

I. INTRODUCTION

This paper is intended to set forth the basic constitutional and statutory principles that apply to local campaign finance regulations with respect to contribution and expenditure limits, reporting requirements and other issues. Within this context, this paper will highlight recent cases that interpret these standards as well as new statutory developments.

In California, the Political Reform Act¹ (the “Act”) imposes contribution limits for state candidates and generally requires all candidates and committees to disclose campaign contributions and expenditures. However, the Act leaves contribution limits for local candidates to local governments.² Over the years, many cities have passed campaign ordinances that create contribution limits and other requirements. A list of these cities is attached to this paper as an appendix.³

Credit must be given to the Municipal Law Handbook published by the League of California Cities and its analysis of campaign rules. Finally, this paper is but one perspective on the principles that govern local campaign reform ordinances.⁴ The author hopes that you find it to be helpful.

II. CONTRIBUTION LIMITS

A. Candidates

1. Contribution limits generally. Under the historic U.S. Supreme Court decision, *Buckley v. Valeo*,⁵ cities may constitutionally impose limits on contributions to local candidates and their controlled committees. Municipal campaign contribution limits may be enacted by either resolution or ordinance.⁶ Because contribution limits interfere with the right of association (in addition to speech), cities

¹ Govt. Code §§ 81000 et seq.

² Govt. Code § 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”). For a discussion of Section 85312 (member communications) see p. 6.

³ The appendix is derived from a detailed chart compiled by Olson, Hagel & Fishburn, LLP on local campaign ordinances.

⁴ For another perspective, see City of Elk Grove, *Charter Exploratory and Election Reform Report 2007, Ch. 7 – Campaign Finance Reform*, accessible at <<http://www.elkgrovecity.org/charter-election/printables/reform-report.pdf>>. The firm of Olson, Hagel & Fishburn, LLP assisted with the drafting of the report, which contains many references to local ordinances. This paper has drawn upon some of these examples.

⁵ *Buckley v. Valeo* (1976) 424 U.S. 1.

⁶ Elec. Code § 10202.

must demonstrate “a sufficiently important interest and [employ] means closely drawn to avoid unnecessary abridgement of associational freedoms.”⁷

2. Justification. The sole justification upheld for imposing contribution limits is the state interest in combating corruption and the appearance of corruption.⁸ *Buckley* reasoned that these limits involve little direct restraint on communication since they permit contributors “symbolic expression of support” for candidates but do not infringe upon the contributor’s ability to discuss candidates and issues or to join or volunteer for political associations.⁹ However, the Court did not endorse the goals of equalizing the ability of all citizens to influence electoral outcomes, or reducing the skyrocketing cost of political campaigns.¹⁰ Also, expenditures made in cooperation or consultation with candidates or their controlled committees or agents in effect operate as contributions and therefore should be subject to the same level of scrutiny, since such a rule prevents circumvention of contribution limits.¹¹

3. Overall contribution limit. *Buckley* also suggested that an overall limit on the amount of money contributors may donate would pass constitutional muster, since it would prevent evasion of conventional limits on contributions to candidates.¹² Otherwise, contributors could make large donations to political committees likely to support the candidate or to the candidate’s political party.¹³

4. Accepted evidence of corruption. The courts have looked to a variety of information that, taken together, constitutes sufficient evidence of corruption or the appearance thereof. This has included evidence of the unchecked exponential increase in campaign spending, candidates’ reliance on large (some illegal) contributions from a small number of monied and special interests, testimony by multiple elected officials and political advisors regarding the rigors of fundraising, and preferential treatment of and access to government officials by contributors.¹⁴ Acceptable evidence has also included multiple newspaper articles documenting improprieties related to

⁷ *Buckley v. Valeo*, 424 U.S. at 25; *Nixon v. Shrink Missouri Government PAC* (2000) 528 U.S. 377, 387-88 (state contribution limits upheld); *Federal Election Commission v. Colorado Republican Federal Campaign Committee (Colorado II)* (2001) 533 U.S. 431, 456; *Federal Election Commission v. Beaumont* (2003) 539 U.S. 146, 162.

⁸ *Buckley v. Valeo*, 424 U.S. at 26-27; *Federal Election Commission v. National Conservative PAC* (1985) 470 U.S. 480, 496-497.

⁹ *Buckley v. Valeo*, 424 U.S. at 20-21.

¹⁰ *Id.* at 26.

¹¹ *Federal Election Commission v. Colorado Republican Federal Campaign Committee (Colorado II)*, 533 U.S. at 446 -47 (state party expenditures coordinated with candidates constitute contributions); see *Buckley v. Valeo*, 424 U.S. at 47 (citing federal law); see also Govt. Code § 85500 (on independent expenditures, disclosure and coordination).

¹² *Buckley v. Valeo*, 424 U.S. at 38.

¹³ *Ibid.* But see discussion below regarding independent committees.

¹⁴ *Id.* at 27, fn. 28, citing to lower court description of the record; see *Buckley v. Valeo* (D.C. Cir. 1975) 519 F.2d 821, 837-40.

campaign contributions, an elected official's affidavit, evidence of legislation for kickbacks, indictment of a former attorney general for misuse of public funds to benefit contributors, and overwhelming voter approval of contribution limits suggesting perception of corruption.¹⁵ However, public distrust alone will not constitute sufficient evidence of corruption or its appearance.¹⁶

In *Citizens for Clean Government v. City of San Diego*,¹⁷ a community group challenged the application of San Diego's candidate contribution limit to the signature-gathering phase of a recall election. The Ninth Circuit held that the district court should not have held as a matter of law that the city had a sufficient interest in justifying the application of its contribution limits in these circumstances.¹⁸ It found that the lower court's reliance on hypothetical situations was insufficient in that it was not derived from any legislative findings and could not be found anywhere in the record.¹⁹ The court remanded the case for the city to provide evidence of a sufficiently important governmental interest.

Practice tip => When imposing contribution limits, develop legislative findings in support of the regulation that its purpose is to combat corruption or the appearance of corruption, and if possible cite specific instances of campaign violations. Anecdotal evidence may be helpful as well but will probably not suffice on its own. If the contribution limit is later challenged, the legislative findings and other supporting evidence will be a critical part of your record upon which the court will rely in deciding whether or not to uphold the contribution limit.

5. Corporate contributions. Cities may constitutionally prohibit corporate contributions to candidates.²⁰ Such a restriction may be upheld upon a showing of a compelling governmental interest.²¹ "Even then, the state must employ means closely drawn to avoid unnecessary abridgement" of speech.²² In the context of candidate elections, the state may have such an interest where it is acting to avoid the corrosive influence of large amounts of capital on elections, and protecting the rights of shareholders whose views may differ from those of management expressed on behalf of the corporation.²³ *First National Bank of Boston v. Bellotti* noted that many state and federal laws regulate corporate participation in candidate elections and that the

¹⁵ *Nixon v. Shrink Missouri Government PAC*, 528 U.S. at 393-94.

¹⁶ *Federal Election Commission v. National Conservative PAC*, 470 U.S. at 499.

¹⁷ *Citizens for Clean Government v. City of San Diego* (9th Cir. 2007) 474 F.3d 647.

¹⁸ *Id.* at 653-54.

¹⁹ *Ibid.*

²⁰ See *First National Bank of Boston v. Bellotti* (1978) 435 U.S. 765, 787-88, fn. 26; *Federal Election Commission v. Weinsten* (S.D.N.Y. 1978) 462 F.Supp. 243.

²¹ See *id.* at 786 (citations omitted); *Federal Election Commission v. Weinsten*, 462 F.Supp. at 246, fn. 3 (citations omitted).

²² See *ibid.*

²³ See *Federal Election Commission v. Weinsten*, 462 F.Supp. at 246 -47 (citations omitted).

importance of preventing the corruption of elected officials has “never been doubted.”²⁴ The Court added that, “Congress might well be able to demonstrate the existence of a danger of real or apparent corruption in independent expenditures by corporations to influence candidate elections.”²⁵ Berkeley and San Francisco, for example, have enacted bans on corporate contributions to candidates.

6. Amount of contribution limits. As stated above, contribution limits must be “closely drawn” in order to avoid interference with constitutional rights of association.²⁶ Candidate contribution limits must therefore not be so low as to prevent the mounting of an effective campaign. In *Buckley*, the Court while upholding contribution limits cautioned that such limits could have a “severe impact” on political expression if it prevented candidates and committees from “amassing the resources necessary for effective advocacy.”²⁷

Later, in *California Prolife Council PAC v. Scully*,²⁸ the court held that Proposition 208’s system of variable contribution limits was not “closely drawn” to meet the state’s interest in combating corruption. The court explained that if the higher contribution limits triggered by the acceptance of expenditure ceilings were sufficient to combat corruption, the lower limits were “constitutionally infirm.”²⁹ The court also held that the contribution limits were too low for candidates to mount an effective campaign.³⁰ The limits ranged from \$100-\$500 and roughly doubled if the candidate accepted spending limits.³¹ Finally, *California Prolife Council PAC* noted that any contribution limit must be judged against the circumstances of the local jurisdiction, taking into account such factors as the cost of media, printing, and staff support, as well as available news media coverage and the size of the district.³²

More recently, in *Randall v. Sorrell*,³³ the U.S. Supreme Court in a plurality opinion struck down Vermont’s candidate contribution limits of \$400 per two-year election cycle for the office of governor (amounting to a \$200 limit for the primary and general elections) and lower limits for other statewide offices. The Court found that these limits were too restrictive and not sufficiently tailored because: (1) the limits set substantial restrictions on the ability of candidates, and in particular challengers, to raise the funds necessary to run a competitive election, (2) the limits severely restricted the

²⁴ *First National Bank of Boston v. Bellotti*, 435 U.S. at 788, fn. 26.

²⁵ *Ibid.* (citations omitted); see also *Federal Election Commission v. Weinsten*, 462 F.Supp. at 249; *Anderson’s Paving Co. v. Hayes* (W. Va. 1982) 170 W. Va. 640, 642, 295 S.E. 2d 805, 807.

²⁶ *Buckley v. Valeo*, 424 U.S. at 25.

²⁷ *Id.* at 21.

²⁸ *California Prolife Council PAC v. Scully* (E.D. Cal. 1998) 989 F.Supp. 1282, 1296.

²⁹ *Ibid.*

³⁰ *Id.* at 1298-99.

³¹ *Id.* at 1292.

³² *Id.* at 1298.

³³ *Randall v. Sorrell* (2006) 126 S. Ct. 2479, 2006 U.S. LEXIS 5161.

ability of political parties to help their candidates get elected, since it treated a national party and all of its affiliates as a single entity for purposes of the same contribution limits that applied to individuals, (3) the contribution limits unreasonably impacted the ability of individual citizens to volunteer their time to campaigns, since incurred expenses such as those for travel by volunteers were counted as contributions, although unpaid services were not treated as such, (4) the limits were not indexed to inflation, and (5) there was no special justification for the very low contribution limits other than that present in *Buckley*. (See Section III below for a discussion of *Randall*'s analysis in striking down expenditure limits.) Similarly, the court in *San Jose Silicon Valley Chamber of Commerce PAC v. City of San Jose*³⁴ noted in dicta that San Jose's \$250 contribution limit was somewhat low, citing the U.S. Supreme Court's *Randall* decision and the fact that San Jose's limit was not indexed for inflation. The court did not distinguish its decision from *Randall*, which involved statewide races.

B. Ballot Measures

1. Generally. Unlike contribution limits for candidate elections, contribution limits for ballot measure committees are subject to strict scrutiny and have been struck down as unconstitutional.³⁵ The Court reasoned that the same state interest in preventing corruption or its appearance is insufficiently likely to occur in the context of a ballot measure campaign in which no individual is running for office.³⁶ Bans on corporate contributions to ballot measure committees have likewise been struck down as unconstitutional, as the risk of corruption is not as significant as in candidate elections.³⁷

2. Candidate-controlled ballot measure committees. In an examination of the intersection between candidate and ballot measure contribution limits, the court in *Citizens to Save California v. California Fair Political Practices Commission*³⁸ struck down an FPPC regulation setting limits on contributions to

³⁴ *San Jose Silicon Valley Chamber of Commerce PAC v. City of San Jose*, 2006 U.S. Dist. LEXIS 94338.

³⁵ *Citizens Against Rent Control v. Berkeley* (1981) 454 U.S. 290 (\$250 contribution limit for ballot measure committees held to violate First Amendment rights of association and speech).

³⁶ *Id.* at 297-99.

³⁷ *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (prohibition on corporate contributions and expenditures regarding state referenda held to violate corporation's First Amendment rights); *PG&E v. City of Berkeley* (1976) 60 Cal.App.3d 123 (prohibition on corporate contributions to ballot measure committees invalidated); *C & C Plywood Corp. v. Hanson* (9th Cir. 1978) 583 F.2d 421 (Montana statute prohibiting corporate contributions and expenditures regarding ballot measures struck down); *Anderson's Paving Co. v. Hayes*, 170 W. Va. 640, 295 S.E. 2d 805 (state prohibition on corporate contributions regarding ballot measures struck down, but ban on corporate contributions to candidates left intact).

³⁸ *Citizens to Save California v. California Fair Political Practices Commission* (2006) 145 Cal.App.4th 736.

candidate-controlled ballot measure committees on statutory (and not constitutional) grounds, as the rule conflicted with the Political Reform Act and exceeded the Commission's authority.

C. Member Communications

1. Proposition 34. In 2000, Proposition 34 added Section 85703 (among other things) to the Political Reform Act. It stated that nothing in the Act would nullify local contribution limits or prohibitions, except that such rules could not conflict with Government Code Section 85312.³⁹ Under Section 85312, where an organization pays for communications to its employees, members or shareholders, or their families, in order to support a candidate or ballot measure, the payment does not qualify as a contribution or expenditure.⁴⁰ An "organization" is broadly defined to include such entities as corporations and labor unions, as well as "any other organization or group of persons acting in concert" (including campaign committees) but excluding candidates and individuals.⁴¹ Member communications do not include payments for general public advertising, such as broadcasting, billboards and newspaper advertising.⁴² Section 85312 applies to communications regarding local candidates and measures.⁴³ The end result was that local contribution limits and prohibitions were left intact by Proposition 34, provided that they did not regulate member communications.

2. AB 1430. Enacted in 2007, AB 1430 listed types of prohibited local regulations on payments for member communications. Under the statute, cities cannot regulate the source of payments for member communications, or limit payments to a political party committee for a member communication.⁴⁴ Further, cities cannot regulate what types of payments are considered directly related to the making of a member communication (and therefore permissible), including costs associated with its formulation, design, production and distribution, such as surveys, list acquisition and consulting fees.⁴⁵ For each of these examples however, if a state statute or FPPC regulation created a similar rule expressly made applicable to member communications, the local rule would be permitted.⁴⁶

Practice tip => Check your campaign ordinance to see that it is not so broad as to inadvertently encompass member communications, either via its definitions or by a substantive rule.

³⁹ Govt. Code § 85703(a).

⁴⁰ Govt. Code § 85312; 2 Cal. Code Regs. § 18531.7(a). The statute contains an exception requiring political parties to disclose these types of payments.

⁴¹ 2 Cal. Code Regs. § 18531.7(a)(1).

⁴² Govt. Code § 85312; 2 Cal. Code Regs. § 18531.7.

⁴³ 2 Cal. Code Regs. § 18531.7(g).

⁴⁴ Govt. Code § 85703(b).

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

D. Independent Committees⁴⁷

1. *Lincoln Club* and *McConnell*. Unlike candidate contribution regulations, limits on contributions to independent committees making independent expenditures in support of or in opposition to candidates are subject to strict scrutiny.⁴⁸ An “independent expenditure” is an expenditure that is made, “in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or... unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.”⁴⁹ *Lincoln Club v. City of Irvine* held that an ordinance effectively restricted expenditures by barring a non-profit corporation from making independent expenditures where its members’ dues exceeded a local contribution limit.⁵⁰ The court found that in order to comply with the ordinance, the non-profit would have to dramatically alter its organizational structure by reducing dues and expanding its membership.⁵¹ However, the U.S. Supreme Court in *McConnell v. Federal Election Commission*⁵² subsequently upheld a federal law that banned large “soft money” contributions to national political parties, thereby casting some doubt on the holding of *Lincoln Club*.⁵³ *McConnell* explained that *Buckley* itself upheld a limitation on contributions to political committees and party committees in recognition of the fact that absent this prohibition, one could easily make large contributions to a candidate’s political party that could then make independent expenditures.⁵⁴

2. *OakPAC v. City of Oakland*.⁵⁵ Notwithstanding *McConnell*, the district court in *OakPAC* granted a temporary restraining order enjoining the enforcement of an Oakland ordinance restricting contributions to persons and committees making independent expenditures to support or oppose local candidates. Like *Lincoln Club*, the court reasoned that by limiting available funds for independent expenditures, the ordinance effectively limited both contributions as well as expenditures.⁵⁶ The court also distinguished *McConnell* on the grounds that that decision focused on the connection between contributors, national party committees and those holding federal office, while

⁴⁷ For a detailed treatment of this topic, see Kuperberg, *Does Campaign Finance Regulation Have a Future?: The Fate of Municipal Limitations on Contributions to Committees Making Independent Expenditures*, League of California Cities, 2003 City Attorneys Conference.

⁴⁸ *Lincoln Club v. City of Irvine* (9th Cir. 2001) 292 F.3d 934, 938-39.

⁴⁹ Govt. Code § 82031.

⁵⁰ *Lincoln Club v. City of Irvine*, 292 F.3d at 938-39.

⁵¹ *Id.* at 939.

⁵² *McConnell v. Federal Election Commission* (2003) 540 U.S. 93, 152, fn. 48, 156.

⁵³ See also *California Medical Association v. Federal Election Commission* (1981) 453 U.S. 182 (limit on contributions by unincorporated associations to multi-candidate committees upheld).

⁵⁴ *McConnell v. Federal Election Commission*, 540 U.S. at 152, fn. 48.

⁵⁵ *OakPAC v. City of Oakland* (N.D. Cal.) 2006 U.S. Dist. LEXIS 96900.

⁵⁶ *Id.* at 3.

under state law, independent expenditures cannot be coordinated with candidates.⁵⁷ The proceedings in this case have been stayed pending the outcome of the *San Jose Silicon Valley* case before the Ninth Circuit, addressed below.

3. *San Jose Silicon Valley Chamber of Commerce PAC v. City of San Jose*.⁵⁸ Like *OakPAC*, this decision invalidated a San Jose campaign ordinance that limited campaign contributions to independent expenditure committees. The opinion viewed these contribution limits as expenditure limits subject to strict scrutiny. The court reasoned that since committee expenditures must be made from a limited pool of contributions, the rule in effect limited the committee's expenditures. The court then found that while preventing corruption or the appearance of corruption was a legitimate objective, following *Buckley*, the San Jose ordinance went too far by regulating contributions "in aid of or in opposition to" candidates. The *San Jose Silicon Valley* decision is currently on appeal to the Ninth Circuit. If the Ninth Circuit follows *Lincoln Club* and affirms the district court, the decision will further limit the ability of cities to maintain effective campaign contribution limits.

4. *Committee on Jobs Candidate Advocacy Fund v. Herrera*.⁵⁹ Like *San Jose Silicon Valley*, this court addressed a San Francisco ordinance that imposed candidate contribution limits on independent expenditure committees. In this decision, the district court granted a preliminary injunction enjoining enforcement of the ordinance. This decision is similar to *Lincoln Club*, *OakPAC*, and *Silicon Valley*, in that this court viewed the contribution limitation at issue as in effect an expenditure limit subject to strict scrutiny. This case also distinguishes *McConnell* on the grounds that (1) *McConnell* focused on the link between contributors, parties and officeholders (as stated in *OakPAC*) while there was no evidence of a connection between the plaintiff committee and municipal candidates, and (2) the San Francisco ordinance impacted core associational rights. Like *OakPAC*, this case has been stayed pending the outcome of *San Jose Silicon Valley*. The *Committee on Jobs* decision appears to represent the continuation of a trend of cases that apply the strict scrutiny standard to contribution limits that affect independent expenditure committees.

Practice tip => If the Ninth Circuit in *San Jose Silicon Valley* affirms the lower court decision, city attorneys should consider revising their campaign ordinances that regulate contributions to independent committees, as appropriate.

⁵⁷ *Id.* at 4.

⁵⁸ *San Jose Silicon Valley Chamber of Commerce PAC v. City of San Jose* (N.D. Cal.) 2006 U.S. Dist. LEXIS 94338.

⁵⁹ *Committee on Jobs Candidate Advocacy Fund v. Herrera* (N.D. Cal.) 2007 U.S. Dist. LEXIS 73736.

III. EXPENDITURE LIMITS

A. Generally. Unlike contribution limits, *Buckley v. Valeo* held that limits on campaign expenditures result in far greater restraints on the constitutional guarantees of freedom of speech and association.⁶⁰ Specifically, the Court found that expenditure limits lead to substantial restraints on the quantity and diversity of political speech, such as the “issues discussed, the depth of their exploration and the size of the audience reached,” since communicating ideas almost always requires the expenditure of money.⁶¹ Spending limits are therefore subject to strict scrutiny and will be upheld only where they are “narrowly tailored to serve a compelling state interest.”⁶²

Buckley held that the governmental interest in eliminating corruption and its appearance is inadequate to justify expenditure limits.⁶³ *Buckley* also rejected the goal of equalizing the ability of all citizens to influence electoral outcomes as a justification for expenditure limits,⁶⁴ and found that the state does not have an interest in equalizing the amount of funds spent by candidates and their committees.⁶⁵ Further, the absence of coordination between a candidate and the person making the expenditure not only undermines its value to the candidate (and may indeed prove counterproductive) but also lessens the danger of any “quid pro quo” scenario and resulting corruptive influence on the candidate.⁶⁶ The courts of late have been construing contribution limits that apply to independent committees as expenditure limits subject to strict scrutiny. (See above for further discussion on this topic).

On the other hand, expenditure limits may be upheld where they constitute a condition on the acceptance of public funds.⁶⁷ Several cities have adopted voluntary expenditure limits and have permitted candidates to accept larger contributions as an incentive to accept expenditure limits. Examples of such ordinances include Hayward, Oakland and San Jose. However, one must be careful not to create disparities in the two contribution limits that are so great as to effectively leave candidates with no choice but to accept expenditure limits, as such a scheme may not be viewed as entirely voluntary.

⁶⁰ *Buckley v. Valeo*, 424 U.S. at 44.

⁶¹ *Id.* at 19; *Citizens for Jobs and Energy v. Fair Political Practices Commission* (1976) 16 Cal.3d 671, 675 (Political Reform Act provision imposing expenditure limits regarding ballot measures invalidated, following reasoning of *Buckley*).

⁶² *Austin v. Michigan Chamber of Commerce*, 494 U.S. at 657; *Federal Election Commission v. Massachusetts Citizens for Life, Inc.* (1986) 479 U.S. 238, 256.

⁶³ *Buckley v. Valeo*, 424 U.S. at 45; *Montana Chamber of Commerce v. Argenbright* (9th Cir. 2000) 226 F.3d 1049 (Montana initiative prohibiting corporate expenditures in ballot measure campaigns struck down).

⁶⁴ *Buckley v. Valeo*, 424 U.S. at 48-49.

⁶⁵ *Id.* at 56-57.

⁶⁶ *Id.* at 47; see also *Federal Election Commission v. National Conservative PAC*, 470 U.S. at 497-98.

⁶⁷ *Buckley v. Valeo*, 424 U.S. at 57, fn. 65.

In 2006, the U.S. Supreme Court in *Randall v. Sorrell*⁶⁸ decided in a plurality opinion that expenditure limits enacted by the Vermont legislature were unconstitutional. The Court struck down the expenditure limits because the primary justification for imposing them was not significantly different from Congress' rationale for imposing the expenditure limits struck down in *Buckley v. Valeo*, i.e. preventing corruption or the appearance of corruption. The Court also held that the additional justification, i.e. that expenditure limits were necessary in order to reduce the amount of time candidates must spend raising money, was unpersuasive. The Court declined the opportunity to revisit *Buckley* and its strict scrutiny standard for analyzing regulations limiting campaign expenditures. (See above for an analysis of *Randall* with respect to contribution limits.)

B. Personal funds. Campaign ordinances cannot limit the spending of a candidate's personal funds. Limits on a candidate's personal expenditures, like independent expenditure limits (addressed below), impose substantial restraints on speech.⁶⁹ The Court rejected the governmental interest in combating corruption and its appearance since those concerns are less pronounced when the funds come from candidates or their immediate family.⁷⁰ The Court also rejected the goal of equalizing the financial resources of candidates primarily because it would result in restrictions on the ability of candidates to speak on their own behalf.⁷¹

C. Corporate Independent Expenditures. Expenditure limits on organizations have been subject to strict scrutiny and struck down as unconstitutional.⁷² However, cities may be able prohibit certain corporate independent expenditures to influence candidate elections.⁷³ Rather than using general treasury funds, corporations can be required to limit payments to those from a separate segregated fund created specifically for that purpose.⁷⁴ The Court reasoned that corporate wealth is the result of state-conferred corporate structures that facilitate the amassing of capital but which does not reflect public support for the corporation's political ideas.⁷⁵ In addition, this prohibition

⁶⁸ *Randall v. Sorrell*, 126 S. Ct. 2479, 2006 U.S. LEXIS 5161.

⁶⁹ *Buckley v. Valeo*, 424 U.S. at 52.

⁷⁰ *Id.* at 53.

⁷¹ *Id.* at 54.

⁷² See *Federal Election Commission v. National Conservative PAC*, 470 U.S. at 497-98 (rule imposing expenditure limit on independent committees spending funds to support Presidential candidates that accept public financing held unconstitutional); *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. at 259, 263-64.

⁷³ *Austin v. Michigan State Chamber of Commerce*, 494 U.S. at 659-60 (state law prohibiting independent expenditures from corporate treasury in connection with candidate elections upheld).

⁷⁴ *Id.* at 660.

⁷⁵ *Ibid*; see also *Federal Election Commission v. National Right to Work Committee* (1982) 459 U.S. 197, 207-08; *United States v. UAW-CIO* (1957) 352 U.S. 567, 570-83 (history of federal regulation of contributions and expenditures by corporations and labor unions).

protects individuals who pay money into a corporation from having such funds used to support candidates they might oppose.⁷⁶ However, where the entity is expressly set up as a non-profit advocacy corporation and not as a business, has no shareholders and is not established by nor receives contributions from business corporations or labor unions, a rule barring corporations from using general treasury funds to influence candidate elections cannot be constitutionally applied.⁷⁷

IV. REPORTING REQUIREMENTS

A. Generally. The Political Reform Act contains a series of reporting requirements that are generally applicable to all state and local candidates and committees. The Municipal Law Handbook published by the League of California Cities contains a thorough discussion of these requirements,⁷⁸ which will not be repeated here. Instead, this section will focus on applicable constitutional standards and the extent to which cities can impose additional reporting standards in a local campaign reform ordinance.

Mandatory campaign disclosure rules by their very nature can seriously infringe upon the First Amendment's guarantees of privacy and association.⁷⁹ With respect to candidates, campaign disclosure rules must therefore survive "exacting scrutiny" in that there must be a "relevant correlation" or "substantial relation" between the governmental interest and the information that must be disclosed.⁸⁰ Disclosure rules will generally withstand such scrutiny because they serve three distinct but complementary purposes. First, they provide voters with information on how funds are donated and spent, which aids voters in evaluating candidates. Second, it deters corruption and its appearance by shedding light on large contributions and expenditures. Finally, such rules aid in detecting violations of contribution limits.⁸¹

1. Minor parties. *Buckley* suggested that situations could arise where the threat to the exercise of First Amendment rights is so serious and the governmental interest in disclosure so insubstantial that one could not constitutionally apply disclosure rules to minor parties.⁸² Minor parties have a less sound financial base and are more

⁷⁶ *Federal Election Commission v. National Right to Work Committee*, 459 U.S. at 208; *Federal Election Commission v. Beaumont*, 539 U.S. at 154.

⁷⁷ *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. at 263-64 (rule that prohibited use of corporate treasury funds to make expenditures in connection with federal elections struck down as applied to non-profit political advocacy corporation).

⁷⁸ See League of California Cities, *Municipal Law Handbook* (2007) § 3.9.15.

⁷⁹ *Buckley v. Valeo*, 424 U.S. at 64 (citations omitted).

⁸⁰ *Ibid.*

⁸¹ *Id.* at 66-68.

⁸² *Id.* at 71, citing *NAACP v. Alabama* (1958) 357 U.S. 449 (membership disclosure rule struck down based on showing that past disclosures resulted in reprisals and threats).

vulnerable to falloffs in contributions where fears of reprisal deter donations.⁸³ While declining to adopt a blanket rule, the Court stated that minor parties must be allowed an opportunity to show that compelled disclosure would result in harassment, reprisals or threats.⁸⁴

2. Ballot measures. With respect to ballot measures, campaign disclosure rules are subject to strict scrutiny,⁸⁵ and may only be justified by the informational interest in educating the electorate.⁸⁶ The U.S. Supreme Court has repeatedly acknowledged the constitutionality of state laws requiring the disclosure of contributions and expenditures regarding ballot measures in order to educate the voting public.⁸⁷ More recently, in *California Pro-Life Council, Inc. v. Randolph*,⁸⁸ the Ninth Circuit held that California had a compelling governmental interest in requiring the disclosure of contributions and expenditures made to pass or defeat ballot measures, given the record evidence of the electorate's strong interest in knowing the true forces behind referenda. However, the court struck down a requirement to form a PAC in order to receive contributions for ballot measure elections.

3. Tribal sovereign immunity. In *Agua Caliente Band of Cahuilla Indians v. Superior Court (Fair Political Practices Commission)*,⁸⁹ the California Supreme Court held that notwithstanding the doctrine of tribal sovereign immunity, the plaintiff was subject to the reporting requirements of the Political Reform Act and to suit by the FPPC.

B. Additional Local Requirements. The Political Reform Act authorizes cities and other agencies to create additional local requirements. The Act states that, "Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title."⁹⁰ However, cities cannot create filing requirements additional to or different from the Act for local elections, unless the requirements apply only to local candidates, their controlled committees, committees that primarily exist to support or oppose a local candidate or local ballot measure, and to local

⁸³ *Buckley v. Valeo*, 424 U.S. at 71.

⁸⁴ *Id.* at 74. (See e.g., *Wisconsin Socialist Workers 1976 Campaign Comm. v. McCann* (E.D. Wis. 1977) 433 F. Supp. 540, 547-49 (Wisconsin disclosure rules held inapplicable to socialist-affiliated party based on evidence of past harassment and surveillance).

⁸⁵ *California Pro-Life Council v. Getman* (9th Cir. 2003) 328 F.3d 1088, 1101, fn. 16.

⁸⁶ *Id.* at 1105, fn. 23.

⁸⁷ *Id.* at 1102, citing, e.g., *First National Bank of Boston v. Bellotti*, 435 U.S. at 791-92, *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. at 299-300, and *Buckley v. American Constitutional Law Foundation* (1999) 525 U.S. 182, 203, 205.

⁸⁸ *California Pro-Life Council, Inc. v. Randolph* (9th Cir. 2007) 507 F.3d 1172.

⁸⁹ *Agua Caliente Band of Cahuilla Indians v. Superior Court (Fair Political Practices Commission)* (2006) 40 Cal. 4th 239.

⁹⁰ Govt. Code § 81013.

general purpose committees.⁹¹ Local agencies that create, amend or repeal campaign ordinances or other rules must file a copy with the FPPC.⁹²

Accordingly, cities sometimes require that local campaign committees file an additional “pre-election” statement immediately before an election.⁹³ Cities may also, for example, require campaign committees to itemize contributions and expenditures during a reporting period at a lower amount than the \$100 threshold set by the Act.⁹⁴ While state law generally requires campaign committees to file disclosure statements once they raise or spend \$1000 or more,⁹⁵ cities may set this amount at a lower threshold in order to facilitate the reporting of contributions and expenditures, which may be particularly appropriate in a jurisdiction where the amount of money spent in local elections is not especially high.⁹⁶

V. OTHER ISSUES

A. Public Financing. In *Buckley*, the Court held that Congress may provide for public financing of elections and may condition acceptance of public funding on a candidate’s acceptance of expenditure limitations.⁹⁷ *Buckley* also stated that Congress may require “some preliminary showing of a significant modicum of support” in order to be eligible for public funding.⁹⁸ Even so, in California the Political Reform Act prohibits local agencies from spending or accepting public funds to seek elective office.⁹⁹ This ban does not apply to charter cities.¹⁰⁰ Following *Buckley*, cities with public financing schemes usually require that candidates demonstrate public support by raising a specified amount of money before becoming eligible for public funds. Examples of cities with public financing ordinances include Los Angeles, Oakland and San Francisco.

B. Due Process. City attorneys should be careful about acting both in a prosecutorial and advisory capacity in the same campaign enforcement matter before an administrative body acting in a quasi-judicial capacity.¹⁰¹

⁹¹ Govt. Code § 81009.5(b).

⁹² Govt. Code § 81009.5(a).

⁹³ Davis, for example, requires a third pre-election statement to be filed prior to the election. See Govt. Code §§ 84200.5, 84200.7 and 84200.8 (general state requirement to file two pre-election campaign disclosure statements).

⁹⁴ See Govt. Code § 84211 (detailing contents of campaign statements).

⁹⁵ Govt. Code § 82013 (definition of committee).

⁹⁶ See Fair Political Practices Commission, *Campaign Disclosure Manual 2 – Information for Local Candidates, etc.*, (May 2007), Appendix 2-3.

⁹⁷ *Buckley v. Valeo*, 424 U.S. at 57, fn. 65.

⁹⁸ *Id.* at 96 (citation omitted).

⁹⁹ Govt. Code § 85300.

¹⁰⁰ *Johnson v. Bradley* (1992) 4 Cal.4th 389; 2 Cal. Code Regs. § 18530 (codifying exemption for charter cities and counties).

¹⁰¹ See *Howitt v. Superior Court* (1992) 3 Cal.App.4th 1575 (county counsel’s office has burden of showing that legal advisor to personnel board is adequately screened from

C. Enforcement. As stated above, the Political Reform Act allows local governments to impose additional requirements where it does not prevent compliance with the Act.¹⁰² Cities may arguably impose late filing penalties with respect to statements required by local ordinance, since such rules would not conflict with penalties for failure to timely file state-mandated campaign reports. Imposing additional local penalties in the latter circumstance however would conflict with the Act.

Practice tip => It is important to conduct trainings for candidates and treasurers on local campaign rules before the election season commences. Fair Political Practices Commission staff may be available for a joint training to provide guidance on state law requirements, with notice well in advance. Candidates and treasurers may attend in significant numbers provided that outreach is performed and individuals are encouraged to sign up. Trainings will often reduce confusion and errors in reporting or practices, and thus result in fewer enforcement matters.

D. Political Action Committees. The extent to which cities may regulate the activities of PACs is largely governed by the Political Reform Act, which as indicated allows local governments to create additional requirements that do not conflict with the Act. Within the bounds of the constitutional standards outlined above, cities may, for example, require PACs to file campaign statements that disclose contributions and expenditures in the same manner as other campaign committees that receive or spend funds in support of or in opposition to local candidates and measures. However, city attorneys should be careful when imposing contribution limits on such committees if their activities are independent from candidates or exist to support or oppose ballot measures, as discussed earlier in this paper.¹⁰³

E. Mass Mailings and Anonymous Literature. In California, the Political Reform Act requires that mass mailings (200 substantially similar pieces of mail) identify the sender of the communication.¹⁰⁴ Cities may require additional information, provided that the local rule does not prevent compliance with the Act. Some cities, such as Berkeley, also require that copies of mass mailings be filed with the local ethics or elections commission. However, cities should be careful about broadly imposing

lawyer acting as advocate); *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81 (attorney who acted as advocate for initial denial of permit application may not act as legal advisor to hearing officer reviewing that denial). The City Attorney's Department of the League of California Cities maintains additional resources that explore this topic in great detail. See www.cacities.org.

¹⁰² Govt. Code § 81013.

¹⁰³ For additional information on how the Political Reform Act and cities regulate political action committees, see City of Elk Grove, *Charter Exploratory and Election Reform Report 2007, Ch. 7 – Campaign Finance Reform*, *supra* fn. 4.

¹⁰⁴ Govt. Code §§ 82041.5, 84305; 2 Cal. Code Regs. § 18435.

identification requirements on all campaign literature, as it may run afoul of the First Amendment right to anonymous speech.¹⁰⁵

F. Campaign Debt. The Political Reform Act permits campaign committees to continue to raise funds to pay debts after an election.¹⁰⁶ For candidate committees, cities may continue to apply local contribution limits and reporting requirements to such activities consistent with its authority to do so.¹⁰⁷ However, cities cannot prohibit the carry over of debt from one campaign reporting period to another, since that would seem to be at odds with the Act.

VI. CONCLUSION

Over the past several decades, many cities have enacted a wide variety of local campaign finance reform ordinances. These range from initiative ordinances creating commissions with enforcement authority to legislative enactments that create a simple contribution limit and reporting requirement. Whatever your rules might entail, a key to successful enforcement and day-to-day administration is education and outreach. Where treasurers and candidates understand the basic requirements of your ordinance, they will avoid major violations and the frequency and intensity of your City's enforcement actions may decrease correspondingly. In addition, by educating candidates and treasurers you will start to build trust and confidence in these individuals that the ordinance and any implementing regulations are understandable and will be enforced in a firm but even-handed manner. The consistency in education, outreach and accessibility you provide to the local regulated community over the short-term and long-term will likely pay dividends in effective enforcement and hopefully result in smooth sailing for your local campaign regulations.

¹⁰⁵ *McIntyre v. Ohio Elections Commission* (1995) 514 U.S. 334 (holding unconstitutional a fine imposed on an individual distributing anonymous leaflets).

¹⁰⁶ See 2 Cal. Code Regs. § 18404.

¹⁰⁷ Govt. Code §§ 81013, 85703(a).

Appendix – Cities with Campaign Ordinances

Agoura Hills	Fresno	Rancho Palos Verdes
Albany	Fullerton	Richmond
Anaheim	Galt	Rohnert Park
Arcadia	Gardena	Rolling Hills Estates
Arcata	Grand Terrace	Roseville
Azusa	Hayward	Sacramento
Bell Gardens	Hermosa Beach	San Diego
Belmont	Highland	San Fernando
Benicia	Huntington Beach	San Francisco
Berkeley	Irvine	San Jose
Beverly Hills	Laguna Beach	San Juan Capistrano
Brentwood	Laguna Niguel	San Luis Obispo
Buena Park	Laguna Woods	San Marcos
Burbank	La Mesa	San Mateo
Burlingame	La Mirada	San Pablo
California City	Lancaster	San Ramon
Carlsbad	Lemon Grove	Santa Ana
Chico	Livermore	Santa Clara
Chula Vista	Long Beach	Santa Clarita
City of Commerce	Los Angeles	Santa Cruz
Claremont	Lynwood	Santa Monica
Concord	Malibu	Santa Rosa
Coronado	Manhattan Beach	Santee
Corte Madera	Menlo Park	Sausalito
Cotati	Milpitas	Scotts Valley
Culver City	Modesto	Signal Hill
Cypress	Montclair	Simi Valley
Dana Point	Murrieta	Solano Beach
Danville	Newark	Sonoma
Davis	Newport Beach	South Gate
Del Mar	Novato	Thousand Oaks
Dublin	Oakland	Torrance
East Palo Alto	Oceanside	Ukiah
El Cerrito	Orange	Union City
El Segundo	Pacific Grove	Ventura
Escondido	Palmdale	Walnut
Fairfield	Palo Alto	Walnut Creek
Fillmore	Patterson	West Covina
Folsom	Petaluma	West Hollywood
Fontana	Pleasant Hill	West Sacramento
Foster City	Pleasanton	Whittier
Fountain Valley	Pomona	Windsor
Fremont	Poway	Woodland