

Political Law Update

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California Imposes New Burdensome Reporting Requirement for LLCs Engaged in Political Activity

On September 27, 2021, California Gov. Gavin Newsom signed S.B. 686 (the act) into law, imposing additional disclosure requirements on LLCs that make contributions or independent expenditures above a certain threshold or sponsor their own PAC. In particular, such LLCs will be required to file a report with the secretary of state's office, providing detailed information regarding their members, as described below. The act takes effect January 1, 2022.

Under current California law, an LLC, corporation or individual making contributions totaling \$10,000 or more in a calendar year to all California state and local candidates and committees combined must file major donor committee reports. Moreover, such entity or person making \$1,000 or more in independent expenditures in a calendar year must file as an independent expenditure committee. Please note, for purposes of these thresholds, contributions and independent expenditures that are coordinated with certain related entities such as a parent company or subsidiary are aggregated, and once the threshold is met, the entities qualify as a single committee.

The act adds to these reporting requirements by requiring an LLC that qualifies as a major donor committee or independent expenditure committee, or that sponsors a PAC, to also file a "statement of members." Based on the plain language of the act, for LLCs that qualify as a major donor committee or independent expenditure committee it appears that this new reporting requirement applies even if the LLC qualifies as such committee based on aggregated contributions from affiliates with whom it coordinates.

An LLC's statement must list each of its members that has a membership interest of 10% or more in the LLC or that has made \$10,000 or more in total capital contributions (defined as contributions made in exchange for a membership interest) to the LLC after qualifying as a committee/sponsoring a PAC or during the prior 12 months. In addition, for any member identified in the statement that is itself an LLC, the statement also must list any member of that LLC which hits the foregoing thresholds.

The statement must include each identified member's percentage ownership in the LLC, the total dollar amount of the member's capital contributions to the LLC and — for those members having made \$10,000 or more in capital contributions to the LLC — the date of each capital contribution that the member made to the LLC.

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An LLC must file a statement of members within 10 days of qualifying as a committee or as a sponsor of a PAC, except an LLC must file a statement of members within 24 hours of qualifying as a committee or as a sponsor of a PAC, if 1) the LLC qualifies within 30 days of an election and 2) the LLC made a contribution to, or an independent expenditure supporting or opposing, a candidate or ballot measure on the ballot in that election, or made a contribution to a committee that made a contribution to, or an independent expenditure supporting or opposing, a candidate or ballot measure on the ballot in that election.

If an LLC receives a capital contribution of \$10,000 or more after qualifying as a committee or a sponsor of a PAC, it must file an amended statement of members reporting the contribution. However, the law is silent as to whether such amendment must be filed if an LLC's membership changes after the initial statement.

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