

Marin County
Independent Expenditures
Frequently Asked Questions

GENERAL INFORMATION

What is an “Independent Expenditure”?

“Independent Expenditure” means an expenditure made by any person or committee 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 taken as a whole and in context, unambiguously urges a particular result in an election but which is *not made to or at the behest of the affected candidate or committee*.

Why is the County regulating these?

Voters are not always aware of who supports or opposes a campaign message funded with independent expenditures. Although existing law requires disclosure of the campaign committee's name, requiring clear and prominent disclosure of the top donors can better inform voters about the interests behind an advertisement or communication. In addition, requiring reporting and posting within 24 hours will ensure timely public information.

How are these regulated now?

The state Fair Political Practices Commission enforces the Political Reform Act and requires certain reporting and disclosure information of independent expenditures that affect County and local candidates. All independent expenditures currently must be reported to the Registrar of Voters, and the PRA dictates when this occurs.

Can independent expenditures be capped or stopped altogether?

No. Independent expenditures are a form of political free speech and therefore protected under the First Amendment. The public's interest to ensure elections are free of undue influence therefore must always be balanced with the right to protected speech.

Who can make independent expenditures?

Independent expenditures can be made by individuals or committees. “Independent Expenditure committees” are those that make independent expenditures but don't necessarily receive donations. “Primarily formed” committees can also make independent expenditures. These are committees that are primarily formed to endorse or oppose a candidate or measure but are not controlled by the candidate or initiative committee. They both make and receive contributions. “General Purpose Committees” (PACs) receive contributions but are not formed to support or oppose any specific candidate or measure in any specific election.

REPORTING REQUIREMENTS

What are the additional reporting requirements of the County's ordinance?

The ordinance requires individuals or committees that make independent expenditures of \$1,000 to file a report with the County Registrar of Voters within 24 hours each time the threshold is met. Absent the County ordinance, currently law requires this only during the 16-day period before any election.

What will be required in the report to be filed?

Much of the same information that is currently required in the FPPC Independent Expenditure Form 496 (for 16-day period before an election) and Form 465 (used any other time) and other committee forms disclosing contributions. The Registrar of Voters will specify the form to be used. Per the ordinance, the information to be reported includes:

- The candidate or measure supported or opposed by the expenditure
- The amount spent
- Date and amount of payment
- Description of the type of communication for which the payment was made or incurred
- Name and address of the person making the payment
- Name and address of the payee or committee
- All contributions of \$100 or more
- In addition, a copy of the mailing or advertisement or copy of the script or recording of the call, transmission or advertisement must be filed.

When will the report need to be filed?

Within 24 hours of making independent expenditures that total to \$1,000. Each time the threshold is met, a report must be filed with the County of Marin Registrar of Voters.

Will a candidate or committee still be required to file other forms already required by the FPPC and according to those filing dates?

Yes. Check with County Registrar of Voters on filing deadlines for all other forms.

COMMUNICATIONS

What is a "campaign communication"?

The PRA defines a campaign communication as expressly advocating support or opposition of clearly identifiable candidates or measures

Per the County's ordinance

- More than 200 substantially similar pieces of campaign literature distributed within a calendar month, including not limited to mailers, flyers, facsimiles,

pamphlets, door hangers, e-mails, campaign buttons 10 inches in diameter or larger, and bumper stickers 60 square inches or larger

- Posters, yard or street signs, billboards, super-graphic signs and similar items
- Television, cable, satellite and radio broadcasts;
- Newspaper, magazine, internet website banners and similar advertisements
- 200 or more substantially similar live or recorded telephone calls made within a calendar month.

What is not considered a "campaign communication"?

- Small promotional items such as pens, pencils, clothing, mugs, potholders, skywriting or other items on which the statement required by this section can not be reasonably printed or displayed in an easily legible typeface
- Communications paid for by a newspaper, radio station, television station or other recognized news medium; also editorials or news stories are excluded.
- Communications from an organization to its members other than a communication from a political party to its members

What is required to be included in campaign communications, per the County's ordinance?

For communications funded by an independent expenditure, the following are required:

- "This communication was not authorized by candidate X for Y office" or "initiative proponent"
- Names of 3 largest contributors to the committee of \$2,000 or more, listed in order of contribution amount, with their city and state of residence.
- In the event more than three meet this threshold at identical contribution levels, the three highest shall be selected according to chronological sequence of their donations
- "Additional information regarding this independent expenditure committee can be found at www.marinvotes.org."

How is this disclosure information required to appear?

- For printed communications that measure no more than 24" x 36", the disclosure statements must be printed in at least 10 point type in contrasting color to the background on which it appears. For oversize communication, all disclosure statements must be at least 5% of the height of the material and printed in contrasting color.
- For video broadcast, the information must be written and spoken either at the beginning or end of the communication. The written disclosure must air for at least 5 seconds. A spoken disclosure is not required if the disclosure statement is written for at least 5

seconds of a broadcast of 30 seconds or less, or 10 seconds of a 60 second broadcast,

- For audio, telephone or radio advertisement, the disclosure must be spoken in a clearly audible manner at the same speed and volume as the rest of the advertisement, for at least 3 seconds at the beginning or end of the communication. The requirement will be satisfied by using the words "on behalf of" immediately followed by the name of the individual or committee that pays for the communication.

What is already required by the PRA?

For communications supported by independent expenditures, current law requires:

- Name of the committee making the independent expenditure
- Names of 2 largest contributors to the committee of \$50,000 or more, listed in order of contribution amount
- Statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate
- For printed communications, disclosure statements to be printed clearly and legibly in no less than 10 point type in a conspicuous manner, or spoken clearly if broadcast
- Highest major contributor of \$50,000 in an electronic broadcast of 15 seconds or less or in print media which is 20 square inches or less.
- For video, the written information must appear for at least 4 seconds. If the written disclosure appears for 5 seconds of a broadcast of 30 seconds or less, or 10 seconds of a 60 second broadcast, no spoken disclosure is required.
- For audio, disclosure must occur for at least 3 seconds in duration.
- For 500 or more similar phone calls that expressly advocate support for or opposition to a candidate or measure, the name of the independent expenditure committee must be disclosed to recipients.

What is the penalty for violation of the ordinance?

Violation is a misdemeanor. In addition, any person who intentionally or negligently violates the ordinance is subject to an administrative fine of \$5,000 or up to 3 times the amount of the communication.

Where do I find information about candidates or independent expenditures made?

The County Registrar of Voters website – marinvotes.org – contains all required statements filed by candidates and committees per election.