These resources are current as of 3/1/19. 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.

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.
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CONTRIBUTION LIMITS AND SOURCE RESTRICTIONS

Aggregation

There is no limit on the total an individual may contribute for political purposes.

Individuals, PACs and Corporations may all give an unlimited amount to candidates and committees.

Legislative Session

During the regular legislative session, legislators and statewide office-holders may not accept or solicit contributions, nor may any person or political committee promise to make a contribution to any of these officials during the regular session. The prohibition lasts from the first day of the session until adjournment sine die, but does not cover a reconvened session or any special legislative sessions. VA. CODE ANN. § 24.2-954.

Earmarking

Donors to a political committee may designate that some or all of their contribution must be given by the PAC to a particular candidate. The PAC reports the receipt of the contribution coming from that donor, and it reports the disbursement of the funds to the designated candidate; the candidate, in turn, reports receiving the contribution from the original donor who earmarked the funds, along with required disclosure information for contributions greater than $100. Id. at § 24.2-947.4(B)(3).

In-kind Contributions

A good or service provided for free or at less than the usual cost is an in-kind contribution. In-kind contributions include expenditures that are coordinated with or made with the authorization of a candidate. Id. at § 24.2-945.1(A) (defining “in-kind contribution”).

New items are valued at the retail price, used items at the fair-market value, and services at the actual cost per hour.

Personal services are not an in-kind contribution when they are provided voluntarily, without any compensation requested or received.

In-kind contributions are treated the same as monetary contributions. In-kind contributions must be itemized and disclosed when the value of any donor’s in-kind and monetary contributions totals $100 or more. Id. at §§ 24.2-947.4(B)(2), 24.2-949.5(B)(2).

Corporate Contributions

Corporations may make unlimited contributions, including direct monetary and in-kind contributions. A corporation may contribute directly; through a corporate-funded PAC; or, it may divide its contributions between the two. While corporate contributions are permissible under
state law, the contributions may subject the corporation to federal tax if the organization has investment income. Additionally, the corporation may risk its tax status if political activity becomes its primary purpose.

**COMMUNICATIONS**

**Issue Advocacy v Express Advocacy**

Corporations, state PACs and other section 527 organizations may make unlimited issue-advocacy communications without being subject to registration or reporting, as long as the communications do not contain “express advocacy.” See Virginia Society for Human Life v. Caldwell, 256 Va. 151, 158-60 (1998).

The definitions of “contribution” and “expenditure” include language specifically to reach only “express advocacy” activities: anything of value given or paid “for the purpose of expressly advocating the election or defeat of a clearly identified candidate.” Va. Code § 24.2-945.1. This same language is used in describing reporting requirements with respect to “independent expenditures.” Id. at § 945.2. The statute does not define “express advocacy.” The Virginia Supreme Court held that the campaign finance laws did not reach communications unless they “expressly advocate the election or defeat of a clearly identified candidate.” Virginia Society for Human Life at 160. Generally, “express advocacy” will include the so-called “magic words” such as “vote for” or “defeat,” and may also include words or phrases not susceptible to any other meaning. The Department of Elections has submitted a proposed regulation defining express advocacy as follows:

"Express advocacy" means any communication that uses phrases such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject," or any variations thereof or any communication when taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates because (i) the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (ii) reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates.


This proposed regulation is under formal review and public comment has closed; it was certified by the Attorney General on February 1, 2019. Note that the “Department of Elections” was established as a state agency in 2013, headed by the Commissioner of Elections. The State Board of Elections acts through the Department of Elections. Va. Code § 24.2-103. Many statutory requirements refer to either the “State Board” or the “Department of Elections” but these are generally interchangeable.
Membership communications:

Communications containing express advocacy are “expenditures,” whether sent to an organization’s members or to the general public. Id. at § 24.2-945.1(A) (defining “expenditure”). If the communication is part of an in-kind contribution, the costs must be reported to the candidate whom the communication benefited; if it was an independent expenditure, it must be reported as described below.

Independent expenditures:

An “independent expenditure” is an expenditure made by a person, campaign committee or political committee that is not controlled by, coordinated with or made with the authorization of a candidate or the candidate's campaign. Id. at § 24.2-945.1(A) (defining “independent expenditure”).

Note that an entity may not simply avoid reporting a communication as an independent expenditure by declaring that it is a coordinated in-kind contribution. Coordination is defined as including only expenditures made at the candidate’s or campaign’s express request or suggestion, or with the “material involvement” of the candidate or campaign in devising the expenditure’s strategy, content, dissemination method or timing. Id. at § 24.2-955.1 (defining “coordination”).

A corporation, political committee or out-of-state PAC may make unlimited independent expenditures.

Recordkeeping and Reporting – An entity must maintain records and file reports if it makes independent expenditures totaling $1,000 or more for any statewide office during an election cycle. For all other offices, the reporting threshold is $200 per election cycle. Id. at § 24.2-945.2(A).

Reports are due and need to be received within 24 hours of when the funds are expended or when the materials are published or broadcast, whichever occurs first. Id. at § 24.2-945.2(B).

The report must detail the expenditure, including the date, amount and the payee, along with the names of the candidates supported or opposed. The report must state the percentage of the expenditure that supported or opposed each candidate. The report form is available at: https://www.elections.virginia.gov/FormsWarehouse/Campaign%20Finance/2018/CampaignFinance/Candidate/2014IndependentExpenditureReport.pdf

Disclaimers – Independent expenditures must include a disclosure statement, as described in the section below.

Disclaimers:

Radio, TV and print media communications must include disclaimers displayed conspicuously. Print media includes billboards, newspaper and magazine ads, mailings, fliers, email and websites. Printed pieces consisting of more than one page need bear the disclaimer only on one page or face. Id. at § 24.2-955.1 (defining “print media”).
Print media:

- “Paid for by [name of entity].” If the advertisement supports or opposes the nomination or election of a clearly identified candidate, it must also state either, “Authorized by [name of candidate], candidate for [name of office] or “Not authorized by a candidate.” If the advertisement opposes a clearly identified candidate, the sponsor must also disclose the name of the candidate it is supporting. Id. at § 24.2-956.1.

TV advertisement:

- Non-PACs: The chief executive must say the following statement: “[Name of entity] sponsored this ad.” Id. at § 24.2-957.3.
- PACs: The chief executive or treasurer must say the following statement: “The [name of PAC] sponsored this ad.” During that statement, the speaker’s image – either video or still photo – must appear on the screen. Additionally, the words “Paid for by [name of PAC]” must appear on the screen at least 20 scan lines in size. Id. at § 24.2-957.2.

Radio advertisement:

- Non-PACs: The chief executive must say the following statement: “[Name of entity] sponsored this ad.” Id. at § 24.2-958.3.
- PACs: The chief executive or treasurer must say the following statement: “This ad was paid for by [Name of political action committee].” This statement must last at least two seconds and be spoken so as to be easily understood. Id. at § 24.2-958.2.

Telephone calls:

- The caller must identify the name of the entity that authorized and is paying for the calls before the call ends, unless the recipient hangs up first. If the call is authorized by a political committee, the caller must state its full name and its State Board of Elections registration number; if the call is from an entity other than one registered with the State Board of Elections, the caller must state the full name and residence address of the individual responsible for the calls. Id. at § 24.2-959.1.

Telephone calls are covered only when they are part of a series of calls made 1) to 25 or more phone numbers in Virginia, 2) during the 180 days before a general or special election or the 90 days before a primary election or other nominating event, 3) conveying or soliciting relating to the election or nominating event, and 4) using paid (not volunteer) callers. VA. CODE ANN. § 24.2- 955.1 (defining “campaign telephone calls”).

Jointly sponsored advertisements must include the names of each entity that paid for the communication.

Note that the required disclaimers differ slightly for communications jointly sponsored by a candidate and another entity, such as a corporation or PAC. If sponsoring a communication with a candidate, see Id. at § 24.2-955 et seq. for guidance.
As noted above, a communication is coordinated only if made at the express request or suggestion of the candidate or candidate’s committee, or with the candidate or his or her committee’s “material involvement” in the communication’s strategy, content, dissemination method or timing. Id. at 24.2-955.1 (defining “coordinated”).

**COORDINATION**

Corporations and PACs may coordinate with candidates and campaigns to conduct express advocacy or other activities. Coordinated activities must be reported as an in-kind contribution received by the benefiting candidate, and also as an expenditure, if made by a PAC rather than by a corporation. With corporations and PACs permitted to give candidates unlimited contributions, entities have greater latitude to conduct coordinated expenditures than in many other states.

**REGISTRATION & REPORTING REQUIREMENTS**

**Types of PACs**

Virginia distinguishes between political committees based in the state (“in-state PACs”) and those political committees covered by § 527 of the Internal Revenue Code that are based in other states (“out-of-state PACs”). The salient factor is whether the organization makes most of its contributions to Virginia candidates and political committees, or to those outside of Virginia. An entity is an in-state PAC only if half or more of the money it contributes goes to Virginia candidates and PACs; the committee’s administrative expenses and the transfer of funds between affiliated organizations are not factored into this calculation. The contribution percentage is to be calculated based on the entirety of the committee’s registration, and not on only one report or election cycle. VA. CODE ANN. § 24.2-945.1(A) (defining “primary purpose”).

**In-State PACs:**

An in-state PAC is an entity that receives contributions and spends money for the primary purpose of expressly advocating the election or defeat of a clearly identified candidate. As noted above, an entity is an in-state PAC only if 50 percent or more of the money it contributes goes to Virginia nonfederal candidates or PACs. Otherwise, the entity must register as an out-of-state PAC.

**Registration**

Within ten days of anticipating that it will spend more than $200 in a calendar year, an in-state PAC must file a statement of organization, available at: https://www.elections.virginia.gov/FormsWarehouse/Campaign%20Finance/2018/PoliticalCommittees/PAC/2018_SOO_PAC_TLA.pdf. On its statement of organization, an in-state PAC must state that its primary purpose is to influence the outcome of nonfederal elections in Virginia; the State Board of Elections is prohibited by law from registering any PAC that fails to do so. Id. at § 24.2-949.2(A).
The statement of organization also must include the name of a Virginia resident who will maintain the entity's books and accounts, who works under the direction of the treasurer, along with the address in Virginia where the books will be kept. Id. at § 24.2-949.2(A).

Recordkeeping and Administration

Bank Account:
The bank account of an in-state PAC must be opened at a bank branch in the Commonwealth of Virginia. Id. at § 24.2-949.2(A).

Treasurer:
The treasurer must be a Virginia resident. The PAC’s statement of organization must list the treasurer’s residential and business addresses. Id. at § 24.2-949.2(A).

Administrative Expenses:
A corporation may pay to administer its affiliated PAC. The PAC must report these costs as in-kind contributions.

PAC Solicitations:
A corporation may spend unlimited amounts to solicit contributions to its affiliated PAC. Further, the corporation or the PAC itself may solicit both members and non-members alike, without limit. All solicitations for a PAC must inform the target of the solicitation at the time of the solicitation:

1. he or she has the right to refuse to contribute without facing any reprisal; and
2. the political purposes of the committee.

Id. at § 24.2-949.1.

PAC Reporting
A PAC must detail its receipts and expenditures as follows:

Receipts:

The total number of contributors whose contributions have aggregated $100 or less during the calendar year, along with a total of these un-itemized contributions; and

An itemized list of all donors whose aggregate year-to-date contributions (including monetary and in-kind) have totaled more than $100, including each donor’s name, listed alphabetically; address; occupation, employer and the locality where the donor is employed; the amount of the contribution; their aggregate contributions to the PAC for that year; and the date of their last contribution. Itemizations for donors who are not individuals must include the principal type of business and place of business.

Expenditures:

All expenditures must be itemized, disclosing the payee’s name and address, the purpose of the expenditure, the name of the person contracting for or arranging the expenditure, and the date and amount of the expenditure.
Reporting schedule:

Quarterly: A state PAC must detail its receipts and expenditures in quarterly reports. Reports are due on the 15th of the month following the close of the calendar quarter. Id. at § 24.2-949.6(C).

Large Contribution Reports: In addition to its regularly filed quarterly reports, a state PAC must file a "large dollar contribution report" within three business days of receiving any single contribution or loan of $10,000 or more, regardless of when during the year the PAC receives the contribution. Large contributions or loans must also be reported on the next quarterly report. Id. at § 24.2-949.7.

Reporting must continue until the PAC files a termination report. A PAC may terminate only if it has disposed of all of its surplus funds. The statute identifies the categories of entities that may receive surplus funds. Money may not be converted to anyone’s personal use. Id. at § 24.2-949.9. See below for further discussion of the permissible entities to receive surplus funds.

Reporting forms are available at: https://www.elections.virginia.gov/candidatepac-info/political-committees/political-action-committees/index.html.

Reporting method:

A PAC must file electronically if it accepts contributions or makes expenditures of more than $10,000 in the current or previous calendar year. However, if the PAC expects its activity to be less than $10,000 in the upcoming calendar year, it may request a waiver to permit it to file on paper. This request must be submitted before its first report of the year is due. Id. at § 24.2-949.8(B). Information on Virginia’s electronic report creation and filing system, known as COMET, is available at: https://www.elections.virginia.gov/FormsWarehouse/Campaign%20Finance/COMET/COMETUserManual.pdf.

Reporting authority:

All reports are filed with the State Board of Election. Id. at § 24.2-949.8.

Out-of-State PACs

An out-of-state PAC is a political organization that 1) gives Virginia state candidates and committees less than half of the total money it contributes, and 2) is not a PAC registered with the Federal Election Commission. Id. at § 24.2-945.1(A) (defining “out-of-state political committee” and “primary purpose”).

A “political organization” is an entity covered by section 527 of the Internal Revenue Code.

Virginia requires an out-of-state PAC to register and report if it gives a total of $10,000 or more to Virginia candidates and committees in a calendar year. A political organization does not need to register or report if its contributions total less than $10,000 per year.
As noted under “Types of PACs” above, the statute states that the organization’s contributions are measured “over the entirety of the committee’s registration” and not on only one report or election cycle. Id. at § 24.2-945.1(A) (defining “primary purpose”).

**Bank Account**

The bank account for an out-of-state PAC does need not to be in a Virginia bank. Id. at § 24.2-949.9:1(B).

**Registration**

An out-of-state 527 must register with the State Board of Elections on or before the date on which its aggregate contributions to Virginia candidates and political committees reach or exceed $10,000 for the calendar year. Id. at § 24.2-949.9:1(A). It registers by submitting a Statement of Organization, available at: [https://www.elections.virginia.gov/FormsWarehouse/Campaign%20Finance/2018/PoliticalCommittees/OutOfState/SOO-Out-of-State.pdf](https://www.elections.virginia.gov/FormsWarehouse/Campaign%20Finance/2018/PoliticalCommittees/OutOfState/SOO-Out-of-State.pdf)

Registration as an out-of-state 527 expires automatically at the end of the calendar year; committees making contributions in future years must re-register.

On its registration statement, the out-of-state PAC must list most of the information required of an in-state PAC, plus its taxpayer identification number, the names of the states in which it files reports, and its campaign-finance registration numbers in each state where it reports. Id. at § 24.2-949.9:1.

Because all out-of-state PACs are automatically terminated at the end of the calendar year, an out-of-state PAC must re-register for each year in which it has activity.

**Reporting**

Reporting for an out-of-state PAC is based on the timing of its contributions to Virginia candidates and committees in a calendar year.

On the day it registers with Virginia, an out-of-state PAC must report the following information:

For each contributor whose year-to-date contributions made between the immediately preceding January 1 and the date the report is filed total $2,500 or more in the aggregate, report the donor’s name, address, occupation, employer, business location, and the dates and amounts of each contribution; and

A list of all contributions it has made to Virginia candidates and committees between the immediately preceding January 1 and the date the report is filed.

Id. at § 24.2-949.9:1(D). This report does not need to be filed electronically.

With each subsequent contribution it makes in Virginia, regardless of the amount, the out-of-state PAC must report:
The new contribution to a Virginia candidate or committee; and

All donors who have contributed $2,500 or more in the aggregate since the previous filing. This subsequent report must be filed electronically. Id. at § 24.2-949.9:2(B,C). This reporting regime may result in an out-of-state PAC filing reports more regularly than an in-state PAC.

Chain-reaction reporting – In addition to the reporting required by an out-of-state PAC, some contributors to the out-of-state PAC also must register and report:

At the time an out-of-state PAC registers, any section 527 organization that has contributed an aggregate of $50,000 or more to the out-of-state PAC during the current calendar year must itself file a statement of organization in Virginia and list its own contributors and expenditures. Id. at § 24.2-949.9:1(E).

(Then, any 527s that have given $50,000 or more to that newly registered out-of-state PAC must themselves register, setting off a potential chain reaction.)

After an entity registers as an out-of-state PAC, any contributions of $10,000 or more from another non-federal, non-Virginia 527 organization will trigger registration and reporting in Virginia for that second 527, regardless of whether there is any intent to use the money in Virginia. Prior to accepting contributions aggregating $10,000 or more in the aggregate in any calendar year from the other non-federal 527, the first committee must ask the second for its Virginia State Board of Elections registration number, and then verify that number with the State Board of Elections. Id. at § 24.2-949.9:3. Prior to accepting contributions aggregating $10,000 or more in the aggregate in any calendar year from a federal political action committee, the first committee must also request the federal political action committee’s registration number and verify that number with the State Board of Elections. Id. at § 24.2-949.9:4.

Federal PACs

Registration

Within 10 days of giving $200 or more in a calendar year to Virginia committees or non-federal candidates, a Federal PAC must register with the State Board of Elections by submitting a Statement of Organization. Id. at § 24.2-949.2(A,C). The Statement of Organization is available at https://www.elections.virginia.gov/FormsWarehouse/Campaign%20Finance/2018/PoliticalCommittees/PAC/SOO-FEC.pdf

The Federal PAC must supply its name and address, its FEC identification number, and the name and address of its treasurer. Id. at § 24.2-949.2(C).

An amended Statement of Organization must be submitted within 10 days if any of the information on the form changes.

The State Board of Elections will provide a link to the PAC’s FEC reports.
Reporting

Other than submitting the Statement of Organization, no additional reporting is required of a Federal PAC.

Accessibility

All reports filed electronically by in-state and out-of-state PACs are available on-line at http://cfreports.sbe.virginia.gov/. Reports can be downloaded in PDF and XML formats and include donor name, occupation and location, among other information.

Termination

In-state PACs – An in-state PAC may terminate after it determines it will no longer receive contributions or make expenditures aggregating more than $200 in a calendar year. To terminate, the in-state PAC must file a final report, disclosing:

- all contributions and expenditures not previously reported;
- all debts and the manner in which they will be retired; and
- how any surplus funds will be distributed.

The state limits the ways in which surplus funds may be disposed. An in-state PAC may dispose of its funds only by:

- transferring the money to the PAC’s affiliated organization;
- returning funds to contributors, as long as the refunds do not exceed the amount of the donor’s original contribution;
- contributing the funds to any organization described in § 170(c) of the Internal Revenue Code;
- contributing the funds to Virginia candidates, political committees or political parties; or
- paying the PAC’s expenses.

Funds or intangible personal property may not be converted to one’s personal use or to the use of an immediate family member of a committee’s treasurer or chief executive. Id. at § 24.2-949.9.

Out-of-state PACs – The State Board of Elections automatically terminates all out-of-state PACs automatically at the end of the calendar year. An out-of-state PAC does not need to take any steps to terminate. To make contributions in future years, however, it must re-register.

REFERENDUM COMMITTEES

Contribution Limits

Referendum committees may accept unlimited amounts from any individual, corporation or political committee, and they may spend unlimited amounts on their activities.
Registration

Any entity, including a corporation or a political committee, that seeks to influence the outcome of a referendum must register as a referendum committee if it spends more than the following amounts to advocate the passage or defeat of a referendum:

- Statewide referendum: $10,000;
- Referendum being held in more than one city or county: $5,000; or
- Referendum being held in only one city or county: $1,000.

The entity must register within 10 days of having reason to believe it will exceed these limits. VA. CODE ANN. §§ 24.2-945.1(A), 24.2-951.1.

As written, the law requires a corporation to register as a referendum committee even if its only involvement is to give monetary contributions over the threshold to an existing referendum committee.

Reporting

A referendum committee must detail its receipts and expenditures as follows:

Receipts

The total number of contributors whose contributions have aggregated $100 or less during the calendar year, along with a total of these un-itemized contributions; and

An itemized list of all donors whose aggregate year- to-date contributions (including monetary and in-kind) have totaled more than $100, including each donor’s name, listed alphabetically; address; occupation, employer and the locality where the donor is employed or where his business is located; the amount of the contribution; their aggregate contributions to the referendum committee for that year; and the date of their last contribution.

Expenditures

All expenditures must be itemized, disclosing the payee’s name and address, the purpose of the expenditure, the name of the person contracting for or arranging the expenditure, and the date and amount of the expenditure. Id. at § 24.2-951.3.

Reporting schedule

Referendum committees must report their ballot measure contributions and expenditures each year in accordance with the reporting deadlines. Schedules are available at: https://www.elections.virginia.gov/candidatepac-info/political-committees/referendum-committees/index.html. Reports are required to be filed electronically if the committee accepts contributions or makes expenditures in excess of $10,000 in the current or prior calendar year. Id. at § 24.2-951.8.
Large contribution reports – within three business days of receiving any single contribution or loan of $10,000 or more, a referendum committee must file a “large dollar contribution report” with the State Board of Elections. The large contribution report may be filed in writing or electronically. Multiple contributions from a single source in amounts less than $10,000 for the purpose of evading the $10,000 threshold are considered a single contribution. Id. at § 24.2-951.7.

Termination – within six months after the referendum is decided, the committee must either file a final report or else amend its Statement of Organization to become a Political Action Committee and file on the appropriate schedule. Id. at 24.2-951.4(B).

ENFORCEMENT AND PENALTIES

Complaints of reporting or disclaimer violations should be made to the State Board of Elections. If the Board determines a PAC is in violation, it will forward the complaint to the appropriate Commonwealth’s Attorney, who will initiate civil proceedings to collect civil penalties, or criminal proceedings in the case of a willful violation. VA. CODE ANN. § 24.2-946.3.

There is a rebuttable presumption that a failure to file a large pre-election report was willful. Id. at § 24.2-953.1(C). Willful violations are punishable as Class 1 misdemeanors. Id. at § 24.2-953(D).

Virginia law sets a detailed schedule of fines for late or missing campaign-finance reports. Id. at § 24.2-953 et seq. Prior to assessing a penalty, the Commissioner of Elections or the general registrar shall send a notice of the missing or incomplete report. No penalty shall be assessed if the information required to complete the report is filed within 10 days of the notice. The 10-day deadline may be extended for up to two weeks for good cause. If the required information is not provided by the deadline, then the Commissioner of Elections or general registrar shall assess a penalty of up to $500, the amount depending on the number of omissions, the amount of money involved, and the proportion of contributions or expenditures containing omissions. The penalty shall increase every 60 days of non-compliance, and if the non-compliance continues for more than 120 days there shall be a rebuttable presumption that the violation was willful and the matter shall be referred to the Commonwealth’s attorney. Fines are increased for certain repeat violations or for violations within 60 days of an election in which the person is a candidate. Id. at § 24.2-953.3.

Violations of the state’s disclaimer requirements for TV, radio, print or telephonic communications also are subject to a schedule of fines, with higher fines imposed on violations occurring in the last two weeks before an election. Id. at § 24.2-955.3.
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