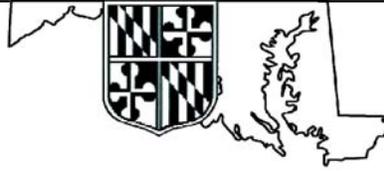


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MARYLAND STATE BOARD OF ELECTIONS

Issue Date: December 20, 2013

**Independent Expenditure Political Action Committees**

The State Board of Elections issues this guidance for publication and inclusion as a section in the Summary Guide reaffirming its legal understanding of the contribution and transfer limits to political action committees that make exclusively independent expenditures or electioneering communications. The Assistant Attorney General assigned as counsel to this agency has reviewed this guidance and agrees.

**In General:**

A person may not make a contribution in excess of \$4,000 to a political committee and \$10,000 overall to all Maryland political committees during the election cycle. *See* Election Law Article §13-226(b). Additionally, Maryland law limits a political committee from accepting a transfer of no more than \$6,000 by any other registered political committee including nonfederal out-of-state political committees during an election cycle. *See* Election Law Article §13-227(c).

**Narrow Exception:**

However, contributions limits are not applicable to persons making independent expenditures or electioneering communications. An individual or a person that makes expenditures attempting to influence an election through express advocacy or electioneering communications and not in coordination with any candidate or political party may receive unlimited amount of donations from other individuals or persons.

Recent litigation across the country has questioned the application and enforcement of the contribution limits to a registered political action committee that makes exclusively independent expenditures or electioneering communications.

The Supreme Court has repeatedly recognized that political contributions are a form of political speech and that independent expenditures are entitled to First Amendment protections. Therefore, any laws restricting political speech or the ability to make independent expenditures would require a compelling governmental interest. The constitutionally significant fact for these cases is the lack of coordination and cooperation between the candidate and the source of the expenditure.

In a string of decisions based upon the ruling in *Citizens United*, federal courts in multiple jurisdictions have struck down contribution limits as applied to a political action committee that makes exclusively independent expenditures. Consistent with the overwhelming weight of legal authority on this issue, the Maryland State Board of Elections does not interpret the contribution limits of Election Law Article § 13-226(b) to apply to donations to political groups that make **only** independent expenditures or electioneering communications. However, candidate committees, slates, political parties, and legislative party caucus committees may not make a contribution or transfer to a committee that makes only independent expenditures or electioneering contributions because in that event the contribution or transfer would amount to “coordination,” which is prohibited and contrary to donor intent. Therefore, under limited circumstances, contributions and transfers made to a registered political action committee that makes exclusively independent expenditures or electioneering communications will not be subjected to the limits of Election Law Article §§13-226 and 13-227.

**Application of the Limits to an Independent Expenditure Political Action Committee:**

- A. *A Person*- A Person, not including political committees, may make an unlimited contribution to a political action committee that makes exclusively independent expenditures or electioneering communications.
- B. *Authorized Candidate Campaign Committees and Slates*- An authorized candidate campaign committee and a slate may not make a transfer to a political action committees that makes exclusively independent expenditures or electioneering communications.
- C. *Central Committees*- A central committee may not make a transfer to a political action committees that makes exclusively independent expenditures or electioneering communications.
- D. *Legislative Party Caucus Committee*- A legislative party caucus committee may not make a transfer to a political action committees that makes exclusively independent expenditures or electioneering communications.
- E. *Political Action Committee (PAC)*- A PAC may not make an unlimited contribution or transfer to a political action committee that makes exclusively independent expenditures or electioneering communications.
- F. *Out-of-State Political Committee*- A nonfederal out-of-state political committee may make an unlimited contribution or transfer to a political action committee that makes exclusively independent expenditures or electioneering communications.