

# COMMUNICATIONS

Campaigns reach the voters through political communications including television, radio, and Internet advertising, mailers, billboards, precinct-walking, and flyers. The Political Reform Act (Act) requires that committees report most payments in connection with political communications as direct expenditures, nonmonetary contributions to the campaign, or independent expenditures. As discussed below, however, certain types of communications may not be reportable at all, or may be subject to special reporting requirements. This chapter reviews common communications in a campaign and how payments for the communications are reported.

The Act also requires “paid for by” disclosures on campaign ads to inform voters who is paying for the communication. Chapter 7 discusses the disclosure requirements that apply to communications, including mass mailings, made by candidate controlled committees for their own election and communications made by non-controlled committees that are primarily formed to support or oppose a candidate.

## A. Payments for Communications Made by Candidate’s Campaign

In most cases, a candidate’s campaign committee will be funding the bulk of the communications to elect that candidate to office. When a candidate’s campaign committee makes expenditures for communications in furtherance of the candidate’s election, the committee simply reports these direct expenditures. The expenditures are reported on the committee’s Form 460, Schedule E, as described in Chapter 8.

## B. Payments for Communications Made by Others

Generally, when someone other than the candidate or their committee pays for a communication that expressly advocates support of the candidate, and the communication is coordinated with or “made at the behest” of the affected candidate, the candidate has received a **nonmonetary contribution** that must be reported by the candidate’s controlled committee.

Payments for communications expressly advocating support of or opposition to a candidate, which are not coordinated with or made at the behest of the candidate, are **independent expenditures**, and the affected candidate is not required to report the payments; however, the person making the independent expenditure may have reporting obligations.

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

**QUICK TIP:** If a third party pays for communications supporting or opposing the election of a candidate, these may be nonmonetary contributions to the candidate, if coordinated with the candidate, or independent expenditures.

Communications paid for by a candidate’s controlled committee to support their own candidacy, or to oppose their opponent, are direct campaign expenditures, not contributions or independent expenditures.

In most cases, communications paid for by a non-candidate controlled committee primarily formed to support or oppose a candidate are considered contributions or independent expenditures.

## Coordinated Communications - Nonmonetary Contributions

When someone other than the candidate or their committee pays for a communication that is coordinated with or “made at the behest” of the candidate or their committee, the payment for the communication is a nonmonetary contribution to the affected candidate.

### Coordination – “Made at the Behest”

A payment is coordinated with or “made at the behest” of the candidate or committee under each of the following situations:

- It is made at the request, suggestion, or direction of, or in cooperation, arrangement, consultation, concert, or coordination with the candidate or committee on whose behalf, or whose benefit the expenditure is made.
- The candidate or committee has made or participated in making any decision about the content, timing, location, mode, intended audience, volume of distribution, or frequency of placing the communication.
- A creator, producer, or distributor of the communication, or the person paying for the communication has had a discussion with the candidate or committee regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placing the communication.

There is a rebuttable presumption that an expenditure funding a communication is **coordinated with or “made at the behest”** of a candidate or committee if:

- **Committee’s Needs.** It is based on information about the candidate’s or committee’s campaign needs or plans provided by the candidate or committee to the person making the expenditure, such as information concerning campaign messaging, planned expenditures, or polling data.
- **Agent.** It is made by or through any agent of the candidate or 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.

**QUICK TIP:** When a communication that expressly advocates support of a candidate is paid for by someone other than the candidate or their committee, and the communication is “made at the behest” of the affected candidate, the candidate must report the payment as a nonmonetary contribution.

- **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 replicates, reproduces, republishes, or disseminates, in whole or substantial part, a communication, including video footage, designed, produced, paid for, or distributed by the candidate or committee.
- **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 considered to be coordinated** with or made at the behest of a candidate or committee based solely on any of the following circumstances:

- **Interview.** A person interviews the candidate on issues affecting the person making the expenditure.
- **Candidate Material.** The person making the expenditure has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate'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.
- **Public Appearance.** The person making the expenditure has invited the candidate or committee representative 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 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 no 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.

FPPC Regulation 18225.7, summarized above, specifies when a communication is considered independent versus made at the behest of a candidate or committee. Because the determination is based on specific facts, persons are encouraged to contact the FPPC for guidance.

## 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 candidate or committee.

### Clearly Identified Candidate

A communication clearly identifies a candidate when it uses the candidate’s name, photograph, or status as a candidate or officeholder. If a communication includes a group of candidates and refers to some well-defined characteristic of the group, the candidates are clearly identified even if it does not use specific names.

**QUICK TIP:** When a communication that expressly advocates support of a candidate is not “made at the behest” of the affected candidate, the payment is considered an independent expenditure and the candidate does not report the payment. The person making the payment may have reporting obligations.

### Express Advocacy

A communication expressly advocates support of or opposition to a clearly identified candidate under the following scenarios:

- **Magic Words.** The communication uses words such as “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” or “reject.”

**Ex 7.1** - An individual paid \$4,000 for a newspaper ad stating “Vote for Autumn Gomez.” The communication expressly advocates support for a clearly identified candidate and must be reported either as a contribution if it was made at the candidate’s behest or as an independent expenditure if it was not.

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 candidate or measure.

**Ex 7.2** - Friends of Gomez, a non-candidate controlled committee primarily formed to support Autumn Gomez’s candidacy, printed campaign literature stating, “Vote for Autumn Gomez.” The communication included a copy of a photograph the committee obtained from the public information counter at Autumn Gomez’s campaign headquarters. Autumn Gomez did not in any way coordinate with the committee in producing the campaign literature. Therefore, the committee made an independent expenditure, not a contribution to Autumn’s Gomez’s campaign.

On the other hand, if the committee contacted Autumn Gomez and arranged for a professional photographer to meet for the purpose of taking photographs for the mailer, the committee would be making a nonmonetary contribution to Autumn Gomez’s campaign.

**Ex 7.3** - During Curt Anthony’s campaign, two newspaper advertisements supporting Curt Anthony were published without Curt Anthony’s knowledge or consent. Because the payments for these communications were not coordinated with Curt Anthony or made at Curt Anthony’s behest, they were independent expenditures by the person(s) funding the ads and were not reportable by Curt Anthony’s campaign. The person(s) who paid for the ads may have a filing obligation.

- **Unambiguously Urges.** The communication is made within 60 days prior to an election, it refers to a clearly identified candidate, 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 candidate.

A committee or person making independent expenditures must be aware that the communication cannot be coordinated with the affected candidate or measure committee. If there is coordination, the payments are reported as contributions.

## C. Other Communications

### Endorsements

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

Frequently, a candidate will publish their endorsement by another official. As long as the communication does not advocate the election of the endorsing official (or the defeat of that official's opponent), a payment made to communicate the endorsement is not a contribution to the endorsing candidate or official, even though the endorsement was made at the behest of both individuals.

If a candidate pays for a communication supporting their own candidacy that also supports or opposes a ballot measure, the payment is not a contribution or independent expenditure made in connection with the ballot measure.



**Ex 7.4** - The president of a police officers' association announces at its annual meeting that the association endorses John Law for county sheriff. Merely making an oral endorsement is not a contribution to or independent expenditure for John Law. Closer to the election, at the request of candidate John Law, the association mails a special flyer to the voters announcing its endorsement of John. Because the mailing was made at the behest of the candidate, the association has now made a nonmonetary contribution to John Law.

**Ex 7.5** - A city council candidate paid for a mailing which quoted the mayor's verbal endorsement of their candidacy. Although the mayor was also on the ballot, the flyer was not a contribution to the mayor.

**Ex 7.6** - Emmelyn Chin, a city council member running for reelection, sent out a flyer to registered voters in Emmelyn's district asking them to support Emmelyn's candidacy. The flyer also encouraged the voters to vote for Lorraine Sweet for Governor, although this endorsement was not made at Lorraine's behest. Because the gubernatorial election and city council election would appear on the same ballot for those living in Emmelyn Chin's district (and the flyer was sent only to voters in that district), the payment for the flyer is not an independent expenditure supporting Lorraine Sweet.

If a candidate pays for a communication that supports another candidate, and the payment is not made at the behest of the endorsed candidate, the payment is not considered to be an independent expenditure if: (1) the candidate paying for the communication also is included in the communication; (2) the non-paying candidate is listed on the same ballot as the paying candidate; and (3) the communication is targeted only to potential voters in the paying candidate's district.

**QUICK TIP:** See Chapter 7 for the disclosure and sender identification requirements for mass mailings sent by a candidate-controlled committee or a committee primarily formed to support or oppose a candidate.

## Social Media – Internet Communications

**Paid Advertisements on the Internet.** A paid advertisement that a candidate or committee places on the Internet is reportable under the Act. A candidate or committee that pays to place a communication on another person’s website must report the expenditure on a campaign statement. Similarly, a candidate must report a payment to purchase email addresses or any payment for general or public advertisements on Internet sites.

**Ex 7.7** - John is running for school board and John’s neighbor George posts support for John’s candidacy on Facebook. In George’s Facebook post, George includes a picture of John that George got from John’s website. The communication is not reportable because George was not paid for the Facebook post.

**Uncompensated Individuals’ Internet Activity.** When an individual who is not compensated by a candidate or committee sends communications over the Internet (e.g., emails, social networking, blogging, website postings, and hyperlinks) that support or oppose a candidate or measure, these activities do not constitute reportable contributions or expenditures. Regulation 18215.2 creates a “safe harbor” for uncompensated individuals’ political activity on the Internet.

**Paid Blogger.** The safe harbor for an individual’s uncompensated Internet activity does not apply to a blogger a committee pays to support or oppose a candidate or measure. The committee must report payments to that individual. The safe harbor also does not apply to a blogger who receives a majority of their advertisement revenue from a single candidate or committee because they are not considered to be providing uncompensated personal services.

**Ex 7.8** - Camille is running for local office and pays Julia to post a message on Julia's blog supporting Camille's candidacy. Camille's committee must report the payment as an expenditure on the Form 460.

## D. Non-Contributions

There are some communications that are not considered to be contributions to the candidate or the candidate's controlled committee.

**Ex 7.9** - The League of Women Voters invited all candidates for city council to speak at a forum. Only one candidate attended, but since at least two candidates running for the same office were invited, the cost of the forum is not a contribution to the candidate who attended.

### Debates

If a nonpartisan organization hosts a debate or other forum and invites at least two opposing candidates, a payment for the event is not a contribution to the candidates.

Similarly, a payment for a debate or forum sponsored by a political party or a committee affiliated with a political party is not a contribution if a majority of the candidates for the party's nomination are invited to participate.

**Ex 7.10** - At a union's regularly-scheduled monthly meeting, one candidate was invited to solicit votes. The union did not incur any additional costs in connection with the speaker's presentation, so no contribution was made.

### 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 a candidate speaks is not a contribution if the organization pays no additional costs in connection with the speaker's attendance.

## Non-Political Communications

A payment made at the behest of a candidate 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 refer to the candidate's election campaign, or their 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.

## Member Communications

Payments made by an organization or its sponsored committee for a communication that supports or opposes a candidate 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 the organization's sponsored committee makes the payments, the committee would report the payments as being made for general member communications.

Payments made by a political party for a communication that supports a candidate are not contributions to the candidate as long as the communication is distributed only to the party's members, employees, and families of its members and employees. The party must report the payments, however, as if they were contributions or independent expenditures.

**Ex 7.11** - Your campaign consultant asks a labor organization to send a mailing supporting your election. The mailing will be sent only to the organization's membership. The mailing is not a contribution to you. Later, the campaign consultant asks the organization to send the mailing to all registered voters in your district. The mailing to the voters is a contribution to you.

**Ex 7.12** - The Green Party pays for a mailing supporting your candidacy to all of its members five days before your election. The cost of the mailing exceeds \$1,000. The Party must file a Form 497 (24-Hour/10 Day Contribution Report). You are not required to disclose the mailing as a contribution.

## 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.

## Voter Registration

A payment made at the behest of a candidate 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.

**Ex 7.13** - At the behest of an elected official, an organization paid for a 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 official.

## Voting Records

An entity may publish the voting records of public officials. As long as only the voting records are published, the communication is not considered a contribution or an independent expenditure.

## Answering Your Questions

**A. A labor union pays for a mailing advocating the election of a candidate for city council. The mailing list includes both union members and non-union members and 20% of the mailing costs are attributed to non-union members. Must the candidate report the full cost of the mailing as a non-monetary contribution?**

No. The candidate may pro-rate the cost and report as a nonmonetary contribution only the mailing costs for the non-union members.

**B. A representative of an environmental organization interviewed a candidate for county supervisor about issues affecting the environment. Later, the candidate learned that the organization paid for a radio advertisement advocating the election of that candidate. Must the candidate report a nonmonetary contribution?**

No. An expenditure is not made at the behest of a candidate just because a person interviews the candidate on issues affecting the person making the expenditure. As long as the candidate did not coordinate with the organization to produce the advertisement in any other way, the organization made an independent expenditure, not a contribution to the candidate.

**C. I was elected to the city council in November. May I assist an independent expenditure committee that supported my candidacy in retiring its debt now that the election is over?**

No. An “independent expenditure” is made without the coordination, cooperation, or consultation of the candidate. If you assist the committee, the expenditures are not considered independent.

**D. I am a law enforcement officer running for city council. Is it permissible to wear my law enforcement uniform in my campaign literature?**

The Political Reform Act does not contain restrictions related to a candidate wearing a law enforcement uniform; however, other laws may apply. Candidates should contact the District Attorney or City Attorney.

## 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.                      |
| 82041.3 | Made at the Behest of.                        |
| 82044   | Payment.                                      |
| 82047   | Person.                                       |
| 84211   | Contents of Campaign Statement.               |
| 85312   | Communications to Members of an Organization. |

### Title 2 Regulations

|         |   |
|---------|---|
| 18215   | Contribution.   |
| 18215.2 | Uncompensated Internet Activity by Individuals that is not a Contribution or Expenditure. |
| 18225.7 | Made At the Behest; Independent versus Coordinated Expenditures.                          |
| 18421.5 | Reporting an Expenditure for Paid Online Communications.                                  |
| 18450.1 | Definitions. Advertisement Disclosure.  |
| 18531.7 | Payments for Communications – Section 85312.  |