

MONTANA

CAMPAIGN FINANCE AND BALLOT MEASURE GUIDE

These resources are current as of 6/22/18. 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

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

- ◆ The Montana Disclose Act, which became effective in 2015, and related new regulations substantially amended Montana campaign finance law with notable changes including:
 - Registration and reporting requirements related to “[Electioneering Communications](#)”
 - [Increased reporting frequency and requirements to file reports electronically](#) using Campaign Electronic Reporting System (“CERS”)
- ◆ Added reference to the Commissioner of Political Practices’ Education and Resources webpage at the beginning of this guide.
- ◆ Bidders for certain state contracts must disclose “covered expenditures” to or on behalf of candidates and other entities. Executive Order No. 15-2018 (June 8, 2018).

This guide summarizes key aspects of *state* campaign finance law and regulations. 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.

Table of Contents

- I. **Contribution Limits and Source Restrictions**
 - a. Aggregation
 - b. Caps on PAC contributions to legislative candidates
 - c. In-kind contributions
 - d. Legislative/lobbying restrictions
 - e. Corporate and Union contributions
 - f. Anonymous contributions
- II. **Communications**
 - a. Membership communications
 - b. Issue advocacy vs. Express advocacy
 - c. Independent Expenditures
 - d. Disclaimers
 - e. Advertising notice to candidates
 - f. Robocalls
- III. **Registration and Reporting Requirements**
 - a. Registration as a State Committee
 - i. Independent Committee (“PAC”)
 - ii. Incidental Committee
 - iii. Ballot Issue Committee
 - b. Recordkeeping and Administration
 - c. Reporting
 - i. Reporting schedule
 - ii. Federal PACs and Out-of-State PACs
 - iii. Accessibility
 - d. Termination
- IV. **Ballot Measures**
 - a. Ballot Issue Committees
 - b. Ballot Issue Committee Reporting Schedule
- V. **Enforcement and Penalties**
- VI. **Contact Information for State and Local Agencies**

Important Note: The Commissioner of Political Practices maintains an [Education and Resources](#) webpage that readers of this guide may find helpful.

CONTRIBUTION LIMITS AND SOURCE RESTRICTIONS

Limits to candidates are per-election, with the primary and general counting separately, unless a candidate is unopposed in the primary, in which case the candidate may accept contributions for only one election.

From ↓	To Candidates				To Committees		To Ballot Measure
	Governor & Lt. Gov. filed jointly	Other Statewide	Legislative	Municipal	PACs	Parties	
Individuals	\$680	\$340	\$180	\$180	No limit	No limit	No limit
PACs	\$680	\$340	\$180*	\$180	No limit	No limit	No limit
Corporations and Unions ¹ (from general treasury funds)	\$0	\$0	\$0	\$0	No limit	No limit	No limit

*See [Caps on PAC Contributions to Legislative Candidates](#), below.

[MCA § 13-37-216](#); [ARM 44.11.227](#). Candidate exploratory campaigns are subject to the lowest contribution limit of the offices the candidate is considering seeking. [MCA § 13-37-219](#).

- **Aggregation:** An individual or PAC may contribute to an unlimited number of candidates, bound only by the per-candidate aggregate limits listed above. “Aggregate contributions” are defined as the total of all of the following contributions made by or received from a person in each election in a campaign:
 - All contributions ([ARM 44.11.401](#)),
 - All earmarked contributions ([ARM 44.11.404](#)),
 - All expenditures encouraged in order to avoid a contribution ([ARM 44.11.504](#)), and
 - All coordinated contributions ([MCA § 13-1-101\(10\)](#); [ARM 44.11.501](#); [ARM 44.11.602](#))

¹ See [Corporate and Union Contributions](#), below.

[ARM 44.11.222](#). For example, an individual who gives \$25 at a fundraiser and later contributes another \$150 to a candidate for the legislature during the primary has given \$175, in aggregate, which is within the \$180 limit. If the candidate wins the primary, the individual may contribute another \$180 to the candidate for the general election.

- Caps on PAC Contributions to Legislative Candidates: A state senate candidate may receive no more than \$2,850 in total combined contributions from PACs (other than political party committees), and a state house candidate may receive no more than \$1,750 per election cycle. [MCA § 13-37-218](#); [ARM 44.11.226](#).
- In-kind Contributions: The value of an in-kind contribution is treated the same as any other type of contribution. [MCA §§ 13-1-101\(9\)](#), [13-37-216\(4\)](#), [ARM 44.11.401\(1\)\(d\)](#). It does not include services provided without compensation by individual volunteers or meals and lodging provided by individuals in their private residences, [MCA § 13-1-101\(9\)\(b\)](#). Political parties also enjoy an exemption for in-kind services of their paid staff. [ARM 44.11.401\(2\)](#) and [44.11.225\(3\)](#).
- Legislative/Lobbying Restrictions: Contributions may be given during the legislative session, may be given in the State House, and may be given by registered lobbyists.
- Corporate and Union Contributions:
 - Corporations and unions are prohibited from making contributions to candidates from their general treasury funds, but they may make independent expenditures in an election and contribute to a PAC for independent expenditures in support of or opposition to candidates or parties. [MCA § 13-35-227\(1\)](#); *See also Lair v. Murry*, 871 F.Supp.2d 1058, 1066-70 (D.Mont.2012).
 - Corporations and unions may make contributions to candidates via a PAC in the form of a separate, segregated fund, supported solely by voluntary contributions solicited from individuals who are shareholders, employees or members. [MCA § 13-35-227\(4\)](#).
- Anonymous Contributions: It is illegal to knowingly make or receive an anonymous contribution. [MCA § 13-37-217](#).

COMMUNICATIONS

Membership Communications

- The cost of communications by any membership organization or corporation to its members, stockholders or employees are not reportable expenditures. [MCA § 13-1-101\(18\)\(b\)\(iv\)](#). These exempt communications

include endorsement of candidates and ballot issues, and solicitations for PAC contributions.

However, an unsolicited political endorsement disseminated to a non-member may defeat the exemption, turn the entity into an incidental committee and trigger limits and reporting requirements. See Matter of the Complaint against Montanans for Common Sense Water Laws/Against I-122 (Argenbright), April 30, 1998 and Matter of the Complaint against MEA/MFT (Unsworth), October 5, 2006.

Issue Advocacy vs. Express Advocacy

- Issue advocacy may be regulated as an “electioneering communication,” which is defined as a paid communication that is publicly distributed by radio, television, cable, satellite, internet, website, newspaper, periodical, billboard, mail, or any other distribution of printed material within 60 days of the initiation of voting that does not support or oppose a candidate or ballot issue, can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and refers to one or more clearly identified candidates, a political party, ballot issue, or other question submitted to the voters in the election, including by depicting the name, image, likeness, or voice, of one or more clearly identified candidates, subject to limited exceptions including membership communications. [MCA § 13-1-101\(16\)](#) (*emphasis added*); [ARM 44.11.605](#).
- The initiation of voting for purposes of the electioneering communication period occurs when ballots are mailed, including absentee ballots in elections not conducted by mail. [ARM 44.11.605\(2\)](#).
- Express advocacy occurs in an “election communication,” - which is defined as paid advertising broadcast over radio, television, cable, or satellite, paid placement of content on the internet or other election communication network, paid advertising in a newspaper, periodical or on a billboard, a mailing, or printed material - that supports or opposes a candidate or ballot issue, with limited exceptions including voter registration drives and membership communications. [MCA § 13-1-101\(14\)](#); [ARM 44.11.604](#).
- “Support or oppose” means using express words (e.g. “vote” “oppose” “support” “elect” “defeat” “reject”) that call for the nomination, election, passage, or defeat of a candidate, political party, or ballot issue. It also includes referring to a candidate, political party, or ballot issue in a manner that is susceptible to no reasonable interpretation other than as a call for nomination, election, passage, or defeat. [MCA § 13-1-101\(50\)](#).

Independent Expenditures

- An “independent expenditure” means an expenditure for an election communication that is not coordinated with a candidate or ballot issue committee. [MCA § 13-1-101\(25\)](#).
- “Coordination” means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent thereof. [MCA § 13-1-101\(10\)](#); [ARM 44.11. 602](#) (defining “coordinated expenditure”). Some of the factors that may be considered to determine whether or not a communication or activity is coordinated include the involvement of a person who is, or has been in the past six months, compensated by the candidate or candidate’s agent, reusing all or part of a candidate’s material that is not obtained from a public source, and having a written firewall policy distributed in advance to relevant individuals that is also filed with the Commissioner of Political Practices. [ARM 44.11. 602\(2\)](#).
- PACs, individuals and corporations, including nonprofits, may make independent expenditures related to candidates and ballot measures.

Disclaimers

- All election communications, electioneering communications, and independent expenditures must include a statement identifying the person who paid for the communication.
- The disclaimer must “clearly and conspicuously include the attribution ‘paid for by’ followed by the name and address of the person who made or financed the expenditure for the communication.”
- Covered communications in a partisan election financed by a candidate must state the candidate’s party affiliation or include the party symbol.
- If a document or other article of advertising is too small for a disclaimer to be conveniently included, the disseminator must file a copy of it with the Commissioner of Political Practices, together with the required disclaimer information at the time it is publicly distributed.
- If the disclaimer is unintentionally omitted, the person financing the communication must notify the Commissioner of Political Practices within two business days of discovery of the omission and make every reasonable effort to bring the material into compliance and may not disseminate non-compliant material.
- The Commissioner of Political Practices will notify a candidate or political committee if a formal complaint about failure to include required “paid for by” or party affiliation disclaimer has merit. The material must be brought

into compliance within 2 business days or 24 hours, depending on whether notice is more or less than 7 days prior to an election. Failure to bring the material into compliance may result in a civil penalty.

- For additional information, please view [this Attribution Brochure](#) and [Social Media Attribution](#) resource published by the Commissioner for Political Practices.

[MCA 13-35-225](#); [ARM 44.11.601](#)

- Materials Funded By Anonymous Contributors – If a political committee claims to be exempt from disclosing the names of its contributors, it must “clearly and conspicuously” include in all its covered communications the following disclaimer: “This communication is funded by anonymous sources. The voter should determine the veracity of its content.” [MCA § 13-35-237](#). According to an advisory opinion by the Commissioner of Political Practices, this disclaimer is only required when anonymity is claimed for a single person or entity contributing \$35 or more. See [COPP-2013-AO-003](#), Montana Family Foundation/Anonymity Disclaimer, October 29, 2013.

Advertising Notice to Candidates

- When a candidate or political committee intends to distribute printed materials, or print, radio or TV advertisements in the 10 days prior to an election, those materials or ads must be provided to any candidates who are mentioned or identified therein. The materials must be provided to the candidates via email, fax or hand delivery at the time that they are first published, broadcast, mailed or disseminated to the public. This requirement does not apply to ads or materials that 1) have already been published or broadcast, 2) do not identify the opposing candidate or 3) mention candidates only in the context of an endorsement. [MCA § 13-35-402](#); [ARM 44.11.607](#).

Robocalls

- Montana prohibits so-called “robocalls” related to political campaigns, unless the caller and recipient have a “preexisting business relationship.” This ban impacts calls using an automatic telephone dialing device in connection with a recorded message, unless the caller first uses a live operator to obtain the recipient’s permission to play the recording. [MCA § 45-8-216](#).

REGISTRATION AND REPORTING REQUIREMENTS

Registration as a State Committee

- “Political committee” refers to two or more individuals (or an entity other than an individual) who receive a contribution or make an expenditure to support or oppose a candidate or ballot issue or to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure, but is not formed by making an election communication, electioneering communication, or an independent expenditure of \$250 or less. [MCA § 13-1-101\(31\)](#); [ARM 44.11.202](#). It must register with the state within five days of appointing a campaign treasurer to deposit contributions received or of making an expenditure, or after authorizing a person to do so on its behalf, whichever occurs first, and, in the case of a ballot issue, within five days after the issue becomes a ballot issue. [MCA §§ 13-37-201](#) and [13-37-207](#). In addition to political party committees, there are three other types of political committees:
 - Independent Committee (“PAC”) – A political committee that is organized for the primary purpose of supporting or opposing a candidate, but is not controlled by and does not coordinate with the candidate, although it can make contributions within the allowed limits, also known in Montana as a “PAC.” [MCA § 13-1-101\(24\)](#); [ARM 44.11.203](#) (defining “primary purpose”).
 - Incidental Committee – A political committee that is not specifically organized or operated for the primary purpose of supporting or opposing candidates or ballot issues, but incidentally becomes a political committee by receiving a contribution or making an expenditure. [MCA § 13-1-101\(23\)](#); [ARM 44.11.203](#) (defining “primary purpose”). For example, an incidental committee can form if an organization expends \$250 or more on an electioneering communication about a ballot issue, even if the communication does not state support or opposition to the ballot issue.
 - Ballot Issue Committee – A political committee specifically organized to support or oppose a ballot issue. [MCA § 13-1-101\(7\)](#). See the section below on [“Ballot Measures”](#) for more information on the registration and reporting requirements specific to ballot issue committees.
- To register, a political committee must appoint a treasurer and file a [Form C-2, Statement of Organization](#)
- Names – A political committee’s name must identify any economic or other interest shared by a majority of its donors, if such an interest exists.

If a majority of its contributors share a common employer, the employer must be identified in the name. [MCA § 13-37-210](#).

- Federal and Nonresident State PACs – A copy of a federal PAC’s statement of organization (FEC Form 1) and any amendments thereto must be filed with the Commissioner of Political Practices, and nonresident state PACs must file a Form C-2 or its equivalent. [ARM 44.11.305](#).

Recordkeeping and Administration

- A political committee must designate a primary account (“depository”) into which all contributions are deposited and from which all expenditures are disbursed. This account must be in a financial institution authorized to do business in Montana, but the account does not need to be opened in a bank branch that is located in the state. [MCA § 13-37-205](#). Additionally, it may establish a secondary account in each county in which it participates in an election, and activity from the secondary account may be conducted by a designated deputy treasurer. [MCA § 13-37-202](#).
- Treasurer
 - The treasurer must be registered Montana voter. [MCA § 13-37-203](#).
 - The treasurer must preserve detailed accounts of contributions received and expenditures made by the political committee for four years. [MCA § 13-37-208\(3\)](#).
- Funds must be deposited within five days of their receipt, excepting Sundays and holidays. [MCA § 13-37-207\(1\)](#). This includes electronic contributions from online payment service providers and payment gateways. [ARM 44.11.408\(1\)\(c\)](#).

Reporting

- An organization that makes an election communication, electioneering communication, or independent expenditure must file reports regardless of its state or federal tax status. [MCA § 13-37-233](#).
- In addition to reporting to the Commissioner of Political Practices, an entity submitting a bid for state government contracts with a total contract value of over \$25,000 for services or \$50,000 for goods must disclose “covered expenditures” that exceed \$2,500 in aggregate within the prior two years. “Covered expenditures” include contributions, expenditures, or transfers by the entity, including its parent and controlled subsidiaries, made to or on behalf of candidates, as well as another entity that pays for an electioneering communication or make contributions, expenditures, or transfers to another entity that does so. [Executive Order No 15-2018](#)

[\(June 8, 2018\).](#)

- Reporting calendars for committees are available on the [Commissioner of Political Practices website](#). These calendars vary depending on the election involved (e.g. statewide, district, other) and type of committee involved. [MCA § 13-37-226](#).
- Political committees must electronically file their reports using the Campaign Electronic Reporting System (CERS). [MCA § 13-37-226\(7\)](#); [ARM 44.11.302](#).
- The reports filed by political committees include the Form C-4 (Incidental Political Committee Finance Report), the Form C-6 (Political Committee Finance Report), and the Form C-7 (Notice of Pre-election Contributions) and Form C-7E (Notice of and Expenditures) found [here](#).
- Contributions to Independent and Ballot Issue Committees
Contributions must be itemized for any donor whose aggregate contributions within the reporting period total \$35 or more. The report must also disclose the aggregate contributions made by the donor for all reporting periods within the election cycle.
 - The report must include the donor's name, address, occupation and employer, if any. For a corporation that contributes to a ballot issue, the name and address of the corporation, but not the type of business entity, must be reported.
 - For loans, the names, addresses, occupations and employers, if any, of any lenders or endorsers must be disclosed. [MCA § 13-37-229\(1\)](#); [ARM Title 44, Chapter 11, Subchapter 4 Reporting Contributions](#).
- Contributions to Incidental Committees
An incidental committee that does not receive earmarked contributions for a specified candidate or ballot issue and does not solicit contributions for incidental committee election activity, including in-kind expenditures, independent expenditures, election communications, or electioneering communications is required to report only expenditures. If it does so, it must disclose donors to such election activity. [MCA § 13-37-232\(1\)](#).
- All expenditures, regardless of the amount, must be itemized, providing the name, mailing address, occupation and principal place of business for each person to whom the political committee has paid money. [MCA §§ 13-37-229\(2\)](#) and [13-37-232\(2\)](#); See also [Expenditure Detail Guidance](#) published by the Commissioner of Political Practices.
- In addition to following procedures for reporting other expenditures, a person making an independent expenditure must report the name of the

candidate or committee the independent expenditure was intended to benefit and the fact that the expenditure was independent. The candidate or political committee benefiting from the independent expenditure does not have to report the expenditure. [ARM 44.11.502\(8\)](#).

- Federal and Nonresident State PACs – Federal and nonresident state PACs may file their FEC or state reports with Montana.
 - Federal PACs must file their FEC campaign finance report for any period in which they attempt to influence a Montana election. The reports need to be filed only for periods in which the federal PAC receives contributions from Montana sources or spends money to influence a Montana election. [ARM § 44.10.305\(1\)\(a\)](#).
 - Nonresident State PACs – If a committee is registered and reports in another state, it may submit those reports to satisfy Montana’s requirements “if those reports fully disclose the source and disposition of all funds used to influence elections in Montana.” The reports need only be filed for the periods in which the PAC makes expenditures and contributions in Montana elections. [ARM § 44.10.305\(2\)\(a\)](#).
- Accessibility – Campaign finance reports are searchable on the Commissioner of Political Practice’s website in [CERS](#) and [hard copy](#).

Termination

- A political committee that will not participate in future election and that wishes to end its status as a committee may file a statement of termination with its closing report. [MCA § 13-37-228\(3\)](#); [ARM 44.11.306\(3\)](#).

BALLOT MEASURES

- Ballot Issue Committees – These are political committees specifically organized to support or oppose a ballot issue. [MCA § 13-1-101\(7\)](#). An issue becomes a “ballot issue” when the proper official certifies that it is qualified for the ballot, except that a statewide issue becomes a “ballot issue” upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue. [MCA § 13-1-101\(6\)\(b\)](#).
- Ballot Issue Committee Reporting Schedule – A political committee that supports or opposes a statewide ballot issue follows the same reporting calendar imposed on statewide candidates, which differs from the reporting calendar for political committees that support or oppose a local ballot issue. [MCA § 13-37-226\(1\) and \(3\)](#). Reporting calendars for

statewide and local ballot issue committees are available on the [Commissioner of Political Practices website](#).

ENFORCEMENT AND PENALTIES

- Any person who knowingly violates a provision of Montana's election laws for which no other penalty is specified is guilty of a misdemeanor. [MCA § 13-35-103](#). In addition, pursuant to [MCA § 13-35-106\(2\)](#), a candidate and/or a campaign treasurer who is convicted of violating any provision, except [MCA § 13-35-207\(9\)](#) (relating to signing petitions), is ineligible to be a candidate for any public office in the state of Montana until his final discharge from state supervision. If an elected official or a candidate is adjudicated to have violated any provision of this title, except § 13-35-207(9), he shall be removed from nomination or office, as the case may be, even though he was regularly nominated or elected. [MCA § 13-35-106\(3\)](#).
- Complaints may be filed with the Commissioner of Political Practices and a state district court may enjoin any person to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws. [MCA § 13-35-108](#); [ARM 44.11.106](#).

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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