenditures for "electioneering communications" or for communications that expressly advocated the election or defeat of a candidate, Citizens United was concerned that the television commercials promoting its film could subject the corporation to criminal and civil penalties. In its decision, the Supreme Court struck down the 63-year old law that prohibited corporations and unions from using their general treasury funds to make independent expenditures in federal elections, finding that the law unconstitutionally abridged the freedom of speech.

While this bill prohibits business entities from making contributions to candidates in the state, it does not limit the ability of business entities to make independent expenditures. In fact, in light of the *Citizens United* ruling described above, it seems unlikely that such a restriction on independent expenditures would be found to be constitutional. As a result, one of the effects of this bill, if approved, may be to further shift campaign spending away from spending by candidates and toward independent expenditures done by outside entities.

In fact, previously enacted restrictions on campaign contributions to candidates for elective state office have been instructive in demonstrating how campaign contribution restrictions can drive an increase in independent expenditures. Specifically, the amount and percentage of campaign spending made through independent expenditures increased substantially after Proposition 34 at the November 2000 statewide general election enacted campaign contribution limits to candidates for elective state office. In the March 2000 and November 2000 elections, the last two elections that were not subject to the Proposition 34 campaign contribution limits for legislative races, the total amount of money spent on independent expenditures for all legislative races was less than $500,000. By comparison, according to information from campaign disclosure reports that were filed with the Secretary of State, the last three election cycles (2015-16, 2017-18, and 2019-20) have had an average of almost $57.5 million in spending on independent expenditures in state legislative races.

While this bill restricts the ability of a business entity to contribute money *directly* to a candidate for elective office, it does not otherwise restrict the amount that a business entity can *spend* in attempting to influence an election for office. If business entities are unable to make campaign contributions to candidates they support, those entities may instead divert those funds to independent expenditures that are intended to help those same candidates get elected.

6) **Contribution Limits**: As noted above, Proposition 34, which was approved by the voters at the November 2000 statewide election, established limits on the size of campaign contributions made to candidates for elective state office, among other provisions. Proposition 34 was approved with 60.1% of the vote. 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."

   More recently, in 2019, the Legislature approved and Governor Newsom signed AB 571 (Mullin), Chapter 556, Statutes of 2019, which established default campaign contribution limits for county and city office at the same level as the limit on contributions from individuals to candidates for Senate and Assembly, effective January 1, 2021. AB 571 additionally permitted a county or city to establish its own contribution limits, which prevail over the default limits contained in that bill.

   To the extent that the current contribution limits are reasonable, and are accomplishing the goal of "minimiz[ing] the potentially corrupting influence…caused by large contributions," it is unclear why a contribution from a business entity would pose greater concern than a similar-sized contribution from another entity, including other non-individual contributors. If a campaign contribution of $4,900 from a corporation to a candidate for state legislature has the potential to have too great of an influence on that candidate, wouldn't a $4,900

contribution from an executive at that corporation present the same concern?

7) **Contributions from Business Entities Prior to the Effective Date of This Bill**: As currently drafted, this bill would take effect on January 1, 2022. Unless this bill were amended to require candidates for elective office to return campaign contributions that they already received from business entities for future elections, candidates who wish to raise money from business entities would be able to continue to do so for the rest of this calendar year, and would be able to use those funds for elections held after the effective date of this bill. Furthermore, any candidate who has already raised money from business entities for an election after January 1, 2022 would be able to use those funds for that future election. Many candidates have already opened committees and received campaign contributions for elections for office to be held in 2022 or later.

8) **Arguments in Support**: In support of this bill, Free Speech for People writes:

> Under current state law, corporations and other "business entities" may contribute as much to a candidate for local or state office as an individual would be allowed to contribute. These amounts currently range from $4,900 for candidates for city, county, legislative, and state pension boards, to $32,400 for candidates for governor. Many corporations take broad advantage of this opportunity. For example, according to California Fair Political Practices Commission data, companies like Chevron, Uber and Lyft contributed the legal maximum to dozens of state legislators in 2019-20, and lower amounts to many more state legislators and city council candidates.
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> This poses an unacceptable risk of corruption and creates the appearance of corruption. Contributions to candidates from corporations and other business entities pose a heightened risk of corruption because they are far more likely to be understood as in exchange for favorable legislative or regulatory treatment. For this reason, nearly half the states ban corporations from contributing to candidates…
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> The bill is constitutional. U.S. Supreme Court precedent confirms that laws banning corporations and similar business entities from contributing to candidates are constitutional under the First Amendment and other principles. See *FEC v. Beaumont*, 539 U.S. 146 (2003). And the U.S. Supreme Court's decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), which invalidated a law banning independent expenditures by corporations, did not disturb *Beaumont*. Indeed, since 2010, at least five federal courts of appeal (including the Ninth Circuit, which has jurisdiction over California) have upheld laws banning corporate contributions to candidates against challenge.

9) **Arguments in Opposition**: In opposition to a prior version of this bill, Southwest California Legislative Council wrote:

> You may not be aware of the fact that there are already numerous prohibitions in place that govern contributions to candidates, including contributions from business entities. You should also brush up on campaign contribution limits which govern most contributions to municipal, state and federal campaigns. Direct

contributions, that is, not the PAC's and independent expenditures, which are limitless and not even addressed in your bill. Finally, you may also not be aware that the Supreme Court of the United States has already ruled on the issue of free speech rights under the First Amendment in their 2010 *Citizens United* decision.

10) **Related Legislation**: AB 871 (Kiley), which is pending in this committee, would prohibit contributions from electrical or gas corporations to candidates for elective state office. AB 871 was heard in this committee on April 15, 2021, but did not receive a vote and was held without recommendation.

11) **Previous Legislation**: This bill is similar to AB 1245 (Low) of 2019, except that AB 1245 applied only to candidates for elective *state* office, while this bill would additionally apply to candidates for local office. AB 1245 was heard twice in this committee, but did not receive a vote and was held without recommendation.

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

Money Out Voters In (sponsor)
350 Humboldt: Grass Roots Climate Action
350 Silicon Valley
Acterra Action for a Healthy Planet (prior version)
Alameda County Democratic Party
Alliance for Boys and Men of Color
California Environmental Justice Alliance Action
California League of Conservation Voters
Center for Community Action and Environmental Justice
Central Coast Alliance United for a Sustainable Economy
City of Berkeley
Clean Seas Lobbying Coalition
Communities for a Better Environment
Community Democracy Project (prior version)
Courage California
Democratic Party of Contra Costa County
Free Speech for People
Indivisible CA: Statestrong
Los Angeles County Democratic Party
Mi Familia Vota (prior version)
Peace and Freedom Party of California
Progressive Asian Network for Action
San Bernardino County Democratic Central Committee
Sierra Club
Students for a National Health Program, South Bay Chapter

Sunrise Silicon Valley (prior version)
Surfrider Foundation (prior version)
Approximately 2,600 individuals indicating support via various petitions and letters

Opposition

Southwest California Legislative Council (prior version)

Analysis Prepared by: Ethan Jones / ELECTIONS / (916) 319-2094