AB 249 Based on 2016's AB 700 But Fixes Three Loopholes

AB 249 (Gomez-Levine), replacing AB 14, is the new version of *California DISCLOSE Act*, which will dramatically improve disclosure on ballot measure ads about who has paid for the ads. Knowing the true source of funds for ads will prevent voters from being deceived about who is truly paying for them, help voters better evaluate the credibility and content of ads, and promote greater confidence in the electoral process.

All three bills are very similar, having two major changes to current California campaign advertising disclosure rules that work together for better disclosure: (1) New formatting requirements that make it infinitely easier for viewers to hear or see the top 2 or 3 contributors, and (2) Expansion of existing law requiring earmarking of contributions meant for particular candidates to also include contributions meant for specific committees or ballot measures, so that their ads must show their true top contributors, not misleading committee names.

AB 249 starts from AB 700 language as stakeholders asked, but with 3 amendments addressing problems revealed by analysis since final AB 700 amendments were introduced by the Senate Appropriations Committee.

Like AB 700, AB 249 covers earmarking for specific ballot measures, candidates, and committees, but does not cover earmarking for independent expenditures for or against candidates (as AB 14 would have). It does, however, still improve formatting and number of contributors IE ads must show compared to current law.

Here are AB 249's only differences from AB 700 (except for two minor but important formatting fixes):

1) AB 249 removes AB 700's conflicting and narrower definition of "earmarking".

AB 700 had conflicting definitions of "earmarking" in Sections 84501 and Section 85704. Analysis later showed that the conflicting language would not only make the law "overly complex" (in the words of the FPPC), but could risk allowing ballot measure ads to legally lie to voters about who paid for them even when funders earmarked contributions for specific ballot measures. AB 249 removes the conflicting definition from 84501, while retaining AB 700's language letting committees reasonably rely upon the earmarking contributors provide.

2) AB 249 closes a loophole in AB 700 and AB 14 for political party and candidate ads

AB 700 removed political parties and most candidate-controlled committees from the current code definition of "advertisement" in section 84501. Though FCC regulations would still require their names to be disclosed on TV and radio ads, it meant that there would be no California requirement to do so. California shouldn't have to rely on federal regulations for its disclosure laws.

AB 249 closes this loophole by restoring political parties and candidate-controlled committees to the definition of "advertisement", as in current code. It does not require their ads to disclose their top 3 funders or use AB 249's clearer disclosure formats, because candidates have contribution limits and because people understand who the political parties are, so have less need to see their top funders on ads (they can still see them online).

This means that in AB 249, unlike AB 700 and AB 14, political party and candidate ads would have essentially exactly the same disclosure requirements as they have in current law – no more, and no less.

3) AB 249 lowers earmarking exemption for member dues from $7,300 to $500 & applies only to new rules

Last year, the Senate Appropriations Committee amended AB 700 to exempt dues, assessments, fees, and similar payments to a membership organization up to $7,300 a year from earmarking. While it's reasonable to provide an exemption for small member dues for the new earmarking rules for ballot measures, since such small donations will never add up to the $50,000 minimum for the top 3 on political ads, multiple legislators and stakeholders believed that $7,300 was way too high, with the FPPC saying it would allow *"increased money laundering"*.

AB 249 narrows the exemption from $7,300 a year to only $500 a year, and only for contributions earmarked for ballot measures. This still will provide reasonable protection against unnecessary new earmarking tracking for potentially thousands of small member dues, while ensuring that it doesn't open up any potential loophole for existing law earmarking for contributions to candidates or for earmarking of larger contributions to initiatives.

For more information:
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