

# WISCONSIN

## CAMPAIGN FINANCE AND BALLOT MEASURE GUIDE

These resources are current as of 11/21/18. 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](mailto:advocacy@afj.org).

### What's New in This Guide

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

- ◆ “Important Note” on campaign finance reform legislation enacted in 2015, effective January 1, 2016.
- ◆ Contribution limits are increased; individual and political action committee (“PAC”) contribution limits are doubled.
- ◆ Political parties and legislative campaign committees may make unlimited contributions to candidate committees.
- ◆ Corporations, labor organizations and federally-recognized Indian Tribes may not contribute to candidate committees, but may contribute to Independent Expenditure Committees, Referendum Committees and a segregated fund of a political party or legislative campaign committee. Certain limited liability companies may contribute to political committees, including candidate committees.
- ◆ Sponsors of PACs and conduits are no longer required to register and report spending on administration and solicitation expenses. Registration and reporting requirements for Independent Expenditure Committees and other organizations or individuals making independent expenditures are established.
- ◆ Impermissible coordination of independent expenditures is defined and penalties established.
- ◆ Issue advocacy is not regulated under campaign finance laws and coordinated issue advocacy is not an in-kind contribution.

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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**Important Note:** On December 16, 2015, Wisconsin Act 117 (“Act 117”) was signed into law. It repealed and recreated Wisconsin’s campaign finance statutes, effective January 1, 2016 and was drafted in response to numerous court decisions including *State ex rel. Two Unnamed Petitions v. Peterson*, 2015 WL 4376442 (2015), *Wisconsin Right to Life Inc. v. Barland (Barland II)*, 751 F.3d 804, 808 (7th Cir. 2014), *Young v. Vocke*, No. 13-635 (E.D. Wis. September 7, 2014), *RG Network v. Barland*, No. 14-C-719, (E.D. Wis. October 15, 2015). Act 117 codified contribution source restrictions, contribution limits and the regulation of independent political speech and made a number of changes to the regulation of political committees in Wisconsin. The Government Accountability Board (“G.A.B.”) will continue to enforce campaign finance laws until July 1, 2016 when a newly constituted Ethics Commission will become the state’s campaign finance regulator. As a result, significant agency guidance on the new campaign finance laws may not be available until after July 1, 2016. <http://gab.wi.gov/campaign-finance>, or by phone at (608) 266-8005.

## ETHICS COMMISSION

- In December 2015, legislation was signed into law dissolving the Government Accountability Board and replacing it with two independent commissions: the Ethics Commission which regulates ethics, lobbying and campaign finance and the Elections Commission, which administers and oversees election administration.<sup>1</sup> The Ethics Commission consists of at least six members:
  - One member appointed by the senate majority leader;
  - One member appointed by the senate minority leader;
  - One member appointed by the speaker of the assembly;
  - One member appointed by the assembly minority leader;
  - Two members who formerly served as judges (and who were elected to their judicial positions), appointed by the governor, and subject to senate confirmation;<sup>2</sup> and,
  - One member nominated by each political party, other than the two major political parties, whose candidate for governor received at least 10 percent of the vote in the most recent gubernatorial election, appointed by the governor, and subject to senate confirmation. The governor chooses this third-party nominee from a list of three individuals prepared by the third party.

The Ethics Commission has the ability to retain both special investigators and special counsel to assist in the enforcement of the laws it administers.

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<sup>1</sup> The dissolution of the Government Accountability Board and creation of the two commissions is effective on June 30, 2016, six months after the rewrite of Wisconsin campaign finance laws became effective. Although the G.A.B. will administer the new statute for six months, this summary refers to the Ethics Commission throughout. See 2015 Wisconsin Act 117 and 2015 Wisconsin Act 118.

<sup>2</sup> These two members are chosen from separate lists prepared by the legislative leadership of the two major political parties. Each party prepares a list of three individuals, and then the governor appoints one individual from each party’s list.

## CONTRIBUTION LIMITS AND SOURCE RESTRICTIONS

<b>From</b> ↓	<b>To Candidates</b>				<b>To Committees</b>				
	Governor	Other Statewide	Legislative	Municipal	PACs	Independent Expenditure Committee	Parties <sup>3</sup>	Segregated Fund of a Party <sup>4</sup>	Referendum Committee
<b>Individuals<sup>5</sup></b>	\$20,000 (per 4-year cycle)	\$20,000 (per 4-year cycle)	\$1,000 Assembly (per 2-year cycle)  \$2,000 Senate (per 4-year cycle)	Based on population of the jurisdiction and no less than \$500 and no more than \$6,000.	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
<b>PACs</b>	\$86,000 (per 4-year cycle)	Lt. Gov. \$26,000;  Attorney General: \$44,000;  Others: \$18,000	\$1,000 Assembly (per 2-year cycle)  \$2,000 Senate (per 4-year cycle)	Based on population of the jurisdiction and no less than \$400 and no more than \$5,000.	Unlimited	Unlimited	\$12,000 per year	\$12,000 per year	Unlimited
<b>Other Persons<sup>6</sup></b>	\$86,000 (per 4-year cycle)	Lt. Gov. \$26,000;	\$1,000 Assembly	Based on population of	Unlimited	Unlimited	\$12,000 per year	\$12,000 per year	Unlimited

<sup>3</sup> "Party" includes legislative campaign committees which are organized in either house of the legislature to support a candidate of a political party for legislative office.

<sup>4</sup> A segregated fund of a party may not be established for the purpose of making contributions to candidate committees or disbursements for express advocacy. These funds may be used to pay for expenses like office space, staff costs, polling, opposition research, and candidate recruitment.

<sup>5</sup> "Individual" includes sole proprietorships, partnerships and certain limited liability companies.

	To Candidates				To Committees				
	cycle)	Attorney General: \$44,000; Others: \$18,000	(per 2-year cycle) \$2,000 Senate (per 4-year cycle)	the jurisdiction and no less than \$400 and no more than \$5,000.					
Corporations, Federally recognized Indian Tribes and Labor Organizations	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Unlimited	Prohibited	\$12,000 per year	Unlimited

The limits above are cumulative for the entire election cycle, whether or not there is a contested primary election. They are not adjusted for inflation.

See WIS. STAT. § 11.1101 for campaign contribution limits.

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<sup>6</sup> Out-of-state PACs, federal PACs and section 527 organizations that do not meet the Wisconsin definition of a PAC.

### Lobbyists

- A lobbyist is permitted to make campaign contributions to a “partisan elective state official” only between April 15 of the year of that official’s election and the November general election. WIS. STAT. § 13.625(1m)(b).

Registered lobbyists may deliver campaign contributions from a PAC, conduit or other person to partisan elective state officials at any time. WIS. STAT. § 13.625(1)(b)3.

- “Partisan elective state officials” include governor, lieutenant governor, secretary of state, state treasurer, attorney general, district attorney, state senator and state representative. WIS. STAT. § 13.62(11p).
- In addition to the aforementioned date restrictions imposed on contributions by registered lobbyists, a lobbyist may contribute to legislative candidates who are also partisan elective state officials only after the legislature has concluded its final floor period and is not special or extraordinary session. WIS. STAT. § 13.625(1m)(b)(1).

### Soliciting government employees

- Political contributions may not be solicited or delivered on government property nor may government employees be solicited while engaged in their respective official duties. WIS. STAT. § 11.[1207](#).

### Anonymous contributions

- Anonymous contributions exceeding \$10 received by a committee may not be used or expended. Such contributions must be donated as laid out in WIS. STAT. § 11.[1108](#).

### Cash contributions

- All committees are prohibited from accepting contributions in cash in excess of \$100. WIS. STAT. § 11.1107.

### Contributions in the name of another

- All committees are prohibited from accepting contributions in the name of someone other than the true contributor. WIS. STAT. § 11.[1204](#).

### In-kind contributions

- An “in-kind” contribution is the transfer of tangible personal property or services to a committee valued at fair market value at the time of the transfer. WIS. STAT. § 11.0101(8)(a)2.

- “In-kind” contributions do *not* include:
  - time spent by uncompensated individuals who volunteer their services;
  - unreimbursed individual travel expenses incurred by a volunteer;
  - costs incurred by an individual in preparing and transmitting personal correspondence;
  - Any cost incurred to conduct “Internet activity” (including sending or forwarding email, providing a hyperlink or other direct online access to a site operated by another person, blogging, creating, maintaining or hosting a website, payment of a nominal fee for use of a website operated by another person, or any other form of communication distributed over the Internet) by an individual acting on his or her own behalf, or on behalf of another if the individual is not compensated for those services;
  - Any cost incurred for covering or carrying a news story, commentary, or editorial;
  - The cost of invitations, food and beverages for a candidate event at a private residence;
  - Any communication that does not expressly advocate for the election or defeat of a candidate; and,
  - A communication made between an organization and its members or potential members.

Wis. STAT. § 11.0101(8)(b).

- Before making an in-kind contribution to a political committee, the contributor must notify the committee and obtain verbal or written consent to the in-kind contribution. Wis. STAT. § 11.1109.

### Corporate, Tribal and Labor Contributions

- Contributions to candidates, political parties and PACs by corporations, labor organizations and federally recognized Indian Tribes (“tribes”) are prohibited. Wis. STAT. § 11.1112.
- Corporations, labor organizations and tribes may contribute unlimited amounts to independent Expenditure Committees and Referendum Committees. Wis. STAT. §§ 11.1104, 11.1112.
- Corporations, labor organizations and tribes may contribute up to \$12,000 annually to a segregated fund of a political party or legislative campaign committee provided the segregated fund is not used to make contributions to candidate committees or disbursements for express advocacy. Wis. STAT. §§ 11.1104(6), 11.1112.



## COMMUNICATIONS

### Issue Advocacy vs. Express Advocacy

- Wisconsin campaign finance statutes do not regulate “issue discussion, debate or advocacy; grassroots outreach or lobbying.” WIS. STAT. § 11.0100. In addition, an issue advocacy communication is not an in-kind contribution. WIS. STAT. 11.0101(8)(b)9.
- Wisconsin regulates speech that expressly advocates the election or defeat of a clearly identified candidate or referendum. “Express advocacy” means a communication that references a clearly identified candidate, unambiguously relates to the election or defeat of that candidate and contains terms such as “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for...(an elective office),” “vote against,” “defeat,” “reject,” or “cast your ballot against.” WIS. STAT. § 11.0101(11). The statutory definition of express advocacy does not include a reference to the “functional equivalent of express advocacy” adopted by the U.S. Supreme Court.

### Membership communications

A communication made between an organization and its members is not a disbursement or an expenditure for express advocacy. A member means a shareholder, employee or officer of the organization or an individual who has affirmatively manifested an interest in joining, supporting or aiding the organization. WIS. STAT. §§ 11.0101(10)(b)1., 11.0505(2)(b)2., 11.0605(2)(b)2., 11.1001(2)(b)2.

### Independent Expenditures

- Definition
  - “Independent expenditures” are expenditures for express advocacy that are not made in coordination with a candidate, candidate committee, candidate’s agent, legislative campaign committee or political party. WIS. STAT. § 11.0101(16).
  - “Express advocacy” means a communication that references a clearly identified candidate, unambiguously relates to the election or defeat of that candidate and contains terms such as “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for...(an elective office),” “vote against,” “defeat,” “reject,” or “cast your ballot against.” WIS. STAT. § 11.0101(11).
- Registration, Reporting and Oath
  - PACs and Independent Expenditure Committees must register with the Ethics Commission within 10 days of making or accepting

contributions, making disbursements or incurring obligations in excess of \$2,500 in a calendar year. (See below for definitions of PAC and Independent Expenditure Committees.) Individuals and other entities that make independent expenditures are not required to register. WIS. STAT. §§ 11.0502, 11.0602, 11.1001.

- Any individual, PAC, Independent Expenditure Committee or other entity that spends more than \$2,500 in the aggregate on independent expenditures in the 60 days prior to a primary or general election must report the expenditure to the Ethics Commission within 72 hours. PACs and Independent Expenditure Committees must also file periodic campaign finance reports itemizing all contributions received and disbursements made. Other entities that make independent expenditures are not required to report contributions received or file periodic campaign finance reports. WIS. STAT. §§ 11.0504(1), 11.0505(1)(a), 11.0604(1), 11.0605(1)(a), 11.1001(1)(a).
- Reports of specific independent expenditures made in the pre-primary or pre-election period by a PAC, Independent Expenditure Committee, individual or other entity must include an affirmation, made under oath that the committee, individual or entity will comply with the prohibition on coordination of independent expenditures. WIS. STAT. §§ 11.0505(1)(b), 11.0605(1)(b), 11.1001(1)(b)(6).
- Disclaimers
  - Every independent expenditure made by a PAC or an Independent Expenditure Committee must include the disclaimer “Paid for by ABC Committee. Not authorized by any candidate or candidate’s agent or committee.” WIS. STAT. § 11.1303(2)(a), (b), (d)..

The same disclaimer requirement applies to a person or other entity making independent expenditures, but only if the independent expenditure exceeds \$2,500. WIS. STAT. § 11.1303(2)(c).

### **Disclaimers**

- Every communication paid for by a political committee, including every independent expenditure, must contain a disclaimer identifying the sponsor of the communication. This includes printed advertisements, billboards, handbills, television and radio advertisements and other communications such as t-shirts, bumper stickers and yard signs. WIS. STAT. § 11.1303(2)(a).

No disclaimer is required on small items on which the information required by this subsection cannot be conveniently printed, including text messages, social media communications, and certain small advertisements on mobile phones. The commission may, by rule, specify small items or other communications that do not require a disclaimer. WIS. STAT. § 1303(2)(f).

- The disclaimer must use the words “Paid for by” followed by the name of the sponsor. The name of the committee’s treasurer is not required. WIS. STAT. § 11.1303(2)(b).
- A disclaimer for an independent expenditure must include a second sentence and use the words: “Not authorized by any candidate, candidate’s agent or committee.” WIS. STAT. § 11.1303(2)(d). This requirement applies to an independent expenditure made by individuals and entities other than committees if the expenditure exceeds \$2,500.
- Sample disclaimers:
  - Direct expenditure by a candidate’s committee:  
*Paid for by Friends of Mary Smith. (Optional: Jim Jones, Treasurer.)*
  - In-kind contribution from a PAC to a candidate’s committee:  
*Paid for by ABC PAC as an in-kind contribution to Friends of Mary Smith. (Optional: Jim Jones Treasurer.)*
  - Independent expenditure by a PAC:  
*Paid for by ABC PAC. (Optional: Jane Doe, Treasurer). Not authorized by any candidate, candidate’s agent or committee.*

## COORDINATION

With the enactment Act 117, “coordination” is now statutorily addressed in Wisconsin’s campaign finance law. WIS. STAT. § 11.1203. Importantly, this new standard applies only to express advocacy/independent expenditures. Issue advocacy communications are not regulated under state campaign finance law. WIS. STAT. §§ 11.0100, 11.0101(8)(b)9. Accordingly, the Wisconsin coordination standard does not apply to issue advocacy communications and other grassroots lobbying activities.

Wisconsin statutes prohibit corporations, labor organizations, federally-recognized Indian tribes and independent expenditure committees from coordinating independent expenditures with candidates under any circumstances and establish penalties for violating this prohibition.

An individual or political action committee (“PAC”) may coordinate an independent expenditure with a candidate if the expenditure does not exceed the applicable contribution limits. WIS. STAT. §§ 11.1112, 11.1203(1). If the independent expenditure complies with the contribution limit, the candidate and the PAC must report it as an in-kind contribution. WIS. STAT. § 1203(2)(b). If this independent expenditure exceeds the contribution limit, both the candidate and the individual or PAC are subject to penalties.

An “independent expenditure” means “an expenditure for express advocacy by a person, if the expenditure is not made in coordination with a candidate, candidate committee, candidate’s agent, legislative campaign committee, or political party.” WIS. STAT. § 11.0101(16).

An independent expenditure is coordinated if the candidate, candidate’s agent, legislative campaign committee of the candidate’s political party or the candidate’s political party does either of the following for the benefit of a candidate:

- *Communicates directly* with the PAC, independent expenditure committee or other individual or organization making the expenditure to *specifically request* that an expenditure that benefits the candidate be made. The PAC, independent expenditure committee, other individual or organization must then *explicitly assent* to the request before making the expenditure.
- *Exercises control over* either
  - The expenditure; or
  - The content, timing, location, form, intended audience, number or frequency of the communication.

WIS. STAT. § 11.1203(2).

A candidate’s agent is limited to an individual who has control over the day-to-day operation of the candidate committee. WIS. STAT. §11.0101(2). A candidate’s agent does not include an employee of a political party or legislative campaign committee unless that person is also an employee of a candidate. However, independent expenditures may not be coordinated with the political party of the candidate or the legislative campaign committee of the candidate’s political party.

The following are not prohibited coordinated expenditures:

- Candidates endorsing and soliciting contributions for other candidates.
- Candidates, candidate committees, legislative campaign committees and political parties responding to inquiries about a candidate’s or political party’s position on legislative or policy issues.

- Using publicly available information to create, produce or distribute a communication.

Wis. STAT. § 11.1203(3).

## CONDUITS

- Any organization may form a political organization called a “conduit.” Under Wisconsin law, a conduit is an organization that receives funds from individuals (who, by contributing, become “members” of the conduit) and deposits those funds into a segregated account at a financial institution. An individual may not establish a conduit. Wis. STAT. § [11.0101\(7\)](#). While the funds are deposited in a single bank account, each deposit remains earmarked by donor and attributed to an individual member. Each member then has an “account” or “balance” within the conduit from which he can make political contributions. Accordingly, the funds held by a conduit account are *always* controlled (and owned) by the individual members of the conduit.
- Member funds collected by the conduit may be disbursed to a candidate committee, political party or PAC selected by the original contributor. Wis. STAT. §§ [11.0101\(7\)](#), [11.0701\(3\)](#). Member funds held in the conduit bank account are disbursed only at the specific direction of the individual member to a particular recipient. When more than one member of the conduit authorizes a disbursement to the same candidate, political party or PAC, the transfer may be made with a *single* conduit check for the total amount of the aggregated, but individually authorized, contributions.
- Unlike PACs, a conduit itself may not in any way determine the amount of a particular contribution or the recipient of a contribution. The contribution always remains an individual contribution. Wis. STAT. § [11.0701\(3\)](#). While a conduit steering committee or conduit administrator may make suggestions, the member who controls the individual conduit account must make all disbursement decisions.

## GENERAL COMMITTEE REGISTRATION AND REPORTING REQUIREMENTS

### Online Registration

- The Ethics Commission offers online registration via its Campaign Finance Information System ([“CFIS”](#)).

## **Electronic Reporting**

- Any committee that accepts contributions totaling \$1,000 or more during a two-year election cycle must file its reports electronically. WIS. STAT. § 11.1304(6).
- A committee filing on CFIS may:
  - enter its campaign finance information directly into CFIS using the input screens;
  - upload transactions to CFIS (receipts, expenses, etc.); or
  - complete GAB-2S Excel spreadsheet and email the completed report to the Ethics Commission.
- All registered committees should receive a mailing or e-mail with their username (the committee's identification number is its username) and password. The username and password allow the committee to login to CFIS and then upload transactions to be reported to the Ethics Commission.

## **Public Disclosure**

- It is the duty of the Ethics Commission to make all reports available for public inspection "as soon as practicable." WIS. STAT. § 11.1304(12). Paper copies are available at the Ethics Commission office. Detailed information for political committees that file electronically is searchable on CFIS.
- In addition to the Ethics Commission., a public interest group, the Wisconsin Democracy Campaign, has developed a searchable – by contributor name, employer and recipient – database of contribution information.
- No information copied from any campaign finance report may be sold or utilized by any person for any commercial purpose. WIS. STAT. § 11.1304(12).

## **Termination**

- A committee may terminate its registration after it has reduced its cash balance to \$0. WIS. STAT. § 11.0105. To eliminate a cash balance, residual funds may be used for any purpose not prohibited by law, returned to contributors, contributed to other political committees or donated to a tax-exempt charitable organization or the common school fund.
- Once it has emptied its depository account, the committee must file a final campaign finance report and a termination report.

## PAC REGISTRATION AND REPORTING REQUIREMENTS

### Registration Threshold

- An organization or committee must register as a PAC if it meets two thresholds:
  - Its stated purpose is express advocacy or more than 50% of its total spending in a 12-month period is on express advocacy, expenditures made to support or defeat a referendum, and contributions made to a candidate committee, legislative campaign committee, or political party; *and*,
  - It makes or accepts contributions, makes disbursements or incurs obligations in excess of \$2,500 in a calendar year.

If both thresholds are met, registration must occur within 10 business days of the receipt of the first contribution that exceeds the \$2,500 threshold. WIS. STAT. §§ 11.0101 (25)(a), 11.0502(1), (2).

- PACs are not required to register with local filing officers, even if contributing to local candidates. WIS. STAT. 11.0102(1)(a).

### Jurisdiction

- A PAC is considered either a “resident” PAC or a “nonresident” PAC, depending on whether the PAC maintains an office or street address in Wisconsin. WIS. STAT. § 11.0103(5).
- A nonresident PAC must register with the Ethics Commission only if it meets both the thresholds required for registration.
  - If a nonresident PAC does not meet both the \$2,500 and the 50% threshold requirements, it is not required to register as a PAC in Wisconsin.
  - If a nonresident PAC meets both registration thresholds and registers with the Ethics Commission, it must submit reports on disbursements made and obligations incurred with respect to an election for state or local office in Wisconsin. However, the nonresident PAC only must report all contributions received from Wisconsin sources. WIS. STAT. § 11.0103(5). Although the

nonresident PAC that registers with the Ethics Commission is not required to report contributions received from non-Wisconsin sources, it must abide by Wisconsin's corporate source restriction.

### Filing Fee

Every registered PAC whose disbursements exceed \$2,500 in any calendar year must pay a \$100 annual filing fee. The fee is due no later than January 15 of each year. Wis. Stat. § 11.0102(2)(a), (b). The fee should accompany the year-end campaign finance report. The Commission must accept credit card, debit card, or other electronic payment and include a surcharge to recover the actual costs associated with the acceptance of that electronic payment.

### **“Resident” PACs**

- Registration
  - To register a Resident PAC, file Form ETHCF-1, “Campaign Registration Statement.” Section 1 for candidates may be left blank. In completing Section 2, indicate that the PAC is a “Resident Committee.”
  
- Administration
  - A PAC must deposit and disburse all funds through a *single* depository account at a financial institution. WIS. STAT. § 11.0501(2). Although the account is not required to be opened in a Wisconsin branch, it is strongly encouraged that the financial institution be one that has branches in Wisconsin.
  
  - Disbursements must be made by negotiable instrument which includes the electronic transfer of funds. WIS. STAT. §§ 11.0101(22), 11.0106.
  
  - A PAC must appoint an individual as treasurer. No disbursement may be made or obligation incurred without the authorization of the treasurer. No contributions or disbursements may occur at a time when there is a vacancy in the office of treasurer. WIS. STAT. § 11.0501 . State law is silent on residency requirements for the treasurer.
  
- Reporting
  - A PAC registered with the Ethics Commission is required to disclose all of its financial activity periodically. WIS. STAT. § 11.0504.
  
  - All contributions and disbursements, including anonymous contributions of \$10 or less, must be itemized and reported.



Records must be kept for at least three years following the reporting period to which they pertain. Wis. STAT. §§ 11.0501(4), 11.0504(1).

- The name and address of each contributor must be reported. If an individual's aggregate contributions in a calendar year exceed \$200, the PAC must provide the donor's occupation – but not employer. Wis. STAT. § 11.[0504\(1\)\(a\)](#).
- Reporting Schedule
  - Campaign finance reporting dates for 2016, 2017, and 2018 are available on this calendar.
  - Resident PACs must file reports twice each calendar year on Form GAB-2 ([the form has not yet been updated to reflect Act 117 changes](#)):
    - The “July Continuing Campaign Report” is due July 15, covering activity from January 1 through June 30.
    - The “January Continuing Campaign Report” is due January 15, covering activity from July 1 through December 31. Wis. STAT. § 11.0504.
  - “Spring Pre-Primary,” “Spring Pre-Election Reports,” “Fall Pre-Primary” and Fall Pre-Election Reports” are required when PACs make contributions to candidates on the ballot in an upcoming election. These reports include activity up to 14 days before the primary or general election and are due 8 days before the election day. Wis. STAT. § 11.11.0504(2)-(5).
- Exemption from Reporting
  - Any PAC that does not expect to accept contributions or make or expenditures or incur obligations in excess of \$2,000 in a calendar year may indicate so on its registration statement and will be exempt from all filing requirements so long as this remains true. The PAC must revoke this indication by amending its registration statement when it no longer meets the exemption requirements, and must begin filing timely financial reports starting with the next required report. Wis. STAT. § 11.0104.
- Sponsoring organizations
  - If a PAC has a sponsoring organization, the organization is not required to register with the Ethics Commission. The sponsoring organization may spend unlimited funds on administrative and solicitation expenses. This spending by the sponsor is not reported

and is not treated as a contribution to the PAC or a disbursement by the PAC. WIS. STAT. § 11.0101(8)(b)13., (10)(b)5.

- Wisconsin law does not limit who may be solicited for contributions to a PAC.

### “Nonresident” PACs

- A “nonresident committee” includes a PAC that does not maintain an office or address in Wisconsin. If the nonresident committee meets both the \$2,500 and the 50% threshold required for registration, it must submit reports on a form prescribed by the Ethics Commission of contributions from Wisconsin residents and disbursements made with respect to an election for state or local office in Wisconsin. The Ethics Commission has not yet advised how this reporting must be done. WIS. STAT. § 11.0103(5).
- Nonresident PACs that do not meet the registration thresholds are not required to report activity to the Ethics Commission. WIS. STAT. § 11.0103(5).

## INDEPENDENT EXPENDITURE COMMITTEE REGISTRATION AND REPORTING REQUIREMENTS

### Registration Threshold

- An organization must register as an Independent Expenditure Committee if it meets two thresholds:
  - Its stated purpose is making independent expenditures or more than 50% of its spending in a 12-month period is on independent expenditures and expenditures in support or opposition of a referendum; *and*
  - It makes or accepts contributions, makes disbursements or incurs obligations in excess of \$2,500 in a calendar year.

If both thresholds are met, the committee must register with the Ethics Commission within 10 business days of the receipt of the first contribution that exceeds the \$2,500 threshold. WIS. STAT. §§ 11.0101(17), 11.0602.

- Independent Expenditure Committees are not required to register with local filing officers, even if sponsoring independent expenditures in support of or opposition to local candidates. WIS. STAT. 11.0102(1)(a).

## **Jurisdiction**

- An Independent Expenditure Committee is considered either a “resident” committee or a “nonresident” committee, depending on whether the committee maintains an office or street address in Wisconsin. WIS. STAT. § 11.0103(5).
- A nonresident Independent Expenditure Committee must register with the Ethics Commission only if it meets both the thresholds required for registration.
  - If a nonresident Independent Expenditure Committee does not meet both the \$2,500 and the 50% threshold requirements, it is not required to register as a Wisconsin committee. WIS. STAT. § 11.0103(5). Instead, it would report its independent expenditure activity as an “other person.”
  - If a nonresident Independent Expenditure Committee does meet both registration thresholds, it must submit reports on disbursements made and obligations incurred with respect to an election for state or local office in Wisconsin. The nonresident committee must report all contributions received from Wisconsin sources only. See WIS. STAT. § 11.0103(5).

## **Filing Fee**

- Every registered Independent Expenditure Committee whose disbursements exceed \$2,500 in any calendar year must pay a \$100 annual filing fee. The fee is due no later than January 15 of each year. WIS. STAT. § 11.0102(2)(a), (b). The fee should accompany the year-end campaign finance report. The Commission must accept credit card, debit card, or other electronic payment and include a surcharge to recover the actual costs associated with the acceptance of that electronic payment.

## **“Resident” Independent Expenditure Committee**

- Registration
  - To register an Independent Expenditure Committee, file Form ETHCF-1, “Campaign Registration Statement.” Section 1 for candidates may be left blank. In completing Section 2, indicate that the committee is “Resident Committee.”
- Administration
  - An Independent Expenditure committee must deposit and disburse funds through a single account a financial institution. 11.0603(1)(c).

- Disbursements must be made by negotiable instrument which includes the electronic transfer of funds. Wis. Stats. §§ 11.0101(22), 11.0106.
- An Independent Expenditure Committee must appoint an individual as a treasurer. No disbursement may be made or obligation incurred without the authorization of the treasurer. No contributions or disbursements may occur at a time when there is a vacancy in the office of treasurer. Wis. STAT. § 11.0603(1)(b).
- Reporting
  - An Independent Expenditure Committee registered with the Ethics Commission is required to disclose all of its financial activity periodically. Wis. STAT. § 11.0604.
  - All contributions and disbursements, including anonymous contributions, must be itemized and reported. Records must be kept for at least three years following the reporting period to which they pertain. Wis. STAT. §§ 11.0601(4), 11.0604(1)(a).
  - The name and address of each contributor must be reported. If an individual's aggregate contributions in a calendar year exceed \$200, the committee must provide the donor's occupation – but not employer. Wisc. Stat. § 11.0604(1)(a).
- Reporting Schedule.
  - Campaign finance reporting dates for 2016, 2017 and 2018 are available on this calendar
  - Resident committees must file reports twice each year. The forms on which reports must be made have not yet been updated to reflect Act 117 changes. The "July Continuing Campaign Report" is due July 15 covering activity from January 1 through June 30. The "January Continuing Campaign Report" is due January 15 covering activity from July 1 through December 31. Wis. STAT. § 11.0604.
  - "Spring Pre-Primary, Spring Pre-Election, Fall Pre-primary and Fall Pre-Election Reports are required when Independent Expenditure Committees support or oppose candidates on the ballot in the upcoming election. These reports include activity up to 14 days before the primary or general election and are due 8 days before the election day. Wis. STAT. § 11.0604(2)-(5).
- An Independent Expenditure Committee that spends at least \$2,500 in the aggregate on express advocacy in the 60 days prior to a primary or

general election must report the expenditure to the Ethics Commission within 72 hours. Wis. STAT. § 11.0605. The report must include:

- The dates, recipients, amount and purpose of disbursements as well as the name of any candidate identified in the express advocacy, the office for which he or she is a candidate and whether the express advocacy supported or opposed the candidate.
- An affirmation, made under oath that the committee will comply with the prohibition on coordination.
- The name and address of the committee's designated agent.
- Exemption from Reporting
  - Any Independent Expenditure Committee that does not expect to accept contributions or make or expenditures or incur obligations in excess of \$2,000 in a calendar year may indicate so on its registration statement and will be exempt from all filing requirements so long as this remains true. The committee must revoke this indication by amending its registration statement when it no longer meets the exemption requirements, and must begin filing timely financial reports starting with the next required report. Wis. STAT. § 11.0104.
- Sponsoring organizations
  - If an Independent Expenditure Committee has a sponsoring organization, the organization is not required to register with the Ethics Commission. The sponsoring organization may spend unlimited funds on administrative and solicitation expenses. This spending is not reported and is not treated as a contribution to the committee or a disbursement by the committee. Wis. STAT. § 11.0101(8)(b)14., (10)(b)6.
  - Wisconsin law does not limit who may be solicited for contributions to an Independent Expenditure Committee.

### **“Nonresident” Independent Expenditure Committees**

- A “nonresident committee” includes an Independent Expenditure Committee that does not maintain an office or address in Wisconsin. If a nonresident committee meets the \$2,500 and 50% thresholds required for registration, it must submit reports on a form prescribed by the Ethics Commission of contributions from Wisconsin sources and disbursements made with respect to an election for state or local office in Wisconsin. The

Ethics Commission has not yet advised how this reporting must be done. WIS. STAT. § 11.0103(5)

- Nonresident Independent Expenditure Committees that do not meet the registration thresholds are not required to report activity to the Ethics Commission but may need to file reports as an “other person.”

## BALLOT MEASURES

- An organization is required to register as a Referendum Committee if:
  - Its major purpose is making expenditures to support or defeat a referendum or more than 50% of its total spending in a 12-month period is used to make expenditures made to support or defeat a referendum, *and*
  - It makes or accepts contributions, makes disbursements, or incurs obligations for the purpose of influencing a particular vote at a referendum in a calendar year in an aggregate amount in excess of \$10,000.

If both of these thresholds are met, the committee must register within 10 business days of reaching the \$10,000 threshold. WIS. STAT. §§ 11.0101(28)(a), 11.0802.

- A Referendum Committee must register with the Ethics Commission or the appropriate local filing officer. WIS. STAT. § 11.0102(1).
- A Referendum Committee must file a Form ETHCF-1 indicating the its name and mailing address, the nature of the referendum that is support or opposed, the name and mailing address of its treasurer and the name and mailing address of the committee’s depository account. WIS. STAT. § 11.0803
- The committee must appoint a treasurer who must ensure all funds are deposited into the committee’s depository account, authorize all disbursements made or obligations incurred by the committee and maintain committee records for at least 3 years. Wis. Stat. § 11.0801

A Referendum Committee must report all contributions, including anonymous contributions of \$10 or less, disbursements and obligations to the Ethics Commission. Wis. Stat. § 11.0804(1). Anonymous contributions in excess of \$10 must not be used or expended and must be donated in accordance with Wis. STAT. 11.1108.

- In addition to PACs and individuals, a Referendum Committee may accept contributions from corporations, labor organizations and federally-recognized Indian tribes. WIS. STAT. § 11.1112.

The name and address of each contributor must be reported. If an individual's aggregate contributions in a calendar year exceed \$200, the committee must provide the donor's occupation. WIS. STAT. § 11.0804(1)(a).

- A Referendum Committee must file reports twice each calendar year on Form GAB-2 ([the form has not yet been updated to reflect Act 117 changes](#)). The "July Continuing Campaign Report" is due July 15, covering activity from January 1 through June 30. The "January Continuing Campaign Report" is due January 15, covering activity from July 1 through December 31. Wis. Stat. § 11.11.0804.
- "Spring Pre-Primary," "Spring Pre-Election Reports," "Fall Pre-Primary" and Fall Pre-Election Reports" are required when a Referendum Committee makes or accepts contributions, makes disbursements or incurs obligations in support of or opposition to a referendum appearing on the ballot in the upcoming election. These reports include activity up to 14 days before the primary or general election and are due 8 days before the election day. WIS. STAT. § 11.11.0804(2)-(5).
- PAC Disbursements and Contributions
  - If a PAC makes disbursements to support or oppose a referendum question, it must report such activities. WIS. STAT. § 11.0504.

If a PAC's sole activity in connection with the referendum question is to make a contribution to a Referendum Committee, no additional registration is required. The PAC must report the contribution. WIS. STAT. § 11.0504.

- Registration as a Referendum Committee Not Required
  - An organization that merely contributes (in cash or in-kind) to a Referendum Committee does *not* itself need to register.
  - An organization that limits its communications to members does *not* need to register. WIS. STAT. § 11.0101(10)(b)1.
  - An organization that publishes information on a referendum without words of express advocacy telling voters how to vote on the referendum question does not need to register. For example, an entity publishing background information about a referendum question,

perhaps expressing a point of view but without expressly supporting or opposing a particular vote, does not need to register.

- An organization also does *not* need to register if it limits its activities to:
  - analyzing a controversial topic and presenting a conclusion but not discussing how to vote on the referendum question;
  - presenting balanced information on both sides of an issue, referring to the referendum question, but without reflecting a view on it;
  - hosting forums or other events in which balanced information on both sides of an issue is presented;
  - conducting public opinion polls and other research on voter attitudes and public opinion in connection with a referendum question; and,
  - conducting nonpartisan get-out-the-vote activities, calling attention to the importance of a referendum question and encouraging people to vote but not reflecting a view on how people should vote.

## ENFORCEMENT AND PENALTIES

- The Ethics Commission may commence only civil actions for violations of campaign finance laws while a district attorney may bring civil actions and criminal prosecutions upon receiving a referral from the commission. A referral may be made only upon a finding a probable cause by the commission. Any action or prosecution conducted by a district attorney must take place in the county where the defendant resides. If the defendant is not a person, the commission must refer the matter to the district attorney where its principal place of operation is located. If the defendant is not a Wisconsin resident, the matter must be referred to the district attorney for the county where the alleged violation occurred. Wis. STAT. §§ 11.1400(5), 11.1401(2).
- Civil Penalties. Violations may result in a forfeiture of up to \$500. A forfeiture may be imposed for each violation of a single requirement. Additional penalties may be imposed as follows:
  - Delinquent report: a person who is delinquent may be required to forfeit up to \$50 or 1 percent of the annual salary for the office for which a candidate is being supported or opposed, whichever is greater. Each day of delinquency is a separate forfeiture.
  - Violation of contribution limits, source restrictions or other prohibitions: a person who makes a contribution in violation of chapter 11 may be required to forfeit treble the amount of the



contribution or the portion of that contribution which was illegally contributed.

- Failure to pay filing fee: a person who fails to register and pay the filing fee within the time required shall forfeit \$500 plus treble the amount of the applicable filing fee.

See WIS. STAT. § 11.1400.

- Criminal Penalties. Criminal penalties may be imposed only for intentional violations. The elements of intent are established in the criminal code.
  - The following intentional violations are Class I felonies, which are punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.
    - Failure to comply with any registration or reporting requirement.
    - Making a contribution from the funds or property of another or giving funds or property to another person for the purpose of making a contribution.
    - The following if they do not involve a specific dollar figure or if they involve a dollar figure exceeding \$100 in amount or value:
      - Exceeding contribution limits or violating source restrictions.
      - Filing false reports.
      - Making unlawful obligations or disbursements.
      - Violating attribution or disclaimer requirements.
  - The following intentional violations are punishable by a fine of not more than \$1,000 or not more than 6 months imprisonment, or both:
    - The following if they do not exceed \$100 in amount or value.
      - Exceeding contribution limits or violating source restrictions.
      - Filing false reports.
      - Making unlawful obligations or disbursements.
      - Violating attribution or disclaimer requirements.
    - Any other violation of chapter 11 that is not punishable as a Class I felony.

See WIS. STAT. § 11.1401.

- The district attorney for each respective county is generally responsible for enforcing campaign finance law as it applies to local campaigns.

## CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES

### **Ethics Commission**

<http://gab.wi.gov/>

Staff directory: <http://gab.wi.gov/about/staff>

212 East Washington Avenue, Third Floor  
P.O. Box 2973  
Madison, WI53707-2973  
Phone: (608) 266-8123  
Fax: (608) 264-9319  
[gab@wi.gov](mailto:gab@wi.gov)

The Ethics Commission publishes numerous documents to assist principals, lobbyists and affected officials in understanding and complying with the state's lobbying and ethics law, available here. (<http://ethics.state.wi.us/Forms-Publications/FormsPublications.htm>)

Mike Wittenwyler wrote the first edition of the Wisconsin Campaign Finance state law resource, published by Alliance for Justice in 2007.  
This edition has been revised and updated by: Mike Wittenwyler and Jodi Jensen

## FOR FURTHER ASSISTANCE

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

**Email:** [advocacy@afj.org](mailto:advocacy@afj.org)  
**Telephone:** 1-866-NPLOBBY (675-6229)

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

**Mike Wittenwyler or Jodi Jensen**  
Godfrey & Kahn,  
P.O. Box 2719,  
Madison, WI 53701  
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