

COMMUNICATIONS

Ballot measure campaigns reach the voters through communications including television, radio and Internet advertising, mailers, billboards, precinct walking and flyers. The Political Reform Act (“Act”) requires reporting of most payments in connection with political communications and requires “paid for by” disclosures 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 disclosure requirements that apply to ballot measure communications.

A. Payments for Ballot Measure Communications

Most payments made by a committee primarily formed for a measure for communications will likely be **direct expenditures** or **contributions** to other committees. 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 additional reports, including 24-Hour/10-Day reports and verifications. (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”

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 frequency of placing the communication.
- The creator, producer, or distributor of the communication, 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.

There is a rebuttable presumption that an expenditure is coordinated with 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, such as information concerning campaign messaging, planned expenditures, or polling data.
- **Agent.** It is made by or through any agent of the committee in the course of the agent’s involvement in the current campaign. “Current campaign” means the period beginning 12 months prior to the date of the primary or special election in which the candidate is on the ballot for an elective office and

ending on the date of the general or special runoff election for that office. For a measure, “current campaign” means the period beginning 12 months prior to the date of the election in which the measure is on the ballot.

- **Common Consultants.** 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 current campaign.
- **Republication.** The communication reproduces, republishes, or disseminates a communication designed, produced, paid for, or distributed by the committee in whole or substantial part.
- **Fundraising.** The committee making the expenditure is primarily formed to support the candidate or oppose their opponent and in the course of the current campaign, the candidate who benefits from the expenditure solicits funds for or appears as a speaker at a fundraiser for the committee making the expenditure.
- **Former Staff.** The person making the expenditure is established, run, or staffed in a leadership role, by an individual who previously worked in a senior position or advisory capacity on the candidate’s or officeholder’s staff within the current campaign.
- **Candidate’s Family.** The person making the expenditure is established, run, staffed in a leadership role, or principally funded by an individual who is an immediate family member of the candidate.

However, an expenditure is **not coordinated with** 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.
- **Photograph or Press Release.** The person making the expenditure has obtained a photograph, position paper, press release, or similar material from the committee or the committee’s agents.

- **General Request for Support.** The person makes the expenditure in response to a general, non-specific 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.
- **Meeting with Members or Employees.** 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.
- **Prior Contribution.** The person making the expenditure has made a contribution to the candidate or committee.
- **Informed after the Expenditure is Made.** A person informs a candidate or committee that the person has made an expenditure, provided that there is not exchange of information, not otherwise available to the public, relating to details of the expenditure.
- **Expenditure Benefits Another Candidate or Committee.** The expenditure is made at the request or suggestion of the candidate or committee for the benefit of another candidate or committee.
- **Hyperlink.** The communication includes a hyperlink to the Internet website or other social media page of a candidate or ballot measure committee.

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.

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.

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.

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 of or opposition to 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.

Ex 6.2 - An individual paid \$4,000 for a newspaper ad stating “Vote for Measure A.” The communication expressly advocates support for a clearly identified ballot measure. It must be reported either as a contribution or independent expenditure, depending upon whether it was coordinated with a primarily formed ballot measure committee.

Later, the same individual paid \$2,000 for post card-sized flyers that simply stated, “Vote on Election Day.” This communication is not reported as a contribution or independent expenditure because it did not expressly advocate support of or opposition to a measure.

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 Regulation 18420 if the payments qualify as contributions or independent expenditures.

Governmental agencies must refer to 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.

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.

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.

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 \$38,800 (limit through December 31, 2020) 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.



“Lt. Gov. Ramos says YES on 155 - Support Seismic Retrofitting and CA jobs.”

Ex 6.4 - Two weeks before a 2020 election in which Lt. Gov. 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 “Lt. Gov. Ramos says YES on 155 - Support Seismic Retrofitting and CA Jobs.” 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 \$38,800 (2019-2020 limit) 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.

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.

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 or independent expenditures 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.
- 85310 Communications Identifying State Candidates.
- 85312 Communications to Members of an Organization.
- 85500 Independent Expenditures; 24-Hour Disclosure; Coordination.

Title 2 Regulations

- 18215 Contribution.
- 18225.7 Made at the Behest of; Independent Versus Coordinated Expenditures.
- 18420 Reporting Campaign Contributions and Expenditures by State or Local Government Agencies.
- 18420.1 Payments by State or Local Agencies for a Campaign Related Communication.
- 18531.7 Payments for Communications – Section 85312.
- 18539.2 Reporting Payments Pursuant to Government Code Section 85310.

Court Case

Californians for Fair Representation – No on 77 et al., v. Schwarzenegger (2006) 138 Cal.App.4th 15.