Ballot measure campaigns reach the voters through communications including television, radio and Internet advertising, mailers, billboards, precinct walking and flyers. The Political Reform Act requires reporting of most payments in connection with political communications and requires “paid for by” disclaimers on ballot measure ads to inform voters who is paying for a communication.

This chapter reviews common communications in a ballot measure campaign and how payments for the communications are required to be reported. The next chapter discusses the disclaimer requirements that apply to ballot measure communications.

A. Payments for Ballot Measure Communications

Most payments a committee primarily formed for a measure makes for communications for or against a ballot measure will likely be direct expenditures, or contributions to other committees that will be spent to make the communications. Ballot measure committees may also receive significant nonmonetary contributions when others pay for communications, such as phone banking or precinct walking, and the payments are coordinated with the committee.

In some circumstances, ballot measure committees may make independent expenditures. If a general purpose committee spends money for communications to support or oppose a measure without coordinating with the affected ballot measure committee, the general purpose committee’s expenditures are considered to be independent expenditures. A general purpose committee making independent expenditures on a ballot measure must file reports, including 24-hour reports, verifications, and supplemental independent expenditure reports. (See Chapter 11.)

Quick Tip

A primarily formed ballot measure committee that is making expenditures on behalf of the measure for which it is formed is not making independent expenditures. This includes communications that ask voters to oppose a rival measure.
B. Coordinated Communications

When someone other than the ballot measure committee pays for a communication that is coordinated with, or “made at the behest of” the ballot measure committee, the communication is a nonmonetary contribution to that committee.

Coordination – “Made at the Behest”

“Coordinated” or “made at the behest” means made at the request, suggestion, or direction of, or in cooperation or consultation with the committee for whose benefit the expenditure is made.

A payment is coordinated with or “made at the behest” of a ballot measure committee under each of the following:

- It is made at the request, suggestion, or direction of, or in cooperation, consultation or coordination with the committee for whose benefit the expenditure is made.

- The committee or their agents have made or participated in making any decision about the content, timing, location, mode, intended audience, distribution, or placement of the communication.

- The creator, producer, or person paying for the communication has had discussion and agreement with the committee, or its agents, regarding the content, timing, location, mode, intended audience, distribution, or placement of the communication.

An expenditure is presumed to be coordinated or “made at the behest of” a committee if:

- Committee’s Needs. It is based on information about the committee’s campaign needs or plans provided to the expending person by the committee.

- Agent. It is made by or through any agent of the committee in the course of the agent’s involvement in the current campaign.
• **Common Consultants.** The person making the expenditure retains the services of a person who provides the committee with professional services related to the campaign or fundraising strategy for that same election.

• **Republication.** The communication reproduces, republishes, or disseminates a communication designed, produced, paid for, or distributed by the committee in whole or substantial part.

However, an expenditure is **not coordinated** or made at the behest of a candidate or committee merely because:

• **Interview.** A person interviews the committee or committee’s agent on issues affecting the person making the expenditure.

• **Committee Material.** The person making the expenditure has obtained a photograph, position paper, press release, or similar material from the committee or the committee’s agents.

• **Public Appearance.** The person making the expenditure has invited committee representatives to make a public appearance before the person’s members, employees, shareholders, or their families provided that there is no discussion with the committee prior to the expenditure related to details of the expenditure.

FPPC Regulation 18225.7, summarized above, specifies when a communication is considered independent versus made at the behest of a committee. Because the determination is based on specific facts, persons may contact the FPPC for guidance.

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**C. Independent Expenditures**

An independent expenditure is a payment for a communication that:

• **Expressly advocates** the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, and

• The communication is **not coordinated** with or “made at the behest” of the affected committee.

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**Ex 6.1** – A business entity printed campaign literature stating, “Vote for Measure B.” The communication included reasons why voters should vote for the measure. The business entity did not prepare the literature with assistance from the committee primarily formed to support Measure B. The business entity made an independent expenditure, not a contribution to the Measure B committee.

On the other hand, if the business entity contacted the Measure B committee and arranged for the committee’s staff to help draft and design the literature, the business entity would have made a nonmonetary contribution to the committee primarily formed to support Measure B.
Clearly Identified Measure

A communication clearly identifies a measure when the measure’s name, popular title, or official title is used.

Express Advocacy

A communication expressly advocates support or opposition of a clearly identified ballot measure under the following scenarios:

- **Magic Words.** The communication uses words such as “vote for,” “elect,” “cast your ballot,” or “defeat.”

- **Unambiguously Urges.** The communication is made within 60 days prior to an election, it refers to a clearly identified ballot measure, and when taken as a whole, it unambiguously urges a particular result in an election. The message must be susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific ballot measure.

A committee or person making independent expenditures must be aware that the communication cannot be coordinated with the affected measure committee. If there is coordination, the payments are reported as contributions.

D. Government Agency Communications

A state or local government agency may provide factual information and analysis about the purposes, provisions, or estimated impact of bond issues or ballot measures in some circumstances, and this does not constitute a contribution or independent expenditure. However, a state or local government agency is prohibited from using public resources to campaign for or against a ballot measure. (See Chapter 4.)

A state or local agency making payments for campaign activities may become a committee subject to reporting under FPPC Regulation 18420 if the payments qualify as contributions or independent expenditures.
Governmental agencies must refer to FPPC Regulation 18420.1 concerning payments for communications that expressly advocate the election or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urge a particular result in an election. The express advocacy rules are somewhat different than those provided for non-governmental entities. For example, the factors a governmental entity will use to determine if a communication unambiguously urges a particular result in an election include either of the following: 1) the agency prepared campaign material such as bumper stickers or television or radio spots; 2) the style, tenor and timing of the communication can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.

E. Reporting

There are different reporting requirements for contributions and independent expenditures. When a person or group of persons makes expenditures for a communication at the behest of a committee, the committee must report the receipt of a nonmonetary contribution. The person making the expenditure may also have to file reports.

Committees that are the beneficiaries of independent expenditures do not report them. However, the person making the independent expenditures will have filing obligations.

Endorsements

An endorsement of a measure may become a contribution or an independent expenditure when a payment is made in connection with the endorsement.

If a candidate pays for a communication supporting his or her own candidacy and also supporting or opposing a ballot measure, the payment is not a contribution to the ballot measure committee nor is it an independent expenditure.

Ex 6.3 - The president of a police officers’ association announces at its annual meeting that the association endorses county Measure Y. Merely making an oral endorsement is not a contribution or independent expenditure to the committee supporting Measure Y.

Closer to the election, in coordination with the committee formed to support Measure Y, the association mails a special flyer to the voters announcing its endorsement. The association has now made a nonmonetary contribution to the committee.
Communications Identifying State Candidates

If a ballot measure committee makes a payment or a promise of a payment totaling $50,000 or more for a communication disseminated within 45 days of an election that clearly identifies a candidate for elective state office, but does not expressly advocate the election or defeat of the candidate, the committee must report the payment. The committee must file Form E-530 with the Secretary of State within 48 hours. (See Chapter 11.)

If the communication is made at the behest of the candidate, the ballot measure committee is subject to the political party contribution limits of $34,000 per contributor. Once a ballot measure committee receives a contribution in excess of that contribution limit, the committee may not make a payment for such a communication. (See Chapter 3.)

F. Non-Contributions

Debates

If an organization or entity hosts a debate or other forum about a ballot measure and invites the proponent of a ballot measure and at least one opponent, or their respective representatives, to participate in equal numbers, a payment for the event is not a contribution to the ballot measure committees.

Meetings

A payment made by a bona fide service, social, business, trade, union, or professional organization for reasonable overhead expenses associated with a regularly-scheduled meeting at which an individual representing either side of a ballot measure speaks is not a contribution, if the organization pays no additional costs in connection with the speaker’s attendance.

Ex 6.4 - Two weeks before a 2016 election in which State Senator Ramos will be listed on the ballot, the committee primarily formed to support Proposition 155 pays more than $50,000 for billboard ads in her district stating “Thank you Senator Ramos for your support of high speed rail.” The ads do not advocate her election, but include her name and image and were approved by her. The measure committee must file an E-530 report and is subject to a contribution limit of $34,000 in a calendar year from a single source.

Ex 6.5 - The League of Women Voters invited the proponent and an opponent of Proposition 310 to speak at a forum. Only the proponent attended. Because both sides of the ballot measure were invited, the cost of the meeting is not a contribution to the committee established to support the measure.
Member Communications

Payments made by an organization or its sponsored committee for a communication that supports or opposes a ballot measure are not contributions or expenditures as long as the communication is made only to the organization's members, employees, or shareholders, or the families of its members, employees, or shareholders. The payments may not be for general public advertising, such as billboards, newspaper ads, or radio or television ads. If made by the organization’s sponsored committee, the committee would report the payments as being made for general member communications.

Payments made by a political party for a communication that supports or opposes a ballot measure are not contributions as long as the communication is distributed only to the party's members, employees, and families of its members and employees. However, the party must report the payments as if they were contributions or independent expenditures.

News Stories

A payment for the cost of publishing or broadcasting a news story, commentary, or editorial is not a contribution when the payment is made by a federally-regulated broadcast outlet or a regularly-published newspaper, magazine, or other periodical of general circulation that routinely carries news, articles, and commentary of general interest.

Ex 6.6 - Your campaign consultant asks a labor organization to send a mailing to only labor union members supporting your committee's position on a ballot measure. The mailing is not a contribution to your committee.

Later, the campaign consultant asks the organization to send the mailing to all registered voters in the district where the measure will appear on the ballot. The mailing to the voters is a contribution to your committee.
Authority

The following government Code sections and Title 2 regulations provide authority for the information in this chapter.

Government Code Sections

82015  Contribution.
82025  Expenditure.
82031  Independent Expenditure.
82044  Payment.
82047  Person.
85312  Communications to Members of an Organization.
85500  Independent Expenditures; 24-Hour Disclosure; Coordination.

Title 2 Regulations

18215  Contribution.
18225  Expenditure (express advocacy, clearly identified).
18227.5  Made at the Behest of (coordination).
18531.7  Payments for Communications – Section 85312 (member communications).