



*Help achieve an open and accountable government*

June 12, 2019

The Honorable Tom Umberg  
Chair, Senate Elections and Constitutional Amendments Committee  
State Capitol, Room 3070  
Sacramento, CA 95814

Cc: The Honorable Sabrina Cervantes and Kevin Mullin and Members of the Senate Elections and Constitutional Amendments Committee

**RE: AB 201 (Cervantes-Mullin) – Oppose Unless Amended.**

Dear Chairman Umberg:

AB 201 takes on the important task of refining disclosure requirements for text message advertisements. It has several valuable refinements concerning when disclosures on text message ads are required, along with the especially important addition of requiring disclosure on text message ads paid for by candidates and political party committees.

**Unfortunately, as sponsors of the *California DISCLOSE Act*, AB 249 (Mullin-Levine), we must reluctantly but strongly oppose AB 201 in its current form because it will significantly weaken the *DISCLOSE Act* for ballot measure and independent expenditure text messages ads, thereby allowing campaigns to effectively hide from voters who is communicating with them.**

Just as you yourself rightly insist on knowing who is asking for your vote when you vote on legislation without having to dig for the information, voters deserve no less when they themselves vote. That is the fundamental *DISCLOSE Act* principle that is violated by a significant part of this bill.

By passing the *DISCLOSE Act* and the *Social Media DISCLOSE Act* (AB 2188, Mullin), California correctly blazed the trail to clearly and prominently showing voters who's really paying for political ads — on the ads themselves. The only listed exception in AB 249 and AB 2188 is graphic ads, which are often too small to show full disclosure text<sup>1</sup>. Every other type of ad listed, including television, radio, print, email, social media, and robocalls, must directly include their top contributors on the ads themselves.

**AB 201 as drafted goes in the opposite direction as the *DISCLOSE Act***, because the bill would expressly allow all mass text advertisements to disclose only a URL, or, even worse, nothing more than a committee ID number — unlike every other type of advertisement besides graphic ads.

Based on a premise that it would somehow be impracticable to list top funders in texts (and, with respect, it is never impracticable do so given that text messaging platforms allow multiple SMS messages to be sent and received as one text<sup>2</sup>), the bill would overturn *DISCLOSE Act* precedent and permit massive robotexts to deluge your constituents with no hint who the real funders are in the text itself.

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<sup>1</sup> Graphic ads are instead required to display “*Who funded this ad?*” and link to a website with the disclosure information. AB 2188’s amendments to “electronic media advertisement” formatting rules in Section 84503 clarified that this exception only applies to an ad that is a “graphic, image, animated graphic, or animated image”.

<sup>2</sup> Though SMS text messages are limited to 160 characters, text messaging platforms allow longer text messages to be sent and most carriers and smartphones show them as a single message, i.e., not broken up into several messages.

**A solution to this problem could be to make amendments to differentiate between texts sent by volunteers**, which could be allowed to disclose only a URL as in the current draft of AB 201, vs. robotexts and texts from paid staffers, which would be required to include brief disclosures of the top two funders, more in line with the *DISCLOSE Act* disclosures on other types of ads.

Such amendments, outlined on page 4, would be analogous to the differences in current law Section 84310 between mass phone calls from volunteers vs. paid staffers<sup>3</sup>. This solution would facilitate campaigns with volunteers who believe in them to have conversations with voters, while discouraging campaigns that don't have such volunteers from bombarding your constituents with mass texts sent by hired staffers because they don't have to list the top funders that they must list in other types of ads.

#### **HOW AB 201 WEAKENS DISCLOSURE ON BALLOT MEASURE AND INDEPENDENT EXPENDITURE TEXTS.**

Current law in Sections 84502 and 84503 require text measure ads to include top funders because it requires that all ballot measure ads and independent expenditure ads list the name of the committee paying for the ad and its top 3 funders, unless superseded by specific language (as in the case of graphic ads). The attached appendix describes in detail why this includes text message advertisements and will hold when AB 2188 goes into place on January 1, 2020.

It is true that requiring text message ads to list the full committee name, which is often lengthy and misleading, as required by existing Section 84502, may not be optimal for texts. Section 84503's requirement that the top three contributors be listed could also be amended to take up less space in text messages. Our proposed amendments on page 4 describe possible solutions.

Regardless, AB 201 as drafted goes much too far in amending those requirements in the following ways:

#### **1. A URL INSTEAD OF TOP FUNDERS ISN'T ENOUGH INFO ON ROBOTEXTS OR PAID STAFF TEXTS.**

AB 201's Section 84504.7(b)(1) requires that text message ads say "Paid for by" followed by the URL to a website containing the disclosures required by Section 84502, 84503, and 84506.5.

Though this is better than nothing, and would allow motivated voters who know what it means and have time on their hands to find the key disclosure information by going to the URL on their smartphone, it is a drastic weakening of the intent of the DISCLOSE Act and the plain requirements in Section 84502 and 84503 that advertisements display the name of the committee and top contributors.

Here are some misleading "disclosure" URLs on robotexts that this would allow:

"Vote Yes on Prop 99. Paid for by [www.EnvironmentalistsFor99.com](http://www.EnvironmentalistsFor99.com)"  
(Although the committee is funded by major polluters.)

"Sabrina Cervantes is anti-union and will raise your taxes. Paid for by [www.CervantesRaisesTaxes.com](http://www.CervantesRaisesTaxes.com)"  
(Sent to union members by an IE committee actually funded by labor opponents.)

Yes, voters in the know and with enough time would be able to go to the website in the link, scroll down to the bottom of the website it goes to, and squint on their smartphones to see who really funded the texts. But most voters won't know the information is online, won't know that following the link would go to it, or won't have time. They will only see the message and the misleading "disclosure" URL.

<sup>3</sup> Section 84310 requires that paid phone callers making mass calls disclose who pays for them during their calls, but "does not apply to telephone calls made by the candidate, the campaign manager, or individuals who are volunteers".

**2. THE OPTION TO LIST ONLY THE COMMITTEE ID WILL BE INCOMPREHENSIBLE TO MOST VOTERS.**

Even worse, AB 201’s Section 84504.7(b)(2) would allow committees to send texts that don’t even include a URL to a website with the disclosure, but to instead say merely “Paid for by” followed by the committee ID number of the candidate or committee paying for the advertisement.

This means that disclosures on text message advertisements for a ballot measure would look like this:

“Vote Yes on Prop 26. Paid for 9873234”
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This, respectfully, would be completely incomprehensible to the vast majority of voters. Even if they knew it was a committee identification number, most voters would have no idea how to find the disclosure information. And, for the rare voter who does know how to look up committee numbers on the Secretary of State website, figuring out the top contributors is not a quick or easy process. Avoiding such vacuous disclosures was one of the reasons the legislature passed the *DISCLOSE Act*.

AB 201 provides this option to committees *“If, because of the nature of the technology used to send the text message, including the text message disclosure required by paragraph (1) would be impracticable or would severely interfere with the candidate or committee’s ability to convey the intended message”.*

**But it is never “impracticable” to include a URL in a text.** A URL, like “www.Yeson99.com” is in fact merely plain text like the words in the message. While it is true that not every voter has a smartphone that will allow them to click on the URL in the text, every voter can type that URL into a web browser and quickly find the key disclosure information. The same is not true of a committee identification number.

**3. NO DISTINCTION BETWEEN TEXTS SENT BY VOLUNTEERS VS. ROBOTEXTS/PAID STAFF MASS TEXTS MEANS VOTERS WILL BE INUNDATED BY ROBOTEXTS WITH VIRTUALLY NO USEFUL DISCLOSURE.**

Current code Section 84310 regarding disclosures on mass phone calls makes a clear distinction between robocalls or calls made by paid staffers (which it requires to disclose the name of the committee paying for the call) vs. calls made by volunteers (which it doesn’t).

Text messaging platforms like Relay and Hustle allow people to send thousands of texts an hour, one at a time, to voters. Using such platforms to facilitate volunteers having conversations with voters about measures or candidates they believe in is a valuable service. It is easily argued that such texts from volunteers should have more limited disclosures, such as only a URL to a website that has the disclosure information, because the volunteers are not being paid.

In contrast, allowing robotexts or texts from paid staffers — who are being paid by the committee — to avoid clearly showing in the text who’s paying for them will allow (and in fact encourage) every campaign to inundate your constituents with texts showing only misleading URLs (or worse, only committee numbers). This would dramatically weaken the *DISCLOSE Act* and is opposite to its intent.

**FOR THESE REASONS, WE MUST STRONGLY OPPOSE AB 201 UNLESS AMENDED.**

Although the author’s intent for AB 201 to provide California voters with more complete information about who’s paying for and sending them mass text messages is laudable and one that we share, and AB 201 has some valuable refinements of the *DISCLOSE Act*’s treatment of mass text messages, as drafted it will significantly weaken California’s disclosure laws and their intent, as detailed above.

**In summary, the bill as currently drafted:**

- Drastically weakens existing *DISCLOSE Act* disclosure requirements for ballot measure and independent expenditure text messages by replacing top contributors with, at best, a URL.
- Allows robotexts and mass texts sent by paid staff to use URLs with misleading names that voters will very rarely click, instead of listing the top funders.
- Allows texts to show only a committee ID number that will be incomprehensible to most voters, if the committee deems it “impracticable” to send a URL even though a URL is just text and is therefore never “impracticable”.
- Doesn’t distinguish between texts sent by volunteers vs. robotexts and texts sent by paid staff.

**WAYS THAT AB 201 COULD BE AMENDED TO REMOVE OUR OPPOSITION AND LEAD TO SUPPORT.**

AB 201 does have several valuable refinements of the *DISCLOSE Act*’s treatment of text message advertisements. Its provision to extend disclosure requirements to text messages paid for by candidate committees and political party committees is particularly important. Also welcome are its provisions that disclosure is required on only the first message in a single conversation within a calendar day, and not required on a text message sent in reply to a voter’s response.

**The following amendments would address our concerns and not weaken the *DISCLOSE Act*:**

1. Striking Section 84504.7(b)(2) and corresponding language to remove the option for committee texts to only disclose the committee identification number.
2. Amending Section 84504.7(b)(1) to apply to only texts sent by volunteers, so that only text messages sent by volunteers have the option to include the minimal URL disclosure. We’d suggest an option for texts sent by volunteers to say “Details at:” instead of “Paid for by:”
3. Add a section saying that any texts sent by mass distribution technologies, or sent by paid staff or other non-volunteers through text messaging platforms, must include (a) some way to disclose the name of the committee that paid for the ad, and (b) “Major funding by” followed by the committee’s top two funders, similar to radio ads.

**We suggest the following additional amendments to minimize the text needed for disclosures while not working against achieving the *DISCLOSE Act*’s goal to disclose funders on ads themselves:**

- The requirement to display the name of the committee could be satisfied by including either (a) the name of the committee, (b) “Committee” followed by the ID of the committee, or (c) a URL to a website with the disclosure information.
- For texts paid for by candidate committees, require the name of the candidate and the office they are running for, e.g. “Mary Jones for Los Angeles City Council”, rather than the committee name or ID number.
- Allow committees to list on texts shorter names used in common parlance for top contributors, e.g., “SEIU” instead of “Service Employees International Union”, “Boilermakers Local 92” instead of “International Brotherhood of Boilermakers Local 92”, or “Howard Jarvis” instead of “Howard Jarvis Taxpayers Association”.
- Allow “CA” in the disclosures to replace “California”.
- Allow texts sent by text messaging platforms to say “with” instead of “Paid for by” in front of the committee name.

These amendments would provide improved disclosure that is consistent with, and not less than, the *California DISCLOSE Act*’s clear intent to always show voters who’s paying for ads on the ad themselves.

**Examples of robotexts or texts sent by paid staffers** that would meet these amendments include:

“Vote No on Prop 99. Paid for by No on 99, Working Families Against a Bad Initiative. Major funding by SEIU and CA Teachers Association.”

“Vote No on Prop 99. Paid for by Committee 8373219. Major funding by SEIU and CA Teachers Association.”

“Vote No on Prop 99. Paid for by [www.NoOn99.com](http://www.NoOn99.com). Major funding by SEIU and CA Teachers Association.”

“Don’t vote for Sabrina Cervantes! Paid for by <Name of Her Opponent> for Assembly”.

**Example of a text sent by a volunteer** using a text messaging platform:

“This is Mary with No on 99. Please vote No! Details at [www.NoOn99.com](http://www.NoOn99.com).”

These examples should make clear that disclosure of top funders on text messages can be done in a reasonable and practicable manner with amendments like the ones described above. Unlike the current draft of AB 201, these amendments would provide voters with the information they need on the actual text message advertisements, which has always been the intent of the *California DISCLOSE Act*.

We are happy to engage with the author, the committee, and other stakeholders to discuss these proposed amendments or other ways to address our concerns. But unless AB 201 is amended in these or similar ways so that it doesn’t move the law in a direction opposite to the intent of the *California DISCLOSE Act*, we regret that we must strongly oppose AB 201 and respectfully request your “NO” vote.

Respectfully,



Trent Lange  
President and Executive Director  
California Clean Money Campaign

## **Appendix: Current Law Requires Ballot Measures and Independent Expenditure Text Message Advertisements to List the Committee Name and its top 3 funders**

**Current law Sections 84502 and 84503 require text message advertisements on ballot measures and independent expenditures to list the name of the committee paying for the ad and its top 3 funders.** Although the Assembly Elections Committee analysis correctly points out that AB 2188 (Mullin), which goes into effect on January 1, 2020, amends Section 84504.3's formatting requirements for "electronic media advertisements" in a way that doesn't list mention messages (which it never explicitly did), the general requirements for advertisements in Sections 84502 and 84503 will still be in place, and are clear:

**84502.** (a) (1) Any advertisement paid for by a committee pursuant to subdivision (a) of Section 82013, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate, shall include the words "Ad paid for by" followed by the name of the committee...

**84503.** (a) Any advertisement paid for by a committee pursuant to subdivision (a) of Section 82013, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate, shall include the words "committee major funding from" followed by the names of the top contributors to the committee paying for the advertisement...

AB 2188 did not repeal nor amend Sections 84502 or 84503. In fact, it added a new section explicitly referencing the fact that they hold, *unless* a provision in Sections 84504 to 84504.6 conflicts, such as the special formatting requirements for other specific kinds of electronic media ads:

**84503.5.** *The disclosures described in Sections 84504 to 84504.6, inclusive, supersede the disclosures described in Sections 84502, 84503, and 84506.5, to the extent they conflict.*

This section was added because some types of advertisements needed explicit formatting that may override the general Section 84502 and 84503 requirement that ads must include the committee name and top contributors. E.g. Since graphic ads may not always be able to fit all that text, AB 249 and AB 2188 said that they must instead say "Who funded this ad?" Similarly, ads on social media platforms require special formatting, so AB 2188 added Section 84504.6 for them.

Text messages, however, are a very simple and straightforward case: They are text, nothing more, nothing less. No formatting requirements regarding the text size or color are needed, which is why there was no need to explicate their formatting in AB 2188's Section 84504.3. Sections 84502 and 84503 clearly describe what they must include, and does not need to be "superseded".

The only reason that text message advertisements on ballot measures and IEs wouldn't be required to list the committee name and top contributors under current law, even when AB 2188 goes into effect, would be if the FPPC determined by regulation under Section 84501(a)(2)(G) that it was "impracticable".

**The FPPC has not passed such a regulation, and should not, so Section 84502 and 84503 will hold when AB 2188 goes into effect on January 1, 2020.**