PURPOSE

AB 1217 seeks to extend the California DISCLOSE Act, AB 249 (Mullin), to cover issue ads that are intended to influence legislative and administrative actions, and also close the loophole for electioneering communications that attack or support candidates during election season without expressly advocating for their election or defeat.

EXISTING LAW

In 2017, AB 249, the California DISCLOSE Act, was signed into law. The DISCLOSE Act made strides in addressing previous lax campaign finance disclosure policies. The measure improved the clarity of the formatting of disclosures of top funders of ballot measure and independent expenditure ads on TV, radio, print, and common forms of electronic media. It also established new earmarking rules to identify original donors to committees and ballot measures.

In 2018, AB 2188, the Social Media DISCLOSE Act, was signed into law to extend AB 249 to cover ads on social media and other online platforms like Facebook, Twitter, and Google.

Existing law requires persons who make $50,000 or more in electioneering communications, within 45 days of an election, that clearly identify a state candidate but that don't expressly advocate their election or defeat, to report the payment. It does not require any disclosure on such ads.

BACKGROUND & PROBLEM

Issue advertisements that attempt to pressure legislators to influence legislative outcomes are a growing problem in California. For example, last year a group called "CALInnovates" placed over 400 ads on Facebook trying to kill the Net Neutrality bill (SB 822). In another example, while the legislature was debating bills on how to hold PG&E accountable for devastating wildfires, PG&E spent over $6 million on "grassroots and other advocacy related to state legislative proposals". At the same time, television ads from "The BRITE Coalition" blanketed the airwaves with messages defusing blame for wildfires, without saying who paid for the ads.

Electioneering communications that target candidates without expressly advocating for their election or defeat — also known as "sham" issue ads — are also a growing problem, with over $26 million in reported expenditures since 2010. They are a major loophole in AB 249's requirement that independent expenditure ads for and against candidates must clearly show their top 3 funders.

Currently, although payments for electioneering communications of $50,000 or more must be reported to the Secretary of State, and spending on issue ads attempting to influence legislation must be reported as lobbying expenditures, there are no disclosure requirements on such ads, nor even any way to look up who provided funding to the sometimes misleadingly named entities that reported the expenditures.

SOLUTION

The Issue Ad DISCLOSE Act will build upon the improvements to campaign advertisement disclosure that the California DISCLOSE Act and Social Media DISCLOSE Act established in 2017 and 2018. It:

- Defines "issue advocacy advertisement" as an "advertisement" that must follow the DISCLOSE Act rules and clearly disclose the top 3 funders. This type of ad is defined as one that "clearly refers to and reflects a view on the subject matter, description, or name of one or more clearly identified pending legislative actions, administrative actions, or ballot measures", and either appeals for ad recipients to take action by contacting an elected official or are made within 60 days of the legislative session end.
- Defines "electioneering communication" as an "advertisement" that must follow the DISCLOSE Act rules and clearly disclose the top 3 funders. This type of ad is defined as "an advertisement that refers to one or more clearly identified candidates for elective office, but does not expressly advocate

for the election or defeat of the candidate or candidates, and that is disseminated, broadcast, or otherwise communicated during the period beginning 120 days before the primary or special election and ending on the date of the general or runoff election".

- States that a non-committee only must follow DISCLOSE Act disclosure rules for issue ads if it is a "major advertiser" that spends $10,000 or more on advertisements in a calendar year.
- Defines "top funders" to be shown on issue ads from major advertisers that are not committees as the "lobbying donors" who gave the 3 largest lobbying-available donations of $10,000 or more. Has exceptions for donors who restrict the use of their funds, and for ads paid for entirely with nondonor or small donor funds.
- Identifies original donors on issue ads by stating that if a lobbying donor earmarked a payment for lobbying on a clearly identified pending legislative or administrative action, they shall be listed as one of the top 3 funders even if their funds were transferred through multiple layers of entities.
- States that payments made for the purpose of electioneering communications are classified as contributions or expenditures. This will ensure that any Dark Money multipurpose organization that spends $50,000 or more on electioneering communications must become a campaign committee under Section 84222, the same as if they made $50,000 in independent expenditures.

AB 1217 will provide needed transparency about the true funders of issue ads that are intended to influence legislative or administrative actions and to close the "electioneering communication" loophole for ads about candidates during election season.

SUPPORT

California Clean Money Campaign

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