



New Presumptions of Coordination in California Political Communications/ Independent Expenditures

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The California Fair Political Practices Commission (FPPC) has overhauled its regulations that define when an independent expenditure will be deemed to have been coordinated with a candidate or ballot measure committee. Amendments approved by the FPPC on October 15, 2015 create new presumptions that can turn communications created using activities and tactics commonly relied on by independent groups into in-kind contributions. As a result of these new presumptions, groups and persons wishing to use unlimited funds to support candidates and ballot measures are advised to adhere to certain precautions when developing the campaign's strategy.

The following activities are now presumptively coordinated with a candidate and, unless refuted, will be deemed an in-kind contribution, subject to the candidate's contribution limit:

- **Fundraising.** An expenditure supporting a candidate who has fundraised or appeared at a fundraising event for a committee primarily formed to support that candidate, or oppose that candidate's opponent, in the course of the current campaign, is presumed to be coordinated.
- **Former staff.** Expenditures made by a committee that is established, run, or staffed in a leadership role, by an individual who worked for a candidate or officeholder in a senior position or advisory capacity within the prior 12 months, are presumed to be coordinated.
- **Family.** Expenditures by a committee that is established, run, staffed in a leadership role, or principally funded by an immediate family member of a candidate, are presumed to be coordinated.

The FPPC also changed the regulation to curtail candidate activities it believes are intended to telegraph a candidate's campaign needs without directly communicating them to independent groups. The following circumstances will create a presumption that a communication is coordinated with the candidate affected by

it:

- The independent group and the candidate retain common consultants who provide campaign or fundraising strategy.
- The independent group re-publishes a communication produced and distributed by the candidate.

The new regulation provides a safe harbor for independent groups when they place in their communication a hyperlink to the website of the candidate affected by their independent expenditure.

Governor Brown Signs New Disclaimer Requirement for Independent Expenditures

In addition to the new presumptions, Governor Brown signed Assembly Bill 990, which modifies the disclaimer language required on independent expenditure communications. Now, independent expenditures must include the following phrase: This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office." The text of the disclaimer must be in 14 size san serif font. For mass mail independent expenditures, the disclaimer must be contained in a text box and within a quarter inch of the recipient's name.

AB 990 was adopted as an emergency measure. Therefore, the new disclaimer language is required on independent expenditures made to influence the upcoming November 3 local elections.

Nossaman can assist clients that engage in California political communication activities with creating firewalls to navigate the new presumptions of coordination and comply with the expanded disclaimer requirement. Note that while these rules apply to all independent expenditures, many local jurisdictions impose additional restrictions and presumptions. Any person or group distributing political communications that affect a local candidate or ballot measure must confirm whether additional rules apply. Contact Amber Maltbie at amaltbie@nossaman.com or 213.612.7803 for assistance.