

# TEXAS

## CAMPAIGN FINANCE AND BALLOT MEASURE GUIDE

These resources are current as of 6/13/14. We do our best to periodically update these resources and welcome any comments or questions regarding new developments in the law. Please email us at [advocacy@afj.org](mailto:advocacy@afj.org).

### What's New in This Guide

The following changes/additions have been made since the previous version of this guide:

- ◆ Amended information on issue advocacy and express advocacy, under "[Communications](#)"
- ◆ Amendments to contribution limits to statewide judicial candidates

This guide summarizes key aspects of laws and regulations governing campaign finance on the state level. The laws discussed in this publication apply to election activities surround candidates for statewide office. It is not intended to provide legal advice or to serve as a substitute for legal advice.

In some jurisdictions, city and/or county regulations may also apply to certain political activities. Check with the appropriate local jurisdiction before undertaking any activity.

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## CONTRIBUTION LIMITS AND SOURCE RESTRICTIONS

From:	To Candidates				To Committees		To Ballot Measures
	Governor	Other Statewide	Legis-lative	Municipal	PACs	Parties	
Individuals	None	None*	None	**	None	None	None
PACs	None	None*	None	**	None	None	None
Corpor-ations***	Prohibited	Prohibited	Prohibited	Prohibited	Ballot Measure PACs only	***	Permitted, No Limit

\* Contribution limits apply to candidates for judicial office, in the following amounts (aggregate per individual, per election cycle): \$5,000 for statewide judicial office; \$1,000 for judicial districts with population less than 250,000; \$2,500 for judicial districts with population from 250,000 to one million; and \$5,000 for judicial districts with populations greater than one million. There are no contribution limits to judicial candidates made by general-purpose committees. Law firms, including all related persons and the firm's general-purpose committee, may not contribute more than \$50 to a statewide judicial candidate per election. ([TEX. ELECT. CODE §§ 253.155, 253.157, 253.1621](#)).

\*\* Several cities (including Austin, Dallas, Houston and San Antonio) have adopted contribution limits by local ordinance or charter. See section on [Contact Information for State and Local Agencies](#), below. No statewide laws apply contribution limits to municipal elections. Counties have no authority to adopt contribution limits.

\*\*\* See discussion below about different rules applicable to different types of corporate entities. Stricter rules apply to corporations and labor unions. Corporations and labor unions may contribute to political parties only for certain activities, including normal overhead, administrative and operating costs of the party, and the costs of a primary election or convention. ([TEX. ELECT. CODE §§ 253.104, 257.002](#)).

### Aggregate Limits

- There are no aggregate limits for individuals, other than for judicial candidates, as discussed above.

### Restrictions on Contributions

- Cash contributions – Cash contributions made to a candidate, officeholder, or [specific-purpose committee \(“SPC”\)](#) from a single individual exceeding an aggregate \$100 per election cycle are prohibited. ([TEX. ELECT. CODE §253.033](#)).
- Legislative Session – Contributions made to a statewide officeholder, a member of the legislature, a specific-purpose committee for supporting, opposing, or assisting a statewide officeholder or member of the legislature, or a legislative caucus are prohibited during the period starting 30 days before start of regular biennial legislative session (early

December of even numbered year), until twenty days after adjournment (June of odd numbered year). ([Tex. Elect. Code § 253.034](#), [253.0341](#)).

- Judicial Elections – In judicial elections, campaign period for accepting contributions generally begins 210 days before filing deadline (typically June of odd numbered years) and extends 120 days after either primary election (March of even numbered years) or a contested general election (November of even numbered years). Exceptions may apply. ([TEX. ELECT. CODE §253.153](#)).
- Members of a law firm and their families are restricted in some cases from contributing to judicial candidates after firm and all members have contributed a certain amount. ([TEX. ELECT. CODE § 253.157](#)).
- Certain Public Buildings – Contributions are prohibited in the Texas State Capitol and courthouses. ([TEX. ELECT. CODE § 253.039](#)).
- Union and Corporate Ban – Unions and most corporations may not make political contributions to a candidate or officeholder, but may do so to a ballot measure committee. ([TEX. ELECT. CODE § 253.094](#)).
- In-Kind Contributions – In-kind contributions must be evaluated at fair market value and reported by candidate or officeholder as contributions. ([1 TEX. ADMIN. CODE §§ 20.51, 20.52](#)).
- False name – A person may not knowingly make a political contribution in the name or on the behalf of another individual unless that person discloses his or her name and address in writing to both the recipient of the contribution and the person on whose behalf the contribution is being made. ([TEX. ELECT. CODE § 253.001](#)).

### **Corporate and *Massachusetts Citizens for Life* (“MCFL”) Contributions**

- The state does recognize *MCFL* status.
- Corporations (including incorporated nonprofit entities) are prohibited from making political contributions except to ballot measure PACs. ([TEX. ELECT. CODE §§ 253.091, 253.094](#)).
- Corporations and labor unions *may* make unlimited direct campaign expenditures (i.e. independent expenditures), but are subject to [reporting requirements](#).

- Contributions by *non-incorporated* membership associations, professional corporations, and professional associations are permitted.
- Contributions by LLCs (limited liability companies), LPs (limited partnerships), or LLPs (limited liability partnerships) are permitted if the entity has no corporate partners or members. ([TEX. ELECT. CODE §§ 253.091, 253.093, 253.094](#)).
- Business entities that would have organized as business corporations prior to the 1990's may now organize as LLCs, which are not subject to the corporate contribution ban. As a result, more corporate money is being contributed in Texas elections.
- For-profit and nonprofit entities may create, sponsor, and administer a General-Purpose Committee (GPC), but only entities which are permitted to make political contributions may directly fund their GPC. Other entities may seek funding for GPC from shareholders or members. ([TEX. ELECT. CODE § 253.100](#)).

## COMMUNICATIONS

### Member Communications

- Communications to a corporation's or labor union's members are not considered contributions or expenditures. ([TEX. ELECT. CODE § 253.098\(a\)](#); [1 TEX. ADMIN. CODE § 24.11](#)).

### Issue Advocacy vs. Express Advocacy

- Only those communications containing express advocacy (as opposed to those that contain mere general issue advocacy) are required to include the statutory disclosure information, [discussed below](#).
- [TEX. ELECT. CODE § 255.001](#) establishes the disclosure requirements for political advertisements that contain "express advocacy." The law does not define express advocacy, but does state that political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy. ([TEX. ELECT. CODE § 255.001\(b\)](#)). Thus, a disclosure statement is required anytime one of the aforementioned entities authorizes a political advertisement.
- For political advertisements *not* authorized by a candidate, a candidate's agent, or a political committee, the disclosure requirement depends on the precise language of the communication. A political advertisement will be

considered to expressly advocate for the election or defeat of an identified candidate or the passage or defeat of a measure if it includes words or phrases such as “vote for,” “elect,” “defeat,” “support,” “reject,” or “Smith for Senate.”

- The relevant Texas definitions of “campaign contribution” and “campaign expenditure” both include the term “*in connection with a campaign for elective office or on a measure.*” ([TEX. ELECT. CODE §§ 251.001\(3\), \(7\)](#)). This phrase has been interpreted by both the Texas Supreme Court and the Texas Ethics Commission as being consistent with the federal interpretation of the express advocacy rule.<sup>1</sup> Thus, political advertisements that explicitly support or oppose a candidate for public office or a measure must contain the required statutory disclaimer. ([See below for disclosure requirements.](#))

### **Electioneering Communications**

- Texas regulates only express advocacy communications, with no special disclosure rules for communications made near the time of the election. (Though some communications containing issue advocacy may be required to carry disclaimer as “legislative advertising.”) ([TEX. GOVT. CODE § 305.027](#)). [See below.](#)

### **Independent Expenditures (“Direct Campaign Expenditures”)**

- There is no statutory definition of “independent expenditure” because there are no broadly applied contribution or expenditure limits. However, the statute includes “direct campaign expenditure,” which is defined as “a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure.”
- Corporations and labor organization: In light of legislation following the *Citizens United v. FEC* Supreme Court decision, Texas law now permits corporations and labor organizations to make “direct campaign expenditures” (i.e. independent political expenditures or contributions to independent expenditure-only PACs). Corporations and labor organizations continue to be prohibited from making political contributions. ([TEX. ELECT. CODE § 253.094](#))
- Independent Expenditure Reporting Requirements
  - General-Purpose Committees report direct campaign expenditures (i.e. independent expenditures) on their contribution and

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<sup>1</sup> See *Osterburg v. Peca*, 12 S. W. 3d 31 (Tex. 2000); and *In re: Ellis*, 279 S.W. 3d 1 (Tex. App. — Austin 2008, appl’n for mand. denied); Texas Ethics Commission Ethics Advisory Opin. 198 (1994).

expenditure reports for the applicable period. ([TEX. ELECT. CODE §§ 254.031, 254.151](#)).

- General-Purpose Committees must notify candidate or officeholder if it accepts political contributions or makes political expenditures on behalf of the candidate or officeholder. ([TEX. ELECT. CODE § 254.161](#); [1 TEX. ADMIN. CODE § 20.421](#)).
- Persons (entities, including individuals, that do *not* qualify as General-Purpose Committees) that make one or more direct campaign expenditures exceeding \$100 in an election must comply with statutory reporting duties as if they were the campaign treasurer of a general-purpose committee that does not file monthly reports under [TEX. ELECT. CODE § 254.155](#). (The individual/entity is not, however, required to file a campaign treasurer appointment.) These individuals/entities are not required to file disclosure reports if their expenditure(s) are disclosed elsewhere. ([TEX. ELECT. CODE § 254.261](#)).

**Disclaimers**

- “Political Advertising” that supports or opposes a candidate for public office or a measure (i.e. contains “express advocacy” – [see above](#)) must carry a statutory disclaimer. ([Tex. Elect. Code § 255.001](#)). Only certain types of communications in printed, published, broadcast or internet media constitute political advertising. ([TEX. ELECT. CODE § 251.001\(16\)](#)).

- For qualifying political advertisements, the following disclaimer is required:

“Political Advertising Paid for by X”

(X to be full name of entity paying for the advertising). ([TEX. ELECT. CODE § 255.001](#)).

- Only certain mediums of communication require disclaimers:

	<b>Issue Advocacy*</b>	<b>Express Advocacy</b>
<b>Telephones</b>	No	No
<b>Internet</b>	No	Yes
<b>Email</b>	No	No

<b>Television</b>	No*	Yes
<b>Radio</b>	No*	Yes
<b>Print</b>	No*	Yes
<b>Billboards</b>	No*	Yes
<b>Handbills</b>	No*	Yes
<b>Mail</b>	No*	Yes

\* Disclaimer or reporting would apply to some issue advocacy if it involves broadcast or printed communication supporting, opposing, or proposing legislation and it is: 1) paid for by a lobbyist (must be reported by lobbyist), or 2) published in return for consideration (must carry disclaimer). ([TEX. GOVT. CODE §§ 305.006\(c\), 305.027](#)). Personally produced handbills, mail or other publications that support or oppose legislation but are not published in return for consideration are not regulated.

- Texas also requires “legislative advertising” to have a disclaimer. Legislative advertising is defined as a communication that supports, opposes, or proposes legislation. The following disclaimer is required:

“Legislative Advertising paid for by X on behalf of Y.”

(X being person who actually enters into contract with printer, publisher or broadcaster and Y being individual or entity represented by X). ([TEX. GOVT. CODE § 305.027](#)).

- See also special rules for political advertising disclaimers in judicial race. ([TEX. ELECT. CODE § 255.008](#)).

## COORDINATION

- There are no statutory provisions, except in Judicial Fair Campaign Act. ([TEX. ELECT. CODE §§ 253.163, 253.169, 253.170, 253.171](#)). Under the Judicial Fair Campaign Act, certain direct campaign expenditures by supporting PACs and political parties count against a judicial candidate’s voluntary expenditure limits and the contribution limits of the person or PAC making the expenditure.

## REGISTRATION AND REPORTING REQUIREMENTS

### State PACs

- Types of Texas PACs
  - *General-Purpose Committee (GPC)*: A GPC is defined as a committee that supports, opposes or assists two or more *unidentified* candidates or ballot measures (i.e. a committee that supports candidates who oppose gambling). ([TEX. ELECT. CODE § 251.001\(14\)](#)). A GPC may not make contributions until it has had a treasurer appointment on file for at least 60 days and has accepted contributions from 10 or more contributors. ([TEX. ELECT. CODE § 253.037](#); [1 TEX. ADMIN. CODE § 20.401](#)). In addition, a GPC may *only* make contributions to other GPCs that are listed on its registration form. ([TEX. ELECT. CODE § 253.037\(b\)](#)).
  - *Specific-Purpose Committee (SPC)*: A SPC is defined as a committee that supports, opposes or assists *identified* candidates seeking known office or *identified* ballot measures. ([TEX. ELECT. CODE § 251.001\(13\)](#)). Certain SPCs must have a treasurer appointment on file for at least 30 days before election day. ([Tex. Elect. Code § 253.031\(c\)](#)).
- Registration of State PACs
  - All GPCs and those SPCs active in state races or statewide ballot measures are required to register with the Texas Ethics Commission. SPCs active only in municipal, county or special district races and/or ballot measures need only file in the local jurisdiction in which they are active.
  - Registration requirements are generally the same for GPCs and SPCs (collectively “PACs”); however, each entity has its own set of forms available at <http://www.ethics.state.tx.us/main/forms.htm>. PACs may also register electronically at [http://www.ethics.state.tx.us/whatsnew/elf\\_filing\\_info.htm](http://www.ethics.state.tx.us/whatsnew/elf_filing_info.htm).
  - Timing: Registration must occur *before* the PAC accepts more than \$500 in political contributions or makes more than \$500 in expenditures. It is unlawful to expend or accept more than \$500 without a treasurer designation on file. ([Tex. Elect. Code § 253.031\(b\)](#)).
  - A PAC must designate a treasurer, who need not be a Texas resident. ([TEX. ELECT. CODE § 253.031](#)). A PAC must also maintain a bank account or accounts segregated from non-PAC funds. ([TEX.](#)

[ELECT. CODE § 253.040](#)). There is no requirement that the bank must be located in Texas.

- Reporting for State PACs

- PACs, along with individuals, corporations, or labor unions spending more than \$100 (or groups of individuals spending more than \$500) for independent expenditures during an election year must file disclosure reports on the below schedule. ([Tex. Elect. Code § 254.261](#)). All disclosure reports must be [filed electronically](#) unless the disclosing entity is able to claim a statutory exemption.
- During non-election years, only the semi-annual reports must be filed. Note: Both GPCs and SPCs may choose an alternative reporting schedule than what is listed. For more information, see [http://www.ethics.state.tx.us/guides/pac\\_guide.pdf](http://www.ethics.state.tx.us/guides/pac_guide.pdf).
- A PAC (including a GPC sponsored by a nonprofit) must identify its contributors over \$50. ([Tex. Elect. Code § 254.031\(a\)\(1\)](#)). PACs must also report political expenditures that, in the aggregate, exceed \$100 during the reporting period. ([TEX. ELECT. CODE § 254.031\(a\)\(3\)](#)).
- If a PAC accepts funds from outside Texas for a Texas election, it must report those political contributions in reports filed in Texas. See also reporting and filing rules for out-of-state PACS, [below](#).
- *Reporting Schedule*
  - **Semi-Annual:** Due January 15 and July 15 of each year, regardless of whether a PAC has any activity during the reporting period. ([TEX. ELECT. CODE § 254.153](#); [1 TEX. ADMIN. CODE § 20.423](#)). Semiannual reports that are amended before the eighth day after the date the original report was filed is considered to be filed on the date the original report was filed. ([Tex. Elect. Code § 254.0405](#)).
  - **30-Day Pre-Election:** Due 30 days before an election *if* a PAC has activity during the reporting period. ([TEX. ELECT. CODE § 254.154](#); [1 TEX. ADMIN. CODE § 20.425](#)).
  - **8-Day Pre-Election:** Required if 1) a PAC was required to file a 30-day pre-election report, *or* 2) a PAC makes expenditures during the reporting period. The report is due 8 days before an election. ([TEX. ELECT. CODE § 254.154](#); [1 TEX. ADMIN. CODE § 20.425](#)).

- **Special Pre-Election:**
  - The special pre-election period starts nine days before an election and ends at noon on the day before the election.
  - *GPCs:* Reports are due within 24-hours if, during the special pre-election reporting period, a GPC: 1) receives a contribution from a person aggregating more than \$5,000 during the reporting period, *or* 2) makes more than \$1,000 in independent expenditures supporting or opposing a single candidate, *or* 3) makes more than \$15,000 in independent expenditures supporting or opposing a *group* of candidates. ([Tex. Elect. Code § 254.039](#); [1 Tex. Admin. Code § 20.435](#)).
  - *SPCs:* During the special pre-election reporting period, an SPC must report within 24-hours a contribution from a single source that totals more than \$1,000 during the reporting report. ([Tex. Elect. Code § 254.038](#)).

(If the due date for a report falls on the weekend or a holiday, the report is due on the next regular business day.)

- *Alternative Reporting for Certain GPCs*
  - GPCs with less than \$20,000 in one or more accounts in which political contributions or deposited, as of the last day of the preceding reporting period, are permitted to file reports containing the following information (in lieu of the information required under Sections 254.031(a)(1) and (5) and 254.151(6):
    - The amount of political contributions from each person that exceeds an aggregate \$100, including the date of contribution and the contributor's full name, address and occupation; and
    - The total amount of political contributions and expenditures made during that reporting period of \$100 or less.  
([TEX. ELECT. CODE § 254.1541](#)).
  - GPCs may opt to file Monthly Reports (in lieu of the reporting schedule under Sections 254.153 and 254.154), so long as the GPC delivers written notice of its intent to do so between January 1 and January

15 of the year in which it intends to file monthly. ([TEX. ELECT. CODE § 254.155](#)). To review the contents and schedule of monthly reports, view Sections [254.156](#) and [254.157](#).

## Out-of-State PACs

- Registration of out-of-state PACs
  - An out-of-state PAC is not required to register as a Texas PAC, but must report its contributions or direct campaign expenditures (independent expenditures). An out-of-state PAC is defined as a committee that: 1) makes political expenditures outside Texas; and 2) in the 12 months immediately preceding the making of a political expenditure by the committee inside Texas (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80 percent or more of the committee's total political expenditures in any combination of elections outside Texas. ([TEX. ELECT. CODE §§ 251.001\(15\); 1 TEX. ADMIN. CODE § 20.13](#)). Therefore, if more than 20 percent of an out-of-state PAC's total political expenditures are made on Texas elections, it must register as a Texas state PAC.
  
- Reporting for out-of-state PACs
  - An out-of-state PAC is required to report its Texas political activity in one of two ways:
    - An out-of-state PAC that files reports electronically in another jurisdiction may comply with Texas' reporting requirements by sending a letter to the Texas Ethics Commission detailing where the electronic report may be found on the website of the agency with which the out-of-state PAC is required to file its reports; *or*
    - An out-of-state PAC that does *not* file reports electronically in another jurisdiction may comply with Texas' reporting requirements by sending a copy of the cover sheets of the report and a copy of each page on which the committee reports a contribution or expenditure accepted or made in connection with a state or local election in Texas. ([1 TEX. ADMIN. CODE § 20.13](#)).
  
  - Out-of-state PACs active in Texas (contribution over \$500 to any one candidate) must submit the following to the Texas candidate or PAC receiving the contribution:
    1. A written statement, certified by an officer of the out-of-state committee, listing the full name and address

- of each person who contributed more than \$100 to the out-of-state committee during the 12 months immediately preceding the contribution, *or*
2. A copy of the out-of-state PAC's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state PAC.

([TEX. ELECT. CODE §§ 253.032, 251.001\(15\), 251.005, and 254.1581](#)). See also modified submission option in [1 TEX. ADMIN. CODE § 22.7](#)).

## Texas PAC Administration

- An affiliated corporation or union may pay for administrative expenses of a PAC that makes candidate or political party contributions. ([TEX. ELECT. CODE § 253.100](#)).
- A corporation may solicit contributions for the PAC from its stockholders or members and their families. ([TEX. ELECT. CODE § 253.100](#)). However, neither a corporation nor a labor union may use its own funds to contribute directly to a PAC that makes candidate contributions. Nor may corporate funds be expended to solicit persons other than members, shareholders and their families. In addition, no union dues or other funds obtained as a condition of employment may be used to make a political contribution or political expenditure. ([TEX. ELECT. CODE § 253.101](#)).

## Termination

- To terminate a PAC, file a Termination Report with the Texas Ethics Commission. ([TEX. ELECT. CODE § 254.127](#); [1 TEX. ADMIN. CODE § 20.417](#)).

## ENFORCEMENT AND PENALTIES

- Civil enforcement is by Texas Ethics Commission (TEC) and criminal enforcement by local prosecutors (county attorney or district attorney). In almost all cases, enforcement is complaint driven. TEC's only routine enforcement is for late filed reports. TEC does not audit PACs for compliance. See [Enforcement and Sworn Complaints](#) for additional details.
- Most TEC civil penalties relating to reporting violations range from \$100 to \$500 per violation. Most criminal violations of Texas Election Code are Class A misdemeanors, but violation of corporate activity ban is a third

degree felony. ([TEX. ELECT. CODE §§ 253.094, 253.101-104](#)).

- The Texas Election Code also provides for a private civil cause of action for damages in favor of candidates, PACs and the State if an opponent or third-party violates certain provisions of the Texas Election Code. ([TEX. ELECT. CODE §§ 253.131-134](#)).

## **BALLOT MEASURES**

- A corporation or labor union may make unlimited contributions to a ballot measure SPAC (a PAC focusing exclusively on one or more identified ballot measure) without triggering registration or reporting requirements. ([TEX. ELECT. CODE § 253.096](#)).
- A corporation or union may make unlimited direct campaign expenditures (i.e. independent expenditures) for or against ballot measures but must report all activity that exceeds \$100. ([Tex. Elect. Code § 254.261](#)). See [Independent Expenditure section above](#) for reporting requirements.

## CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES

### **Texas Ethics Commission**

Natalia Ashley, Interim Executive  
Director/Special Counsel  
P. O. Box 12070  
Austin, Texas 78711-2070

201 East 14th Street, 10th Floor  
Austin, Texas 78701

<http://www.ethics.state.tx.us/tec>

Telephone: 512-463-5800

1-800-325-8506

Legal, Administrative, Executive Division  
FAX: 512-463-5777

Disclosure Filing FAX: 512-463-8808

### **City of Austin**

City Code of Ordinances, Chapter 2-2,  
Austin Fair Campaign Chapter  
City Charter, [Article III](#), § 8 (Limits on  
Campaign Contributions and

Expenditures

[www.ci.austin.tx.us](http://www.ci.austin.tx.us)

### **City of Dallas**

City Code of Ordinances

[Chapter 15A](#), Article I

“Campaign Contributions”

[www.dallascityhall.com](http://www.dallascityhall.com)

### **City of Houston**

[City Code of Ordinances](#)

Chapter 18, Art. IV “Limitations on  
Solicitations and Contributions”

[www.houstontx.gov](http://www.houstontx.gov)

### **City of San Antonio**

[City Code of Ordinances](#)

Article VII, “Municipal Campaign Finance  
Regulations”

(Sec. 2.300-2.311)

[www.sanantonio.gov](http://www.sanantonio.gov)

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## FOR FURTHER ASSISTANCE

**For assistance regarding these resources or for more  
information about federal law, please contact our attorney  
one-on-one counseling service:**

Email: [advocacy@afj.org](mailto:advocacy@afj.org)

Telephone: 1-866-NPLOBBY  
(675-6229)

**For assistance regarding state law in Texas,  
please contact:**

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