



**Date:** November 1, 2007  
**To:** Elections Oversight Committee Members  
**From:** Patrick H. West, City Manager *PHW*  
**Subject:** **AB 1430 (Campaign Finance Reform)**

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Attached for your information is a copy of the chaptered version of AB 1430, which focuses on campaign finance reform, and the related Senate analysis. This bill serves as an amendment to the Political Reform Act of 1974 and prohibits local governments from adopting campaign finance ordinances that restrict communications between an organization and its members unless state law similarly restricts such communications. This item is currently scheduled for discussion at the November 6 Elections Oversight Committee meeting at 12:00 p.m.

For more information, please contact Tom Modica, Manager of Government Affairs, at 8-5091.

cc: Mayor and Members of the City Council  
Bob Shannon, City Attorney  
Christine Shippey, Assistant City Manager  
Reginald Harrison, Deputy City Manager  
Tom Modica, Manager of Government Affairs  
Jyl Marden, City Council Liaison

Attachment  
PHW: TM: pc  
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**Assembly Bill No. 1430**

**CHAPTER 708**

An act to amend Section 85703 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor October 14, 2007. Filed with  
Secretary of State October 14, 2007.]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1430, Garrick. Political Reform Act of 1974: contribution limitations.

Existing law provides that, for the purposes of contribution limits imposed by the Political Reform Act of 1974, payments for communications to an organization's members, employees, shareholders, or their family members, to support or oppose a candidate or ballot measure are not contributions or expenditures if not made for general public advertisements, such as broadcasting, billboards, or newspaper ads. However, existing law requires that payments by a political party for communications to registered party members that would otherwise qualify as contributions or expenditures be reported in accordance with provisions governing the filing of periodic campaign reports, and governing the filing of reports online or electronically with the Secretary of State.

Existing law provides that the Political Reform Act does not nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except the limitations and prohibitions may not conflict with these provisions regulating payments for communications.

This bill would provide that certain restrictions and limitations by a local jurisdiction on payments for a member communication, as defined, would conflict with these provisions and would be prohibited.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a  $\frac{2}{3}$  vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

*The people of the State of California do enact as follows:*

SECTION 1. Section 85703 of the Government Code is amended to read:

85703. (a) Nothing in this act shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that these limitations and prohibitions may not conflict with the provisions of Section 85312.

(b) Limitations and prohibitions imposed by a local jurisdiction on payments for a member communication, as defined in subdivision (c), that conflict with Section 85312 and which are thereby prohibited by subdivision (a) include, but are not limited to, any of the following:

(1) Source restrictions on payments for member communications that are not expressly made applicable to member communications by a state statute or by a regulation adopted by the commission pursuant to Section 83112.

(2) Limitations on payments to a political party committee for a member communication that are not expressly made applicable to member communications by a state statute or by a regulation adopted by the commission pursuant to Section 83112.

(3) Limitations on the scope of payments considered directly related to the making of a member communication, including costs associated with the formulation, design, production, and distribution of the communication such as surveys, list acquisition, and consulting fees that are not expressly made applicable to member communications by a state statute or by a regulation adopted by the commission pursuant to Section 83112.

(c) For purposes of this section, “member communication” means a communication, within the meaning of Section 85312, to members, employees, shareholders, or families of members, employees, or shareholders of an organization, including a communication by a political party to its members who are registered with that party.

SEC. 2. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

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|SENATE RULES COMMITTEE           |                               | AB 1430 |
|Office of Senate Floor Analyses  |                               |         |
|1020 N Street, Suite 524         |                               |         |
|(916) 651-1520                   | Fax: (916)                   |         |
|327-4478                         |                               |         |
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## THIRD READING

Bill No: AB 1430  
 Author: Garrick (R), et al  
 Amended: 5/8/07 in Assembly  
 Vote: 27

SEN. ELECTIONS, REAPP. & CONST. AMEND. CMTEE. : 4-1,  
 7/10/07

AYES: Battin, Cogdill, Padilla, Calderon  
 NOES: Migden

ASSEMBLY FLOOR : 77-0, 5/24/07 - See last page for vote

SUBJECT : Political Reform Act of 1974: contribution  
 limitations:  
           communications

SOURCE : State Building and Construction Trades Council

DIGEST : This bill prohibits local governments from  
 adopting campaign finance ordinances that restrict  
 communications between an organization and its members  
 unless state law similarly restricts such communications,  
 or by regulation by the Fair Political Practices  
 Commission.

ANALYSIS : Existing law provides that payments made for  
 communications to members, employees, shareholders, or  
 families of members, employees, or shareholders of an  
 organization for the purpose of supporting or opposing a  
 candidate or a ballot measure are not contributions or

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expenditures, if those payments are not made for general public advertising such as broadcasting, billboards, and newspaper advertisements. However, such payments made by a political party for communications to its members that would otherwise qualify as contributions or expenditures are to be reported in the same manner as contributions or expenditures.

Existing law provides that nothing in the Political Reform Act (PRA) shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that those limitations and prohibitions cannot conflict with the provision of state law that provides that payments made by an organization for communications to its members are not contributions or expenditures.

Existing law prohibits a person from making a contribution to a political party totaling more than \$30,200 in a calendar year for the purpose of making contributions for the support or defeat of candidates for elective state office, or for the purpose of making expenditures at the behest of a candidate for elective state office for communications to party members related to the candidate's candidacy for elective state office. [Proposition 34 of 2000]

This bill prohibits local governments from adopting campaign finance ordinances that restrict communications between an organization and its members unless state law similarly restricts such communications. Specifically, this bill prohibits a local jurisdiction from doing any of the following:

1. Imposing source restrictions on payments for member communications that are not expressly made applicable to member communications by a state statute or by a regulation adopted by the Fair Political Practices Commission (FPPC).
2. Adopting limits on payments to a political party committee for member communications that are not expressly made applicable to member communications by a state statute or FPPC regulation.

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3. Adopting limits on the scope of payments considered

directly related to the making of a member communication, including costs associated with the formulation, design, production and distribution of the communication such as surveys, list acquisition, and consulting fees that are not expressly made applicable to member communications by a state statute or FPPC regulation.

Legislative Counsel (LC) Opinion. Assemblymember Garrick requested a legal opinion concerning local limitations or restrictions on member communications. He asked whether local regulations that would impose restrictions on member communications by a state political party committee, under Section 85312, would be in conflict with Section 81009.5, 85312, and 85703 of the Government Code, and thereby invalid. He asked that LC specifically address local regulations that would limit the amount of payments that may be made to a state political party committee for a member communication, the source of payments made to a state political party committee for a member communication, or the scope of payments made to a state political party committee considered directly related to the making of a member communication. Also, he asked that LC address local regulations that would impose additional filing requirements on payments for a member communication of a state political party committee. It was the opinion of LC that a local regulation that would limit the amount of payments that may be made a state political party for member communications, that would limit the source of those payments, or that would limit the scope of payments made to a state political party committee considered directly related to the making of a member communication would be in conflict with Sections 85703 and 85312 of the Government Code, and thereby invalid. In addition, they concluded that a local regulation that would impose additional filing requirements upon a state political party committee for member communications would be preempted by Section 81009.5, and thereby invalid.

Ongoing Regulatory Process. In implementing the provisions of the PRA governing member communications, the FPPC has adopted a regulation that sets parameters for what

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constitutes a "payment for communications to members" by an organization. Among other provisions, Title 2, California Code of Regulations, Section 18531.7 (Regulation 18531.7) defines various terms used in the member communications statute (including "organization," "member," "shareholder," and "family"), specifies what constitutes a payment for communications, provides a safe harbor for communications

inadvertently directed to nonmembers, addresses payments for member communications made at the behest of a candidate or committee, and specifies the reporting requirements for member communications made by entities that are considered committees under the PRA.

The FPPC is currently reviewing its regulations governing member communications, and is deciding whether to modify Regulation 18531.7, to adopt new regulations, or both. Among the issues being considered by the FPPC in reviewing its member communications regulation are whether to extend the regulation (or adopt a new regulation) to govern member communications by political parties (Regulation 18531.7 defines the term "organization" to exclude political parties, so communications by political parties are not currently covered by Regulation 18531.7), and what rules and restrictions (if any) should be placed on member communications by political parties.

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Fulhorst Opinion Request . Some of the issues that the FPPC plans to address in reviewing its regulations governing member communications, as detailed above, came to light due to an opinion request sent to the FPPC from Stacey Fulhorst, the Executive Director of the City of San Diego Ethics Commission. Ms. Fulhorst posed 10 questions to the FPPC on how existing law governing member communications was to be enforced, including (1) whether a member communication made by a political party at the behest of a candidate is considered a contribution to that candidate, (2) whether contributions earmarked for member communications at the request of a candidate are considered contributions to the candidate, and (3) whether a local jurisdiction can enact a law defining as a "contribution" any payment for member communications that are made at the behest of a candidate, and therefore subjecting such payments to local contribution limits.

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The FPPC ultimately declined to issue an opinion in response to Ms. Fulhorst's request, and instead decided to incorporate the questions raised in her request into its review of regulations governing member communications. However, because the issues raised in Ms. Fulhorst's request are directly related to some of the issues addressed by this bill, any new or revised regulations that result from the FPPC's review of its member communication regulations could directly impact issues addressed by this bill.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No

Local: No

SUPPORT : (Verified 9/5/07)

State Building and Construction Trades Council (source)  
 American Motorcyclist Association District 37  
 Association for Los Angeles Deputy Sheriffs  
 California Chamber of Commerce  
 California Democratic Party  
 California Labor Federation  
 California League of Conservation Voters  
 California Medical Association  
 California Off-Road Vehicle Association  
 California Pro Life Council  
 California Professional Firefighters  
 California Republican Party  
 California State Council of Laborers  
 California Teachers Association  
 City of Huntington Beach  
 Deputy Sheriffs' Association of San Diego County  
 Former FPPC Commissioner Bill Hauck  
 Former FPPC Commissioner Colleen McAndrews  
 Former FPPC Commissioner James Hall  
 Former FPPC Commissioner Tony Quinn  
 Howard Jarvis Taxpayers Association  
 James Madison Center for Free Speech  
 NARAL Pro-Choice California  
 National Rifle Association of America  
 National Right to Life Committee  
 Peace Officers Research Association of California  
 Planned Parenthood Affiliates of California  
 San Diego Off-Road Coalition

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Service Employees International Union, Local 1000  
 Service Employees International Union State Council

OPPOSITION : (Verified 8/27/07)

California Clean Money Campaign  
 California Common Cause  
 California Public Interest Research Group  
 City of San Diego Ethics Commission  
 League of Women Voters of California  
 Sacramento City Councilmember Steve Cohn

ARGUMENTS IN SUPPORT : According to the author's office,  
 this bill clarifies existing law regarding protected  
 'member communications' for political parties, labor  
 unions, and other membership organizations.



Existing state law allows local jurisdictions to establish regulations 'not in conflict' with state law or regulations promulgated by the FPPC. However, some local jurisdictions have begun the process of attempting to promulgate local laws and regulations that conflict with the clear meaning of the PRA and FPPC regulations and which, as such, are in clear conflict with both bodies.

In particular, local jurisdictions have begun the process of attempting to restrict the First Amendment free speech of political parties and labor unions to communicate with their memberships without regulation by or from local jurisdictions.

This bill clarifies the clear intent of the PRA and FPPC regulations to allow membership organizations to communicate with their own members, and the primacy of state government's authority to interpret the clear meaning of the PRA.

Political parties, labor unions, and other membership organizations have a clear First Amendment right, bolstered by the actual language and clear intent of the PRA and the FPPC, to communicate with their own members. This bill clearly defines this right, so that there will be no future confusion.

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ARGUMENTS IN OPPOSITION : Opponents state:

"AB 1430 would prevent many cities and counties from enacting any laws that would restrict the funneling of large contributions through political parties to benefit candidates -- even when the candidate, party, and donor coordinate the payment and expenditure. Without such safeguards, local contribution limits would be rendered meaningless. Contribution limits are a fundamental and constitutional means that many cities and counties can and do use to prevent corruption and the appearance of corruption in their elections. AB 1430 would create an enormous loophole in these laws, allowing special interest groups to use large campaign contributions to dominate city elections and exert undue influence over city officials.

"The right of many cities and counties to regulate their own elections is enshrined in the state constitution and Political Reform Act. AB 1430 threatens to abridge these rights, substituting the view of the state legislature for that of voters and local officials as to what

campaign finance laws best meet the needs of local jurisdictions."

ASSEMBLY FLOOR :

AYES: Adams, Aghazarian, Anderson, Arambula, Bass, Beall, Benoit, Berg, Berryhill, Blakeslee, Brownley, Caballero, Charles Calderon, Carter, Cook, Coto, Davis, De La Torre, De Leon, DeSaulnier, DeVore, Duvall, Dymally, Emmerson, Eng, Evans, Feuer, Fuller, Gaines, Galgiani, Garcia, Garrick, Hancock, Hayashi, Hernandez, Horton, Houston, Huff, Huffman, Jeffries, Jones, Karnette, Keene, Krekorian, La Malfa, Laird, Leno, Levine, Lieber, Lieu, Ma, Maze, Mendoza, Mullin, Nakanishi, Nava, Niello, Parra, Plescia, Portantino, Price, Richardson, Sharon Runner, Ruskin, Salas, Saldana, Silva, Smyth, Solorio, Spitzer, Strickland, Swanson, Torrico, Tran, Villines, Walters, Wolk

NO VOTE RECORDED: Soto, Nunez, Vacancy

DLW:mw 9/5/07 Senate Floor Analyses

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SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*