

PRIMARILY FORMED COMMITTEES REPORTING INDEPENDENT EXPENDITURES

This chapter discusses the general requirements for committees primarily formed to support or oppose a state candidate. In addition, the forms that are required when a committee makes an independent expenditure are reviewed. An independent expenditure is a payment for a communication that expressly advocates support or opposition of a candidate or measure but is not made at the behest of the candidate or measure committee (or the candidate's or measure committee's agent(s).) See Chapter 7 for additional information about independent expenditures.

Generally, independent expenditures are made by committees primarily formed to support or oppose a candidate, not by candidate controlled committees. Most payments made by candidate controlled committees are direct expenditures. But, there is a brief discussion at the end of this chapter about candidate controlled committees making independent expenditures.

A. General Rules for Committees Primarily Formed to Support or Oppose a State Candidate

As described in Chapter 2, a “primarily formed committee” is formed to support or oppose a single state candidate, but is not controlled by the candidate being supported. Generally, the requirements and restrictions outlined in this manual apply to primarily formed committees, including the following:

- The recordkeeping rules and the duties imposed on the committee treasurer and assistant treasurer. (See Chapter 3.)
- The notification to major contributors of \$5,000 or more. (See Chapter 4.)

- Mandated committee advertisement disclosures, including the names of the top three contributors of \$50,000 or more. (See Chapter 8.)
- The requirement that committee funds must be used for a political, legislative or governmental purpose. (See Chapter 6.)

A primarily formed committee is not subject to the following:

- Contribution limits.
- The requirement to complete the Form 501 (Candidate Intention Statement).
- The requirement to terminate by a specific deadline. (See Chapter 11 for information about terminating a committee.)

The following forms, which are required to be filed by primarily formed committees, are discussed in previous chapters:

- **Form 410 (Statement of Organization):** See Chapter 2.
- **Form 497 (24-Hour/10-Day Contribution Report):** See Chapter 2.
- **Form 460 (Recipient Committee Campaign Statement):** See Chapter 9.

Primarily formed committees making independent expenditures must also file the forms listed below, which are discussed in this chapter:

- **Form 496 (24-Hour/10-Day Independent Expenditure Report)**
- **Form 462 (Verification of Independent Expenditures)**
- **Form T10 (Top Ten Contributors)** – Only required if the committee raises \$1,000,000 or more and has received contributions of \$10,000 or more from a single contributor.

B. Form 496 – 24-Hour/10-Day Independent Expenditure Report

The Form 496 is required when independent expenditures totaling \$1,000 or more are made during the 90-day election cycle.

QUICK TIP: The 90-day election cycle includes the 90 days before an election and the date of the election.

The Form 496 is filed electronically with the Secretary of State within 24 hours of making the independent expenditure(s). No paper copies of this report are required, and no copies are required to be filed with other filing officers.

Reporting examples:

- A committee makes an independent expenditure by paying for an advertisement opposing two candidates. The ad costs \$40,000 and features the candidates equally. The committee must file a separate Form 496 for each candidate and disclose \$20,000 for each candidate.
- A committee makes a \$500 independent expenditure 60 days before the election and a second independent expenditure of \$600, 20 days before the election. A Form 496 is required within 24 hours of the second payment.
- A committee makes a \$1,500 independent expenditure 60 days before the election and files a Form 496. A second independent expenditure of \$600 is made 20 days before the election. Another Form 496 is not required unless additional independent expenditures of \$400 or more are made.

Additionally, a Form 496 is required to be filed within 10 business days when a committee makes independent expenditures that total, in the aggregate, \$5,000 or more to support or oppose the **qualification** of a single local initiative or referendum ballot measure.

Completing Form 496

- **Name of Filer.** Enter the committee's name, phone number, ID number, and address. Provide the date of filing, the report number, and the number of pages. If an amendment is being filed, mark the "Amendment" box.
- **Part 1. Candidate or Measure Supported or Opposed.** Enter the name of the candidate supported or opposed by the independent expenditure, the office sought or held by the candidate, and the district number, if applicable. Mark the applicable "Support" or "Oppose" box. A separate Form 496 must be filed for each candidate or measure.

Note: A committee must review the communication to determine the candidate(s) or committee(s) that should be identified on the Form 496. For example, if a communication only advocates opposition to Candidate Hill, Candidate Hill's information is listed and the "Oppose" box is marked. But, if a communication supports Candidate Jones and opposes Candidate Lieu, two separate Form 496s must be filed – one for Candidate Jones and one for Candidate Lieu. The value for each is determined by prorating the costs among the candidates and/or committees supported or opposed.

- **Part 2. Independent Expenditures Made.** Enter the date the independent expenditure was made. In the "Description of Expenditure" field, enter the type of expenditure (e.g., radio advertisement, billboard, or mailing) and the cumulative-to-date total for that candidate or measure. In the amount field, enter the amount of the specific expenditure disclosed in the description field.

- **Part 3. Contributions of \$100 or More Received.** Disclose contributions of \$100 or more received since the closing date of the last campaign statement (Form 460) filed through the date of the independent expenditure. Enter the date received, the name and address of the contributor, the contributor code (e.g., IND), and the amount received. If the contributor is an individual, enter the individual's occupation and employer. If the individual is self-employed, enter the name of the business. If the contribution received is a loan, enter the interest rate, if any. For contributions of \$100 or more received from a limited liability company (LLC) that has qualified as an independent expenditure committee or major donor, include the name of the LLC and the full legal name of the LLC's responsible officer as defined in Regulation 18402.2. For contributions of \$100 or more received from an LLC that has qualified as a recipient committee, include the name of the committee and its principal officer as defined in Section 82047.6. For an LLC that has not qualified as a committee, include the name of the LLC and the full legal name of the individual primarily responsible for approving the contribution. If more than one individual shares in the primary responsibility of approving a contribution, at least one such individual must be identified.

Once a contribution is reported, it is not necessary to report that contribution on any additional Form 496 but it must be reported on the next Form 460.

Cumulative-To-Date Totals. If the cumulative-to-date total is accurate on the most recently filed Form 496, the committee is not required to amend the cumulative-to-date total amount on previous reports.

496 Independent Expenditure Report

Type or print in ink.
Amounts may be rounded to whole dollars.

496 INDEPENDENT EXPENDITURE REPORT

2. Independent Expenditures Made *Attach additional information on appropriately labeled continuation sheets.*

DATE	DESCRIPTION OF EXPENDITURE	AMOUNT
xx/xx/20xx	Research and consulting services	\$5,300.
xx/xx/20xx	Mailer	37,263
	Cumulative to Date: \$222,900.	

496 Independent Expenditure Report

496 INDEPENDENT EXPENDITURE REPORT

CALIFORNIA FORM 496

I.D. NUMBER *(if applicable)*

NAME OF FILER

3. Contributions of \$100 or More Received*

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR <small>(IF COMMITTEE, ALSO ENTER I.D. NUMBER)</small>	CONTRIBUTOR CODE **	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER <small>(IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)</small>	AMOUNT RECEIVED	INTEREST RATES
xx/xx/20xx	Advocates for Fair Housing - ID 741857 <small>(provide address it will be redacted)</small>	<input type="checkbox"/> IND <input checked="" type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		\$10,000	If loan, enter interest rate, if any _____%
xx/xx/20xx	Mary Ann Morris <small>(provide address it will be redacted)</small>	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	20 Orchard Street, Sacramento, CA 95826 Retired	\$2,000	If loan, enter interest rate, if any _____%
xx/xx/20xx	ABC Company <small>(provide address it will be redacted)</small>	<input type="checkbox"/> IND <input type="checkbox"/> COM <input checked="" type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		\$23,000	If loan, enter interest rate, if any _____%

C. Form 462 – Verification of Independent Expenditures

The Form 462 is filed when a committee makes an independent expenditure(s) totaling in the aggregate \$1,000 or more in a calendar year to support or oppose a single candidate or measure. The Form 462 identifies the committee's principal officer. The officer acknowledges, under penalty of perjury, that the committee's independent expenditures were not coordinated with the listed candidate (or the opponent) and that the committee will report all contributions and reimbursements as required by law.

Principal Officer. A principal officer is an individual primarily responsible for approving the political activity of the committee such as:

- Authorizing the content of communications.
- Authorizing independent expenditures.
- Determining the committee's campaign strategy.

Filing Form 462

Email the Form 462 to the FPPC (form462@fppc.ca.gov) within 10 days from the date of the first independent expenditure of \$1,000 or more. A specific candidate must be identified only once per election. The primary and general elections are separate elections. Thus two forms are required if a committee makes independent expenditures supporting/opposing a candidate listed on both the primary and general election ballots. Maintain the originally signed form for four years.

Completing Form 462

This one page form identifies the committee making the independent expenditure, the candidate or measure supported or opposed by the independent expenditure, and the name of the committee's principal officer. If the committee's Form 410 lists more than one principal officer, any of those officers may sign the Form 462.

Form 462
Verification of Independent Expenditures

CALIFORNIA
FORM 462

This verification form identifies the individual responsible for ensuring that a campaign committee's independent expenditures were not coordinated with the listed candidate (or the opponent) or measure committee and that the committee will report all contributions and reimbursements as required by law. An independent expenditure is not subject to state or local contribution limits.

Amendment (Explain)

1. Name of Committee:

NAME OF RECIPIENT COMMITTEE, ENTITY OR INDIVIDUAL COMMITTEE ID #

Committee to Oppose Smith for Senate District 2 20XX 12123XX

STREET ADDRESS CITY

11 K Street Sacramento

STATE ZIP CODE E-MAIL TELEPHONE NUMBER

CA 95814 ssss@xxxxx.com (916) 111-1111

2. Candidate or Measures:

This committee has reported an independent expenditure(s) to support or oppose the candidate(s) or measure(s) listed on a ballot for the election date identified below. (Note: The reporting of an independent expenditure may occur after this form is filed if an independent expenditure is made before the 90 day, 24-hour reporting period of Government Code Sections 84204 and 85500.)

NAME OF CANDIDATE (First/Last) OR BALLOT MEASURE	SUPPORT	OPPOSE	OFFICE SOUGHT OR HELD/ BALLOT NO./LETTER	JURISDICTION AND DISTRICT, IF ANY	ELECTION DATE
Susan Smith	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Senate	2	6/07/20XX
NAME OF CANDIDATE (First/Last) OR BALLOT MEASURE	<input type="checkbox"/>	<input type="checkbox"/>	OFFICE SOUGHT OR HELD/ BALLOT NO./LETTER	JURISDICTION AND DISTRICT, IF ANY	ELECTION DATE
NAME OF CANDIDATE (First/Last) OR BALLOT MEASURE	<input type="checkbox"/>	<input type="checkbox"/>	OFFICE SOUGHT OR HELD/ BALLOT NO./LETTER	JURISDICTION AND DISTRICT, IF ANY	ELECTION DATE
NAME OF CANDIDATE (First/Last) OR BALLOT MEASURE	<input type="checkbox"/>	<input type="checkbox"/>	OFFICE SOUGHT OR HELD/ BALLOT NO./LETTER	JURISDICTION AND DISTRICT, IF ANY	ELECTION DATE

3. Verification:

I have not received any unreported contributions or reimbursements to make these independent expenditures. I have not coordinated any expenditure made during this reporting period with the candidate or the opponent of the candidate who is the subject of the expenditure, with the proponent or the opponent of the state measure that is the subject of the expenditure, or with the agents of the candidate or the opponent of the candidate or the state measure proponent or opponent. I certify under penalty of perjury under the laws of the State of California that the following is true and correct.

Signature _____ [Signature Required] Printed Name John Doe Signed on X/XX/20XX
(month, day, year)

(Check One): Principal Officer Candidate/Officeholder State Ballot Measure Proponent

FPPC Form 462 (Aug/2016)
 FPPC Advice: advice@fppc.ca.gov (855) 275-3773

D. Form T10 – Top Ten Contributor List

A committee primarily formed to support or oppose a state candidate that receives \$1,000,000 or more, and has received contributions of \$10,000 or more from a single source, must file the Form T10 with the FPPC by email (T10@fppc.ca.gov).

File the Form T10:

- Within *two business days* of meeting or exceeding the \$1,000,000 threshold if the threshold is met within the 16-day period before the election; or
- Within *three business days* of meeting or exceeding the \$1,000,000 threshold if the threshold is met at any time other than during the 16-day period before the election.

Completing Form T10:

- **Part 1. Committee Information.** Enter the committee's name, ID number, date of submittal, report number (e.g., 1, 2), contact information, treasurer's name, and the date of election.
- **Part 2b. Candidate Supported or Opposed.** List the candidate supported or opposed, office sought, district number (if any), and mark "Support" or "Oppose."
- **Part 3. Reasons for Update.** Indicate the reason for an updated submission (e.g., new person qualified, ranking order changed).
- **Part 4. Top Contributors – \$10,000 or More.** Identify the contributor, type of committee (if applicable), ID number (if any), city, state and cumulative amount. To determine the cumulative amount received from a contributor, the committee must count the cumulative amount of contributions from a single source for the primary and general elections combined.
- In the "Part 5 Completed" Column, select "yes" if the contributor is a state recipient committee that has received \$50,000 or more from a single source. Otherwise, select "no."

- **Part 5. State Recipient Committees – Top Two Contributors of \$50,000 or More.** Complete Part 5 when a state recipient committee is listed as a top 10 contributor and the state recipient committee has received contributions aggregating \$50,000 or more, from a single source, during the current two-year election period as displayed on the Secretary of State’s Cal-Access system: <http://cal-access.sos.ca.gov/>. List only the contributors’ names, not the amounts or addresses. Disclose the most recent contributor when two or more contributors of identical amounts qualify as the top two contributors.

Ex 12.1 - A primarily formed candidate committee for a November election received over \$1 million in total contributions and listed five separate donors of \$10,000 or more in Part 4; one donor is a state recipient committee. The committee must access the Secretary of State’s Cal-Access database, enter the committee’s ID number, select contributions received and late contributions received, and list in Part 5 the top two largest contributors of \$50,000 or more. If two or more contributors of identical amounts are included in the top two, disclose the most recent contributor(s).

Note: Update Part 5 when the state recipient committee makes additional contributions to the primarily formed committee completing the Form T10.

Subsequent Submissions:

File an updated Form T10 when any of the following occurs:

- A new person qualifies as a top 10 contributor.
- A person who is an existing top 10 contributor makes additional contributions of \$5,000 or more in the aggregate.
- The relative ranking order of the top 10 contributors changes.
- The reporting committee changes its name to add or delete a candidate.

Note: Part 5 is updated only if the state recipient committee makes additional contributions to the committee completing the Form T10.

The deadlines to file a subsequent submission are:

- Within *two business days* of the change if there are changes to the top 10 list within the 16-day period before the election.
- Within *three business days* of the change if there are changes to the top 10 list at any time other than during the 16-day period before the election.

**Committees Primarily Formed
for State Ballot Measures or Candidates
Top Ten Contributor List**
(Government Code Section 84223)

**CALIFORNIA
FORM T10**

Part 1: Committee Information

Committee Name: Businesses Supporting John Doe for Senate 20XX, sponsored by the Local Business Association in San Diego County

ID Number: 13750XX	Date Submitted: May 20, 20XX	Report Number: 1
Contact Name (last, first): Nelson, Linda	Phone Number: 916-222-2222	
Email Address: lnelson@nelsonmail.com	Treasurer's Name (last, first): Nelson, Linda	
Date of Election: June 5, 20XX	Primarily Formed Ballot Measure <input type="checkbox"/> Primarily Formed Candidate <input checked="" type="checkbox"/>	

**Part 2a: Measure(s)
Supported or Opposed**

Measure # (or A.G. #)	Support	Oppose
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>

Part 2b: Candidate Supported or Opposed

Candidate Name (last, first)	Office Sought	District, if any	Support	Oppose
Doe, John	Senate	XX	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>

Part 3: Reason For Update (Check at least one box)

<input type="checkbox"/> A new person qualified as a top 10 contributor.	<input type="checkbox"/> A person who is an existing top 10 contributor made additional contributions.
<input type="checkbox"/> The relative ranking order of the top 10 contributors changed.	<input type="checkbox"/> The reporting committee changed its name to add or delete a ballot measure or candidate.
<input type="checkbox"/> Other (explain):	

Part 4: Top Contributors – \$10,000 +

Contributor	Recipient Committee or Major Donor, if applicable	ID Number of Recipient Committee or Major Donor, if any	Part 5 Completed	City	State	Cumulative Amount
Citizens to Support Free Enterprise	Recipient Committee	12345XX	Yes	San Diego	CA	\$60,000
Small Business Organization PAC	Recipient Committee	13865XX	Yes	San Diego	CA	\$50,000
ABC Company	Major Donor	19920XX	No	San Diego	CA	\$12,000
John Jacobs	Major Donor	12777XX	No	San Diego	CA	\$11,000
Sally Hon	Major Donor	13256XX	No	Escondido	CA	\$10,000
Golfers Association of San Diego	Major Donor	18927XX	No	Oceanside	CA	\$10,000
Retired Naval Community Volunteers Association	Major Donor	12386XX	No	San Diego	CA	\$10,000
Hector Gomez	Major Donor	16777XX	No	San Diego	CA	\$10,000
Emily Howard	Major Donor	14426XX	No	San Diego	CA	\$10,000
Williams and Williams LLP	Major Donor	15321XX	No	Coronado	CA	\$10,000

**Committees Primarily Formed
for State Ballot Measures or Candidates
Top Ten Contributor List**
(Government Code Section 84223)



Part 5: State Recipient Committee Top Contributors – \$50,000+

Recipient Committee:	Recipient Committee:
ID Number: 12345XX	ID Number: 13865XX
List Names of Top Two Contributors	List Names of Top Two Contributors
1. Californians for Free Enterprise	1. Californians for Small Businesses
2.	2.

Recipient Committee:	Recipient Committee:
ID Number:	ID Number:
List Names of Top Two Contributors	List Names of Top Two Contributors
1.	1.
2.	2.

E. Candidate Controlled Committees

Government Code Section 85501 states that a candidate controlled committee may not make independent expenditures and may not contribute funds to another committee for the purpose of making independent expenditures to support or oppose other candidates.

However, a recent Sacramento County Superior Court decision in *Charles R. "Chuck" Reed v. Fair Political Practices Commission* found Section 85501 unconstitutional and enjoined the Commission from enforcing that provision.

Before making an independent expenditure to support or oppose another candidate, committees should seek advice from the FPPC. An advice letter (*Downing*, No. A-14-148) has been issued on the matter.

A candidate controlled committee for elective office may make independent expenditures to support or oppose a ballot measure.

Authority

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

Government Code Sections

82031	Independent Expenditure.
82036.5	Late Independent Expenditure.
82047.5	Primarily Formed Committee.
82047.6	Principal Officer.
84204	Late Independent Expenditures; Reports.
84204.5	Ballot Measure Contributions and Expenditures; Reports.
84213	Verification.
84223	Top Ten Contributor Lists.
84501	Advertisement.
85501	Prohibition on Independent Expenditures by Candidate Controlled Committees.

Title 2 Regulations

18225.7	Made at the Behest; Independent versus Coordinated Expenditures.
18247.5	Primarily Formed Committees.
18402.2	Limited Liability Companies, Responsible Officer.
18421.10	Reporting Contributions from Limited Liability Companies.
18422.5	Display of Lists of Top Contributors to Committees Primarily Formed for State Ballot Measures or Candidates.
18428	Reporting of Contributions and Independent Expenditures Required to be Aggregated.
18550	24-Hour Independent Expenditure Reports.