



OHIO CAMPAIGN FINANCE AND BALLOT MEASURE GUIDE

These resources are current as of 6/12/2019. 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.

Note: Post-*Citizens United*, Ohio has adopted regulations allowing corporations and labor unions to make independent expenditures. Ohio has not, however, updated its caps on contributions to PACs that only make independent expenditures, which, following the D.C. Circuit's decisions in *SpeechNow v. FEC*, would likely be found unconstitutional. Ohio has also not updated its laws that restrict spending on electioneering communications within 30 days of an election, something the Ohio Secretary of State's office acknowledge may be unconstitutional under the Supreme Court's decision in *Wisconsin Right to Life v. FEC*.

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.

CONTRIBUTION LIMITS AND SOURCE RESTRICTIONS

O.R.C. 3517.102, 3599.03

From:	To Candidates <i>Limits are per-election, with primary and general elections counting separately¹</i>					To Committees <i>Limits are per calendar year</i>	To Ballot Measure
	Governor	Other Statewide	Legislative	Municipal ²	PACs	Parties	
Individuals	\$13,292.35	\$13,292.35	\$13,292.35	See fn. 2.	\$13,292.35	\$39,877.05 ³	Unlimited
PACs/PCEs	\$13,292.35	\$13,292.35	\$13,292.35	See fn. 2.	\$13,292.35	\$39,877.05	Unlimited
Corporations	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited ⁴	Unlimited

Aggregate Limits:

Individuals contributions to separate candidates or entities are not subject to any aggregate limits.

Government buildings:

Contributions may not be solicited or delivered in the areas of government buildings where official business is conducted.

Government Contractors:

While holders of state and local government contracts are not prohibited from making contributions there is a prohibition on awarding a no-bid government contract for goods or services of more than \$500 if contributions to the officeholder from owners, partners or shareholders of the business or their spouses during the two calendar years prior to the award exceeded \$1,000 from any one of such persons. O.R.C. 3517.093, 3517.13(I)&(J).

More expansive provisions governing contributions by government contractors enacted in December 2006 were declared void by the Ohio Tenth District Court of Appeals on 4/14/09 in *UAW Local Union 1112 v. Brunner*, 182 Ohio App.3d 1 (10th District, 2009), for failure to follow proper constitutional procedure in enacting the law.

In-kind Contributions:

¹ The contribution limits are adjusted based on the cost of living index in odd years – the limits listed here are effective 2/25/2019 through 2/24/2021; the Secretary of State publishes the new limits online at:

<https://www.sos.state.oh.us/globalassets/candidates/limitchart2019.pdf> O.R.C. § 3517.104

² Generally unlimited. However, some municipalities have established limits by ordinance or charter.

³ State political party state candidate fund. Limit is \$13,292.35 restricted to individuals who reside in the county.

⁴ Exceptions for certain non-campaign accounts of a political party.

In-kind contributions count toward contribution limits. O.R.C. 3517.01 and 3517.102

Corporate Contributions:

A corporation may not contribute to a candidate, a political party (except to certain non-campaign accounts of a political party) or a PAC, but it may establish a connected PAC funded with contributions from employees, officers and shareholders. O.R.C. §§ 3599.03; 3517.082

A corporation may pay the administrative expenses for its affiliated PAC. O.R.C. § 3517.082

- A corporation may make contributions and expenditures to support a ballot measure. O.R.C. § 3599.03 Corporations contributing to ballot measure campaigns must report those contributions on Form 30-B-1. Corporate independent expenditures to support or oppose a ballot measure must be reported, using Forms 30-B-2. Corporations follow the same reporting deadlines that apply to the ballot issue committees supported or opposed by the corporation. (See below). Forms are available at: <https://www.sos.state.oh.us/campaign-finance/filing-forms/>

Unincorporated organizations may make contributions to candidates and political parties, but must be careful that their total contributions do not create influencing elections as a primary or major purpose of the organization, which could make it a PAC. Unincorporated business organizations which make contributions must include with the contribution information allocating the contribution among the partners, owners, or members of the business.

The state does recognize *MCFL* status. Ohio Elections Committee, *Advisory Opinion 98ELC-03*, 1998.

- Labor organizations may form Political Contributing Entities (PCEs) funded with treasury (dues) monies even if incorporated. O.R.C. 3517.01 While the language of the statute anticipates that corporations may one day be able to form PCEs, as of now only labor unions may do so. See *Ohio Campaign Finance Handbook*, Chapter 7.

Membership Communications:

Communications to a nonprofit's members are not considered contributions or expenditures.

O.R.C. 3517.08 and 3599.03

There is no limit to the amount a nonprofit may spend on communications to members, and such communications need not be reported.

State law does not supercede federal law, and 501(c)(3) organizations are still prohibited from endorsing or opposing candidates for elected office.

Contribution Limits to Independent Expenditure PACs:

Following the D.C. Circuits decision in *SpeechNow v. FEC*, Ohio's contribution limits to PACs are likely unconstitutional to the degree such PACs only make independent expenditures.

COMMUNICATIONS

Issue Advocacy vs. Express Advocacy:

“Express advocacy” means a communication that contains express words advocating the nomination, election, or defeat of a candidate or that contains express words advocating the adoption or defeat of a question or issue, as determined by a final judgment of a court of competent jurisdiction.” O.R.C. 3517.01(C)(23)

The Ohio Elections Commission views express advocacy to encompass more than simply the so-called “magic words” such as “vote for” or “defeat.”

The Ohio Elections Commission has rejected the so-called “magic words” test to decide when a communication has crossed the line between unregulated speech (“issue advocacy”) and regulated speech (“express advocacy”). The state examines each case on its own facts, based on a consideration of the communication’s text and with limited reference to external events. See *Alliance for Democracy v. Citizens for a Strong Ohio/Ohio Chamber of Commerce* (Ohio Elections Commission Case No. 2000E-057) and *Common Cause/Ohio v. U. S. Chamber of Commerce, et al.* (Ohio Elections Commission Case No. 2000E-58). The result is that more speech is treated as election-related and regulated by contribution and reporting rules. See *also State ex rel. Common Cause /Ohio v. Ohio Elections Comm.*, 156 Ohio App.3d 544, 548 (Oh. Ct. App. 10th Dist. 2004) (noting that the commission found that the “magic words” were not necessary to establish “express advocacy”).

Electioneering Communications:

An electioneering communication is any broadcast, cable or satellite communication that refers to a clearly identified candidate and is made between the time the person becomes a candidate and the thirtieth day before the primary or general election. O.R.C. 3517.1011(A)(7)(a).

Any communications by broadcast, cable, or satellite that mention a clearly identified candidate within 30 days before the primary or general election is treated as an expenditure or an independent expenditure. To the degree this

would limit the ability of entities to use general treasury funds to make such communications, it is likely unconstitutional given the Supreme Court's decisions in *Wisconsin Right to Life v. FEC* and *Citizens United v. FEC*.

Anyone intending to make electioneering communications must file a Notice of Intent with the Secretary of State prior to making any disbursements. O.R.C. 3517.1011(C).

There is a \$10,000 annual threshold to trigger reporting requirements; once the threshold of \$10,000 in aggregate within a calendar year is met, a report must be filed within 24 hours of reaching the threshold, and then weekly within 24 hours of the same weekday as the initial report was triggered, if any disbursements were filed within that week. O.R.C 3517.1011(A)(6). E.g. if the threshold is reached on a Tuesday, reports must be filed within 24 hours; and then every Tuesday a report must be filed within 24 hours if a disbursement is made that week.

The disclosure of electioneering communications statement must include:

- o The full name and address of the person making the disbursement, of any person sharing or exercising control over the person making the disbursement, and of the keeper of the books and accounts of the person making the disbursement,
- o The principle place of business of the person making the disbursement, if not an individual,
- o The amount of each disbursement made during the period covered by the statement,
- o The nominations or elections to which the communications pertain and the name of the candidate(s) identified or to be identified.
- o Any contributors who gave \$200 or more either to person who paid for or to the segregated fund that was used to pay for the communication, if those contributions were used to pay for the communication.

O.R.C. § 3517.1011(D)(1)

For all contributors who must be reported, the following information must be included.

- o The date of the contribution
- o The full name and address of the contributor, and if a PAC, the registered PAC number from the state.
- o If the contributor is an individual, the name of their employer, if any, or the name of their occupation and business if self-employed,.
- o A description of the contribution, if it is not monetary
- o The value of the contribution in dollars and cents
- o There are additional rules for contributions made with funds deducted from employee payroll. O.R.C. § 3517.1011(D)(2)(b)(iii).

O.R.C. § 3517.1011(D)(2).

Reports must be filed electronically. O.R.C. § 3517.1011(D)(3). Forms can be found at: <https://www.sos.state.oh.us/campaign-finance/filing-forms/#reporting>; Reports can be filed at: <https://www.sos.state.oh.us/campaign-finance/file-online-cfofs/>

Disclaimer: In each electioneering communication a statement must be made or presented, clearly and conspicuously, that indicates that the communication is not authorized by the candidate or the candidate’s committee; and identifies the person making the disbursement for the electioneering communication. E.g. “paid for by...” O.R.C. 3517.1011(F).

Chart: Which media are regulated O.R.C. 3517.1011(A)(7)(b).

	Issue Advocacy	Express Advocacy
Telephones	No	Yes
Internet	No	Yes
Email	No	Yes
Television	Yes	Yes
Radio	Yes	Yes
Print	No	Yes
Billboards	No	Yes
Handbills	No	Yes
Mail	No	Yes

Independent Expenditures:

An independent expenditure is any expenditure advocating the election or defeat of an identified candidate or candidates, or ballot initiative, which is not made with the consent of or in coordination with any candidate, candidates, or campaign committees of the candidate(s): O.R.C. 3517.01(C)(17); O.A.C. § 111:2-2-01 (Note: this new Administrative Code provision, enacted in 2016, narrows the definition to a “clearly identified candidate”).

Coordination includes reproducing – either in whole or in part – materials prepared by a candidate; such reproduction counts as an in-kind contribution. O.R.C. 3517.01(C)(16)

PACs may make independent expenditures. O.R.C. 3517.105(C)(2)(a) Corporations may make independent expenditures in support or opposition to ballot measures, and to candidates. O.R.C. 3517.105(C)(2)(a); O.A.C. 111:2-2-04..

- o Independent expenditure reporting forms are available at <https://www.sos.state.oh.us/campaign-finance/filing-forms/#reporting>

PAC Independent expenditures are reported in the same manner as candidate expenditures. O.R.C. §3517.105(B)(2)(a).

Any person or entity that makes an independent expenditure shall file a signed statement with the Secretary of State or the Board of elections, including:

- o The reporting person's or entity's name and street address,
- o The name and street address of each person or entity to whom the expenditure was made,
- o The amount, purpose and date of each expenditure, including whether the funds or property were used to advocate the nomination, election or defeat of the candidate.
- o A statement indicating whether the expenditure was in support or opposition to any candidate, along with the candidate's name, and office sought; or to any ballot issue together with the ballot issue number, and whether it is a state, county or local issue,
- o The date that funds or property were paid or given,
- o A statement that the expenditure was not made in coordination with a candidate, candidates or ballot issue committee.

O.A.C §§ 111:2-2-02.

Reporting schedule:

PACs report their independent expenditures as part of their regular PAC reports.

Corporations report their independent expenditures on a stand-alone form on the same deadlines that apply to ballot issue committees and PACs supporting or opposing a ballot issue. (See below)

Disclaimers

All public political advertising (including newspapers, direct mail, flyers, billboards, and broadcast advertising) communications must include the name of the committee that paid for the communication. O.R.C. 3517.20(B).

Telephone banks (more than 500 substantially similar live or automated calls during a 30-day period) must include the name of the PAC or other person or entity paying for the calls. O.R.C. §§ 3517.20(A)(12); 3517.20(B)(1)(d).

In addition to the disclaimers noted above, independent expenditures must state "Not authorized by any candidate or campaign committee." O.R.C. 3517.20 and 3517.21; 3517.105(B)(1)(a).

Disclaimers are not required for items such as lapel pins, buttons, pens, clothing, mugs, etc. O.R.C. 3517.20(E); O.A.C. 111:2-4-18.

REGISTRATION AND REPORTING REQUIREMENTS

Registration as a State PAC

A “political committee” (“PAC”) is any group with the primary or major purpose of influencing an election through express advocacy. O.R.C.

3517.01(C)(8). PACs do not include:

- o “Continuing associations” such as 501(c)(4) organizations or unions that spend money on electioneering communications but which do not engage in express advocacy; and
- o Political clubs formed primarily for social purposes and which have:
 - fewer than 100 members;
 - regularly scheduled meetings;
 - less than \$2,500 in the treasury at any time; and
 - total annual contributions of \$1,000 or less per year made to other entities.

Before conducting any activity, a PAC must designate a treasurer on a Form 30-D, available at <https://www.sos.state.oh.us/campaign-finance/filing-forms/#reporting>. The treasurer does not need to be an Ohio resident. See O.R.C. 3517.10(D). The form must be filed with the Ohio Secretary of State for statewide entities, and with county boards of elections for county and local entities before contributions may be accepted.

Essentially, an out-of-state PAC must operate as if it were an in-state PAC. An out-of-state PAC must file a designation of treasurer and submit Ohio campaign finance reports as if it were an in-state PAC. To engage in Ohio election activity, an out-of-state PAC must register with the Secretary of State before receiving its first contribution and start with a zero balance. An out-of-state PAC must report all contributions received, regardless of whether the donor lives in Ohio or elsewhere. It must itemize all of its expenditures to influence elections in Ohio, but it may report a single lump sum for its non-Ohio expenditures. To terminate and cease filing reports in Ohio, it must have an ending balance of zero. A separate account may be used in order to comply with these requirements. Ohio Elections Commission Advisory Opinion 2006ELC-03.

PAC Recordkeeping and Administration

An Ohio PAC does not need to have an account in an Ohio bank.

A corporation may pay the administrative and solicitation expenses of its affiliated PAC. O.R.C. 3517.082; O.A.C. 111:2-3-01. The PAC must report that it received these benefits.

A PAC sponsored by a corporation or union may only solicit the employees, officers, members and shareholders of that organization. O.R.C. 3517.082

PAC Reporting

A corporate-sponsored PAC must report administrative and solicitation expenses paid by the corporation. O.R.C. 3517.082, 3599.03.

All contributions of any amount must be itemized, except contributions of \$25 or less received at a fund-raising event. O.R.C. 3517.10(B)(4)(e).

The report must include the donor's name and address, the date the contribution was received, the amount received, form of the contribution, and PAC number (if applicable). For contributions over \$100, the report must include the employer, or if self-employed, the occupation and the business name. Reports must also include a description of the contribution and the value in dollars and cents, if the contribution is other than money, O.R.C. 3517.10(B)(4).

The report must also list all expenditures, including the date of the expenditure, the name of the person or entity to whom the expenditure was made, and the PAC registration number (if applicable), the object or purpose of the expenditure, and the amount.

Reporting Schedule:

Reports are required on the following schedule, no later than 4 pm on the date specified:

- o Year-end report on January 31
- o Semi-annual report on July 31
- o Pre-election reports 12 days before primary, general and special elections
- o Post-election reports 38 days after primary, general and special elections.

PACs filing a post-primary report are exempt from filing the semi-annual report; entities filing a post-general report are exempt from filing the year-end report. O.R.C. 3517.10(A)

PACs that received contributions of less than \$1000 and made expenditures of less than \$1000 by the close of business on the twentieth day before the election do not need to file the pre-election report and should report those expenditures on the post-election report.

PACs must file semi-annual and year-end reports regardless of whether they had any activity during the period, but need not file pre- or post-election reports if they had no activity, instead they must file a statement to the effect

that they received no contributions and made no expenditures since their last report. O.R.C. 3517.10(A)

PACs with \$10,000 in contributions or expenditures during a period must file electronically with the Secretary of State. Additionally, other reports filed with the Secretary of State may be filed electronically. O.R.C. 3517.106(E)(2).

Reports are filed with the Ohio Secretary of State for statewide entities, and with county boards of elections for county and local entities.

Statewide reports are posted on the internet, and donors are disclosed publicly, with reports filed with Secretary of State searchable by name.

Termination

A PAC may terminate when it has no balance and no outstanding debts. Check the “termination” box on final report. O.R.C. 3517.10

ENFORCEMENT AND PENALTIES

For violations of the law, the Ohio Elections Commission may reprimand, impose a fine, and/or refer for prosecution. Fines may range from \$25 to \$10,000 or more. To trigger an enforcement action, the Ohio Secretary of State and county boards of elections refer matters to Ohio Elections Commission or individual may file a notarized complaint with the Commission. O.R.C. 3517.11, 3517.153

CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES

Ohio Secretary of State

180 East Broad Street, 16th Floor
Columbus, Ohio 43215
Phone: (614) 466-2655
Fax: (614) 644-0649

<http://www.sos.state.oh.us/SOS/CampaignFinance.aspx>

<http://elc.ohio.gov/>

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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