

## **AB 201 (Cervantes & Mullin):**

### **Text Message DISCLOSE Act**

As Amended in Senate: August 12, 2019

Last updated: August 12, 2019

#### **PURPOSE OF THE BILL**

Under existing law, the only mass campaign text messages that are regulated are those sent by ballot measure committees or independent expenditures. However, those regulations are set to expire on January 1, 2020.

AB 201, the Text Message DISCLOSE ACT, will require any entity sending mass campaign text messages that support or oppose a candidate or ballot measure to include "paid for" disclosures. This would apply whether the entity is a candidate, political party, ballot measure committee, or an independent expenditure.

#### **PROBLEM & NEED FOR THE BILL**

One of the fundamental tenets of our state's election laws is that, in the realm of campaign communications, there is a preference for more disclosure rather than less.

Multiple forms of campaign communications, including advertisements over television, radio, and mailers, are heavily regulated and must include disclosures on what entity is paying for the communication.

The rationale behind these disclosures is that, rather than risk an infringement of the First Amendment and regulating the content of political speech, it is preferable for the public to be able to identify the entity making the expression. That way, the entity responsible for the expression can be held accountable in the court of public opinion.

However, under existing law, mass campaign text messages are required to include disclosures if they are sent by ballot measure committees or independent expenditures. Such text messages sent by candidates or political parties are unregulated. Unfortunately, even the existing regulations are set to expire on January 1, 2020 when many of the campaign finance laws the Legislature has passed go into effect.

Text messages are the new frontier for campaign communications. Many political campaigns already use them as a way to communicate with consenting supporters. However, existing law also allows the sending of text messages, even if the recipient did not explicitly consent to receiving messages from that particular campaign. It is not surprising that campaigns are availing themselves more and more of this medium, as research shows that the read rate on text messages is 98 percent, and upwards of 90 percent within three seconds of their receipt.

Without subsequent state regulation, shadowy entities could take advantage of this situation by sending unsolicited, negative text messages that lack disclosures. The lack of disclosure would allow them to do so with impunity, or any fear of being held accountable or facing any kind of backlash from the public.

Without such regulations, a mass text message like the one below, lacking any kind of disclosure of which entity paid for it, could become the norm rather than the exception:



Hey John, Jim Johnson voted FOR AB 9000 and against US. It's clear that he DOESN'T SHARE OUR VALUES.

#### **WHAT THIS BILL WOULD DO**

AB 201, the Text Message DISCLOSE Act, will require "paid for" disclosures on any mass campaign text messages that support or oppose a candidate or ballot measure, regardless of whether they were sent by a candidate, political party, ballot measure committee, or an independent expenditure.

For all committees except those for candidate committees, a "paid for" disclosure can be made either in the form of a hyperlink or the name of the committee. For candidate committees, the "paid for" disclosure must be made using the name of the candidate and the elected office sought.

Committees with top funders, except candidate or political party committees, must also disclose their top two funders. If a text is sent by a volunteer, or if disclosing the top two funders would be impracticable or technologically infeasible, a committee would not have to disclose the top two funders, and would be allowed to disclose only either a hyperlink or the name of the committee.

The bill makes an exception for text messages that are sent without the use of mass distribution technology (including platforms like Relay) if the candidate, the campaign manager, a paid campaign staffer, or a volunteer is the sender of the text message.

#### **BILL STATUS**

Approved by the Senate Elections Committee, 4-1  
– July 2, 2019

#### **SUPPORT**

CA Clean Money Campaign (Sponsor)  
CA Fair Political Practices Commission (FPPC)