

2-7-2012

Political Contributions and Expenditures by Corporations. Shareholder Approval. Initiative Statute.

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DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

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July 19, 2012

County Clerk/Registrar of Voters (CC/ROV) Memorandum #12238

TO: All County Clerks/Registrars of Voters and Proponent

FROM:


Katherine Montgomery
Initiative Program Manager

RE: Initiative: Failure of #1568, Related to Corporations

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures for the hereinafter named initiative statute filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has **failed**.

TITLE: POLITICAL CONTRIBUTIONS AND EXPENDITURES BY
CORPORATIONS. SHAREHOLDER APPROVAL.
INITIATIVE STATUTE.

SUMMARY DATE: February 7, 2012

PROPONENT: Thomas A. Willis



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STATE OF CALIFORNIA | ELECTIONS**

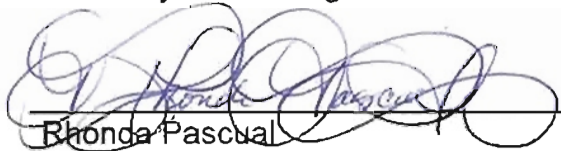
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February 8, 2012

County Clerk/Registrar of Voters (CC/ROV) Memorandum #12057

TO: All County Clerks/Registrars of Voters and Proponents

FROM:


Rhonda Pascual
Program Manager

RE: Initiative: 1568, Related to Corporations

Pursuant to Elections Code section 9004 (c), we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

**POLITICAL CONTRIBUTIONS AND EXPENDITURES
BY CORPORATIONS. SHAREHOLDER APPROVAL. INITIATIVE STATUTE.**

The proponents of the above-named measure are:

Thomas A. Willis
c/o James C. Harrison
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577

(510) 346-6200

#1568

**POLITICAL CONTRIBUTIONS AND EXPENDITURES
BY CORPORATIONS. SHAREHOLDER APPROVAL. INITIATIVE STATUTE.**

CIRCULATING AND FILING SCHEDULE

1. Minimum number of signatures required: 504,760
California Constitution, Article II, Section 8(b)

2. Official Summary Date: Tuesday, 02/07/12

3. Petitions Sections:
 - a. First day Proponent can circulate Sections for
signatures (Elections Code § 336) Tuesday, 02/07/12

 - b. Last day Proponent can circulate and file with the county.
All sections are to be filed at the same time within each
county. (Elections Code §§ 9014, 9030(a)).....Friday, 07/06/12

 - c. Last day for county to determine total number of
signatures affixed to petitions and to transmit total
to the Secretary of State (Elections Code § 9030(b)).....Wednesday, 07/18/12

(If the Proponent files the petition with the county on a date prior to
07/06/12, the county has eight working days from the filing of the petition
to determine the total number of signatures affixed to the petition and to
transmit the total to the Secretary of State) (Elections Code § 9030(b).)

 - d. Secretary of State determines whether the total number
of signatures filed with all county clerks/registrars of
voters meets the minimum number of required signatures
and notifies the counties.....Friday, 07/27/12

 - e. Last day for county to determine total number of qualified
voters who signed the petition, and to transmit certificate
with a blank copy of the petition to the Secretary of State
(Elections Code § 9030(d) & (e)).....Tuesday, 09/11/12

* Date varies based on the date of county receipt.

INITIATIVE #1568
Circulating and Filing Schedule continued

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 07/27/12, the last day is no later than the thirtieth working day after the county's receipt of notification). (Elections Code § 9030(d) & (e).)

- f. If the signature count is more than 555,236 or less than 479,522 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 479,522 and 555,236 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of **all** signatures (Elections Code §§ 9030(f) & (g); 9031(a)).....Friday, 09/21/12*
- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State. (Elections Code § 9031(b) & (c)).....Monday, 11/05/12

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 09/21/12, the last day is no later than the thirtieth working day after the county's receipt of notification.) (Elections Code § 9031(b) & (c).)

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (Elections Code §§ 9031(d), 9033).....Friday, 11/9/12*

*Date varies based on the date of county receipt.

IMPORTANT POINTS

- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code § 18650; *Bilofsky v. Deukmejian* (1981) 124 Cal.App.3d 825, 177 Cal.Rptr. 621; 63 Ops.Cal.Atty.Gen. 37 (1980).
- Please refer to Elections Code §§ 100, 101, 104, 9008, 9009, 9013, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq.
- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

POLITICAL CONTRIBUTIONS AND EXPENDITURES BY CORPORATIONS.

SHAREHOLDER APPROVAL. INITIATIVE STATUTE. Prohibits corporations and other business entities from making contributions or expenditures for political activities without shareholders' prior informed approval. Reduces the total amount of any contribution or expenditure approved by the percentage of shares not voted for approval. Defines political activities to include those related to candidates, ballot measures, issue advocacy, political parties, committees, voter registration, or any other political or legislative causes. Imposes criminal penalties for violations against persons spending, consenting to, or receiving prohibited contributions or expenditures. Requires detailed reporting to shareholders. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Increased annual state enforcement costs of potentially several hundred thousand dollars, partially offset by increased fine revenues. (11-0097.)**

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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February 7, 2012

The Honorable Debra Bowen
Secretary of State
Office of the Secretary of State
1500 11th Street, 5th Floor
Sacramento, CA 95814

Attention: Ms. Katherine Montgomery
Elections Analyst

Dear Secretary Bowen:

Pursuant to Elections Code section 9004, you are hereby notified that on this day we sent our title and summary for the following proposed initiative to the proponent:

- 11-0097, "Corporate Political Accountability Act"

A copy of that title and summary and text of the proposed initiative is enclosed. Please contact me if you have questions. Thank you.

Sincerely,

ASHLEY JOHANSSON
Initiative Coordinator

For **KAMALA D. HARRIS**
Attorney General

FILED
In the office of the Secretary of State
of the State of California

FEB-07-2012

*via email
after 5:00pm*

Debra Bowen, Secretary of State
By Deputy Secretary of State

cc: Thomas A. Willis, Remcho, Johansen & Purcell

11-0097

RECEIVED

DEC 14 2011

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

December 14, 2011

VIA MESSENGER

Office of the Attorney General
1300 "T" Street
Sacramento, CA 95814

Attention: Dawn McFarland

Re: *Corporate Political Accountability Act*

Dear Ms. McFarland:

Pursuant to Elections Code section 9001(a), I request that the Attorney General prepare a title and summary of a measure entitled the "Corporate Political Accountability Act." The text of the measure, a check for \$200.00, and the certifications required by Elections Code sections 9001(b) and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Thomas A. Willis
James C. Harrison
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,



Thomas A. Willis

Enclosures
(00159795)

Section 1. Title. This Act shall be known as the "Corporate Political Accountability Act."

Section 2. Findings and Declarations

The People of California find and declare that:

(a) Corporations make significant political contributions and expenditures to support and oppose California candidates, political parties and political causes. Decisions to use corporate funds for political contributions and expenditures are usually made by corporate boards and executives, rather than shareholders.

(b) Corporations acting through their boards and executives are obligated to conduct business for the best interests of their owners, the shareholders. Corporate boards and executives that use corporation funds to support and oppose political candidates, parties and causes in California opposed by their shareholders are not acting for the best interests of the shareholders.

(c) Historically, shareholders have not had a way to know, or to influence, the political activities of corporations they own. Shareholders and the public have a right to know how corporations are spending their funds to make political contributions or expenditures benefiting California candidates, political parties, and political causes.

(d) Corporations should be accountable to their shareholders prior to making political contributions or expenditures. Requiring the express approval of a corporation's shareholders prior to making political contributions or expenditures will establish necessary accountability.

(e) California political candidates, parties and causes should not accept corporate contributions and expenditures that do not have the support and approval of the shareholders, who are the owners of the corporation.

Section 3. Article 3.5 (commencing with § 85350) is added to Title 9 of the Government Code to read:

§ 85350 Prohibition on Corporate Political Contributions and Expenditures.

(a) As used in this section, the following terms have the following meanings:

- (1) "Approval of the shareholders" shall mean a vote meeting the requirements of Section 152 of the California Corporations Code (or any successor statute, rule or regulation that may exist from time to time).
- (2) "Ballot measure" means any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot.

- (3) "Corporation" means (i) any corporation with shareholders, (ii) any entity in which a corporation with shareholders has an equity interest or, (iii) in the case of a subsidiary or affiliate of such a corporation or entity, the ultimate parent entity of such subsidiary or affiliate.
 - (4) "Indirectly" means the corporation knows or has reason to know its funds will be used to make contributions or expenditures for political activities.
 - (5) "Political activities" means contributions or expenditures made to, or in support of or opposition to, any candidate, political party, committee, voter registration campaign, ballot measure campaign, issue advocacy campaign, or any other political or legislative cause.
 - (6) "Public corporation" means any corporation that files reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended.
 - (7) "Purpose of the measure" means the official title and summary prepared by the Attorney General, County Counsel or City Attorney.
 - (8) "Ultimate parent entity" shall have the meaning set forth in 16 C.F.R. § 801.1(a)(3), or any successor rule or regulation that may exist from time to time.
 - (9) "Written consent of shareholders" means an action taken by the shareholders of a corporation without a meeting that meets the requirements of Section 603 of the California Corporations Code (or any successor statute, rule or regulation that may exist from time to time).
- (b) Notwithstanding any other provision of law, and except as provided in subdivision (d), it is unlawful for a corporation to, directly or indirectly, make any political contribution or expenditure for political activities or for an officer or director of a corporation to consent to any political contribution or expenditure by a corporation prohibited by this section.
 - (c) It shall be unlawful for any candidate, political party, committee, or other person knowingly to accept or receive any political contribution or expenditure not in compliance with subsection (d).
 - (d) A corporation may only make political contributions or expenditures for political activities if it complies with the requirements of this section. No provision of this section shall relieve any corporation of its obligations under any rule or regulation promulgated by the United States Securities and Exchange Commission.
- (1) A corporation meets the requirements of this section if it does all of the following:
 - (A) Within 30 days of the close of the corporation's fiscal year, the corporation shall prepare a report entitled "Political Contributions and Expenditures in California" detailing the contributions or expenditures

made to support political activities during the just completed fiscal year and provide a written copy of such report to its shareholders. A public corporation will be deemed to have complied with this section by including such report in its annual report to shareholders under a caption entitled "Political Contributions and Expenditures in California." In addition, any corporation which maintains a website shall disclose on that website the report to its shareholders. A report made pursuant to this section shall include the following:

- (i) The date of the contributions or expenditures;
 - (ii) The amount of the contributions or expenditures;
 - (iii) The name of the candidate, political party, committee, person, issue or legislative cause to which the contributions or expenditures were made;
 - (iv) If the contributions or expenditures were made for or against a candidate, the office sought by the candidate and the political party affiliation of the candidate;
 - (v) If the contributions or expenditures were made for or against a ballot measure, the purpose of the measure and whether the contributions or expenditures were made in support or opposition to the ballot measure.
- (B) Any corporation that proposes to make political contributions or expenditures for political activities shall, at its annual meeting of shareholders, at a special meeting of shareholders, or through the written consent of shareholders, submit for the approval of the shareholders the total amount the corporation proposes to spend on political contributions or expenditures for political activities during the subsequent fiscal year.
- (i) In the event the corporation fails to obtain the approval of shareholders for contributions or expenditures for political activities with respect to any fiscal year, the corporation shall be prohibited from making such contributions or expenditures. In the event the corporation obtains the approval of shareholders for contributions or expenditures for political activities with respect to any fiscal year, the corporation may expend only the percentage of the amount proposed to be spent on contributions or expenditures equal to the percentage of the shares of the corporation affirmatively voted in favor of the proposed contributions or expenditures. This percentage shall be calculated by dividing the number of shares affirmatively voted in favor of the proposed contributions or expenditures by the total number of outstanding

shares of the corporation. Any approved amount may only be expended on contributions or expenditures in such fiscal year, and no carryover to a later fiscal year is permitted.

- (ii) Any request for shareholder approval as provided in (d)(1)(B), must incorporate within the request a copy of the report on the corporation's contributions or expenditures for political activities pursuant to the requirements in (d)(1)(A).
 - (iii) No provision of this section shall relieve any corporation of its obligations under Section 604 of the California Corporations Code (or any successor statute, rule or regulation that may exist from time to time) or any statute, rule or regulation from any other jurisdiction that regulates the solicitation of proxies, and any corporation with an outstanding class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, of its obligations to comply with the proxy rules promulgated under the Securities Exchange Act of 1934, as amended.
- (C) If during the current fiscal year, the corporation desires to make political contributions or expenditures for political activities above the amount allowed pursuant to subdivision (B), the corporation shall, at a special meeting of shareholders or through a written consent of shareholders, submit for the approval of the shareholders the increased amount the corporation proposes to spend on political contributions or expenditures for political activities.
- (i) When submitting this request for the approval of the shareholders, the corporation shall inform the shareholders of each specific proposed political contribution or expenditure for political activities in detail consistent with the requirements of (d)(1)(A)(i)-(v).
 - (ii) In the event the corporation fails to obtain the approval of shareholders for such contributions or expenditures for political activities, the corporation shall be prohibited from making such additional contributions or expenditures. In the event the corporation obtains the approval of shareholders for such additional contributions or expenditures, the corporation may expend only the percentage of the proposed amount to be spent on contributions or expenditures equal to the percentage of the shares of the corporation affirmatively voted in favor of the proposed additional contributions or expenditures. This percentage shall be calculated by dividing the number of shares affirmatively voted in favor of the proposed additional contributions or expenditures by the total number of outstanding shares of the corporation. Any approved

amount may only be expended on contributions or expenditures in such fiscal year, and no carryover to a later fiscal year is permitted.

- (iii) Any request for shareholder approval as provided in (d)(1)(C), must incorporate within the request a copy of the report on the corporation's contributions or expenditures for political activities pursuant to the requirements in (d)(1)(A).
 - (iv) No provision of this section shall relieve any corporation of its obligations under Section 604 of the California Corporations Code (or any successor statute, rule or regulation that may exist from time to time) or any statute, rule or regulation from any other jurisdiction that regulates the solicitation of proxies, and any corporation with an outstanding class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, of its obligations to comply with the proxy rules promulgated under the Securities Exchange Act of 1934, as amended.
- (D) Any proposal by a corporation regarding political contributions or expenditures for political activities to be voted upon at an annual or special meeting of shareholders pursuant to subdivisions (d)(1)(B) and (d)(1)(C) shall be set forth in such corporation's form of proxy with the caption "Political Contributions and Expenditures in California."
- (e) (1) Any corporation that makes a political contribution or expenditure for political activities shall maintain records that include copies of each report compiled under subdivision (d)(1)(A) and of each vote of shareholders obtained under subdivisions (d)(1)(B) and (d)(1)(C).
- (2) Copies of each report compiled under subdivision (d)(1)(A) and a certificate of the chair of the corporation's audit committee (or other committee of the board of directors serving a similar function) or, in the event no such committee exists, the chair of the corporation's board of directors certifying the results of each vote of shareholders obtained under subdivisions (d)(1)(B) and (d)(1)(C) shall be sent to the California Fair Political Practices Commission upon request.
- (f) The corporation has the burden of proof by clear and convincing evidence to establish that the requirements of this section are met.
- (g) Any person violating this section is guilty of a misdemeanor. In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars (\$10,000) or three times the amount the corporation or person unlawfully contributed, expended, gave or received shall be imposed upon conviction for each violation.

SECTION 4 - Severability

It is the intent of the People that the provisions of this Act are severable and that if any provision of this Act, or the application thereof to any person or circumstances, is held invalid such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application.

SECTION 5 – Conflicting Measures

In the event that this measure and another measure or measures relating to political contributions and expenditures, in whole or part, by corporations shall appear on the same statewide ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.