

MARYLAND

CAMPAIGN FINANCE AND BALLOT MEASURE GUIDE

These resources are current as of 7/20/2016. 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.

What's New in This Guide

- ◆ This is the first edition of the guide.
- ◆ Maryland overhauled its campaign finance laws effective January 1, 2015. The State Board of Elections (“SBOE”), which administers state campaign finance laws, has not yet issued public guidance about interpretation of the overhauled system, and it has withdrawn its previous “Summary Guide” to the campaign finance law

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

Contribution Limits

From:	To Candidates				To Committees			To Ballot Measures
	Governor	Other Statewide	Legislative	County and Baltimore City	PACs	IE PACs	Parties	
Individuals	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	No Limit	\$6,000	No Limit
PACs	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	No Limit	\$6,000	No Limit
IE PACs	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	No Limit	Prohibited	No Limit
Corporations	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	No Limit	\$6,000	No Limit
Labor Organizations	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	No Limit	\$6,000	No Limit

[Md. Election Law Code §§ 13-226, 13-227.](#)

All contribution limits apply to 4-year election cycles. The current cycle is January 1, 2015 to December 31, 2018. Under the recent changes to Maryland's election law, these limits include *all contributions – monetary and in-kind – counted together*. Previously, in-kind contributions were subject to separate limits.

For contributions to candidates in other Maryland municipalities, check with the appropriate local jurisdiction.

Contribution Restrictions

Aggregate Limits

- There is a \$24,000 per cycle aggregate contribution limit for contributions to all campaign finance entities. [Md. Election Law Code § 13-226\(b\)\(2\)](#). However, *McCutcheon v. Federal Election Commission*, 572 U.S. ___, 134 S. Ct. 1434 (2014), struck down aggregate contribution limits for individuals in Federal elections. In light of *McCutcheon*, the SBOE views the aggregate contribution limit on PACs and corporations to be *unenforceable*.
See http://www.elections.state.md.us/campaign_finance/documents/Aggregate_limits_04112014_final.pdf

Affiliated Entities

- Maryland treats contributions (also called “transfers”) by affiliated “business entities” as being made by one contributor if one business entity is a wholly owned subsidiary of the other or if the business entities are owned or controlled by at least 80% of the same individuals or business entities. [Md. Election Law Code § 13-226\(e\)](#).
 - “Business entity” includes “a corporation, a sole proprietorship, a general partnership, a limited partnership, a limited liability company, a real estate investment trust, or any other entity.” *Id.*

Anonymous contributions

- Anonymous contributions are prohibited. Campaign finance entities must remit anonymous contributions to the Fair Campaign Financing Fund. [Md. Election Law Code §§ 13-239](#).

During Legislative Session

- Contributions may not be made to the Governor, Lieutenant Governor, Attorney General, Comptroller, or any member of the General Assembly during the legislative session. [Md. Election Law Code §§ 13-235](#).

Lobbyists

- An individual regulated lobbyist may not, for the benefit of the Governor, Lt. Governor, Attorney General, Comptroller or member of the General Assembly, or candidate for election to those offices:
 - Solicit or transmit a political contribution from any person, including a political committee;
 - Serve on a fund-raising committee or a political committee;
 - Act as a treasurer for a candidate or official or as treasurer or chairman of a political committee;
 - Organize or establishing a political committee for the purpose of soliciting or transmitting contributions from any person; or
 - Forward tickets for fund-raising activities or other solicitation for political contributions, to a potential contributor. MD. CODE ANN. GEN. PROVISIONS § 5-715.
- These prohibitions do not apply to grassroots lobbyist registrants. *Id.* § 5-715(b); [State Ethics Commission Manual](#) at 13 footnote 4.
- Entities that compensate lobbyists and make certain political contributions must provide special statements to the State Ethics Commission regarding their activities, including political contributions made by or at the suggestion of their officers or board members. *Id.* § 5-716.

COMMUNICATIONS

Independent Expenditures

- "Independent expenditure" means an expenditure by a person expressly advocating the success or defeat of a clearly identified candidate or ballot issue if the expenditure is not made in coordination with, or at the request or suggestion of, a candidate, a campaign finance entity of a candidate, an agent of a candidate, or a ballot issue committee. [Md. Election Law Code § 13-101\(bb\)](#).

Electioneering Communications

- "Electioneering communications" are communications that:
 - refer to a clearly identified candidate or ballot issue;
 - are made within 60 days of an election; are
 - capable of being received by 50,000 individuals in the relevant constituency if transmitted by television or radio, or by 5,000 individuals if transmitted by mail, e-mail, text message, phone bank, or print advertisement; and
 - are not made in coordination with, or at the request or suggestion of, a candidate or ballot issue committee. [Md. Election Law Code § 13-307\(a\)\(3\)\(i\)](#).

Membership Communications

Membership communications are excluded from the definitions of independent expenditures and electioneering communications. [Md. Election Law Code §§ 13-306\(a\)\(6\)\(ii\)\(2\); 13-307\(a\)\(3\)\(ii\)\(4\)](#). State law does not otherwise address membership communications.

Disclaimers ("Authority Lines")

- "Campaign material" published or distributed by a campaign finance entity must include an authority line stating:
 - The name and address of the treasurer of each campaign finance entity responsible for the campaign material; and
 - The name of each campaign finance entity for which each treasurer is acting. [Md. Election Law Code § 13-401\(a\)](#).
- "Campaign material" is any material that:
 - Contains text, graphics, or images;
 - Relates to a candidate, prospective candidate, or the approval or rejection of a ballot question; and
 - Is published or distributed. [Md. Election Law Code §§ 1-101\(k\)](#).
- Campaign material published by any other person must include the name and address of the person responsible for the material. [Md. Election Law Code § 13-401\(a\)](#).
- The authority line may omit an address if the address is on file with the SBOE or a local elections board. Id.

- Campaign material that is too small to contain the information required above may simply contain the name and title of the treasurer or other person responsible for it. *Id.*
- There are special rules for commercial advertisements, *id.*, and for campaign material posted on social media, [C.O.M.A.R. Sec. 33.13.07.02](#).
- Campaign material that is published or distributed in support of or in opposition to a candidate, but is not authorized by a candidate, must include the following statement: “This message has been authorized and paid for by (name of payor or any organization affiliated with the payor), (name and title of treasurer or president). This message has not been authorized or approved by any candidate.” [Md. Election Law Code § 13-401\(b\)](#)

COORDINATION

- Maryland law does not define coordination.
 - The definition of an “independent expenditure” excludes acting in coordination with, or at the request or suggestion of, a candidate, a campaign finance entity of a candidate, an agent of a candidate, or a ballot issue committee. [Md. Election Law Code § 13-101\(bb\)](#). Likewise, there is a similar exclusion for “electioneering communications.” [Md. Election Law Code § 13-307\(a\)\(3\)\(i\)](#). But no state authority further defines what conduct comprises coordination.

REGISTRATION AND REPORTING REQUIREMENTS

Types of Campaign Finance Entities

- Maryland’s campaign finance system is convoluted, with different kinds of registration requirements for no less than five (often overlapping) types of political entities:
 - In-state PACs
 - Out-of-state PACs
 - Participating Organizations
 - Independent Expenditure Entities
 - Electioneering Communication Entities
- Depending on their activities, groups may have to register as *multiple* types of entities.
- These multiple registration requirements went into effect in 2015, and even in 2016 SBOE was uncertain about various aspects of the requirements.

In-State PACs

- A Maryland "political committee" (PAC) is a combination of two or more individuals that has as its major purpose promoting the success or defeat of a candidate, political party, or question submitted to a vote at any election. [Md. Election Law Code § 1-101\(gg\)](#).
 - The SBOE informally acknowledges that “major purpose” has not yet been defined.

- Registration
 - Registration is required *before* an in-state PAC either receives or distributes anything of value. [Md. Election Law Code § 13-207\(b\)](#).
 - A PAC registers by filing a Statement of Organization through the state’s [online portal](#). [Md. Election Law Code §§ 13-207\(c\), 13-208](#).
 - A committee must:
 - have a chairman and a treasurer who are Maryland residents;
 - identify each candidate or ballot question then known that the PAC was formed to promote or defeat;
 - identify any special interest, including any business or occupation, that the organizers of or contributors to the PAC have in common;
 - state whether the PAC will participate in presidential, gubernatorial, Baltimore City, or municipal elections. [Md. Election Law Code §§ 13-207\(c\), 13-208\(c\)](#).
 - Special Name Rules:
 - A PAC’s name must not be deceptive as to the committee’s true nature or character.
 - A PAC sponsored by or affiliated with another entity or group must identify that entity’s or group’s name within the PAC’s name. [Md. Election Law Code § 13-208\(d\)](#).

- Reporting
 - Report Contents
 - PACs must report, as to each contribution or expenditure:
 - its amount or value;
 - the date of the receipt of expenditure;
 - the name and residential address of the person from whom the contribution was received or to whom the expenditure was made; and

- a description of the asset received or the purpose for which the expenditure was made. [Md. Election Law Code § 13-221, 13-304.](#)
 - The occupation and employer should also be included, to the extent practicable, for individuals who contribute a cumulative amount of \$500 or more during the election cycle. [Md. Election Law Code § 13-221.](#)
 - PACs must also report loans, which are considered to be contributions in the amount of the outstanding principal balance, [Md. Election Law Code § 13-230](#), along with all outstanding bills due.
- Reporting Schedule
 - Reports are due:
 - By the 3rd Wednesday in January;
 - In gubernatorial election years only, by the third Tuesday in April, if the campaign finance entity did not file the annual report on the immediately preceding third Wednesday in January.
 - By the 5th Tuesday immediately preceding each primary election
 - The 2nd Friday immediately preceding each primary election
 - The last Tuesday in August immediately preceding a general election
 - The 2nd Friday immediately preceding a general election
 - The 2nd Tuesday after a general election. [Md. Election Law Code § 13-309\(a\).](#)
 - With the exception of the report due on the 3rd Wednesday in January, campaign finance entities need only report as to the elections that they indicated they would participate in on their statement of organization. [Md. Election Law Code §§ 13-309\(b\)\(1\), \(b\)\(2\), \(c\).](#) If, however, an entity participates in an election that it did not designate, then it must file all campaign finance reports for that election on the schedule set out above. [Id. § 13-309\(b\)\(3\).](#)
 - The current reporting schedule is available [here](#).
 - The SBOE has a duty to notify campaign finance entities about reports required to be filed by those entities at least 10 but not more than 20 days before the report is due. [Md. Election Law Code § 13-321.](#)
- Reporting Exemption
 - Entities that have raised or spent less than \$1,000 during a reporting period may file an affidavit to that effect instead of a required report. [Md. Election Law Code § 13-305.](#)

Out-of-State PACs

- An "out-of-state political committee" is a nonfederal political committee organized under the law of another state. [Md. Election Law Code § 13-301](#). It does *not* mean a committee that's registered with only the IRS or the Federal Election Commission.
- Registration
 - Out-of-state PACs must register in Maryland within 48 hours after they contribute (also called "transfer" in Maryland) an aggregate of \$6,000 during a 4-year election cycle to Maryland campaign finance entities. [Md. Election Law Code § 13-301](#).
 - When an organization reaches the \$6,000 threshold , it must register through the state's [on-line portal](#).
 - The entity must designate the election year in which the PAC is participating. *Id.*
- Reporting
 - The entity must also file the same campaign finance reports with the SBOE on the same schedule as in-state PACs set out above. *Id.*
 - The first report must cover the period from the beginning of the election cycle. *Id.*
 - Reporting Exemption
 - Entities that have raised or spent less than \$1,000 during a reporting period may file an affidavit to that effect instead of a required report. [Md. Election Law Code § 13-305](#).

Participating Organizations

- A "participating organization" is an entity established under sections 501(c)(4), 501(c)(6) or 527 of the Internal Revenue Code that makes:
 - a contribution to a campaign finance entity for the express purpose of causing it to make a disbursement in Maryland;
 - a donation to a person for the express purpose of making an independent expenditure or electioneering communication in Maryland; or
 - a donation to an out-of-state political committee for the express purpose of causing it to make a disbursement in the state. [Md. Election Law Code § 13-309.2](#).
- Registration
 - Registration through the state's [on-line portal](#) is required within 48 hours of making contributions, donations or disbursements totaling \$6,000 or more in an election cycle. *Id.*

- Reporting
 - Participating Organizations must file reports on the same schedule as in-state and out-of-state PACs. *Id.*
 - The reports must include all disbursements made to influence elections in Maryland and either:
 - The name, address, and occupation of the five donors who gave the largest amount of money to the organization to influence Maryland elections within the previous year, or
 - If the participating organization registered within 6 months of when a report otherwise would be required, describe how the public may access via the Internet the organization’s reports detailing all disbursements made and donations received. *Id.*

Independent Expenditure Entities

- Registration
 - Maryland requires any “person”—which includes individuals, partnerships, committees, associations, corporations, labor organizations, or any other organization or group of persons, *except for in-state PACs*—to register through the state’s [on-line portal](#) within 24 hours of making independent expenditures of at least \$5,000, counting all races together, in a 4-year election cycle.¹ [Md. Election Law Code § 13-306](#).
 - Registration does *not* require a “Statement of Organization” and does *not* trigger the ongoing, periodic reporting requirements of an out-of-state PAC unless the entity triggers regular *in-state* PAC registration.
- Reporting
 - Within 48 hours of making independent expenditures of at least \$10,000 in an election cycle, an Independent Expenditure entity must file a report with the state. And, it must do the same for every additional \$10,000 it spends on independent expenditures. [Md. Election Law Code §§ 13-306\(c\), \(d\)](#).
 - Reports must be filed electronically on the SBOE’s website, and include:
 - the identities of the person making the independent expenditures and any person exercising direction or control over the activities of that person;

¹ The statute directs a \$5,000 registration threshold here, but the state’s online disclosure portal has mistakenly listed it as \$10,000. SBOE officials confirmed this is an error.

- the business address of the person making the independent expenditures;
 - the amount and date of each independent expenditure and the person to whom the expenditure was made;
 - the candidate or ballot issue to which the independent expenditure relates
 - whether the independent expenditure supports or opposes that candidate or ballot issue; and
 - the identity of each person who made cumulative donations of \$ 6,000 or more to the person making the independent expenditures during the period covered by the report. [Md. Election Law Code § 13-306\(e\)](#).
- An entity required to report must also do at least one of the following:
 - if the entity submits regular, periodic reports to its shareholders, members, or donors, include in each report, in a clear and conspicuous manner, the information that was included in its Independent Expenditure report; or
 - if the entity maintains a website, post a hyperlink to its independent expenditure report on the website within 24 hours of the report being filed and maintain the hyperlink until the end of the election cycle.
 - [Md. Election Law Code § 13-306\(j\)](#).

Electioneering Communication Entities

- The registration and reporting requirements are the same as for Independent Expenditure entities. [Md. Election Law Code § 13-307](#).

Special Reporting Requirements for Persons Doing Public Business

- There are special reporting requirements for persons doing public business. [Md. Election Law Code § 14-104](#).
- "Doing public business" means making or having a contract with any governmental entity involving cumulative consideration of at least \$ 200,000. *Id.* § 101(h). "Doing public business" does not include receiving a salary from a governmental entity. *Id.*

Recordkeeping and Administration

- Each campaign finance entity must designate one or more campaign accounts. The account(s) must be in a financial institution and be

registered in a manner that identifies it as the account of the campaign finance entity. [Md. Election Law Code §§ 13-220](#).

- Copies of campaign material must be kept for at least one year after the *next* general election. [Md. Election Law Code § 13-403](#).
- A campaign finance entity's account books and related records must be kept for either 10 years after the creation of an account book or 2 years after the entity files a final campaign finance report. [Md. Election Law Code § 13-221](#).

Public Disclosure

- Filings are made publicly available through the state's [online portal](#).

Termination

- If a campaign finance entity has neither a cash balance nor an outstanding obligation at the end of a reporting period, the report for that period should be marked "final" and no further report is required. [Md. Election Law Code § 13-309\(b\)\(4\)](#).
- Before a campaign finance entity files a final report, the entity must pay all outstanding obligations and dispose of all of its remaining assets by making Maryland contributions and expenditures, and, with any remaining funds, either:
 - returning funds pro rata to contributors, or
 - giving the funds to
 - a nonprofit organization that benefits teachers or students,
 - a charitable organization registered or exempt from registration under the Maryland Charitable Solicitations Act,
 - the state's Campaign Finance Fund, or
 - an accredited Maryland institution of higher education if the funds are designated for scholarships, grants, or loans to students. [Md. Election Law Code § 13-247; 13-311](#).

ENFORCEMENT AND PENALTIES

- The SBOE establishes late filing fees of \$10/day up to \$500. [Md. Election Law Code § 13-331](#). If the entity has insufficient funds to pay the fee, the entity's responsible officers are jointly and severally liable to pay. *Id.*
- If the SBOE determines that there has been a failure to file a report for more than 30 days, the SBOE will notify the entity that, within 30 days after service of notice:
 - the failure to file must be rectified and any late filing fee be paid, or
 - the responsible officers must show cause why the SBOE should not refer the entity for prosecution. [Md. Election Law Code § 13-335](#).

- A responsible officer who fails, without cause, to file the campaign report and pay the late fee within 30 days of receiving notice is guilty of a misdemeanor and is subject to up to a \$25,000 penalty and up to one year in prison. *Id.*
- A person who knowingly and willfully violates the campaign finance statutes is guilty of a misdemeanor and is subject to up to a \$25,000 penalty and up to one year in prison. *Id.*
- Filings are made under oath. Any person who willfully makes a false, fraudulent, or misleading statement or entry in a campaign finance report is guilty of perjury. [Md. Election Law Code § 13-601.](#)
- A person who violates the campaign finance statute without knowing the act is illegal is subject to a civil citation and a civil penalty up to \$5,000. [Md. Election Law Code § 13-604.](#)
- The SBOE may impose civil penalties not to exceed \$500 for making unauthorized disbursements, failing to maintain a campaign bank account, failing to keep detailed and accurate record books, failing to report all contributions and expenditures, failing to include an authority line, and failing to retain a copy of campaign materials. [Md. Election Law Code § 13-604.1.](#)

BALLOT ISSUES

- A "ballot issue committee" is a political committee whose major purpose is to promote the success or defeat of a question to be submitted to a vote at an election. [Md. Election Law Code §§ 1-101\(f\), /§ 1-101\(gg\)](#)
 - The SBOE informally acknowledges that "major purpose" has not yet been defined.
- Ballot issue committees must register in the same manner set out above for in-state PACs.
 - Note: like for in-state PACs, registration is required *before* conducting any accepting contributions or making expenditures to support a measure.
- Ballot issue committees have a slightly different reporting schedule, however, from in-state PACs.
 - Reports are due:
 - The 3rd Wednesday in January
 - The last Tuesday in August immediately preceding a general election
 - The 4th Friday immediately preceding a general election
 - T the 2nd Friday immediately preceding a general election
 - The 2nd Tuesday after a general election. [Md. Election Law Code § 13-309\(a\).](#)

- With the exception of the report due on the 3rd Wednesday in January, committees need only report as to the elections that they indicated they would participate in on their statement of organizations. [Md. Election Law Code §§ 13-309\(b\)\(1\), \(b\)\(2\), \(c\)](#). If, however, an entity participates in an election that it did not designate, it must file all campaign finance reports for that election on the schedule set out above. [Id. § 13-309\(b\)\(3\)](#).
- The current reporting schedule is available [here](#).

CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES

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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:

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