

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING  
Paul Fong, Chair  
SB 52 (Leno and Hill) – As Amended: June 18, 2014

SENATE VOTE: 28-11

SUBJECT: Political Reform Act of 1974: campaign disclosures.

SUMMARY: Changes the content and format of disclosure statements required on advertisements supporting or opposing ballot measures. Specifically, this bill:

- 1) Repeals existing requirements governing disclaimers and disclosure statements that must appear on campaign advertisements relating to ballot measures, 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;
  - 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,
  - c) A requirement that an advertisement supporting or opposing a ballot measure 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.
- 2) Requires an advertisement regarding a ballot measure that is disseminated by a political party or candidate-controlled committee to include a disclosure statement that reads as follows:

"Paid for by [name of the committee that paid for the advertisement]."
- 3) Requires an advertisement regarding a ballot measure that is disseminated by a committee other than a political party or candidate controlled committee to include a disclosure statement in accordance with the following:
  - a) In the case of a radio advertisement or a prerecorded telephonic message, the disclosure statement shall read as follows:

"This ad has major funding from [state names in descending order of identifiable contributors who have made the two largest cumulative contributions to the committee that paid for the advertisement]. Paid for by [name of the committee that paid for the

advertisement]."

- i) Provides that only one identifiable contributor is required to be included in a disclosure statement if there is only one identifiable contributor to the committee that paid for the ad or if the ad lasts 15 seconds or less.
- ii) Provides that if there are no identifiable contributors to the committee that paid for the ad, or if the content of the ad names each of the identifiable contributors required to be named in the disclosure statement, the ad may include only the following sentence of the disclosure statement:

"Paid for by [name of the committee that paid for the advertisement]."

- b) In the case of a television or video advertisement, the disclosure statement shall read as follows:

Ad Paid for by a Committee whose Top Funders are:

1. [Identifiable contributor who made the largest contribution to the committee]
2. [Identifiable contributor who made the second largest contribution to the committee]
3. [Identifiable contributor who made the third largest contribution to the committee]

Funding Details At: [website containing contributor information].

Paid for by [name of the committee that paid for the advertisement].

- c) In the case of a mass mailing or print advertisement designed to be distributed personally, the disclosure statement shall read as follows:

Ad Paid for by a Committee whose Top Funders are:

1. [Identifiable contributor who made the largest contribution to the committee]
2. [Identifiable contributor who made the second largest contribution to the committee]
3. [Identifiable contributor who made the third largest contribution to the committee]

Funding Details At: [website containing contributor information].

Paid for by [name of the committee that paid for the advertisement].

- i) Provides that if the advertisement is five inches tall or less, it does not need to include the "Funding Details" line.
- ii) Provides that if the advertisement is four inches tall or less, it needs to include only the two top funders, instead of the three top funders.
- iii) Provides that if the advertisement is three inches tall or less, it needs to include only the top funder, instead of the three top funders.

- 4) Imposes the following requirements on the disclosure statements required by this bill:
  - a) In the case of a radio advertisement or prerecorded telephonic message, the statement must be 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.
  - b) In the case of a television or video advertisement, the statement must be included in a disclosure area with a solid black background on the entire bottom one-third of the screen at the beginning or end of the advertisement for a minimum of five seconds in the case of an advertisement lasting 30 seconds or less, or for a minimum of 10 seconds in the case of an advertisement lasting longer than 30 seconds.
  - c) In the case of a mass mailing or print advertisement designed to be distributed personally:
    - i) In the case of an advertisement disseminated by a political party or candidate-controlled committee, the statement must be included in a disclosure area on the outside display surface of the advertisement; and,
    - ii) In the case of an advertisement disseminated by a committee other than a political party or candidate-controlled committee, the statement must be included in a disclosure area on the largest page of the advertisement with a solid white background with black text.
- 5) Specifies requirements for the size, color, and placement of the text of disclosure statements required by this bill.
- 6) Provides that the disclosure of the name of an identifiable contributor under this bill does not need to include legal terms such as "incorporated," "committee," "political action committee," or "corporation" or their abbreviations, unless the term is part of the contributor's name in common usage or parlance.
- 7) Provides that if this bill requires disclosure of the name of an identifiable contributor that is a sponsored committee that has a single sponsor, only the name of the committee's sponsoring organization shall be disclosed.
- 8) Provides that if an identifiable contributor that is required to be included in a disclosure statement pursuant to this bill is the parent of a subsidiary corporation whose economic interest is more directly impacted than the parent by a measure that is the subject of the advertisement, then the subsidiary's name shall be disclosed.
- 9) Defines the following terms, for the purposes of this bill:
  - a) "Advertisement" to mean any general or public communication that is either of the following:
    - i) Authorized and paid for by a committee for the purpose of supporting or opposing a candidate for elective office; or,

- ii) A ballot measure advocacy communication supporting or opposing the qualification, passage, or defeat of a ballot measure.
  - b) Provides that the term "advertisement" does not include any of the following:
    - i) A communication from an organization, other than a political party, to its members;
    - ii) A campaign button smaller than 10 inches in diameter; a bumper sticker smaller than 60 square inches; or a small tangible promotional item such as a pen, pin, or key chain, upon which the disclosures required by law cannot be conveniently printed or displayed;
    - iii) Clothing apparel;
    - iv) Sky writing;
    - v) An electronic media communication, if inclusion of disclosures is impracticable or would severely interfere with the committee's ability to convey the intended message because of the nature of the technology used to make the communication; or,
    - vi) Any other advertisement as determined by regulations of the Fair Political Practices Commission (FPPC).
  - c) "Cumulative contributions" to mean the cumulative amount of contributions received by a committee beginning 12 months prior to the date the committee made its first expenditure for the purpose of supporting or opposing a candidate for elective office or for the purpose of qualification, passage, or defeat of a ballot measure, and ending seven days before the time the advertisement is disseminated or broadcast.
  - d) "Identifiable contributor" to mean a person that is the original source of funds for contributions received by a committee that cumulatively total \$50,000 or more, notwithstanding the fact that the funds were transferred, in whole or in part, through one or more other committees or persons.
- 10) Requires the FPPC, not later than January 1, 2016, to promulgate regulations related to the reporting and tracking of funds transferred by an identifiable contributor to committees and other persons.
- 11) Requires disclosure statements to be updated to reflect any changes in the order of identifiable contributors as follows:
- a) In the case of television, radio, or other electronic media advertisements, within seven business days, or within five business days if the order of contributors changes within 30 days of an election; and,
  - b) 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.

12) Permits the FPPC to promulgate regulations to require disclosures on all forms of advertisements regarding ballot measures not covered by this bill, including electronic media advertisements and billboards. Requires the regulations, if feasible, to require the listing of the name of the committee and as many of the three identifiable contributors that made the largest cumulative contributions as possible in a conspicuous manner, unless the committee that paid for the advertisement is a political party or candidate-controlled committee, in which case only the name of the committee must be shown. Provides that the disclosure area may occupy no more than 10 percent of the advertisement.

13) Makes the following findings and declarations:

- a) Ever-increasing amounts are raised and spent in support of and opposition to state and local ballot measures, especially in the form of advertisements. The outcomes of such elections are disproportionately impacted by whichever side is able to raise and spend the most money to advance its position.
- b) Ever-increasing amounts are spent on California campaigns by persons who do one or more of the following:
  - i) Frequently use their wealth to fund local and state ballot measures designed to advance their own economic interests.
  - ii) Increasingly avoid having their identities disclosed in election-related advertisements by channeling funds through one or more persons before those funds are received by a committee, thereby undermining the purpose and intent of laws requiring disclosure on such advertisements.
  - iii) Spend extraordinary amounts of money running election-related advertisements while hiding behind dubious and misleading names, including, but not limited to, advertisements by primarily formed committees and general purpose committees.
  - iv) Increasingly evade disclosure by funding advertisements designed to persuade voters without expressly advocating support or opposition.
- c) The activities described in (b) cause the public to become increasingly disaffected with the democratic process, discouraging participation in elections and coloring public perceptions of the legitimacy and integrity of state and local government.
- d) The people of California and their government officials have a compelling interest in knowing the true and original source of committee funding and receiving clear information identifying the largest original contributors responsible for political advertisements funded by such committees.
- e) The disclosure of original contributors on advertisements serves the following important governmental and societal purposes:
  - i) Providing the people and government officials current and easily accessible information regarding who is funding advertisements that are intended to influence

- their votes on ballot measures.
- ii) Enabling the people and government officials to identify potential bias in advertisements to assist them in making more informed decisions and giving proper weight to different speakers and messages.
  - iii) Deterring actual corruption and avoiding the appearance of corruption by providing increased transparency of contributions and expenditures.
  - iv) Improving the people's confidence in the democratic process and increasing their motivation to actively participate in that process by regular voting and other forms of civic engagement.
  - v) Promoting compliance with and detecting violations of the Political Reform Act (PRA), while also addressing the problems and advancing the state interests described in the PRA.

14) Makes technical and conforming changes.

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 a broadcast or mass mailing 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 either of 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.

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

COMMENTS:

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

Campaign spending has reached unprecedented levels in recent years. In 2012, over \$475 million was spent on ballot measures alone in California. Furthermore, many ballot measure committees and general purpose committees that contribute to them are purposely established to disguise who exactly is funding the campaign messages that voters see and hear, hiding behind vague names such as "Californians for Progress." Money is often purposefully channeled through multiple layers of committees or organizations to make it harder to trace and disclose. As a result, the March 2013 PPIC Poll found that 84% of all likely voters, across political ideology, want increased public disclosure of funding sources for signature gathering and initiative campaigns.

While it is essential for individuals and organizations in a democracy to be able to communicate effectively and efficiently with voters, it is equally important that voters are not intentionally deceived and elections are not decided upon misinformation. SB 52 will increase transparency of campaign spending in elections by disclosing major contributors on campaign advertisements for and against ballot measures to ensure that the true original contributors are known by voters when they see the ads. SB 52 requires all state and local ballot measure ads in California to clearly and prominently list their top three original funders of \$50,000 or more in the case of television and print ads, or top two funders in the case of radio ads. Strengthening disclosure requirements on ballot measure advertisements is necessary to help Californians be better informed and feel more represented by their government.

Current law does not require disclosure of any major funders for ads that clearly refer to ballot measures that are meant to influence the public on their vote, but that do not expressly advocate for their passage or defeat. SB 52 resolves this loophole by requiring clear and prominent disclosure of the top funders on "ballot measure advocacy communications," which means "an advertisement that is disseminated, broadcast, or otherwise communicated within 45 days of the election concerning a measure that clearly refers to the measure and that a reasonable person would interpret the overall message as being for or against the measure."

SB 52 will also ensure that the top contributors disclosed on ballot measure advertisements are truly the top three original funders of the advertisement, not misleading committee or nonprofit names. Current disclosure reporting law has a fundamental limitation in that ballot measure ads must only show their direct contributors that gave them money, not the original contributors of that money – i.e., the original individuals, corporations or unions that gave it. SB 52 ensures that ballot measure disclosure will follow the money – no matter how many committees or other persons funds are transferred through.

- 2) Existing Political Advertising Disclaimers: Under the PRA, committees must put "paid for by" disclaimers on 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 Federal Communications Commission (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 that the ad was: "Not authorized by a candidate or a committee controlled by a candidate."

### **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.

- 3) Constitutional Issues: This measure could be interpreted as a violation of the United States and California Constitutions' guarantees to free speech. While the right to freedom of speech is not absolute, when a law burdens core political speech, the restrictions on speech generally must be "narrowly tailored to serve an overriding state interest," McIntyre v. Ohio Elections Commission (1995), 514 US 334.

In ACLU v. Heller (2004), 378 F.3d 979, the Ninth Circuit Court of Appeals struck down a Nevada law that required any published material concerning a campaign to identify the person paying for the publication. In that case, the state of Nevada argued that its law served three state interests, including helping voters evaluate the usefulness of information in a campaign communication, preventing fraud and libel, and furthering enforcement of disclosure and contribution election laws. The court concluded that Nevada failed to demonstrate that its statute was "narrowly tailored to serve an overriding state interest" in accordance with the test established in McIntyre. The court did note in its ruling, however, that "[a]n on-publication identification requirement carefully tailored to further a state's campaign finance laws, or to prevent the corruption of public officials, could well pass constitutional muster."

Additionally, supporters of this bill have argued that, notwithstanding the decision in the Heller case, the provisions of this bill nonetheless are constitutional in light of disclosure requirements that were upheld by the United States Supreme Court in Citizens United v. Federal Election Commission (2010), 130 S.Ct. 876. While the Citizens United case is probably best known as the case in which the United States Supreme Court struck down a 63 year old law that prohibited corporations and unions from using their general treasury funds to make IEs in federal elections, in the same case, the Court also upheld certain disclaimer

and disclosure provisions of the federal Bipartisan Campaign Reform Act (BCRA) of 2002, also sometimes called "McCain-Feingold" for its Senate authors.

The Citizens United case involved 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. Under BCRA, the film produced by Citizens United and the television commercials promoting that movie were subject to certain disclaimer and disclosure requirements—specifically, a requirement that televised electioneering communications must include a disclaimer indicating the name of the person or organization that was "responsible for the content" of the advertising. Additionally, each communication was required to include a statement that the communication was "not authorized by any candidate or candidate's committee," and was required to display the name and address of the person or group that funded the advertisement. Finally, under a different provision of BCRA, any person who spent more than \$10,000 in a calendar year is required to file a disclosure statement with the Federal Elections Commission (FEC) identifying the person making the expenditure, the amount of the expenditure, the election to which the communication was directed, and the names of contributors in certain circumstances.

Citizens United (the corporation) challenged these disclaimer and disclosure requirements as applied to the film and the television advertisements promoting that film. Specifically, Citizens United argued that the disclaimer and disclosure requirements were unconstitutional on the grounds the governmental interest in providing information to the electorate did not justify requiring disclaimers for commercial advertisements. The court disagreed, finding that the disclaimers provided the electorate with important information, helping to ensure that voters were informed, and "avoid[ed] confusion by making clear that the ads are not funded by a candidate or political party."

While some of the requirements of this bill are comparable to provisions of federal law that were at issue in Citizens United (for instance, certain disclaimer requirements included in this bill are similar to those required under federal law that were upheld by the court in Citizens United), other requirements in this bill go beyond what is required by federal law, and beyond what was considered by the court in Citizens United. Specifically, the provisions of this bill that require the identities of certain campaign contributors—entities that were not individually responsible for the content or the production of the advertising—to be included in campaign advertising go beyond what is required by federal law. In light of that fact, while the court in Citizens United did uphold certain federal disclaimer requirements, it is unclear whether the broader requirements in this bill would similarly be upheld against a constitutional challenge on the grounds that those requirements violate the First Amendment.

- 4) Ballot Measure Advertisements Only: Unlike prior versions of this bill, and of similar previous legislation (see below), this bill does not apply to campaign advertisements related to candidates. The existing requirements that apply to those advertisements would continue to apply to candidate ads under this bill. Instead, the new on-advertisement disclosure

requirements contained in this bill apply only to advertisements related to ballot measures.

- 5) FPPC Discretion: This bill provides the FPPC with a significant amount of discretion and authority to determine how key portions of this bill will be implemented. For instance, this bill requires an advertisement to include the name of a person who is "the original source of funds" for contributions received by the committee that pays for the advertisement, notwithstanding the fact that the funds were transferred through one or more other committees or persons. This bill does not, however, establish the methodology for reporting and tracking of funds that are transferred through committees so that the "original source of funds" can be determined, but instead tasks the FPPC with developing regulations to create such a methodology.

Furthermore, this bill provides that if an identifiable contributor that is required to be disclosed in a campaign advertisement is the parent of a subsidiary corporation whose economic interest is more directly impacted than the parent by the ballot measure that is the subject of the advertisement, then the subsidiary's name shall be disclosed on the advertisement. However, this bill does not define the term "economic interest," nor does it establish a method for determining which entity's economic interest would be more directly impacted. As a result, these details would need to be determined by the FPPC through the adoption of regulations or the issuance of advice.

- 6) Changes to Findings and Technical Amendments: In order to ensure that one of the legislative findings in this bill more precisely describes the research that has been submitted by the author and sponsor of this bill, committee staff recommends the following amendment:

On page 3, lines 7 to 8, strike out "whichever side is able to raise and spend the most money to advance its position" and insert:

campaign expenditures in support of and in opposition to these measures

In addition, committee staff recommends the following technical amendments to this bill:

On page 11, line 19, strike out "8.5" and insert:

93 square

On page 11, lines 20-21, strike out "8.5 inches by 11" and insert:

93 square

- 7) Previous Legislation: This bill is similar to AB 1148 (Brownley) and AB 1648 (Brownley) from the 2011-2012 Legislative session. AB 1148 was approved by this committee by a 5-0 vote, but failed passage on the Assembly Floor. AB 1648 was approved by this committee by a 4-2 vote, and was approved on the Assembly Floor by a 50-26 vote, but was not heard in the Senate.

SB 27 (Correa), Chapter 16, Statutes of 2014, establishes conditions under which a

multipurpose organization that makes campaign contributions or expenditures is required to disclose names of its donors. One provision of SB 27 requires a committee that is primarily formed to support or oppose a state ballot measure or state candidate that raises \$1,000,000 or more for an election to maintain an accurate list of the committee's top 10 contributors, and requires that list to be posted on the FPPC's website. This bill requires the disclosure statements on certain types of advertisements to include a link to that contributor list on the FPPC's website.

- 8) 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)

In addition, the California Clean Money Campaign submitted copies of petitions signed by more than 5,000 individuals in support of SB 52

Brennan Center for Justice (prior version)

California Alliance for Retired Americans (prior version)

California Church IMPACT (prior version)

California Common Cause

California Federation of Interpreters (prior version)

California Forward Action Fund (prior version)

California League of Conservation Voters (prior version)

California National Organization for Women (prior version)

California OneCare (prior version)

California State Retirees (prior version)

CALPIRG (prior version)

City of Watsonville (prior version)

Consumer Federation of California (prior version)

Courage Campaign (prior version)

Endangered Habitats League (prior version)

Fresno Stonewall Democrats (prior version)

Friends Committee on Legislation of California (prior version)

Global Exchange (prior version)

Green Chamber of Commerce (prior version)

Insurance Commissioner Dave Jones (prior version)

Jericho (prior version)

League of Women Voters of California (prior version)

Los Angeles County Democratic Party (prior version)

Lutheran Office of Public Policy (prior version)

MapLight (prior version)

National Council of Jewish Women (prior version)

Pacific Palisades Democratic Club (prior version)

Progressives United (prior version)  
Public Citizen (prior version)  
Redwood Empire Business Association (prior version)  
Rootstrikers (prior version)  
San Diego County Democratic Party (prior version)  
Southwest California Synod Evangelical Lutheran Church in America (prior version)  
Southwest Voter Registration Education Project (prior version)  
Union of American Physicians and Dentists/AFSCME Local 206 (prior version)  
United Teachers Los Angeles (prior version)  
10 individuals (prior version)

Opposition

Howard Jarvis Taxpayers Association

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