

RESOLUTION 11-07-2016

DIGEST

Government: Requiring Disclosure of Electioneering Communications

Adds Government Code section 82031.1 and amends sections 82025 and 82031, to provide that electioneering communications shall be subject to the same disclosure requirements as independent expenditures, and clarify what is an independent expenditure.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Government Code section 82031.1 and amend sections 82025 and 82031 to read as follows:

§82031

1 “Independent expenditure” means an expenditure made or liability incurred by any
2 person, including a payment of public moneys by a state or local governmental agency, ~~in~~
3 ~~connection with a communication which~~ as payment for goods or services to expressly advocates
4 the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a
5 clearly identified measure, or taken as a whole and in context, unambiguously urges a particular
6 result in an election but which is not made to or at the request or suggestion ~~behest of the~~ any
7 affected candidate, agent of the candidate, or committee .
8

§82031.1

9 Independent expenditures shall also include “electioneering communications” as defined:

10 (a) "Electioneering communication" means any broadcast, cable, mail, satellite or print
11 communication that:

12 (1) refers to a clearly identified candidate or measure; and

13 (2) is publicly distributed within 90 days before an election in which the candidate is
14 seeking election or reelection or the measure will be approved or disapproved;

15 (b) "Electioneering communication" shall not include the following communications:

16 (1) A communication that is disseminated through a means other than a broadcast station,
17 radio station, cable television system or satellite system, newspaper, magazine, periodical,
18 billboard advertisement, or mail;

19 (2) A communication to less than 100 recipients;

20 (3) A news story, commentary, letter to the editor, news release, column, op-ed or
21 editorial broadcast by a television station, radio station, cable television system or satellite
22 system, or printed in a newspaper, magazine, or other periodical in general circulation;

23 (4) Expenditures or independent expenditures or contributions that must otherwise be
24 reported under this chapter;

25 (5) A communication from a membership organization exclusively to its members and
26 their families, otherwise known as a membership communication;

27 (6) Bona fide candidate debates or forums and advertising or promotion of the same;

28 (7) Email communications; and

29 (8) Internet communications that are not paid advertisements.
30
31

32 §82025

33 “Expenditure” means a payment, purchase, distribution, loan, advance, deposit, gift of
34 money, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to
35 make a payment, or anything else of value, unless it is clear from the surrounding circumstances
36 that it is not made for political purposes. “Expenditure” does not include a candidate’s use of his
37 or her own money to pay for either a filing fee for a declaration of candidacy or a candidate
38 statement prepared pursuant to Section 13307 of the Elections Code. An expenditure is made on
39 the date the payment is made or on the date consideration, if any, is received, whichever is
40 earlier.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Under existing law, independent expenditure (ads explicitly for or against any candidate or ballot measure) committees must file as a committee and publicly disclose their donors. Such a requirement is good, but does not apply to electioneering communications, or communications that mention the candidate or measure without an explicit support or opposition. Existing law also only prohibits independent expenditures from being at the behest of the candidate or candidate’s committee, rather than at the request or suggestion of the candidate, an agent of the candidate, or the committee. Finally, existing law limits the definition of expenditure to a few specified methods, as opposed to many methods and anything of value.

The Solution: This resolution applies the same disclosure requirements to electioneering communications as to independent expenditures. It also prohibits independent expenditures from being at the request or suggestion of the candidate, agent, or candidate’s committee, and expands the definition of “expenditure” to cover anything of value spent to urge a particular result in an election.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds Government Code section 82031.1 and amends sections 82025 and 82031, to provide that electioneering communications shall be subject to the same disclosure requirements as independent expenditures, and clarify what is an independent expenditure. This resolution should be approved in principle because it furthers transparency in the election process.

The current requirements for disclosure of campaign finances stem from “The Political Reform Act of 1974” (hereinafter “Act”). This resolution would help bring that Act in line with current media distribution channels, general election policy, increased transparency, and ensure that voters understand and have access to who is championing any given cause. Over the past 20 years the costs of elections and ballot measures has skyrocketed. At the same time, the amount of money an individual can give directly to a candidate or to support a ballot measure has been restricted. Donations and funds have moved towards largely unlimited and unregulated dark money and the organizations that handle the funds such as PACs, SuperPACs and independent expenditures. The use of this dark money prevents citizens from being properly informed of what is going on in the election process because the special interest groups bombarding them are not required to inform the voting public of the source of their funds and, by extension, the political leaning of the lenders. This proposed resolution helps reign in potential abuse by requiring electioneering communications and independent expenditures to be held to a higher standard and to require them to inform those they are trying to sway of their political bent and ultimate goals. An informed voting populace should have the right to know who is bankrolling or opposing a bill, candidate, proposal, or other ballot measure is critical.

This resolution is similar to Assembly Bill 700 (2015-2016, Reg. Sess.) authored by Assemblyman Jimmy Gomez.