



October 31, 2016

Ms. Jodi Remke  
Chairwoman  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

Dear Ms. Remke:

As you know, California's Fair Political Practices Commission ("FPPC"), the body charged with the administration and enforcement of California's Political Reform Act ("Act"), has partnered with the University of California Berkley School of Law, University of California Davis School of Law, and California Forward to conduct a comprehensive review and revision of the Act ("Reform Project").

The stated goals of the Reform Project are to rewrite the Act in "plain English," incorporate current regulations, and amend provisions to comply with judicial opinions. Reducing the complexity of the Act is a laudable goal, and we are pleased that the FPPC has undertaken this initiative.

The Center for Competitive Politics<sup>1</sup> offers the following comments on Draft 1 of the Reform Project, which has been submitted for public comment.

**I. The "Political Purpose" test in the definition of expenditure and contribution is confusing and unconstitutionally vague.**

The Draft states that both Expenditures and Contributions encompass payments for "political purposes," which includes a payment "[f]or the purpose of influencing or attempting to influence the action of the voters."<sup>2</sup> Nearly every important provision of the Act is based on this phrase, but no one can say what it means. If the Reform Project is to succeed, this language must be clear.

For decades, the U.S. Supreme Court has warned that laws are unconstitutional if "men of common intelligence must necessarily guess as to its meaning."<sup>3</sup> This phrase flunks the test.

Arguably such a standard would include even nonpartisan voter guides, since such educational tools might "influence the action of the voters" to cast informed votes.

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<sup>1</sup> The Center for Competitive Politics is a nonpartisan, nonprofit 501(c)(3) organization that promotes and protects the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. In addition to scholarly and educational work, the Center is actively involved in targeted litigation against unconstitutional laws at both the state and federal levels.

<sup>2</sup> Reform Act §§ 82014, 82030.

<sup>3</sup> *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926).

A key portion of the Federal Election Campaign Act (FECA) had similar wording defining contributions and expenditures.<sup>4</sup> In the seminal case, *Buckley v. Valeo*, the Supreme Court ruled that “it is the ambiguity of this phrase that poses constitutional problems.”<sup>5</sup> Indeed, the Draft language is arguably more problematic than the FECA provision struck in *Buckley*, because the Draft proposes to cover “attempting” to influence voters.

The *Buckley* Court’s opinion solved the problem as follows:

To insure that the reach of [this phrase] is not impermissibly broad, we construe ‘expenditure’ for purposes of that section in the same way we construed the terms of § 608(e) -- to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate. This reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate.<sup>6</sup>

The Reform Project can cure this infirmity with a few simple changes to the Draft. Substitute the words “express advocacy” for the vague phrase “influencing or attempting to influence the action of the voters.” After all, the Draft contains an adequate definition of the term “express advocacy.”

To properly implement this change, other changes are needed to capture payments of contributions to or expenditures by committees. We suggest such changes in the Appendix.

## **II. The Draft maintains a confusing proliferation of committees.**

In reviewing the draft, there are many types of committees. If all these committees are committees under Section 82012, the definitions of a contribution and expenditure can and should be simplified.

Here are the committees that appear to exist:

- Recipient Committee (Section 82012)
- Independent Expenditures Committee (Section 82012)
- Major Donor Committee (Section 82012)
- Controlled Committee (Section 82018)
- General Purpose Committee (Section 82035)
- Political Party Committee (Section 82065)
- Primarily Formed Committee (Section 82066)
- Small Contributor Committee (Section 82072)
- Sponsored Committee (Section 82075)
- Candidate’s Controlled Committee for Election to Office (Section 83103)
- Committee Primarily Formed to Support or Oppose Candidate (Section 83103)
- Ballot Measure Committee (Section 83103)

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<sup>4</sup> 2 US Code 431(e) had defined contribution in part as “anything of value made for the purpose of influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party.”

<sup>5</sup> *Buckley v. Valeo*, 424 U.S. 1, 77 (1976).

<sup>6</sup> *Buckley*, 424 U.S. at 80.

- Multipurpose Committees (Under Section 84520, these entities can become committees)
- Elected State Officer Recall Committees (Section 85701)

### **III. The definition of “Independent Expenditure Committee” creates unnecessary confusion.**

An Independent Expenditure Committee is any person or organization that spends a total of just \$1,000 “in connection with a communication” that “unambiguously *urges* a particular result in an election but is not made to or in coordination with the affected candidate or committee.”<sup>7</sup>

The problem with this definition is that it creates a second definition of “express advocacy,” and it is unclear how it differs from the definition contained in Sections 82014 and 82030.

Only express advocacy – *i.e.* terms such as “elect” or “vote for” – can be regulated as an Independent Expenditure.<sup>8</sup> This separates issue advocacy from express advocacy defined as the election or defeat of a candidate.

By contrast, the Draft proposes to regulate Independent Expenditures “*in connection with a communication*” that “urges” an election result.<sup>9</sup> These definitions are unconstitutionally vague and overly broad. For example, let’s assume a group runs a series of issue ads supportive of gay rights. Then, some time later, the group runs another ad on the same theme, perhaps using similar graphics, but which also contains express advocacy. Would the earlier issue ads be considered express advocacy if they were deemed to be somehow “in connection” with the express advocacy ad?

To eliminate any possible confusion, and for statutory coherence, we suggest adding the same definition of “express advocacy” contained in Sections 82014 and 82030 to Section 82040.

### **IV. The definition of Committee and how a Multipurpose Organization becomes a Committee are not in the same Chapter.**

One of the goals of the Reform Project is to “reorganize the Act in order to have all related provisions in the same chapter.”

California may be unique among the 50 states in its requirement that “multipurpose organizations” can also become recipient committees or major donor committees. This convoluted law is a trap for the unwary, especially those at national organizations that might make a fairly small contribution or expenditure in California, unaware that it could trigger voluminous reporting requirements.

While we strongly believe that the Act’s treatment of such multipurpose organizations is unconstitutional, such changes are likely beyond the scope of the Reform Project.

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<sup>7</sup> See Reform Project §§ 82012, 82030, 82040. The definition of Independent Expenditure Committee incorporates by reference the definitions of Expenditure and Independent Expenditure.

<sup>8</sup> *Buckley*, 424 U.S. at 44, n.52.

<sup>9</sup> Reform Act §§ 82012, 82040.

Nevertheless, the chances that an organization might miss this requirement could be reduced by making reference to Section 84520 (Multipurpose Organizations) in Section 82012 (defining a “committee”).

**V. The definition of Electioneering Communication expands the reach of current law beyond the current law’s intent.**

The current law only counts an electioneering communication as a contribution to a candidate “if the communication is made at the behest of the clearly identified candidate.” The Draft counts it as a contribution if it was made “in cooperation with the clearly identified candidate.”

This is an important difference. To take just one example, many groups that publish voter guides survey candidates about important policy issues and report those results in their guides. These actions are done in “cooperation” with the clearly identified candidates, but are also not made “at the behest” of a candidate. The Draft ought to conform to the current law, which does not bring nonpartisan voter guides within the ambit of electioneering communications.

**VI. The monetary thresholds should be adjusted for past inflation, and then adjusted for future inflation.**

There are many fixed dollar amounts in the Act. As a result, over the years, inflation has made the Act apply to transactions and organizations never contemplated when it was originally adopted. One or more of these low fixed dollar amounts might well be found to be unconstitutional either now or in the future as inflation continues to erode their value.

The value of the contribution limits has been adjusted for inflation, and has been for quite time. It makes sense that the threshold amounts for committee status, small contributor committees, and the amounts for itemized contributions and expenditures should also be adjusted for past inflation and protected against erosion from future inflation.

Requiring donors to be itemized at the current \$100 level also discourages smaller donors from making contributions. The failure to index the permissible contributions to Small Contributor Committees has greatly limited the effectiveness of these organizations. The amounts these committees may donate to various candidates has been indexed to inflation, but the committees have had to raise monies with limits that have been eaten away by inflation.

Many of the problems inherent in disclosure requirements can be drastically reduced simply by ensuring that requirements are only applied to major donors and organizations. While there may be good reasons for disclosure of large donors to candidates, parties, and PACs, what is gained by disclosure of a \$100 contribution to a statewide or legislative candidate?

In a paper for the Brennan Center for Justice and the New America Foundation, Mark Schmitt writes:

In his pathbreaking 2011 article, “The Participation Interest,” George Washington University’s Spencer Overton put forward a number of other proposals that would encourage citizen participation as donors and volunteers as well as voters, all of which would also expand opportunity.... There is some evidence that the disclosure requirement on [federal] contributions of

more than \$200 deters donors from making those modest contributions. Raising that threshold to, say, \$500 might make first-time donors more comfortable without opening a massive loophole.<sup>10</sup>

The \$100 reporting threshold for itemized contributions or expenditures was last adjusted in 1982. Calculating for inflation, the current value of that \$100 is about \$250 today.<sup>11</sup> As the Supreme Court has noted, “[a] failure to index limits means that limits which are already suspiciously low will almost inevitably become too low over time.”<sup>12</sup> A provision to automatically adjust for inflation would maintain the Act’s intent, help prevent constitutional challenges, and reduce the need for the agency and legislators to frequently revisit the thresholds.

Adjusting these thresholds and itemized amounts would also help ensure that the resources of the FPPC are used to enforce major violations of the law.

The threshold for a recipient committee was recently adjusted from \$1,000 to \$2,000, but is still too low. By comparison, there is a \$25,000 threshold at which a group is required to file Form 8871 with the Internal Revenue Service. This form is filed by political organizations, which seek to be treated as tax-exempt under Section 527 of the Internal Revenue Code. It is logical that state filing requirements use the same or higher dollar amount.

The current \$2,000 threshold in California for Ballot Measure Committees may well already be unconstitutional. Just this year, in *Coalition for Secular Government v. Williams*, the Tenth Circuit ruled that an organization, which planned to spend \$3,500 opposing a ballot measure, was unconstitutionally burdened by having to register and file reports:

Instead of assigning that interest the same weight across all issue committees, however, we recognized that the strength of the informational interest in financial disclosure varies depending on whether an issue committee has raised and spent \$10 million, for example, or instead \$3,500 [as planned by the Coalition for Secular Government]. In other words, the strength of the public’s interest in issue-committee disclosure depends, in part, on how much money the issue committee has raised or spent. We continue to agree with the Ninth Circuit’s characterization of this sliding scale:

As a matter of common sense, the value of this financial information to the voters declines drastically as the value of the expenditure or contribution sinks to a negligible level. As the monetary value of an expenditure in support of a ballot issue approaches zero, financial sponsorship fades into support and then into mere sympathy. *Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1033 (9th Cir. 2009) (emphasis in original); *Sampson*, 625 F.3d at 1260–61 (same).

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<sup>10</sup> Mark Schmitt, “Political Opportunity: A New Framework for Democratic Reform,” Brennan Center for Justice and New America Foundation. Retrieved on October 31, 2016. Available at: [https://www.brennancenter.org/sites/default/files/publications/A\\_New\\_Framework\\_for\\_Democratic\\_Reform.pdf](https://www.brennancenter.org/sites/default/files/publications/A_New_Framework_for_Democratic_Reform.pdf) (February 5, 2015), p. 14.

<sup>11</sup> For the purposes of approximation, this analysis used an internet inflation calculator. See, e.g., <http://www.calculator.net/inflation-calculator.html>.

<sup>12</sup> *Randall v. Sorrell*, 548 U.S. 230, 261 (2006).

As the Tenth Circuit Court of Appeals noted, “[w]e reiterate that there is an informational interest in the Coalition’s financial disclosures. After all, the Colorado electorate said so in passing Article XXVIII. But at a \$3,500 contribution level, we cannot ... characterize the disclosure interest as substantial.”<sup>13</sup>

## **VII. Proposed Alternative Language**

Attached to this letter are proposed revisions to the problematic language in the Draft as outlined above. These alternatives comply with Ninth Circuit and U. S. Supreme Court precedent concerning the scope of permissible political speech regulation. These proposed changes are not substantive and are akin to the proposed additions the FPPC proposes to make to add certain regulatory definitions to the statutory provisions they were adopted to interpret.

## **CONCLUSION**

The Reform Project has excellent goals, and the first draft shows significant signs of improvement over the original Act. Nevertheless, the Act is too vague on key definitions in a manner that is likely unconstitutional. The Center for Competitive Politics remains committed to analyzing future drafts of the Reform Project, and looks forward to subsequent revisions.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Keating", is positioned above the typed name and title.

David Keating  
President

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<sup>13</sup> *Coal. for Secular Gov't v. Williams*, 815 F.3d 1267, 1278 (10th Cir. 2016).

**§ 82012. Committee. (82013)**

“Committee” means any person or combination of persons, [including certain Multipurpose Organizations as defined in Section 84520, that](#) ~~who~~ directly or indirectly does any of the following in a calendar year:

- (a) Recipient Committee. Receives contributions totaling \$2,000 or more;
- (b) Independent Expenditures Committee. Makes independent expenditures totaling \$1,000 or more; or
- (c) Major Donor Committee. Makes contributions totaling \$10,000 or more to or at the request of or in cooperation with candidates or committees.

A person or any combination of persons that becomes a committee will retain its committee status until that status is terminated under Section 84450.

**§ 82014. Contribution. (82015, 18215)**

(a) **Definition.** "Contribution" means a payment, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment for political purposes, except to the extent the donor receives full and adequate consideration.

(b) **Political Purposes.** A payment is made for "political purposes" if it is:

(1) For the purpose of ~~"express advocacy" influencing or attempting to influence the action of the voters~~ for or against the nomination or election of a candidate or candidates, or the qualification, passage or defeat of any measure; or

(2) Received by or made at the request of or in cooperation with the following or their agent:

(A) A candidate;

(B) A ~~controlled~~ committee; ~~or~~

(C) An official committee of a political party, including a state central committee, county central committee, assembly district committee, or any subcommittee of such committee; ~~or~~

~~An organization formed or existing primarily for political purposes as described in paragraph (1), including a political action committee established by any membership organization, labor union, or corporation.~~

(c) **"Express Advocacy."** A communication expressly advocates the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if:

(1) It contains express words of advocacy such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," "reject," "sign petitions for," or

(2) Within 60 days prior to an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.

~~(d)~~ **Payments Related or Unrelated to Candidacy.** Despite subdivision (a), a payment received by or made at the request of or in cooperation with a candidate is not a contribution to the candidate if it is clear from the surrounding circumstances that the payment was made for purposes unrelated to the candidate's candidacy for elective office.

(1) Unrelated Payment. The following types of payments are presumed to be unrelated to a candidate's candidacy for elective office:

(A) A payment made principally for personal purposes, in which case it may be considered a gift under Section 82036. Payments that are otherwise subject to the limits of gifts from lobbyist or lobbying firms under Section 90031 are presumed to be principally for personal purposes.

(B) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under the Internal Revenue Code section 501, subdivision (c)(3). A payment by a state, local, or federal governmental agency that is made principally for legislative or governmental purposes is governed exclusively by this clause and, thus, not subject to the reporting requirement described in subparagraph (C).

(C) A payment made principally for legislative, governmental, or charitable purposes, which neither a contribution nor a gift. Payments of this type, however, that are made in response to a solicitation by a candidate who is an elected officer must be reported under Section 84400 within 30 days after the date on which the payment or payments equal or exceed \$5,000 in the aggregate from the same source in the same calendar year in which they are made.

(2) Related Payment; Election-Related Activities. A payment is a contribution if it is made for purposes related to a candidate's candidacy for elective office and all or a portion of



the payment is used for election-related activities. For this paragraph, “election-related activities” include the following:

- (A) Communications that contain express advocacy for the nomination or election of the candidate or the defeat of an opponent.
- (B) Communications that contain reference to the candidate’s candidacy for elective office, the candidate’s election campaign, or the candidate’s or an opponent’s qualifications for elective office.
- (C) Solicitation of contributions to the candidate or to third persons to support the candidate or in opposition to an opponent.
- (D) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in (A) through (C) of this paragraph.
- (E) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.
- (F) Preparing campaign budgets.
- (G) Preparing campaign finance disclosure statements.
- (H) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote, if the communication contains express advocacy of the nomination or election of the candidate or the defeat of an opponent.

~~(d)~~(e) **Payments Considered Contributions.** “Contribution” includes the following:

- (1) The purchase of tickets for fundraising events such as dinners, luncheons, and rallies.
- (2) The candidate’s own money or property used on behalf of their candidacy, other than personal funds of the candidate used to pay either a filing fee for a declaration of candidacy or a candidate statement prepared under the Elections Code section 13307.
- (3) The granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office.
- (4) A payment made by a lobbyist or a cohabitant of a lobbyist for costs related to a fundraising event held at the home of the lobbyist, including the value of the use of the home as a fundraising event venue. Any payment is attributed to the lobbyist.
- (5) A payment made by a lobbying firm for costs related to a fundraising event held at the office of the lobbying firm, including the value of the office as a fundraising event venue.
- (6) The payment of compensation by any person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.
- (7) The transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.
- (8) Payment of public monies<sup>ys</sup> by a state or local governmental agency for communications to the public that satisfy both of the following:
  - (A) The communication expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, or, taken as a whole and in context, unambiguously urges a particular result in an election.
  - (B) The communication is made in coordination with the affected candidate or committee under Section 86300.
- (9) A payment made by a person to a multipurpose organization under Sections 82059 and 84520.

~~(e)~~(f) **Payments Not Considered Contributions.** “Contribution” does not include the following:

- (1) Volunteer personal services or payments made by any individual for their own travel expenses if the payments are made voluntarily and without any understanding or agreement that they will be directly or indirectly repaid.

- (2) A payment made by an occupant of a home or office for costs related to a meeting or fundraising event in the occupant's home or office if the costs are \$500 or less. The exception for a home or office fundraising event does not apply to a lobbyist, a cohabitant of a lobbying, or a lobbying firm as provided for under subdivision (d), paragraphs (4) and (5).
- (3) Amounts received under an enforceable promise if those amounts have been previously reported as a contribution. But the receipt of those amounts must be indicated in the appropriate campaign statement.

~~(f)~~(g) **Exceptions.** The following requests or solicitations are not considered contributions to the requesting or soliciting individual.

- (1) Candidate to another candidate or committee. A contribution made at the request of or in cooperation with a candidate for a different candidate, or to a committee not controlled by the requesting candidate, is not a contribution to the requesting candidate.
- (2) Public Utilities Commission. A payment solicited by a member of the Public Utilities Commission, made principally for legislative, governmental, or charitable purposes, is not a contribution. Payments of this type, however, must be reported under Section 88400 within 30 days after the date on which the payment or payments equal or exceed \$5,000 in the aggregate from the same source in the same calendar year in which they are made.

**§ 82030. Expenditure. (82025; 18225)**

- (a) **Definition.** "Expenditure" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment for political purposes.
- (b) **Political Purposes.** A payment is made for "political purposes" if it is
- (1) For the purpose of ~~"express advocacy" influencing or attempting to influence the action of the voters~~ for or against the nomination or election of a candidate or candidates, or the qualification, passage or defeat of any measure; or
  - (2) Made by:
    - (A) A candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to their candidacy or status as an office holder;
    - (B) A ~~controlled~~ committee; or
    - (C) An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; ~~or~~  
An organization formed or existing primarily for political purposes as described in paragraph (1), including a political action committee established by any membership organization, labor union, or corporation.
- (c) **Express Advocacy.** "Expenditure" includes monetary or non-monetary payments made by any person, other than those persons or organizations described in subdivision (b)(2), that are used for communications that expressly advocate the nomination, election, or defeat of a clearly identified candidate or candidates, or the qualification, passage, or defeat of a clearly identified ballot measure.
- (1) "Clearly identified" as used in this title has the following meaning:
    - (A) A candidate is clearly identified if the communication states the candidate's name, makes unambiguous reference to his or her office or status as a candidate, or unambiguously describes him or her in any manner.
    - (B) A group of candidates is clearly identified if the communication makes unambiguous reference to some well-defined characteristic of the group, even if the communication does not name each candidate. A communication that clearly identifies a group of candidates and expressly advocates their election or defeat is reportable as an expenditure, but the expenditure need not be allocated among all members of the class or group on the campaign statement reporting the expenditure.
    - (C) A measure that has qualified to be placed on the ballot is clearly identified if the communication states a proposition number, official title or popular name associated with the measure. In addition, the measure is clearly identified if the communication refers to the subject matter of the measure and either states that the measure is before the people for a vote or, taken as a whole and in context, unambiguously refers to the measure.
    - (D) A measure that has not qualified to be placed on the ballot is clearly identified if the communication refers to the subject matter of the measure and to the qualification drive.
  - (2) "Express Advocacy." A communication "expressly advocates" the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if:
    - (A) It contains express words of advocacy such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," "reject," "sign petitions for," or
    - (B) Within 60 days prior to an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.

- (d) **Limited Exception for Candidate's Payment of Fees.** "Expenditure" does not include a candidate's use of the candidate's own money to pay for a filing fee for a declaration of candidacy or a candidate statement prepared under Elections Code section 13307.
- (e) **Date Made.** An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

**§ 82040. Independent Expenditure.**

**(82031)**

(a) "Independent expenditure" means an expenditure made by any person, including a payment of public monieys by a state or local government agency, in connection with 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, ~~or taken as a whole and in context, unambiguously urges a particular result in an election~~ but is not made to or in coordination with the affected candidate or committee.

(b) Express Advocacy. A communication "expressly advocates" the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if:

- (1) It contains express words of advocacy such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," "reject," "sign petitions for," or
- (2) Within 60 days prior to an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.

**§ 85504. Electioneering Communications Identifying State Candidates; Reporting; Contribution Limit. (85310)**

- (a) **Making Payment.** Any person who makes a payment or a promise of payment totaling \$50,000 or more for a communication that clearly identifies a candidate for elective state office, but does not expressly advocate the election or defeat of the candidate, and that is disseminated, broadcast, or otherwise published within 45 days of an election, must:
- (1) File a report online or electronically with the Secretary of State disclosing the name of the person, address, occupation, and employer, and amount of the payment.
  - (2) The report must be filed within 48 hours of making the payment or the promise to make the payment.
- (b) **Receiving Payment.**
- (1) Any person who receives a payment or a promise of a payment from other persons totaling \$5,000 or more to make an electioneering communication described in subdivision (a) must disclose on the report the name, address, occupation and employer, and date and amount received from the other person.
  - (2) A person who receives or is promised a payment that is otherwise reportable under paragraph (1) does not need to report the payment if the person is in the business of providing goods or services and receives or is promised payment to provide those goods or services.
- (c) **Contribution Limit.** Any payment received by a person who makes an electioneering communication described in subdivision (a) is subject to the limits in Section 85502, subdivision (b), if the communication is made at the request or suggestion of ~~or in cooperation with~~ the clearly identified candidate. A candidate's response to an inquiry about that candidate's position(s) on legislative or policy issues does not create a request or suggestion.