Chapter 5  
Communications

The Political Reform Act does not regulate the truth or accuracy of political communications, but does require reporting of most payments in connection with flyers, mailers, billboards, and radio and television advertising. Identification rules also may apply.

**Contribution or Independent Expenditure**

Generally speaking, when a general purpose committee pays for a communication supporting or opposing a candidate or ballot measure, the committee has made a nonmonetary contribution unless the payment was not made “at the behest of” the candidate or a committee primarily formed to support or oppose the ballot measure. Payments for communications that expressly advocate support of or opposition to a candidate or ballot measure which are not made at the behest of the affected candidate or ballot measure committee, are called “independent expenditures.” There is an exception for “member communications” sent solely to an entity or organization’s employees, shareholders, or members, as discussed below.

Whether a communication is a contribution, an independent expenditure, or some other type of reportable payment depends on several factors, including whether the communication “expressly advocates” support of or opposition to a clearly-identified candidate or ballot measure. The information and examples provided below may be of assistance in making that determination. However, it is impossible to address all of the types of communications. If presented with a specific example, FPPC staff can provide assistance.

**Express Advocacy**

A communication expressly advocates support or opposition when it uses words such as “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for,” etc. The law further provides that a communication that does not contain express advocacy is also an independent expenditure if the communication, taken as a whole, unambiguously urges a particular result in an election. Courts have applied a narrowing construction to the statutory language, and the law is generally interpreted to require express advocacy to be considered an independent expenditure. *(The Governor Gray Davis Committee v. American Taxpayer Alliance, 102 Cal. App.4th 449 (2002).)*

**Clearly Identifies**

A communication clearly identifies a candidate or ballot measure when the candidate’s name, photograph, or status as a candidate or officeholder is used, or the measure’s name, popular title, or official title is used. Some flyers may mention a group of candidates by some well-defined characteristic of the group. Even if no specific names are used, these too may be communications which clearly identify candidates.

**(Examples)** A general purpose committee paid $4,000 for a newspaper ad stating, “Vote for Measure A.” The communication expressly advocates support for a clearly-identified ballot measure and must be reported by the committee either as a contribution or independent expenditure, depending upon whether it was made at the behest of the committee primarily formed to support Measure A.
Later, the same committee paid $2,000 for post card-sized flyers that simply stated, “Vote on Election Day.” While the payment for this communication is reportable as an expenditure, it is not reported as a contribution or independent expenditure because the communication did not expressly advocate support of or opposition to a candidate or measure.

A communication that expressly advocates support of or opposition to a clearly-identified candidate or ballot measure is a contribution if made at the behest of the candidate or a committee primarily formed to support or oppose the measure. If not made at the behest of the affected candidate or committee, the communication is an independent expenditure.

**Made at the Behest**

A payment is *made at the behest* of a candidate or committee if the payment is made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express prior consent of the candidate or committee or an agent of the candidate or committee and the arrangement occurs prior to the making of the communication. Expenditures made at the behest of a candidate or committee include expenditures:

- Made by a person, other than the candidate or committee, to pay for a communication relating to one or more clearly-identified candidates or ballot measures if it is created, produced, or disseminated:
  - After the candidate or committee has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication; or
  - After discussion and agreement between the candidate or committee and creator, producer, or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.

An expenditure is presumed to be made at the behest of a candidate or committee if it is:

- Based on information about the candidate’s or committee’s campaign needs or plans provided to the expending person by the candidate or committee; or
- Made by or through any agent of the candidate or committee in the course of the agent’s involvement in the current campaign; or
- For a communication relating to a clearly-identified candidate or ballot measure when:
  - The person making the expenditure retains the services of a person who provides either the candidate or the committee supporting or opposing the ballot measure with professional services related to campaign or fundraising strategy for the same election; or
  - The communication replicates, reproduces, republishes, or disseminates, in whole or in substantial part, a communication designed, produced, paid for, or distributed by the candidate or committee.

An expenditure is **not made at the behest** of a candidate or committee just because:

- A person interviews the candidate or candidate’s agent, or committee or committee’s agent on issues affecting the person making the expenditure; or
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- The person making the expenditure obtains a photograph, biography, position paper, or press release, or similar material is provided by the candidate or his or her agent, committee or committee’s agent; or

- The person making the expenditure has made a contribution to the candidate or committee; or

- A person makes an expenditure in response to a general, nonspecific request for support by a candidate or committee, provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure; or

- The person making the expenditure has invited the candidate or committee to make a public appearance before the person’s members, employees, shareholders, or their families provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure; or

- A person informs a candidate or committee that the person has made an expenditure, provided that there is no exchange of information, not otherwise available to the public, relating to details of the expenditure; or

- The expenditure is made at the request or suggestion of the candidate or committee for the benefit of another candidate or committee.

If two or more general purpose committees exchange information between or among themselves, subsequent expenditures by each committee are not, merely by reason of that exchange, considered to be “made at the behest of” the other committee.

Examples

A general purpose recipient committee printed campaign literature stating, “Vote for Cassady.” The communication included Cassady’s photograph, which was obtained from the Cassady re-election committee’s public counter. The general purpose committee did not in any other way coordinate with the Cassady campaign in producing the campaign literature. The general purpose committee made an independent expenditure, not a contribution to Cassady’s committee.

On the other hand, if the general purpose committee contacted Cassady’s political consultant and arranged for a professional photographer to meet with them for the purpose of taking photographs for the mailer, the general purpose committee would be making a nonmonetary contribution to Cassady’s committee.

A local tax measure would increase the benefits provided to police and firefighters. Representatives from both of the general purpose committees that represent the police and firefighters meet to review polls on the likelihood the measure will pass. Each committee then makes separate expenditures in connection with supporting the measure. Under these facts, neither PAC is making a contribution to the other.

Endorsements

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

Examples

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

Closer to the election, at the behest of the committee formed to support Measure YY, the PAC mails a special flyer to the voters announcing its endorsement. The PAC has now made a nonmonetary contribution to the ballot measure committee.
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Determination Based on Facts
As the previous examples illustrate, whether a communication is deemed to be express advocacy, and whether the communication is made at the behest of the affected candidate or ballot measure committee, are factual determinations based on the text of the communication and the circumstances associated with it.

Reporting
There are distinctly different reporting requirements for contributions and independent expenditures.

When a general purpose committee makes payments for a communication that is a contribution, both the general purpose committee and the candidate or committee receiving the benefit report the contribution on a campaign statement.

When a general purpose committee makes payments for a communication that is an independent expenditure, only the general purpose committee will report the payments on its campaign statements.

Non-Contributions
There are some communications that are not considered to be contributions, although payments made by a general purpose committee in connection with these communications would be reportable expenditures.

Debates
A payment for a debate or other forum to which at least two opposing candidates or the proponent of a ballot measure and at least one opponent, or their respective representatives, were invited to participate in equal numbers is not a contribution to the participating candidates or ballot measure committees.

Meetings
A payment made by a bona fide service, social, business, trade, union or professional organization or group for reasonable overhead expenses associated with a regularly-scheduled meeting at which a candidate or an individual representing either side of a ballot measure speaks is not a contribution, if the entity does not pay any additional costs in connection with the speaker’s attendance.

Example: At a union’s regularly-scheduled monthly meeting, a representative for the proponent of Proposition 310 was invited to solicit votes. The union did not incur any additional costs in connection with the speaker’s presentation and, thus, no contribution was made.

Non-Political Communications
A payment made at the behest of a candidate which is for a communication by the candidate or any other person, is not a contribution to the candidate if the communication:

- Does not contain express advocacy;
- Does not make reference to the candidate’s election campaign, or his or her opponent’s qualifications for office; and
- Does not solicit contributions to the candidate or to third persons for use in support of or opposition to the candidate.

Communications Identifying State Candidates
If a committee makes a payment or a promise of payments totaling $50,000 or more for a communication that:

- Clearly identifies a state candidate; but
- Does not expressly advocate the election or defeat of the candidate; and
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- Is disseminated, broadcast, or otherwise published within 45 days of an election for which the candidate identified is on the ballot, the committee must file electronically the Form E-530 (see Chapter 9) and may be subject to contribution limits (see Chapter 2).

Voter Registration

A payment made at the behest of a candidate or ballot measure committee as part of voter registration or get-out-the-vote activities is not a contribution if the communication does not expressly advocate support of or opposition to the candidate or ballot measure.

At the behest of a state candidate, a general purpose committee paid for a nonpartisan voter registration booth at a local fair. No other literature was distributed at the booth. The payment for the voter registration booth was not a contribution to the candidate.

Member Communications

Payments made by an organization or its sponsored committee for a communication that supports or opposes a candidate or 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 regular expenditures on its campaign statements (Form 450 or 460).

A corporation’s sponsored PAC sends a mailing supporting a ballot measure to the corporation’s shareholders. The mailing is not a contribution to the ballot measure committee whose position is supported or an independent expenditure. Later, at the behest of the ballot measure committee, the PAC sends the mailing to all registered voters in the district where the measure will appear on the ballot. The mailing to the voters is a nonmonetary contribution.

The California Tree Doctors Association collects and transmits dues earmarked by its members for political purposes to its sponsored committee. In December, the Association sends a special mailing to its members to raise additional funds for the upcoming state elections. The committee must disclose the payments made by the Association for the solicitation mailing on Schedule C of the Form 460 as nonmonetary contributions from the association (rather than administrative services). The following year, the Association sends a letter to its members recommending candidates running in the upcoming state election. The payments for this mailing qualify as “member communications” and, therefore, are not contributions.

Quick Tip: Political party committees have different reporting requirements for member communications.
contributions to the committee or to the candidates. Neither the Association or the candidates must report the costs of the mailing. (Note: If the sponsored committee paid for the member communication the payments would be reported on Schedules E or F of the Form 460.)

Definition of “Member”
A member is any person who, according to a specific provision of an organization’s articles or bylaws, has the right to vote for the election of a director or an officer or on a disposition of all or substantially all of the assets of the organization or on a merger or on a dissolution. A member is also any person who is designated in the articles or bylaws as a member and, according to a specific provision of an organization’s articles or bylaws, has the right to vote on changes to the articles or bylaws, or pays or has paid membership dues in an amount predetermined by the organization so long as the organization is tax exempt under 26 U.S.C. 501, subdivision (c). Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

People who are only on a mailing or contact list for the organization are not “members” of the organization.

For more information, see Regulation 18531.7 or call the FPPC.

Example The River City Rowing Club’s bylaws require payment of membership dues in order to vote for officers of the club. The Club also has a mailing list of individuals that do not pay dues, but receive the club’s literature. When the club sends a mailer supporting or opposing candidates and measures, they do not send the communication to the mailing list of non-members. Therefore, the mailing qualifies as a “member communication” and the payments made are not contributions or independent expenditures.

Third Party Payments for Member Communications
To meet the exception to the definition of contribution or expenditure, the payment for the communication must be paid by the committee or its sponsor. If a third party makes the payment in coordination with the committee or organization, the payment is considered a contribution or expenditure, subject to any applicable limits and reporting requirements.

Example The California Association of Vegetarians has decided to send a campaign brochure supporting the three Green Party members running for statewide office to its members. Upon hearing of the plan, Friends of the California Environment offers to pay for the communication. The total cost of the communication is $15,000. The payments are made at the behest of each candidate, and each will be featured equally on the flyer. Because the association is not paying for the communication, it does not meet the definition of a “member communication.” Friends must report making a contribution to the three candidates of $5,000 each. Contribution limits apply.

Identification Requirements for Mailings and Advertisements

Mass Mailings
A “mass mailing” is more than 200 similar pieces of mail sent in a single calendar month. The Political Reform Act contains sender identification requirements for mass mailings that are “mailed” (e.g., USPO, FedEx) to a person’s home, business, or post office box.
Solicitation letters, notices of fundraising events, newsletters sent by the committee, and other types of campaign literature are common types of mass mailings.

The Political Reform Act does not regulate the truth or accuracy of mail or other campaign-related advertisements or materials (e.g., false or misleading statements).

Sender Identification Requirements

Sent by One Committee
The name of the committee and its street address, city, state, and zip code must be placed on the outside of each piece of mail in no less than 6-point type and in a color or print that contrasts with the background so that it is easily read. A post office box may be used as the address only if the committee’s street address is on its Statement of Organization (Form 410) on file with the Secretary of State.

Sent by Two or More Committees
The name and address of the committee that is paying the greatest share of the mass mailing, including costs for designing, postage, and printing, must be placed on the outside of each piece of mail as described above. If two or more committees pay equally for the mailer, the name and address of at least one of the committees must be shown on the outside as described above, and the names and addresses of all committees must appear on at least one insert.

Required Recordkeeping
For each mass mailing, the following must be retained for a period of four years:

- A sample of the mailing;
- A record of the date;
- The number of pieces sent; and
- The method of postage used.

Answering Your Questions

Q. Must the committee’s identification number appear on a mailing?
A. No.

Q. If an organization includes a copy of a candidate’s flyer in its newsletter, is the candidate required to be identified on the outside of the mailer?
A. No. The candidate’s name and address must be identified on the flyer only.

Q. A committee has more than one address. Which address must be used on mass mailings?
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A. Any street address that also appears on the committee’s Statement of Organization (Form 410) on file with the Secretary of State may be used.

Q. A committee pays for a ballot measure committee’s mailing as a nonmonetary contribution. Which committee must be identified on the outside, the committee paying for the mailing or the ballot measure committee?

A. Only the committee that pays for the mailing is required to be identified on the outside of the mailing.

Q. If a committee is sending a post card-type mailing, may the name of the committee appear only once?

A. Yes.

Q. Where on the outside of the mailing does the committee identification need to be placed?

A. There is no specific requirement for location of the identification, as long as it appears somewhere on the outside of the mailing.

Identification Requirements for Telephone Calls

If a committee pays for 500 or more similar telephone calls supporting or opposing a candidate or ballot measure, the name of the committee (or the candidate or committee that authorized the calls) must be disclosed to the recipients of the calls. Committees are prohibited from contracting with any phone bank vendor that does not disclose the required information. The committee must maintain a record of the script of the call or, for recorded messages, a copy of the recording, for four years.

Telephone calls also may be subject to the advertisement identification requirements discussed below.

Independent Expenditures Supporting or Opposing Candidates

An advertisement supporting or opposing a candidate that is paid for by an independent expenditure must include a statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate.

Independent Expenditures for Mass Mailings and Broadcast Ads

If a general purpose committee makes an independent expenditure for a broadcast or mass mailing supporting or opposing a ballot measure or candidate, the name of the committee must be identified on the advertisement. If an acronym is used to identify the committee, the name of any sponsoring organization of the committee must be printed on print advertisements or spoken in broadcast advertisements.

Examples

Denim Manufacturers Committee made two types of independent expenditures; one was for a series of radio spots opposing a proposition and the other was a mass mailing supporting a candidate for mayor in San Francisco. Both communications must identify the name of the committee.

Denim Manufacturers Committee also made an independent expenditure to pay for a billboard supporting a proposition. Since the billboard is not a "broadcast or mass mailing," no identification is required by the Political Reform Act.

The required disclosure information must be:

Video: both written and spoken either at the beginning or at the end of the communication, except that if the disclosure statement is written for at least five seconds of a broadcast of thirty seconds or less or ten seconds of a sixty second broadcast, a spoken disclosure statement is not required.
**Audio:** spoken in a clearly audible manner at the beginning or end of the communication and shall last at least three seconds.

**Print Media:** printed in type no less than 10 points in size and printed in a contrasting color to the background on which it appears.

The disclosure information should be in the same language as the advertisement. Proper names are not required to be translated.

### Spokesperson Disclosure

When a committee makes an expenditure of $5,000 or more to an individual for his or her appearance in an advertisement to support or oppose the qualification, passage, or defeat of a ballot measure, the committee must include a statement on the advertisement that reads:

“(Spokesperson’s name) is being paid by this campaign or its donors”

in highly visible roman font shown continuously if the advertisement consists of printed or televised material, or spoken in a clearly audible format if the advertisement is a radio broadcast or telephone message.

The committee must also file a Paid Spokesperson Report (Form 511) within 10 days. (See Chapter 9.)

### Ballot Measure Advertisements

The Political Reform Act imposes specific identification requirements on advertisements paid for by committees primarily formed to support or oppose ballot measures. In some cases, a primarily formed ballot measure committee may be required to identify a general purpose committee in an advertisement. This would occur if the general purpose committee made a contribution of $50,000 or more and the contribution was the highest or second highest contribution received by the primarily formed ballot measure committee.

### Authority

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

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18435 Definition of Mass Mailing and Sender.
18440 Telephone Advocacy.
18450.1 Definitions. Advertisement Disclosure.
18450.4 Contents of Disclosure Statements. Advertisement Disclosure.
18450.5 Amended Advertising Disclosure.
18450.11 Spokesperson Disclosure.
18531.7 Payments for Communications -- Section 85312.
18531.10 Communications Identifying State Candidates.