STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0096
(916) 319-2094
FAX: (916) 319-2194

Assembly
California Legislature

ASSEMBLY COMMITTEE ON
ELECTIONS AND REDISTRICTING
PAUL FONG, CHAIR

AGENDA

1:30 P.M. – June 10, 2014
State Capitol, Room 444

BILLS HEARD IN SIGN-IN ORDER

(Testimony may be limited to 3 witnesses testifying for each side
2 minutes per witness)

Item	Bill No. & Author	Summary
1.	HR 37 (Wieckowski)	Campaign contributions.
2.	SB 1043 (Torres)	Petitions: in-lieu-filing fee and political party qualification petitions: penal provisions.
3.	SB 1226 (Correa)	Political Reform Act of 1974: local campaign finance reform.
4.	SB 1272 (Lieu)	Campaign finance: advisory election.
5.	SB 1441 (Lara)	Political Reform Act of 1974: contributions.

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Date of Hearing: June 10, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
HR 37 (Wieckowski) – As Amended: June 4, 2014

SUBJECT: Campaign contributions.

SUMMARY: States the Assembly's disagreement with the United States (US) Supreme Court's decision in McCutcheon v. Federal Election Commission (2014) No. 12-536 (McCutcheon). Specifically, this resolution:

1) Makes the following findings and declarations:

   a) The US Supreme Court's decision in Citizens United v. Federal Election Commission (2010) 558 U.S. 310 (Citizens United) upset longstanding precedent limiting the political influence of corporations and unions.

   b) The US Supreme Court's decision in McCutcheon further eviscerates our nation's campaign finance laws by overturning nearly 40 years of law upholding aggregate limits on campaign contributions.

   c) Aggregate contribution limits restrict the total amount of money a donor may contribute to all federal candidates and other political committees in an election cycle.

   d) In holding that aggregate contribution limits are invalid under the First Amendment, McCutcheon creates a legal loophole that allows an individual donor to contribute millions of dollars to political parties and individual candidates.

   e) The US Supreme Court has long recognized that campaign finance laws are necessary not only to eliminate quid pro quo corruption in elections by preventing the direct exchange of money for official action, but also to curtail undue influence by wealthy donors.

   f) The democratic process depends on unfettered communication between the people and their elected representatives so that the government may act in response to prevailing public opinion.

   g) Campaign finance laws that allow limitless contributions subvert this political process by enabling the voices of the few to override the collective voice of the many.

   h) Removing aggregate contribution limits also engenders an appearance of corruption that undermines the public's faith in government.

2) States the Assembly's respectful disagreement with the majority opinion and decision of the US Supreme Court in McCutcheon.

3) Calls upon the US Congress to restore constitutional rights and fair elections to all people, not merely to those who can afford it.

FISCAL EFFECT: None

COMMENTS:

1) Purpose of the Resolution: According to the author:

> Many citizens and scholars have been troubled by the influence that special interest groups and individuals have through using contributions to purchase access and influence to legislative channels. Since the challenge on FECA's regulations on the basis of free speech in *Buckley v. Valeo*, the Supreme Court held that regulations dealing with money in politics can raise First Amendment concerns; yet all regulations are not *per se* unconstitutional.
>
> Recently, the United States Supreme Court decision in McCutcheon v. Federal Election Commission on April 2, 2014 further eviscerates our [nation's] campaign finance laws by overturning nearly 40 years of law upholding aggregate limits on campaign contributions since the ruling in *Buckley v. Valeo*. Aggregate contribution limits restrict the total amount of money a donor may contribute to all federal candidates and other political committees in an election cycle. Prior to the *McCutcheon* decision, individuals were limited to aggregate contributions of $48,600 to all candidates, plus $74,600 to all PACs and parties. Accordingly, anyone wishing to donate the maximum $5,200 per candidate would be constrained to nine candidates before encountering the combined limit. In *McCutcheon*, the Supreme Court overturned the aggregate ceilings because they did not advance the anti-corruption rationale underlying campaign finance laws. In holding that aggregate contribution limits are invalid under the First Amendment, *McCutcheon v. Federal Election Commission* creates a legal loophole that allows an individual donor to contribute millions of dollars to political parties and individual candidates. The United States Supreme Court has long recognized that campaign finance laws are necessary not only to eliminate quid pro quo corruption in elections by preventing the direct exchange of money for official action, but also to curtail undue influence by wealthy donors.
>
> Yet, this plurality is not being upheld. Per the dissenting opinion of the Supreme Court in the *McCutcheon v. Federal Election Commission*, "in the absence of limits on aggregate political contributions, donors can and likely will find ways to channel millions of dollars to parties and to individual candidates, producing precisely the kind of 'corruption' or 'appearance of corruption' that previously led the Court to hold aggregate limits constitutional." As a result, these potential channels of access can layout an opportunity for circumvention by creating huge loopholes that will aid the production of special access and corruption. In removing aggregate limits, the Supreme Court ruling has undermined what remained of campaign finance reform.

2) McCutcheon v. Federal Election Commission: In April of this year, the US Supreme Court issued its decision in McCutcheon, a case concerning a federal law restricting the aggregate amount that a donor may contribute in total to all federal candidates and committees in an

election cycle.

Federal campaign finance law contains two types of contribution limits. The first, referred to as "base limits," cap the amount that a donor can give to a candidate, a political party, or a political action committee (PAC) that makes contributions to candidates (for instance, a donor is prohibited from making contributions to a federal candidate totaling more than $5,200 per election cycle—$2,600 for the primary election, and $2,600 for the general election). The Supreme Court's decision did not address these limits, which are similar to contribution limits that are in place in the Political Reform Act.

The second type of contribution limits are aggregate limits, which cap the total amount that an individual donor can contribute in an election cycle. The aggregate limits permit an individual to contribute a total of $48,600 to federal candidates and a total of $74,600 to other political committees (political parties and PACs) in each two-year election cycle. The base limits and the aggregate limits work in tandem, so a donor would be unable to give the maximum $5,200 contribution to more than nine different federal candidates in an election cycle.

It was these second type of limits—aggregate limits—that were at issue in McCutcheon. The Supreme Court, on a 5-4 ruling, struck down the aggregate limits, finding that the limits impermissibly burden individuals' "expressive and associational rights" because they limit the number of candidates that a donor can support. Chief Justice Roberts' opinion rejected arguments that the aggregate limits served an important function in preventing corruption. By contrast, the dissenting justices argued that the court's ruling applied an unreasonably narrow definition of corruption, and maintained that the aggregate limits serve an important role in limiting undue influence by campaign donors.

California does not have aggregate limits of the type that were struck down by the court in McCutcheon, though local jurisdictions in California are free to adopt their own campaign ordinances, and at least one (the City of Los Angeles) has aggregate limits that are similar to the aggregate limits that were struck down by the McCutcheon court.

3) Related Legislation: SB 1272 (Lieu), which is also being heard in this committee today, places an advisory question on the November 4, 2014 statewide general election ballot asking voters whether Congress should propose, and the Legislature should ratify, an amendment or amendments to the US Constitution to overturn Citizens United and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending.

   AJR 1 (Gatto), which is pending in the Senate Judiciary Committee, petitions Congress to call for a federal constitutional convention for the purpose and hope of solely amending the US Constitution with a single amendment to limit "corporate personhood" for purposes of campaign finance and political speech and declare that money does not constitute speech.

4) Previous Legislation: AJR 22 (Wieckowski & Allen), Resolution Chapter 69, Statutes of 2012, called upon the US Congress to propose and send to the states for ratification a constitutional amendment that would overturn Citizens United.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause

Opposition

None on file.

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

Date of Hearing: June 10, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1043 (Torres) – As Introduced: February 18, 2014

SENATE VOTE: 36-0

SUBJECT: Elections: in-lieu-filing fee and political party qualification petitions: penal provisions.

SUMMARY: Provides that a person who is found guilty of fraud within the context of circulating or filing of an in-lieu-filing fee petition or political party qualification petition is subject to the same penalties as a person found guilty of other forms of petition fraud. Specifically, this bill:

1) Defines the term "political party qualification petition" to mean a petition circulated to qualify a political party.

2) Provides that a person who is found guilty of fraudulently circulating an in-lieu-filing fee petition or political party qualification petition is subject to the same penalties as a person found guilty of other forms of petition fraud.

EXISTING LAW

1) Defines "party" as a political party or organization that has qualified for participation in any primary or presidential general election.

2) Specifies that every person charged with the performance of any duty under any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his/her official capacity, knowingly and fraudulently acts in contravention or violation of any of those laws, is, unless a different punishment is prescribed by law, punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment for 16 months or two or three years, or by both that fine and imprisonment. Specifically, these duties include the circulation of nomination papers, declarations of candidacy, and initiative, referendum, and recall petitions.

3) Makes it a crime, subject to various criminal penalties, to engage in specified misconduct in connection with the circulation of nomination papers, declarations of candidacy, and initiative, referendum, and recall petitions, including the following:

   a) Defacing or destroying papers or petitions;

   b) Failing to file papers or petitions;

   c) Knowingly submitting false papers or petitions;

   d) Intentionally misrepresenting the contents of papers or petitions;

e) Giving another person money or other valuable consideration in exchange for that person's signature on papers or petitions;

f) Signing fictitious names to papers or petitions; and,

g) Making false certifications or affidavits concerning papers or petitions.

4) Provides that a candidate may submit a petition containing signatures of registered voters in lieu of paying a filing fee as follows:

a) For the office of California State Assembly, 1,500 signatures;

b) For the office of California State Senate and the United States House of Representatives, 3,000 signatures;

c) For candidates running for statewide office, 10,000 signatures; and,

d) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he or she seeks nomination is 2,000 or more, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 10 percent of the total of registered voters in the district in which he or she seeks nomination, whichever is less.

5) Provides that a party is qualified to participate in any primary election under any of the following conditions:

a) If at the last preceding gubernatorial election there was polled for any one of its candidates for any office voted on throughout the state, at least two percent of the entire vote of the state;

b) If on or before the 135th day before any primary election, it appears to the Secretary of State (SOS), as a result of examining and totaling the statement of voters and their political affiliations transmitted to him or her by the county elections officials, that voters equal in number to at least one percent of the entire vote of the state at the last preceding gubernatorial election have declared their intention to affiliate with that party; or,

c) If on or before the 135th day before any primary election, there is filed with the SOS a petition signed by voters, equal in number to at least 10 percent of the entire vote of the state at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that primary election.

FISCAL EFFECT: According to the Senate Appropriations Committee, no additional state costs to the SOS, and unknown, non-reimbursable local enforcement costs.

COMMENTS:

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

> SB 1043 clarifies that people who commit fraud involving "in-lieu-filing fee petitions" and "political party qualification petitions" are subject to the same felony penalties that apply to people found guilty of committing other forms of petition fraud.
>
> People convicted of committing fraud relative to nomination papers, declarations of candidacy, initiatives, referenda, and recall petitions are subject to specific felony penalties. However, the law does not clearly subject people who forge an in-lieu filing fee petition or political party qualification petition to those same felony penalties.

2) Argument in Support: Secretary of State Debra Bowen, who is the sponsor of this measure, writes in support:

> Petition fraud is a felony and the law sets specific penalties for people convicted of committing fraud involving nomination papers, declarations of candidacy, initiatives, referenda, and recall petitions. However, in-lieu filing fee petitions and political party qualification petitions are not specifically mentioned in the penalty provisions of the code, meaning people who commit fraud involving these petitions could go unpunished.
>
> This lack of clarity has impacted recent Secretary of State investigations. Though the evidence in two cases indicated a person had committed petition fraud, convictions using these penalty provisions could not be obtained because the law does not specifically address the kind of petition in question.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Debra Bowen (Sponsor)
California Association of Clerks and Election Officials

Opposition

Coalition for Free & Open Elections (unless amended)

Analysis Prepared by: Lori Barber / E. & R. / (916) 319-2094

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Date of Hearing: June 10, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1226 (Correa) – As Amended: May 13, 2014

SENATE VOTE: 34-0

SUBJECT: Political Reform Act of 1974: local campaign finance reform.

SUMMARY: Authorizes the Fair Political Practices Commission (FPPC) to administer and enforce a local campaign finance ordinance upon mutual agreement between the FPPC and a city or county, as specified. Specifically, this bill:

1) Expands provisions of law that authorize the FPPC and San Bernardino County and to enter into an agreement for the FPPC to enforce the County's local campaign finance ordinance by permitting the FPPC to enter into a mutual agreement with any city or county to enforce a local campaign finance ordinance. Provides that the FPPC, upon mutual agreement between the FPPC and the city council or board of supervisors of a participating city or county, is authorized to assume primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance ordinance.

2) Defines a "participating city or county," for the purposes of this bill, to mean any city or county that enters into a mutual agreement described above.

3) Provides that the FPPC shall be the civil prosecutor responsible for the civil enforcement of every local campaign finance ordinance that it enforces pursuant to this bill. Provides that the FPPC, as the civil prosecutor of the participating city's or county's local campaign finance ordinance, is not required to seek authorization from the city attorney or district attorney of a participating city or county to bring a civil or administrative action to enforce the ordinance.

4) Permits the FPPC to provide advice and guidance regarding the local campaign finance ordinance and bring civil actions to enforce the civil penalties and remedies of the local campaign finance ordinance that it enforces pursuant to this bill.

5) Repeals the January 1, 2018 sunset date on the provision of law that permits the FPPC to enforce San Bernardino County's campaign ordinance, and extends these provisions of law indefinitely.

6) Makes other conforming changes.

EXISTING LAW:

1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).

2) Requires a local government agency that adopts or amends a local campaign finance ordinance to file a copy of the ordinance with the FPPC.

3) Prohibits a local government agency from enacting a campaign finance ordinance that imposes campaign reporting requirements that are additional to or different from those set forth in the PRA for elections held in its jurisdiction unless the additional or different requirements apply only to the candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose a candidate or to support or oppose the qualification or passage of a local ballot measure which is being voted on only in that jurisdiction, and to city or county general purpose committees active only in that city or county, respectively.

4) Authorizes the FPPC, until January 1, 2018, upon mutual agreement between the FPPC and the San Bernardino County Board of Supervisors, to have primary responsibility for the impartial, effective administration, implementation, and enforcement of a local San Bernardino County campaign finance reform ordinance. Requires the San Bernardino County Board of Supervisors to consult with the FPPC prior to adopting and amending any local campaign finance reform ordinance that is subsequently enforced by the FPPC.

5) Authorizes the FPPC, pursuant to the aforementioned agreement, to investigate possible violations of the San Bernardino County campaign finance reform ordinance and bring administrative actions against persons who violate the ordinance, as specified.

6) Permits the San Bernardino County Board of Supervisors and the FPPC to enter into any agreements necessary and appropriate for the operation of these provisions, including agreements for reimbursement of state costs with county funds, as specified. Permits the San Bernardino County Board of Supervisors or the FPPC, at any time, by ordinance or resolution, to terminate any agreement for the FPPC to administer, implement, or enforce the local campaign finance reform ordinance or any provision thereof.

7) Requires the FPPC to report to the Legislature with specified information on or before January 1, 2017, if the FPPC enters into such an agreement with the San Bernardino County Board of Supervisors.

FISCAL EFFECT: According to the Senate Appropriations Committee, all costs to the FPPC will be reimbursed by the city or county that opts to enter into the mutual agreement.

COMMENTS:

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

> The Political Reform Act of 1974 (PRA) allows local government agencies to adopt campaign finance ordinances that apply to elections within their jurisdictions. These ordinances may be more stringent than the local restrictions that the PRA imposes. While the Fair Political Practices Commission (FPPC) has broad investigative and administrative authority across the state, it does not assume primary responsibility for local campaign finance ordinances. A county board of supervisors or a city council must monitor these ordinances or create an Ethics Commission with this authority.
>
> SB 1226 enables cities and counties to contract with the FPPC for the administration and enforcement of local campaign finance ordinance. This gives cities and counties the

ability to bring in an experienced, independent, and impartial entity to investigate possible local campaign finance violations and bring administrative action against these violators. This bill allows participating entities to eliminate the potential for bias, favoritism, or conflicting interests by authorizing the FPPC to assume primary responsibility for the administration and enforcement of local campaign finance ordinance.

2) San Bernardino County: In 2012, the Legislature passed and the Governor signed AB 2146 (Cook), Chapter 169, Statutes of 2012, which permitted San Bernardino County and the FPPC to enter into an agreement that provides for the FPPC to enforce the County's local campaign finance reform ordinance. Prior to this the FPPC did not enforce any local campaign finance ordinances. According to previous analyses, the County of San Bernardino, which had been the subject of several high-profile corruption cases, was in the process of developing a campaign finance ordinance. Rather than appoint an ethics commission, which could present financial as well as conflict of interest challenges, the County proposed to contract with the FPPC to enforce their local campaign finance ordinance. Moreover, the County determined that it was in the best interest of the County to retain the services of the FPPC to provide for the enforcement and interpretation of San Bernardino County's local campaign finance ordinance as the FPPC has special skills, knowledge, experience, and expertise in the area of enforcement and interpretation of campaign laws necessary to effectively advise, assist, litigate, and otherwise represent the County on such matters. As a result, the FPPC and San Bernardino County entered into a mutual agreement, from January 1, 2013 through December 31, 2014, for the FPPC to provide the County campaign enforcement and interpretation services for the impartial, effective administration, implementation, and enforcement of the San Bernardino's campaign finance reform ordinance.

3) Local Campaign Ordinances and the PRA: Under existing law, local government agencies have the ability to adopt campaign ordinances that apply to elections within their jurisdictions, though the PRA imposes certain limited restrictions on those local ordinances. For instance, SB 726 (McCorquodale), Chapter 1456, Statutes of 1985, limited the ability of local jurisdictions to impose campaign filing requirements that differed from those in the PRA, permitting such requirements only when they applied solely to candidates and committees whose activity is restricted primarily to the jurisdiction in question. This provision sought to avoid the necessity of a candidate or committee active over a wider area being required to adhere to several different campaign filing schedules. Similarly, AB 1430 (Garrick), Chapter 708, Statutes of 2007, prohibited local governments from adopting rules governing member communications that are different than the rules that govern member communications at the state level.

   Aside from these restrictions, however, local government agencies generally have a significant amount of latitude when developing local campaign finance ordinances that apply to elections in those agencies' jurisdictions. Any jurisdiction that adopts or amends a local campaign finance ordinance is required to file a copy of that ordinance with the FPPC, and the FPPC has begun posting those ordinances on its website.

   Several cities and counties have adopted campaign finance ordinances, some of which are very extensive. In some cases, those ordinances include campaign contribution limits, reporting and disclosure requirements that supplement the requirements of the PRA, temporal

restrictions on when campaign funds may be raised, and voluntary public financing of local campaigns, among other provisions. In many cases, local campaign finance ordinances are enforced by the district attorney of the county or by the city attorney. In at least a few cases, however, local jurisdictions have set up independent boards or commissions to enforce the local campaign finance laws.

The FPPC does not currently enforce any local campaign finance ordinances other than San Bernardino County's. The FPPC can and does, however, bring enforcement actions in response to violations of the PRA that occur in campaigns for local office, even in cases where the local jurisdiction brings separate enforcement actions for violations of a local campaign finance ordinance.

4) Criminal, Civil, and Administrative Enforcement of the PRA and Local Campaign Ordinances: Violations of the PRA are subject to administrative, civil, and criminal penalties. Generally, the Attorney General (AG) and district attorneys have responsibility for enforcing the criminal provisions of the PRA, though any elected city attorney of a charter city also has the authority to act as the criminal prosecutor for violations of the PRA that occur within the city. The FPPC, the AG, district attorneys, and elected city attorneys of charter cities all have responsibility for enforcement of the civil penalties and remedies provided under the PRA, depending on the nature and location of the violation, while any member of the public also has the ability to file a civil action to enforce the civil provisions of the PRA, subject to certain restrictions. The FPPC has the sole authority to bring administrative proceedings for enforcement of the PRA. When the FPPC determines on the basis of such a proceeding that a violation of the PRA has occurred, it can impose monetary penalties of up to $5,000 per violation, in addition to ordering the violator to cease and desist violation of the PRA and to file any reports, statements, or other documents or information required by the PRA.

   In the case of local campaign ordinances, there is no single approach as to the types of penalties that are available for the violations of those ordinances. Many local ordinances provide for misdemeanor or civil penalties for violations, while some ordinances do not establish any penalties for violations. In some local jurisdictions that have independent boards or commissions to enforce the local campaign finance ordinances, those boards or commissions have the authority to bring administrative enforcement proceedings, similar to the authority the FPPC has under the PRA.

5) Is Expansion of the Law to Soon? As mentioned above, last session AB 2146 (Cook), Chapter 169, Statutes of 2012, was implemented into law and permitted San Bernardino County and the FPPC to enter into an agreement for the FPPC to enforce the County's local campaign finance reform ordinance. Among other provisions, AB 2146 also required the FPPC, if it entered into an agreement with the San Bernardino County Board of Supervisors, to report to the Legislature with specified information on or before January 1, 2017. Current law requires the report to include, but not be limited to, the status of the agreement, the estimated annual cost savings, if any, for the County of San Bernardino, a summary of relevant annual performance metrics, as specified, any public comments submitted relative to the operation of the agreement, and any legislative recommendations. The committee is not aware that any report has been submitted from the FPPC to the Legislature. Because this law has only been effect since last year and the FPPC and San Bernardino County have only been in contract for a little over a year, the committee may wish to consider whether it is prudent

to expand the law to allow more participating cities or counties to authorize the FPPC to administer and enforce their local campaign finance ordinances. Would it be premature to expand current law when the Legislature has not received a report detailing the effectiveness of the current agreement between the FPPC and San Bernardino County?

Furthermore, the committee may wish to consider whether such an expansion of the FPPC's workload could negatively impact the ongoing enforcement of the PRA. Because there is no guarantee that local campaign finance ordinances will be consistent with the general framework of the PRA, each additional local ordinance that the FPPC is asked to enforce could add complexity to the FPPCs' work. Moreover, while the added complexity of a single ordinance and a single jurisdiction likely can be handled by the FPPC without much difficulty, this bill allows for the FPPC to enter into similar arrangements with other jurisdictions, adding complexity of tracking and enforcing multiple (potentially inconsistent) ordinances in multiple jurisdictions, which could harm the FPPC's ability to focus on its primary responsibility of enforcing the PRA.

On the other hand, this bill does require a mutual agreement be made between the city council or board of supervisors of the participating city or county and the FPPC. Moreover, this bill gives the FPPC discretion on whether or not they will choose to enter into an agreement with a city or county to administer and enforce its local campaign finance ordinance.

6) Political Reform Act of 1974: California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the proposition and require a two-thirds vote of each house of the Legislature.

7) Double-Referral: After this bill was referred to this committee by the Assembly Rules Committee, the Assembly Rules Committee instructed that this bill should be referred to the Assembly Local Government Committee upon approval by this committee. Accordingly, any motion to approve this bill should provide for the bill to be re-referred to the Assembly Local Government Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Orange Board of Supervisors (co-sponsor)
Urban Counties Caucus (co-sponsor)

Opposition

None on file.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094

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Date of Hearing: June 10, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1272 (Lieu) – As Amended: May 27, 2014

SENATE VOTE: 23-12

SUBJECT: Campaign finance: advisory election.

SUMMARY: Places an advisory question on the November 4, 2014 statewide general election ballot on amending the United States Constitution to address campaign finance issues. Specifically, this bill:

1) Requires the following advisory question to be placed on the ballot at the November 4, 2014 statewide general election:

   Shall the Congress of the United States propose, and the California Legislature ratify, an amendment or amendments to the United States Constitution to overturn Citizens United v. Federal Elections Commission (2010) 558 U.S. 310, and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that the rights protected by the United States Constitution are the rights of natural persons only?

2) Contains the following Legislative findings and declarations:

   a) The United States Constitution and the Bill of Rights are intended to protect the rights of individual human beings.

   b) Corporations are not mentioned in the United States Constitution and the people have never granted constitutional rights to corporations, nor have we decreed that corporations have authority that exceeds the authority of "We the People."

   c) In Connecticut General Life Insurance Company v. Johnson (1938) 303 U.S. 77, United States Supreme Court Justice Hugo Black stated in his dissent, "I do not believe the word 'person' in the Fourteenth Amendment includes corporations."

   d) In Austin v. Michigan Chamber of Commerce (1990) 494 U.S. 652, the United States Supreme Court recognized the threat to a republican form of government posed by "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas."

   e) In Citizens United v. Federal Election Commission (2010) 558 U.S. 310, the United States Supreme Court struck down limits on electioneering communications that were upheld in McConnell v. Federal Election Commission (2003) 540 U.S. 93 and Austin v. Michigan Chamber of Commerce. This decision presents a serious threat to self-

government by rolling back previous bans on corporate spending in the electoral process and allows unlimited corporate spending to influence elections, candidate selection, policy decisions, and public debate.

f) In Citizens United v. Federal Election Commission, Justices John Paul Stevens, Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor noted in their dissent that corporations have special advantages not enjoyed by natural persons, such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets, that allow them to spend huge sums on campaign messages that have little or no correlation with the beliefs held by natural persons.

g) Corporations have used the artificial rights bestowed on them by the courts to overturn democratically enacted laws that municipal, state, and federal governments passed to curb corporate abuses, thereby impairing local governments' ability to protect their citizens against corporate harms to the environment, consumers, workers, independent businesses, and local and regional economies.

h) In Buckley v. Valeo (1976) 424 U.S. 1, the United States Supreme Court held that the appearance of corruption justified some contribution limitations, but it wrongly rejected other fundamental interests that the citizens of California find compelling, such as creating a level playing field and ensuring that all citizens, regardless of wealth, have an opportunity to have their political views heard.

i) In First National Bank of Boston v. Bellotti (1978) 435 U.S. 765 and Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley (1981) 454 U.S. 290, the United States Supreme Court rejected limits on contributions to ballot measure campaigns because it concluded that these contributions posed no threat of candidate corruption.

j) In Nixon v. Shrink Missouri Government PAC (2000) 528 U.S. 377, United States Supreme Court Justice John Paul Stevens observed in his concurrence that "money is property; it is not speech."

k) A February 2010 Washington Post-ABC News poll found that 80 percent of Americans oppose the ruling in Citizens United.

l) Article V of the United States Constitution empowers and obligates the people of the United States of America to use the constitutional amendment process to correct those egregiously wrong decisions of the United States Supreme Court that go to the heart of our democracy and the republican form of self-government.

m) The people of California and of the United States have previously used ballot measures as a way of instructing their elected representatives about the express actions they want to see them take on their behalf, including provisions to amend the United States Constitution.

3) Requires the Secretary of State to communicate the results of the vote on the advisory question to Congress.

EXISTING LAW authorizes each city, county, school district, community college district, county board of education, or special district to hold an advisory election on any date on which that jurisdiction is permitted to hold a regular or special election for the purpose of allowing voters within the jurisdiction, or a portion thereof, to voice their opinions on substantive issues, or to indicate to the local legislative body approval or disapproval of the ballot proposal.

FISCAL EFFECT: According to the Senate Appropriations Committee, one time ballot printing/mailing costs of approximately $275,000 - $550,000 depending on the number of pages and based on an estimated cost per page of $55,000. (General Fund)

The actual costs could be higher or lower depending on the length of the title, summary, text, Legislative Analyst's Office's analysis, proponents' and opponents' arguments, as well as the overall size of the ballot pamphlet. Larger ballots generally result in less printing and mailing costs per page. The average number of pages per measure since 2008 is ten and the minimum per measure has been five pages.

COMMENTS:

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

> The United States Constitution and the Bill of Rights explicitly intend to protect the rights of individual human beings as indicated by the phrase "We the people" in the preamble to the Constitution. But in the case of Citizens United v. FEC (2010), corporations have been granted the same rights as people and free speech is now being equated with money, especially as it pertains to political and campaign donations. And in February 2010 Washington Post-ABC News poll found that 80 percent of Americans oppose the U.S. Supreme Court Citizens United ruling. The most recent Supreme Court ruling is McCutcheon v. FEC which was handed down April 2, 2014 and decided that it is permissible for individuals to make limitless contributions to federal campaign and federal candidate committees.
>
> However, it is important to note that Corporations are not mentioned in the Constitution, nor have The People ever granted Constitutional rights to corporations and money does not equal speech as stated by United States Supreme Court Justice Stevens in the case Nixon v. Shrink Missouri Government PAC (2000) that "money is property, it is not speech."
>
> Given that 80 percent of Americans oppose the Citizens United ruling and are likely to be equally opposed to the McCutcheon ruling, SB 1272 would advance the efforts to reverse the Supreme Court's ruling in the Citizens United v. Federal Elections Commission and other applicable judicial precedents, including McCutcheon v. Federal Election Commission.
>
> SB 1272 would add an advisory question to California's November 4, 2014 [ballot] asking the people: "Shall the Congress of the United States propose, and

the California legislature ratify, an amendment or amendments to the United States Constitution to overturn Citizens United v. Federal Election Commission (2010) 558 U.S. 310, and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that the rights protected by the United States Constitution are the rights of natural persons only?"

2) Past Advisory Elections: While existing state law explicitly authorizes cities, counties, school districts, community college districts, county boards of education, and special districts to hold advisory elections, there is no explicit authorization, nor is there a statutory prohibition, for a statewide advisory election. While statewide advisory elections are uncommon, in at least three other instances in California's history, one or more statewide advisory measures have appeared on the ballot. In November 1892, voters approved an advisory measure that was placed on the ballot by the Legislature asking whether United States Senators should be directly elected by a vote of the people. At a statewide special election in June 1933, voters rejected Propositions 9 and 10, which asked the voters whether the Legislature should divert gasoline tax revenues to the general fund to pay off highway bonds. These two measures were put on the ballot by the Legislature. Finally, at the November 1982 statewide general election, voters approved Proposition 12, a measure that urged the United States government to propose to the Soviet Union that both countries agree to immediately halt the testing, production and further deployment of all nuclear weapons, missiles and delivery systems in a way that could be checked and verified by both sides. Unlike this bill, however, the advisory question decided by the voters in 1982 was placed on the ballot by initiative.

   Subsequent to the voters' approval of Proposition 12 in 1982, the California State Supreme Court ruled in American Federation of Labor v. Eu (1984) 36 Cal.3d 687, that placing advisory questions before the voters was not a proper use of the initiative power, because "an initiative which seeks to do something other than enact a statute—which seeks to render an administrative decision, adjudicate a dispute, or declare by resolution the views of the resolving body—is not within the initiative power reserved by the people." In that case, the Court ordered an initiative measure which sought to compel the Legislature to apply to Congress to hold a constitutional convention to adopt a federal balanced budget amendment to be removed from the ballot. The Court's decision in American Federation of Labor did not, however, rule on whether it was permissible for the Legislature to place an advisory question before the voters.

3) Citizens United v. FEC: In January 2010, the United States 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.

4) California Has Called upon Congress to Propose an Amendment to Overturn Citizens United: Last session, the Legislature approved AJR 22 (Wieckowski & Allen), Resolution Chapter 69, Statutes of 2012, which called upon the United States Congress to propose and send to the states for ratification a constitutional amendment that would overturn Citizens United. In light of this fact, the State of California is already on record in support of an amendment to the United States Constitution to overturn Citizens United.

5) Arguments in Support: In support of this bill, the California School Employees Association, AFL-CIO, writes:

> Recent Supreme Court decisions like that of *Citizens United v. Federal Election Commission* and *McCutcheon v. Federal Election Commission* have highlighted the dangers and inequities of identifying money as political speech. While the Court ruled that money takes the place of political speech for donors decades ago, the original intent came with limits on contribution amounts and rigorous reporting obligations. The notion of money being speech has been perverted into allowing those with more money to speak louder than those without the expendable income. These rules would be the same as suspending Roberts Rules of Order and allowing the person who can yell the loudest to control the meeting.
>
> Asking the California electorate of their opinion on whether or not an amendment to the United States Constitution is required to reverse the Supreme Court decisions that equate money with free speech and grant constitutional rights and protections to incorporated entities, allows for the dialogue for progress to occur. Amending the United States Constitution is a long and arduous task. Taking this initial step will signal to the rest of the country that the debate is ready for legislative halls and not just cable news talk shows.

6) Related Legislation: AJR 1 (Gatto), which is pending in the Senate Judiciary Committee, applies to the United States Congress to call a constitutional convention for the sole purpose of proposing an amendment to the United States Constitution that would limit corporate personhood for purposes of campaign finance and political speech and further declares that money does not constitute speech and may be legislatively limited.

   SB 1402 (De León), which is pending in the Assembly Rules Committee, places an advisory question on the November 4, 2014 statewide general election ballot asking voters whether Congress should reform the nation's immigration laws.

   HR 37 (Wieckowski), which is also being heard in this committee today, states the Assembly's disagreement with the United States Supreme Court's decision in McCutcheon v. Federal Election Commission (2014) No. 12-536, in which the Supreme Court struck down a federal law restricting the aggregate amount that a donor may contribute in total to all federal candidates and committees in an election cycle.

7) Previous Legislation: AB 644 (Wieckowski) of 2013, would have required a statewide advisory vote on the November 4, 2014 general election ballot on amending the United States Constitution to address campaign financing issues. AB 644 was set for hearing twice in this committee, but was pulled from the agenda both times at the request of the author.

   AB 78 (Mendoza) of 2011, would have placed a question before voters at the June 5, 2012, statewide primary election asking whether the President and the Congress should create a pathway to citizenship for certain undocumented immigrants. AB 78 was gutted-and-amended and used for another purpose, and was never heard in committee.

   AB 2826 (Mendoza) of 2008, was similar to AB 78 of 2011, except that the advisory question would have been considered by voters at the November 4, 2008, statewide general election. AB 2826 was never heard in committee.

   SB 924 (Perata) of 2007, would have placed a question before the voters at the February 5, 2008, statewide presidential primary election asking whether the President should end the United States occupation of Iraq. SB 924 was vetoed by Governor Schwarzenegger, who argued that "[p]lacing a non-binding resolution on Iraq on the…ballot, when it carries no weight or authority, would only…divide voters and shift attention from other critical issues that must be addressed."

   AB 3 (Statham) of 1993, would have placed a question before the voters at the November 8, 1994, statewide general election asking whether the Legislature should send a plan to Congress requesting the division of the state of California into three states. AB 3 was approved by the Assembly, but was never heard in a committee in the Senate.

8) Bill Calling an Election: Because this bill calls an election within the meaning of Article IV of the Constitution, it would go into immediate effect if signed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Money Out, Voters In (sponsor)
American Sustainable Business Council
Beach Cities Democratic Club
California Clean Money Campaign
California Common Cause
California School Employees Association, AFL-CIO
CALPIRG
Democracy for America
Free Speech for People
LAX-Area Democratic Club
Miracle Mile Democratic Club
Rebuild the Dream
Robert F. Kennedy Democratic Club
Sierra County Democratic Central Committee
West LA Democratic Club

Opposition

Department of Finance

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

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Date of Hearing: June 10, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1441 (Lara, et al.) – As Amended: April 3, 2014

SENATE VOTE: 33-0

SUBJECT: Political Reform Act of 1974: contributions.

SUMMARY: Provides that specified payments made by lobbyists and lobbying firms are considered "contributions" under the Political Reform Act (PRA). Specifically, this bill:

1) Provides that a payment made by a lobbyist or a cohabitant of a lobbyist for costs related to a fundraising event held at the home of the lobbyist, including the value of the use of the home as a fundraising event venue, is a contribution for the purposes of the PRA regardless of the amount of the payment. Provides that a payment described above is attributable to the lobbyist for purposes of the prohibition against a lobbyist making a contribution to an elected state officer or candidate for elected state office.

2) Provides that a payment made by a lobbying firm for costs related to a fundraising event held at the office of the lobbying firm, including the value of the use of the office as a fundraising event venue, is a contribution for the purposes of the PRA regardless of the amount of the payment.

EXISTING LAW:

1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA.

2) Provides that an elected state officer or candidate for elected state office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to an elected state officer or candidate for elected state office, if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer.

3) Defines "contribution," for the purposes of the PRA, to mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes, as specified. Provides that a payment is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure, or is received by or made at the behest of a candidate.

4) Provides that a "contribution" does not include payments made by an occupant of a home or office for costs related to any meeting or fundraising event in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars ($500) or less.

FISCAL EFFECT: According the Senate Appropriations Committee, minor, absorbable enforcement costs to the FPPC from the General Fund.

COMMENTS:

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

> This bill is a part of a package of bills that are aimed at strengthening the relationship between the citizens of California and their state government – the California Accountability in Public Service Act (CAPS Act). Recent events have raised significant questions about the transparency and accountability of rules and political practices in state government. In an effort to tighten state law, we are authoring SB 1441 which bans fundraisers from being held at the home of a lobbyist or at a lobbying firm. This will delete ambiguity and ensure that lobbyists are not providing illegal contributions to state elected officials.
>
> Currently, the Political Reform Act provides for a $500 home hospitality exception for fundraisers, where the first $500 does not count as a contribution. This exception does not specifically exclude lobbyists. At the same time lobbyists are prohibited entirely from giving any campaign contributions to elected officials. The value of all goods provided, regardless of source, counts towards the $500 threshold. Once the threshold is met the value of all goods count as campaign contributions. This leads to a situation where it is virtually impossible to have a fundraiser in a lobbyist's home or office without having an illegal contribution.

2) Hosted Fundraisers: The PRA, among other things, requires candidates and committees to disclose contributions made and received and expenditures made in connection with campaign activities. The term "contribution" is defined as any payment for political purposes for which full and adequate consideration is not provided to the donor.

When individuals or entities make payments in connection with holding a fundraiser for a candidate, such payments ordinarily are considered contributions to the candidate. However, current law allows for some exceptions. For example, payments made by the occupant of a home or office for costs related to any meeting or fundraising event in the occupant's home or office are not considered contributions under the PRA if the costs for the meeting or fundraising event are $500 or less.

Although existing law prohibits lobbyists from making contributions to elected state officers or candidates for elected state office if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer, the exception to the definition of the term "contribution" for the purposes of hosted fundraising events does not exclude events hosted by lobbyists. As a result, a lobbyist could hold a fundraiser at his or her home and the cost would not be considered a contribution, as long as the total cost of such an event did not exceed $500. If other parties donate money or goods in connection with the event, their payments must also be counted to determine if $500 has been spent in connection with the fundraiser. This includes goods or services provided by the candidate or any other person attending the event. If the cost of the event exceeds $500, all payments are counted as contributions.

3) Recent Events: In February of this year, the FPPC approved a settlement in a case in which a registered lobbyist hosted campaign fundraisers for state elective officers and candidates at his house where he provided items such as beverages, flower arrangements, and cigars. The FPPC investigated and determined that the total cost of the fundraisers hosted by the lobbyist at his home, including the value the items provided by the lobbyist, exceeded $500. As a result, the items provided by the lobbyist during the fundraisers constituted non-monetary contributions to the campaign committees of the elective officers and candidates who benefitted from the fundraisers – all violations of the PRA. As a result, the FPPC levied one of the largest penalties against a lobbyist and issued warning letters to the elected officers and candidates who benefitted from the fundraisers.

4) Related Legislation: AB 1673 (Garcia), which is pending in the Senate Elections & Constitutional Amendments Committee, provides that a payment made by an occupant of a home or an office who is a lobbyist, lobbying firm, or lobbyist employer for costs related to a meeting or fundraising event held in the occupant's home or office is considered a contribution under the PRA, regardless of the costs for the meeting or fundraising event. AB 1673 passed out of this committee on 6-0 vote.

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 proposition and require a two-thirds vote of each house of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause

Opposition

None on file.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094