

Date of Hearing: September 13, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 201 (Cervantes) – As Amended August 29, 2019

**CONCURRENCE IN SENATE AMENDMENTS**

**SUBJECT:** Political Reform Act of 1974: campaign disclosure: text messages.

**SUMMARY:** Requires a text message that supports or opposes a candidate or ballot measure to disclose the name of the candidate or committee that paid for the text message and, in certain circumstances, the top contributors to the committee, as specified. Specifically, **this bill:**

- 1) Prohibits a candidate or committee from authorizing or paying for an advertisement that is a text message that supports or opposes a candidate or ballot measure unless the text message contains the following disclosures:
  - a) In the case of a committee other than a candidate's own controlled committee, the text "Paid for by" or "With" followed by the name of the committee or a hyperlink or Uniform Resource Locator (URL) for an internet website that contains specified information about the candidate or committee, as specified.
  - b) In the case of a candidate's own controlled committee, the text "Paid for by" or "With" followed by the name of the candidate, the word "for," and the name of the elective office sought, as specified.
  - c) In the case of a committee that has top contributors of \$50,000 or more, as specified, other than a political party or a candidate's own committee, the text "Top funders:" followed by the names of the top two contributors of \$50,000 or more to the committee paying for the advertisement, as specified.
    - i) Provides that if the disclosures required on the text message pursuant to this bill including the top two contributors would exceed 35 characters, the text message needs to include only the single top contributor of \$50,000 or more.
    - ii) Provides that if a text message includes the name of the committee paying for the advertisement and the committee's name includes the name of one of the top two contributors to the committee, the text message does not need to include the name of that funder after the text "Top funders."
  - d) Requires this disclosure to be in the same font size as a majority of the text in the text message. Prohibits a candidate or committee from contracting with a vendor that does not comply with this disclosure requirement.
- 2) Provides that the disclosure requirements of this bill do not apply to a text message that is individually sent without the assistance of mass distribution technology, including a text messaging platform.

- 3) Provides that a text message that is sent with the assistance of mass distribution technology is not required to include a disclosure of the top two contributors to the committee if both of the following conditions are met:
  - a) The text message is sent by an individual who is an unpaid volunteer.
  - b) The text message includes a disclosure stating that it is being sent by a volunteer.
- 4) Requires an internet website that is hyperlinked as provided for in this bill to remain online and available to the public until 30 days after the date of the election in which the candidate or ballot measure supported or opposed by the advertisement was voted on.
- 5) Provides that the disclosure required by this bill is only required on the first text message in a day if an exchange consists of a sequence of multiple text messages sent on the same day.

**The Senate Amendments:**

- 1) Add the provisions that require text messages to include the names of the top contributors of \$50,000 or more to the committee that is paying for the advertisement, under specified circumstances as described above.
- 2) Repeal a provision that would have permitted a committee to identify itself in a text message disclosure by using the committee's identification number if the disclosure otherwise would be impracticable or would severely interfere with the candidate's or committee's ability to convey the intended message. Allow a committee to identify itself in a text message by using the committee's name or, in the case of a candidate controlled committee, the name of the candidate followed by the word "for" followed by the elective office sought.
- 3) Provide limited flexibility in formatting and placement of disclosures required by this bill.
- 4) Specify that the term "mass distribution technology," for the purposes of this bill, includes a text messaging platform.
- 5) Add double-jointing language to avoid chaptering problems with AB 864 (Mullin) of the current legislative session, and make other minor changes.

**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 the term "advertisement," for the purposes of specified provisions of the PRA, as any general or public communication that is authorized and paid for by a committee for the purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure or ballot measures.
- 3) Requires, until January 1, 2020, an electronic media advertisement that supports or opposes a candidate or ballot measure to include a disclosure identifying the name of the committee that paid for the advertisement and the top contributors to that committee, as specified, unless

the advertisement is paid for by either of the following:

- a) A political party committee; or,
  - b) A candidate-controlled committee established for an elective office of the controlling candidate.
- 4) Requires, beginning January 1, 2020, an electronic media advertisement that is a graphic, image, animated graphic, animated image, email message, internet website, or made via a form of social media to include a disclosure or a link to a disclosure identifying the name of the committee that paid for the advertisement and the top contributors to that committee, as specified, unless the advertisement is paid for by either of the following:
- a) A political party committee; or,
  - b) A candidate-controlled committee established for an elective office of the controlling candidate.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible costs.

**COMMENTS:**

- 1) **Prior Committee Consideration of This Bill:** On April 10, 2019, this committee approved this bill on a 7-0 vote, and this bill subsequently was approved by the Assembly on a 77-0 vote. The version of this bill approved by the Assembly generally required a campaign text message to include a “Paid for by” disclosure that was followed by a hyperlink or URL for an internet website that contains specified information about the candidate or committee sending the text message. In situations where including such a disclosure was impracticable, the Assembly-approved version of the bill allowed for a committee to include a “Paid for by” disclosure followed by the committee identification number of the committee sending the message. The Assembly-approved version of the bill did *not* require campaign text messages to include the names of top contributors to the committee in the text message itself.

This bill was substantially amended in the Senate to expand the content of the disclosures that would be required to appear in political text messages. Notably, the Senate amendments require certain text messages to include a disclosure of the top funders to the committee that is paying for the text message—a requirement that will, in many cases, increase the length of required disclosures. The Senate amendments additionally make the text message disclosure requirements applicable to messages that are sent individually by using text messaging platforms. Although the Assembly-approved version did not explicitly address the applicability of the bill to such messages, this committee’s analysis of this bill indicated that according to the author’s staff, it was not the author’s intent to make the bill applicable to messages sent using text messaging platforms. In light of the Senate amendments, this bill was re-referred to this committee for further consideration pursuant to Assembly Rule 77.2.

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

One of the fundamental tenets of our state's election laws is that, in the realm of campaign communications, there is a preference for more disclosure rather than less. With read rates upwards of 98 percent, mass text messages represent the new frontier of modern campaigns. Under existing law, there are limited regulations of mass campaign text messages, including requirements for disclosing which entity paid for them...

Assembly Bill 201, the *Text Message DISCLOSE Act*, will bring needed regulation to this burgeoning front of modern campaigns. It will require mass campaign text messages that support or oppose a candidate or ballot measure—whether sent by a candidate, political party, or independent expenditure campaign—to include disclosures about which entity paid for the mass text messages...AB 201 will help provide California voters with more complete information about who is paying for and sending them mass text messages.

3) **Existing Disclosure Requirements for Text Messages and Previous Legislation:** As detailed above, existing law generally requires electronic media advertisements to include a disclosure identifying the name of the committee that paid for the advertisement and the top contributors to that committee, as specified, except in situations where the advertisement is paid for by a candidate's own controlled committee or a political party committee. The FPPC has interpreted the term "electronic media advertisement" to include text messages. Accordingly, many campaign text messages that are sent in California already are required to include a disclosure of the entity that is paying for the text message to be sent. Typically, this disclosure is accomplished through including the text "Who funded this ad?" as a hyperlink in the text message that links to an internet website with more details about the committee that paid for the advertisement.

As noted above, however, electronic media advertisements that are paid for by a candidate's own controlled committee or a political party committee generally are not required to include disclosures. Communications by candidates' own campaigns and political parties traditionally have been subject to different disclosure requirements because the identity of the entity sending the communication generally is clear to the public.

In the absence of further changes to state law, certain campaign text messages may no longer be required to include disclosures starting next year as a result of the passage of AB 2188 (Mullin), Chapter 754, Statutes of 2018. While AB 2188 was approved by the Legislature and signed into law last year, it contained a delayed operative date, and will not take effect until January 1, 2020.

AB 2188 made various changes to the required format for disclosures on political advertisements that are electronic media ads. None of the disclosure requirements in AB 2188, however, expressly cover text messages. As a result, when AB 2188 takes effect and its provisions replace the current rules that apply to electronic media advertisements, it is unclear whether political text messages will be required to include disclosures under state law.

This bill not only would ensure that specified political text messages remain subject to a

requirement that those text messages include a disclosure about the entity paying for the text message, but also would expand the text message disclosure rules to require disclosures to appear on most text messages sent by candidates and political parties. Additionally, as amended in the Senate, this bill would require the disclosures on certain text messages to include a listing of the top two contributors of \$50,000 or more to the committee that is paying for the text message to be sent.

- 4) **Mass Distribution Technology:** As detailed above, the text message disclosure requirements found in this bill do not apply to a text message that is individually sent without the assistance of mass distribution technology. When this committee considered this bill previously, the term “mass distribution technology” was not defined or otherwise described in this bill. As a result, this committee’s analysis of the bill at the time indicated that it was unclear whether this bill would apply to certain types of peer-to-peer (P2P) text messaging platforms that require human intervention to send each individual text message. However, this committee’s analysis noted that according to the author’s staff, it was not the author’s intent for the term “mass distribution technology” to include P2P text messaging services. This bill was amended in the Senate, however, to specify that the term “mass distribution technology” includes text messaging platforms, which appears to include P2P text messaging services.
- 5) **Arguments in Support:** A letter sent by a coalition of groups including the sponsor of this bill, the California Clean Money Campaign, states:

AB 201 requires texts sent by candidate committees to “stand by their text” by listing the name of the candidate and the office they’re running for. Texts paid for by other committees must list either the name of the committee or a URL to a website that includes its name and other disclosure information. If texts by committees other than candidate committees or political party committees are sent by nonvolunteers, they must additionally disclose their top two funders just like virtually every other type of political advertisement covered by existing *California DISCLOSE Act* rules.

- 6) **Arguments in Opposition:** In opposition to this bill, the California Labor Federation writes:

Political text messages are a cheap and efficient way for grass roots organizations, relatively unknown candidates, and labor unions to inform voters about the issues and candidates that affect them. Campaign disclosure requirements and efforts to expose dark money in politics are critically important but requiring political text messages to include both a hyperlink and top funders will reduce or eliminate the effectiveness of this tool that is often used by campaigns with fewer resources...By requiring political text messages to include both a URL and the top funders, AB 201 would reduce or eliminate the effectiveness of political text messages. This excessive disclosure requirement is detrimental to grass-roots campaigns that rely on this tool to engage with voters.

- 7) **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)  
California Broadcasters Association  
Chicano Latino Caucus of the California Democratic Party  
Climate Hawks Vote  
Common Cause—California  
Courage Campaign  
Demand Progress  
Democracy for America  
End Citizens United Action Fund  
Endangered Habitats League  
Fair Political Practices Commission (if amended)  
Franciscan Action Network  
Free Speech for People  
GetThru  
GMO Free California  
Indivisible CA: StateStrong  
LegitAction  
Maplight  
Money Out Voters In  
People Demanding Action  
People for the American Way  
Progressive Caucus of the California Democratic Party  
Progressive Democrats of America, California  
Public Citizen, Inc.  
RootsAction  
Voices for Progress  
Voters Right to Know  
Wolf-PAC  
3 Individuals

**Opposition**

California Labor Federation, AFL-CIO  
California School Employees Association  
SEIU State Council

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