

Date of Hearing: September 14, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 249 (Mullin) – As Amended August 29, 2017

CONCURRENCE IN SENATE AMENDMENTS

ASSEMBLY: (April 24, 2017) SENATE: 29-9 (September 11, 2017)

(vote not relevant)

SUBJECT: Political Reform Act of 1974: campaign disclosures.

SUMMARY: Changes the content and format of disclosure statements required on specified campaign advertisements in a manner that generally requires such disclosures to be more prominent. Establishes new requirements for determining when contributions are considered to be "earmarked."

The Senate amendments delete the Assembly version of the bill, and instead:

- 1) Repeal various existing requirements governing disclosure statements that must appear on specified campaign advertisements, and rules that govern the formatting and placement of those disclosures, including all of the following:
 - a) A requirement that an advertisement for or against a ballot measure include a disclosure statement identifying the two highest cumulative contributors of \$50,000 or more to the committee funding the advertisement, except as specified;
 - b) A requirement that a committee that supports or opposes one or more ballot measures must name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major donors of \$50,000 or more in any reference to the committee required by law, and must disclose its name as part of any advertisement or paid public statement; and,
 - c) A requirement that an advertisement that is paid for by an independent expenditure (IE) must include a disclosure statement identifying the name of the committee making the expenditure and the names of the persons from whom the committee making the IE received its two highest cumulative contributions of \$50,000 or more during the 12-month period prior to the expenditure, except as specified.
- 2) **Political Advertisement Disclosure Requirements:** Require advertisements, as defined, that support or oppose candidates or ballot measures, to include disclosure statements in accordance with the following requirements:
 - a) **Content of Disclosures:**
 - i) **"Paid for by" Disclosure Statement:** Require an advertisement to include the words "paid for by" followed by the name of the committee that is paying for the advertisement if either of the following is true:

- (1) The advertisement is paid for by a committee that is neither a political party committee nor a candidate's own campaign committee; or,
 - (2) If the advertisement is paid for by a political party committee or a candidate's own campaign committee, the advertisement is one of the following:
 - (a) Paid for by an IE;
 - (b) An advertisement supporting or opposing a ballot measure; or,
 - (c) A radio or television advertisement.
- ii) **"Committee Major Funding From" Disclosure Statement:** Require an advertisement to include the words "committee major funding from" followed by the names of the three top contributors to the committee paying for the advertisement, as specified, if the advertisement is paid for by a committee that is both of the following:
- (1) Neither a political party committee nor a candidate's own campaign committee; and,
 - (2) A committee that has received contributions of \$2,000 or more in a calendar year (commonly known as a "recipient committee").

For the purpose of this requirement, "top contributors" is defined as the persons from whom the committee paying for an advertisement has received its three highest cumulative contributions of \$50,000 or more. "Cumulative contributions" is defined as the cumulative amount of contributions received by the committee beginning 12 months before the date of the expenditure and ending seven days before the time the advertisement is sent to the printer or broadcaster. If two or more contributors of identical amounts qualify as top contributors, the most recent contributor of that amount shall be listed as the top contributor.

If any of the top contributors is a sponsored committee with a single sponsor, only the name of the single sponsoring organization shall be disclosed.

If fewer than three contributors qualify as top contributors, only those contributors that qualify need to be disclosed, and if no contributors qualify as top contributors, the disclosure is not required.

- iii) **Independent Expenditure Disclosure Statement:** An advertisement supporting or opposing a candidate that is paid for by an IE must include a statement that it was not authorized by a candidate or a committee controlled by a candidate for that office. This disclosure statement is already required under current law, though this bill provides limited flexibility to the wording used for such a statement, depending on the committee that is paying for the IE.
- b) **Formatting, Display, Legibility, and Audibility of Disclosures:**
- i) **Committees Other than Political Parties and Candidates:** Disclosure statements in advertisements that are paid for by a committee that is neither a political party

committee nor a candidate's own campaign committee must comply with the following formatting, display, legibility, and audibility requirements:

- (1) **Audio Advertisements:** An advertisement disseminated over the radio or by telephonic means shall include the disclosures required by this bill and other existing provisions at the beginning or end of the advertisement, read in a clearly spoken manner and in a pitch and tone substantially similar to the rest of the advertisement, and shall last no less than three seconds. However, radio and prerecorded telephonic advertisements only need to disclose the top two contributors of \$50,000 or more unless the advertisement lasts 15 seconds or less or the disclosure statement would last more than eight seconds, in which case only the single top contributor of \$50,000 or more is disclosed.
- (2) **Video Advertisements:** An advertisement disseminated as a video, including advertisements on television and videos disseminated over the Internet, shall include the disclosures required by this bill at the beginning or end of the advertisement as follows:
 - (a) The disclosures must be written and displayed for at least five seconds of a broadcast of 30 seconds or less or for at least 10 seconds of a broadcast that lasts longer than 30 seconds.
 - (b) The written disclosures shall appear on a solid black background on the entire bottom one-third of the television or video display screen, or bottom one-fourth of the screen if the committee does not have or is otherwise not required to list top contributors, and shall be in a contrasting color in Arial equivalent type, and the type size for the smallest letters in the written disclosure shall be 4 percent of the height of the television or video display screen.
 - (c) The top contributors, if any, shall each be disclosed on a separate horizontal line, in descending order, beginning with the top contributor who made the largest cumulative contributions on the first line. The name of each of the top contributors shall be centered horizontally. The written disclosures shall be underlined, except for the names of the top contributors, if any.
 - (d) If using a type size of 4 percent of the height of the television or video display screen causes the name of any of the top contributors to exceed the width of the screen or causes the disclosures to exceed one-third of the television or video display screen, the type size of the name of the top contributor shall be reduced until the top contributor's name fits on the width of the screen or the entire disclosure fits within one-third of the television or video display screen, but in no case shall the type size be smaller than 2.5 percent of the height of the screen.
 - (e) An advertisement that is an IE supporting or opposing a candidate shall include the appropriate "not authorized by" statement in the solid black background below all other text required to appear in that area in a contrasting color and in Arial equivalent type no less than 2.5 percent of the height of the television or video display screen.

- (3) **Print Advertisements:** A print advertisement shall include the disclosures required by this bill, displayed as follows:
- (a) The disclosure area shall have a solid white background and shall be in a printed or drawn box on the bottom of at least one page that is set apart from any other printed matter. All text in the disclosure area shall be in contrasting color.
 - (b) The top contributors, if any, shall each be disclosed on a separate horizontal line, in descending order, beginning with the top contributor who made the largest cumulative contributions on the first line. The name of each of the top contributors shall be centered horizontally in the disclosure area. Immediately below this text, specified committees that raise \$1 million or more shall include the text "Funding Details At [insert Fair Political Practices Commission (FPPC) Internet Web site]," subject to existing law.
 - (c) The text shall be in an Arial equivalent type with a type size of at least 10-point for printed advertisements designed to be individually distributed, including, but not limited to, mailers, flyers, and door hangers.
 - (d) Required disclosures on a printed advertisement that is larger than those designed to be individually distributed, including, but not limited to, yard signs or billboards, shall be in Arial equivalent type with a total height of at least five percent of the height of the advertisement, and printed on a solid background with sufficient contrast that is easily readable by the average viewer. The text may be adjusted so it does not appear on separate horizontal lines, with the top contributors separated by a comma.
 - (e) Newspaper, magazine, or other public print advertisements that are 20 square inches or less shall be required to disclose only the single top contributor of \$50,000 or more.
- (4) **Electronic Media Advertisements:**
- (a) **Internet Web Sites:** An electronic media advertisement that is an Internet Web site must include the disclosure statements in a contrasting color and in no less than 8-point font.
 - (b) **Other Electronic Media Advertisements:** An electronic media advertisement that is not an Internet Web site shall comply with both of the following except as otherwise specified:
 - (i) Include the text "Who funded this ad?" in a contrasting color and a font size that is easily readable by the average viewer.
 - (ii) Such text shall be a hyperlink to an Internet Web site containing the disclosures required by this bill in a contrasting color and in no less than 8-point font. Such a hyperlinked Internet Web site must 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 upon.

An advertisement made via a form of electronic media that is audio only and therefore cannot include either of these disclaimers shall comply with the disclaimer requirements for audio advertisements.

An advertisement made via a form of electronic media that allows users to engage in discourse and post content, or any other type of social media, shall only be required to include the required disclosures in a contrasting color and in no less than 8-point font on the committee's profile, landing page, or similar location and shall not be required to include the required disclaimer on each individual post, comment, or other similar communication.

The disclaimer required by this provision does not apply to advertisements made via social media for which the only expense or cost of the communication is compensated staff time unless the social media account where the content is posted was created only for the purpose of advertisements governed by the Political Reform Act (PRA).

- ii) **Political Parties and Candidates:** Disclosure statements in advertisements that are paid for by a political party committee, or by a candidate's own campaign committee, must comply with the following formatting, display, legibility, and audibility requirements:
 - (1) **IE and Ballot Measure Advertisements:** An advertisement that is paid for by an IE, or that supports or opposes a ballot measure, shall comply with the following:
 - (a) **Audio Advertisements:** A radio or telephone advertisement shall include the required disclosures at the beginning or end of the advertisement and be read in a clearly spoken manner and in a pitch and tone substantially similar to the rest of the advertisement, and shall last no less than three seconds.
 - (b) **Video Advertisements:** A video advertisement, including television and videos disseminated over the Internet, shall include the required disclosures in writing at the beginning or end of the advertisement in a text that is of sufficient size to be readily legible to an average viewer and in a color that has a reasonable degree of contrast with the background of the advertisement for at least four seconds. The required disclosure must also be spoken during the advertisement if the written disclosure appears for less than five seconds of a broadcast of thirty seconds or less or for less than ten seconds of a broadcast of sixty seconds or more.
 - (c) **Print Advertisements:** A print advertisement shall include the required disclosures in no less than 10-point font and in a color that has a reasonable degree of contrast with the background of the advertisement. The disclosure on a print advertisement that is larger than those designed to be individually distributed, such as a yard sign or billboard, shall in total constitute no less than five percent of the height of the advertisement and shall appear in a color

that has a reasonable degree of contrast with the background of the advertisement.

(d) **Electronic Media Advertisements:** The required disclosures shall comply with the same rules as detailed above for electronic media advertisements that are paid for by a committee other than a political party committee or a candidate's own campaign committee.

(2) **Other Radio and Television Advertisements:** A radio or television advertisement that is not paid for by an IE, and that does not support or oppose a ballot measure, shall comply with the following:

(a) **Radio Advertisements:** A radio advertisement shall include the required disclosure at the beginning or end of the advertisement and be read in a clearly spoken manner and in a pitch and tone substantially similar to the rest of the advertisement.

(b) **Television Advertisements:** A television advertisement shall include the required disclosure in writing for at least four seconds with letters in a type size that is greater than or equal to 4 percent of the height of the screen.

c) **Updates of Disclosure Statements:** Require disclosure statements to be updated to reflect any changes in the order of top contributors as follows:

i) In the case of television, radio, telephone, or other electronic media advertisements, within five business days, as specified; and,

ii) In the case of a print advertisement, including non-electronic billboards, prior to placing a new or modified order for additional printing of the advertisement.

d) **Certain Existing Disclosure Statement Requirements Maintained:**

i) Maintain the existing disclosure requirements for a mass mailing sent by a political party committee or a candidate's own campaign committee, or for a mass mailing sent by any other committee if that mass mailing is not required to include a disclosure statement pursuant to the other provisions of this bill.

ii) Maintain the existing disclosure requirements for telephone calls that are paid for by a political party committee, a candidate's own campaign committee, or a slate mailer organization.

3) **Disclosure of Earmarked Contributions on Advertisements and Reports:**

a) **Determination of When a Contribution is "Earmarked" for Reporting Purposes:**

Prohibit a person from making a contribution to a committee or candidate that is earmarked for a contribution to any other particular committee, ballot measure, or candidate, unless the earmarking is reported as specified.

- i) Provide that a contribution is considered to be earmarked for reporting purposes under any of the following circumstances:
 - (1) The committee or candidate receiving the contribution solicited the contribution for the purpose of making a contribution to another specifically identified committee, ballot measure, or candidate, requested the contributor to expressly consent to such use, and the contributor consents to such use.
 - (2) The contribution was made subject to a condition or agreement with the contributor that all or a portion of the contribution would be used to make a contribution to another specifically identified committee, ballot measure, or candidate.
 - (3) After the contribution was made, the contributor and the committee or candidate receiving the contribution reached a subsequent agreement that all or a portion of the contribution would be used to make a contribution to another specifically identified committee, ballot measure, or candidate.
 - ii) Provide that dues, assessments, fees, and similar payments made to a membership organization or its sponsored committee in an amount less than \$500 per calendar year from a single source for the purpose of making contributions or expenditures shall not be considered earmarked.
 - iii) Require a committee making an earmarked contribution to provide the committee receiving the earmarked contribution with information regarding the contributor or contributors who earmarked their funds, as specified.
 - iv) Require earmarked contributions to be listed on campaign reports in such a way that the original source and any intermediary is disclosed, as specified.
 - v) Provide that a violation of these earmarking provisions shall not be based *solely* on the timing of contributions made or received.
- b) **Determination of "Top Contributors" to be Disclosed on Advertisements:** Provide, for the purposes of determining the identities of the "top contributors" that a committee must disclose on an advertisement pursuant to this bill, that if a primarily formed committee contributes funds to another committee primarily formed to support or oppose the same state candidate or ballot measure and the funds used for the contribution were earmarked to support or oppose that candidate or ballot measure, the committee receiving the earmarked contribution must disclose the contributors who earmarked their funds as the top contributor or contributors on the advertisement if the definition of top contributor is otherwise met. Provide that if the committee receiving the earmarked contribution contributes any portion of the contribution to another committee primarily formed to support or oppose the specifically identified ballot measure or candidate, that committee must disclose the true source of the contribution to the new committee receiving the earmarked funds. Require the new committee to disclose the contributor on the new committee's advertisements if the definition of top contributor is otherwise met.
- i) Require the primarily formed committee making the earmarked contribution to provide the committee receiving the earmarked contribution with information

regarding the contributor or contributors who earmarked their funds and the amount earmarked by each contributor, as specified. Prohibit the same contribution from being disclosed more than one time to avoid disclosure of additional contributors who earmarked their funds.

- ii) Provide that the committee receiving the earmarked contribution may rely on the information provided by the contributor for purposes of complying with the disclosure required to appear on the advertisement and shall be considered in compliance with that provision if the information is disclosed as otherwise required.

4) Miscellaneous Provisions:

- a) Extend existing administrative and civil penalty provisions to the new disclosure requirements enacted by this bill, and provide that violations of specified formatting and display requirements are subject to existing treble damages only if the violation is intentional.
 - b) Repeal requirements that dictate the placement and format on mailed advertisements of a specified disclaimer that is required to appear on advertisements that are paid for by IEs, and provide limited flexibility to the wording used for such a disclaimer, depending on the committee that is paying for the IE.
 - c) Codify various FPPC regulations, including regulations that specify the entity that is required to be identified under existing disclaimer rules, define the term "expenditure," specify the types of advertisements that are not required to include disclaimers where they cannot be conveniently printed or displayed, and govern the appearance of existing disclaimers on electronic mass mailings.
 - d) Add findings and declarations.
 - e) Make various minor, technical, clarifying, and conforming changes.
- 5) Change the author of the bill, and add co-authors.
- 6) Add an urgency clause, but provide that the bill shall not become operative until January 1, 2018.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires an advertisement for or against any ballot measure to include a disclosure statement identifying any person whose cumulative contributions are \$50,000 or more. Provides that if there are more than two donors of \$50,000 or more, the disclosure only needs to include the highest and second highest donors in that order.
- 3) Requires a committee that supports or opposes one or more ballot measures to name itself using a name or phrase that identifies the economic or other special interest of its major donors of \$50,000 or more. Provides that if the major donors of \$50,000 or more share a common employer, the identity of the employer must also be disclosed.

- 4) Requires an advertisement supporting or opposing a candidate or ballot measure that is paid for by an IE to include a disclosure statement identifying the name of the committee making the expenditure and the names of the persons from whom the committee making the IE received its two highest cumulative contributions of \$50,000 or more during the 12-month period prior to the expenditure.
- 5) Provides that when a disclosure of the top two donors is required on an advertisement pursuant to the above provisions, only the largest donor needs to be disclosed on an advertisement that is an electronic broadcast of 15 seconds or less or a print advertisement of 20 square inches or less.
- 6) Requires an advertisement supporting or opposing a candidate that is paid for by an IE to include the following statement in no less than 14-point, bold, sans serif type: "This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office." Requires, when included in a mailed advertisement paid for by an IE, that this statement be located adjacent to the recipient's name and address as printed on the advertisement and further requires the text of the statement to be contained in a specified box. Requires the text, the interior of the box, the outline of the box, and the background of the advertisement to be in contrasting colors.
- 7) Provides that a person who violates any of the disclosure requirements detailed above, in addition to specified remedies generally available under the PRA, is liable in a civil or administrative action for a fine of up to three times the cost of the advertisement, including placement costs, as specified.
- 8) Provides that no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail of the mailing in no less than 6-point type which shall be in a color or print which contrasts with the background so as to be easily legible. Provides that if the sender of the mass mailing is a single candidate or committee, the name, street address, and city of the candidate or committee need only be shown on the outside of each piece of mail. Provides that if the sender of a mass mailing is a controlled committee, the name of the person controlling the committee shall also be included.
- 9) Provides that a candidate, committee, or slate mailer organization may not expend campaign funds to pay for telephone calls that are similar in nature and aggregate 500 or more in number, made by an individual, or individuals, or by electronic means and that advocate support of, or opposition to, a candidate, ballot measure, or both, unless during the course of each call the name of the entity that authorized or paid for the call is disclosed to the recipient of the call, as specified. This requirement does not apply to telephone calls made by the candidate, the campaign manager, or individuals who are volunteers.
- 10) Requires a committee primarily formed to support or oppose a state ballot measure or state candidate that raises \$1 million or more for an election to maintain an accurate list of the committee's top 10 contributors, as specified. Requires the committee to provide a current list of the top 10 contributors to the FPPC, as specified, for disclosure on the FPPC's Internet Web site.

- 11) Prohibits a person from making any contribution to a committee on the condition or with the agreement that it will be contributed to any particular candidate unless the contribution is fully disclosed, as specified. Prohibits a person from making a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing specified information to the recipient about both the intermediary and the other person.
- 12) Requires, pursuant to the Federal Communications Commission's (FCC) sponsorship identification regulations, that when a broadcast station transmits any matter for which valuable consideration is paid, the station, at the time of the broadcast, shall announce that such matter is paid for and by whom such consideration was supplied. Requires, in the case of a television political advertisement concerning candidates for public office, that the sponsor be identified with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.

AS PASSED BY THE ASSEMBLY, this bill increased the maximum allowable penalty for violations of the hazardous waste control law from \$25,000 to \$37,500.

FISCAL EFFECT: According to the Senate Appropriations Committee, the FPPC indicates that it would incur first-year costs of \$365,000, and ongoing costs of \$348,000 (General Fund) to implement the provisions of the bill.

COMMENTS:

- 1) **Prior Assembly Consideration of this Bill:** As approved by the Assembly in April, this bill would have increased the maximum allowable penalty for violations of the hazardous waste control law from \$25,000 to \$37,500. Subsequent to the Assembly's approval of this measure, it was amended in the Senate to delete the Assembly-approved provisions of the bill, and to add the current provisions. As a result, this bill has been re-referred to this committee for further consideration pursuant to Assembly Rule 77.2.
- 2) **Purpose of the Bill:** According to the author:

Current campaign finance disclosure laws are not sufficient... to provide accurate information to voters, especially [about] who is truly paying for campaign advertisements. TV ads flash fine print at viewers and radio ads speed read through finance information, often times with misleading information as to who has truly funded the advertisement. Current law allows top donors to hide behind multiple layers of organizations to intentionally mislead advertisement viewers and listeners. This makes it extremely difficult for voters to have truthful information when it comes to campaign finances and donors for advertisements. This bill not only seeks to remedy the fact that campaigns can hide true top donors, but also [improves] the standards for disclosures on TV, radio, and electronic ads in terms of format, font size, and duration.
- 3) **Existing Political Advertising Disclaimers:** Under state and federal law, committees must put "paid for by" disclaimers on certain campaign advertising, including campaign mailers, radio and television ads, telephone robocalls, and electronic media ads. The following, which is based on a publication produced by the FPPC, discusses disclaimer requirements for committees that purchase advertisements or circulate material supporting or opposing a state or local candidate or ballot measure in California.

When is a disclaimer required on political ads or materials?

Political committees must include the following disclaimers:

- **Mass mailings**, including blast campaign emails, must include identification of the sender.
- **Paid telephone calls** must identify the candidate or committee who paid for or authorized the call.
- **Radio and television ads** must include a "paid for by" disclaimer under [FCC] law.
- **Ballot measure ads and independent expenditure ads** must include "paid for by *committee name*" and such ads by primarily formed committees must also list top two donors of \$50,000 or more. This applies to television, radio, and electronic media advertisements, robocalls, mass mailings, and print ads such as newspaper ads, billboards and yard signs.

Are the [PRA's] disclaimer rules the same for all committees and all ads?

No. Basic disclaimer rules apply to campaign materials disseminated by a candidate for their own election campaign because it is generally clear to the public that the candidate is sending the communication. Stricter disclaimer rules apply to (1) ballot measure advertisements and (2) independent expenditure advertisements on candidates and ballot measures, because it is less clear to the public who is responsible for these ads.

What does the disclaimer have to state?

The basic disclaimer must state: "Paid for by *committee name*." Ballot measure and independent expenditure ads paid for by primarily formed committees must also list top two donors of \$50,000 or more and special committee name rules apply. All *independent expenditure* ads for or against a candidate must state: "This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office."...

How must the disclaimer appear?

Disclaimers on political ads and literature must be clear and conspicuous so as to be understood by the intended public. Written disclaimers must be printed clearly and legibly. Spoken disclaimers must be clearly audible and intelligible...

Updating a disclaimer

When a committee's name changes because of new top donors or otherwise, advertisement disclaimers must be revised. Television, radio, electronic media, or robocalls must be amended within five calendar days. Print media, mass mailings, or other tangible items must be amended every time an order to reproduce is

placed.

Advertisements in Languages Other than English

Disclaimers on political advertisements should be written or spoken in the same language used in the advertisement.

Does a disclaimer have to appear on ALL printed materials or campaign items?

No. A disclaimer is not required on regular-size campaign buttons, pins, bumper stickers, or magnets. It is not required on pens, pencils, rulers, mugs, potholders, key tags, golf balls and similar small campaign promotional items where a disclaimer cannot be conveniently printed. The disclaimer is not required on t-shirts, caps, hats, and other articles of clothing; skywriting and airplane banners; or committee checks and receipts.

- 4) **Political Advertising Disclosure Statements and General Purpose Committees:** As detailed above, in certain situations, advertisements related to ballot measures or that are paid for by IEs are required to include a disclaimer that identifies the two top contributors of \$50,000 or more to the committee that is funding the advertisement, but this requirement does not apply to all committees. Primarily formed committees generally must include the disclaimer identifying top contributors in their advertisements, while general purpose committees (including political party committees) do not. (A primarily formed committee makes a significant majority of its contributions and expenditures to support or oppose a single candidate or a group of specific local candidates on the same ballot, or to support or oppose a single measure or two or more measures being voted on in the same election. By contrast, a general purpose committee is usually ongoing in nature and supports or opposes a variety of candidates and ballot measures over the course of several years.)

Even though state statute does not make a distinction between advertisements paid for by primarily formed committees and those paid for by general purpose committees, the FPPC has specified by regulation that general purpose committees are not required to identify their top contributors on advertisements they fund. This regulation was adopted in response to two court cases in which courts struck down requirements for committees to identify certain contributors in political advertisements funded by those committees. In one of those cases, the FPPC was enjoined from enforcing the PRA's on-advertisement contributor disclaimer requirements against general purpose committees.

This bill significantly overhauls the content and format of disclosure statements required on campaign advertisements, when paid for by entities other than political parties and candidates' own campaign committees, in a way that generally requires such disclosures to be more prominent. Additionally, this bill generally requires such advertisements to include an identification of the three top contributors to the committee funding the advertisement, instead of the two top contributors that are required to be identified under existing law. In light of the court cases that led the FPPC to exempt general purpose committees from the PRA's on-advertisement contributor disclosure requirements, however, it is unclear whether legal challenge could similarly result in general purpose committees being exempt from the on-advertisement contributor disclosure requirements of this bill.

- 5) **Political Advertising Disclosure Statements for Candidates and Political Parties:** For advertisements that are paid for by political parties and by candidates' own campaign committees, the provisions of this bill largely maintain the disclosure requirements that apply under existing law. As is the case under existing law, these advertisements would not be required to include a disclosure of the top contributors to the committee paying for the ad. Furthermore, requirements for formatting, display, legibility, and audibility of disclosures on such advertisements largely would remain unchanged by this bill.

This bill does, however, enact a requirement in the PRA that a radio or television advertisement that is paid for by a political party or a candidate must include a "paid for by" disclaimer. While no such requirement currently exists in *state* law, this requirement is similar to existing FCC sponsorship identification regulations, as detailed above. As a result, this new requirement in state law is unlikely to have a significant effect on disclosures that are required to be included on radio and television ads paid for by candidates and political parties. Entities that fail to include the required disclosure, however, would now be subject to potential penalties under state law.

- 6) **Earmarking:** As detailed above, existing law prohibits a person from making a contribution to a committee that is earmarked for a contribution to a particular candidate unless the contribution is fully disclosed. Additionally, existing law requires that both the intermediary and the true source of a contribution be disclosed whenever a contribution is made through an intermediary.

This bill expands the earmarking prohibition to prohibit a person from making a contribution that is earmarked for any particular *committee* or *ballot measure* unless the contribution is fully disclosed, as specified. This bill additionally provides, for the purposes of this earmarking prohibition, that dues, assessments, fees, and similar payments made to a membership organization or its sponsored committee in an amount less than \$500 per calendar year from a single source for the purpose of making contributions or expenditures shall not be considered earmarked. Questions have been raised whether this latter provision would (1) allow membership organizations to solicit contributions of less than \$500 per calendar year from their members that are designated for a specific purpose without disclosing the identities of those contributors, as is otherwise required when a committee receives contributions of \$100 or more, or (2) allow an individual or an organization to make contributions to a candidate or committee in excess of existing contribution limits.

It should be noted, however, that this provision does not apply generally to the solicitation of contributions; instead, it applies only to *dues, assessments, fees, and similar payments* that are made to a membership organization. Additionally, nothing in this bill relieves a membership organization or its sponsored committee from provisions of existing law that require a committee to disclose the name, street address, occupation, and employer of persons from which the committee received contributions of \$100 or more in a calendar year. Finally, no provision of this bill, including the provisions regarding earmarked contributions, expressly or impliedly repeals, amends, or alters the calculation of how much money individuals and organizations may lawfully contribute to political campaigns.

- 7) **Arguments in Support:** The sponsor of this bill, the California Clean Money Campaign, writes:

Campaign spending on ballot measures has reached unprecedented levels. Nearly \$1 billion was spent in California on ballot measures from 2012 to 2016, almost all of it by donors whose true identities were obscured on ads by misleading names buried in fine print...

AB 249 significantly improves disclosures on ballot measure and independent expenditure ads, requiring their three largest funders to be shown clearly and unambiguously on television and print ads regardless of whether they're paid for by primarily-formed or general purpose committees...

AB 249 also expands existing reporting follow-the-money earmarking rules for contributions to candidates to include contributions meant for specifically identified committees or ballot measures. Even more importantly, it ensures that when a committee primarily formed to support or oppose a state candidate or ballot measure contributes to another committee primarily formed to support or oppose a state candidate or ballot measure and the funds used were earmarked for that candidate or ballot measure, that they must report the earmarked contributions and that those earmarked contributions must be shown on the ads if they're a top contributor.

These rules will, for the first time, reveal true funders on ballot measure ads when the funders attempt to hide behind one or more layers of misleading front groups, while providing a reasonable exemption for unnecessary new earmarking tracking of small donors giving up to \$500 a year for specific ballot measures.

8) **Arguments in Opposition:** In opposition to this bill, the Howard Jarvis Taxpayers Association writes:

AB 249 would add a number of cumbersome, free speech restricting provisions to political advertisements. This is especially true for television ads, creating a disclosure area with a solid black background on the bottom third of the screen for five seconds of a 30 second television ad and listing the names of the three largest contributors who paid for the advertisement. If no top contributors exist, one-quarter of the screen is still required to be covered with a black box. Beyond creating a 'scarlet letter' for advertisements, this provision could be unconstitutional.

While the intent of this measure is to enhance disclosure and transparency in ballot campaigns, the amended version of AB 249 makes it clear that disclosure is only important for some. While the measure bans earmarking, it allows membership organizations, including labor issues, to engage in the practice as long as the amount contributed to them is \$500 or less from a single source. If reporting where political contributions originated from is important, it should be important across the political spectrum. While the dollar threshold of \$500 is much lower in AB 249 when compared to prior bills, there yet remains a point at which regulations designed to improve democracy actually impede it. This problem still exists in AB 249.

9) **Related Legislation:** AB 14 (Gomez), which is pending in this committee, is similar to this bill, though there are several notable differences between the two bills. At the author's request, AB 14 was not heard in this committee.

10) **Previous Legislation:** This bill is similar to AB 700 (Gomez) of the 2015-16 Legislative Session. AB 700 failed passage on the Senate Floor on a 26-11 vote. Because AB 700 proposed to amend the PRA without being submitted to voters for their approval, it required a two-thirds vote of each house of the Legislature for passage (27 votes in the case of the Senate).

AB 700 was similar to three bills considered in prior legislative sessions. SB 52 (Leno) of the 2013-14 Legislative Session proposed to change the content and format of disclosure statements on specified campaign advertisements to make those statements more prominent, among other provisions. SB 52 died on the Assembly's Inactive file. AB 1148 (Brownley) and AB 1648 (Brownley) from the 2011-12 Legislative Session also proposed increasing the prominence of disclosure statements on campaign advertisements, among other provisions. AB 1148 failed passage on the Assembly Floor, while AB 1648 was approved by the Assembly, but was not heard in the Senate.

11) **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)
American Family Voices
California Alliance for Retired Americans
California Broadcasters Association (prior version)
California Church IMPACT
California Common Cause
California Democratic Party
California Interfaith Power & Light (prior version)
California League of Conservation Voters
California Physicians Alliance
California Public Interest Research Group
Californians for Disability Rights
Citizens for Responsibility and Ethics in Washington
Coalition for Clean Air
Communications Workers of America, District 9 (prior version)
Conference of California Bar Associations
Consumer Watchdog
CounterPAC
Courage Campaign
CREDO

Daily Kos
Democracy for America
Endangered Habitats League
Free Speech for People
Friends of the Earth
League of Women Voters of California
LegitAction
Lutheran Office of Public Policy—California
Maplight
Money Out People In
Money Out Voters In
New Progressive Alliance
Our Revolution California
People for the American Way
People Demanding Action
Public Citizen
Represent.Us
Secretary of State Alex Padilla
Social Security Works
Take Back Our Republic
Voices for Progress Education Fund
One individual

Opposition

Howard Jarvis Taxpayers Association

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