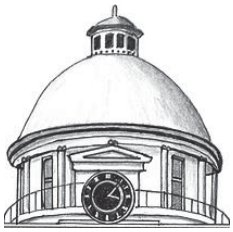
Fair Campaign Practices Act

CANDIDATE FILING GUIDE



Fourteenth Edition

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alabamavotes.gov
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CANDIDATE CHECK LIST

Filing requirements for the following statements or reports are mentioned in this publication. **Other requirements may exist** for specific offices or to satisfy political party rules. When qualifying, check for further information on any additional requirements.

FAIR CAMPAIGN PRACTICES ACT

DATE(S) FILED

- ☐ Appointment of Principal Campaign Committee See page 4. _____
- ☐ FCPA Reports—see page 13
  - ☐ Annual Report for Previous Calendar Year _____
  - ☐ Monthly Reports _____
  - ☐ Primary Election Weekly Reports _____
  - ☐ Primary Election Daily Reports _____
    Legislative, state school board, and statewide candidates. See page 13.
  - ☐ Primary Runoff Election Weekly Reports _____
  - ☐ Primary Runoff Daily Reports _____
    Legislative, state school board and statewide candidates. See page 13.
  - ☐ General Election Weekly Reports _____
  - ☐ General Election Daily Reports _____
    Legislative, state school board and statewide candidates. See page 13.
  - ☐ Annual Report for Election Year _____

ETHICS

- ☐ Statement of Economic Interests—see page 5 _____

BALLOT ACCESS

- ☐ Qualified for ballot access _____

JUDICIAL ELECTIONS

- ☐ Copy of "Statement of Economic Interests" filed with Clerk of the Alabama Supreme Court _____
  Remember, original is filed with appropriate elections official upon becoming a candidate.
- ☐ "Disclosure Statement of Financial Interests" with Clerk of the Alabama Supreme Court _____

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John H. Merrill
Secretary of State

Dear Citizens of Alabama:

I am pleased to present the 14th edition of our Elections Division's publication, the *Candidate Filing Guide*. This new, up-to-date edition will continue to serve as an instructive guide on the topic of Elections, providing detailed and in-depth information on the Fair Campaign Practices Act. If you have any questions, please call our Elections Division at 334-242-7210.

We're honored to serve you and our wonderful state.

Sincerely,

John H. Merrill
Secretary of State

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For General Questions and Obtaining Forms

Contact the Office of the Secretary of State

Mailing Address:	Elections Division Office of the Secretary of State P.O. Box 5616 Montgomery, Alabama 36103-5616
Telephone:	(334) 242-7210 or 1 (800) 274-8683
General FAX:	(334) 242-2444
FAX for Reporting:	(334) 353-2295
World Wide Web:	alabamavotes.gov
E-mail:	alavoter@vote.alabama.gov

For Online Filing Questions

World Wide Web:	fcpa.alabamavotes.gov
Help Desk Telephone:	(888) 864-8910

For Ethics Act Compliance Questions

Contact the Alabama Ethics Commission

Telephone:	(334) 242-2997
World Wide Web:	ethics.alabama.gov

SPECIAL NOTE FOR FEDERAL CANDIDATES

This filing guide applies to candidates for state, county and municipal offices. Federal candidates must follow reporting guidelines and deadlines administered by the Federal Elections Commission (FEC). For more information, please contact the FEC at:

Federal Elections Commission
999 E Street Northwest
Washington, D.C. 20463
1 (800) 424-9530
www.fec.gov

PUBLICATION NOTES

FCPA CANDIDATE FILING GUIDE—FOURTEENTH EDITION

Prepared by the Office of the Secretary of State

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Acknowledgements

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Legal Disclaimer

This document is not a substitute for the ***Code of Alabama 1975.*** It is provided as a guide and is not intended to be an authoritative statement of law. For further legal information, please consult the Code of Alabama 1975, other appropriate legal resources, or your attorney.

CHAPTER ONE

GETTING STARTED

The Fair Campaign Practices Act (FCPA), the state's campaign finance law, is found in the Code Of Alabama 1975, at **§17-5-1 through §17-5-21.** It sets the rules for how and when candidates can raise and spend money. The law also specifies how campaign finance activities are reported.

MANDATORY CAMPAIGN FINANCE COMMITTEE

The law requires every candidate to organize a campaign finance committee and file an **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form, which lists who serves on the committee. [§17-5-4]

The committee form must be filed within *five (5) days* of becoming a candidate. For purposes of the FCPA, the law defines two ways to become a candidate [see §17-5-2(a)(1)]:

1. Reaching the disclosure threshold by either raising or spending *$1,000*, regardless of office sought.

2. Qualifying as a candidate with a political party or by filing a petition as a third party or independent candidate.

If, by the deadline for qualifying with a political party, an individual has not reached the disclosure threshold and, thus, has not filed an **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form, the campaign finance committee section on the political party qualification form may be used to set up the committee. The important thing to remember about the committee form is that it must be filed with the Secretary of State (for state offices) or with the probate judge (for local offices) within *five (5) days* of becoming a candidate. The candidate should be sure party officials (or the municipal clerk, in the case of a city candidate) forward a copy of the qualifying form by that deadline to the appropriate FCPA filing office or else provide him or her with a copy to file on his or her own behalf.

Effective September 1, 2015, all legislative, state school board

and statewide candidates who receive *$5,000* or more in contributions during an election cycle *must* file their **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form *online* at fcpa.alabamavotes.gov. For the 2016 election cycle, candidates for county office *may choose* to file electronically with the Secretary of State instead of filing manually with the probate judge. [§17-5-8(g)] Each county candidate who so chooses is required to file the appropriate form with the probate judge stating that all of the candidate's required FCPA forms and reports will be filed online with the Secretary of State throughout the election cycle.

Commencing with the 2018 election cycle, all principal campaign committees and political action committees that file with the judge of probate, other than candidates for municipal office, shall file electronically with the Secretary of State. [§17-5-9(e)]

A candidate may either serve as the sole member of his or her principal campaign committee or may appoint from two to five persons. If a candidate serves as his or her own principal campaign committee, he or she shall designate a person responsible for dissolving that principal campaign committee in the event of death or incapacity. If the designated person is unable to serve in this capacity at the time of death or incapacity, the principal campaign committee shall be dissolved by the candidate's personal representative as appointed by the judge of probate. [§17-5-4(c)]

A candidate may also select a **DESIGNATED FILING AGENT** when appointing his campaign finance committee. That agent will be authorized to file all required reports for the candidate during the election cycle.

The Secretary of State shall have the authority to dissolve or terminate any political action committee that has maintained a zero balance for one calendar year after providing a 90-day notice of intent to do so by certified mail with return receipt. [§17-5-5(d)]

STATEMENT OF ECONOMIC INTERESTS

Candidates at every level of government must file a **STATEMENT OF ECONOMIC INTERESTS** form with the State Ethics Commission simultaneously on the date such candidate files his or her qualifying papers with the appropriate election official. [§36-25-15] This form covers the previous calendar year. A candidate who has a

current **STATEMENT OF ECONOMIC INTERESTS** on file with the Ethics Commission does not have to file a duplicate form. For questions about filing the **STATEMENT OF ECONOMIC INTERESTS** electronically, please contact the Ethics Commission.

If the individual becomes a candidate by reaching the threshold for raising or spending campaign funds, the candidate files his or her **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form with the appropriate election official: candidates for state office file with the Secretary of State; candidates for county office file with the judge of probate. Candidates for city or town office file with the judge of probate in the county in which the city or town hall is located. The **STATEMENT OF ECONOMIC INTERESTS** form is to be filed with the State Ethics Commission on the same date that the election qualifying paperwork (declaration of candidacy) is filed with the appropriate election official.

If the individual becomes a candidate by qualifying with a political party, the **STATEMENT OF ECONOMIC INTERESTS** must be submitted to the State Ethics Commission simultaneously on the date such candidate files his or her qualifying papers with the appropriate political party.

If the individual is seeking ballot access by submitting a petition for independent candidacy, the **STATEMENT OF ECONOMIC INTERESTS** must be submitted to the State Ethics Commission simultaneously on the date such candidate files his or her petition to the appropriate election official: the Secretary of State for state candidates or the judge of probate for county candidates. [§36-25-15(a)]

Each election official who receives a declaration of candidacy or petition to appear on the ballot shall, within five days of receipt, notify the State Ethics Commission of the name of the candidate and the date on which the person became a candidate. The State Ethics Commission shall, within five buisness days of receipt of such notification, notify the election official whether the candidate has complied with the requirement to submit a **STATEMENT OF ECONOMIC INTERESTS.** [§36-25-15(b)]

If a candidate does not submit a **STATEMENT OF ECONOMIC INTERESTS** in accordance with the requirements of §36-25-15, his or her name shall not appear on the ballot, and he or she shall be deemed not qualified as a candidate in that election. The appropriate election official shall remove the name of that candidate from the ballot. [AG's Opinion 98-00200]

AFTER THE MANDATORY COMMITTEE FILING

While every candidate must appoint a principal campaign committee, candidates who have not reached the *$1,000* threshold are exempt from filing the monthly, weekly and daily FCPA reports until the threshold is reached. [AG's Opinion 90-00343] Otherwise, these reports are due prior to an election. [§17-5-8]

Though not required to file, candidates who have not reached their threshold may still choose to file the optional **WAIVER OF REPORT** form if they are concerned about the appearance of noncompliance.

After reaching the threshold, a candidate files each FCPA report at the required times. All contributions and expenditures, including those received or spent to reach the threshold, are reported. It is important to note that the payment of any qualifying fee or other cost associated with qualifying to run for office is considered an expenditure of the campaign, therefore, it should be reported as such. [§17-5-2(a)(7)]

Contributions from a single source and expenditures made to a single recipient that are greater than $100 must be itemized on these reports. Therefore, it is important for a candidate to maintain some type of internal record for contributions of $100 or less, since an additional donation from the same contributor could bring the total to more than $100 and result in a need to itemize that contributor's contributions. The same is true for expenditures of $100 or less.

All candidates for all legislative, state school board and statewide offices who receive more than *$5,000* in contributions during an election cycle must file their FCPA reports online. [§17-5-8(g)] The online FCPA reporting system contains everything a candidate needs to record contributions and expenditures and to file the required reports.

A county or municipal candidate may request forms for filing these reports from either the Office of the Secretary of State or from the local probate judge. The forms are also available on the Secretary of State's website. Forms and FCPA educational materials, such as this book, are supplied at no charge to the candidate. However, a candidate is not required to use the forms developed by the Office of the Secretary of State, as long as the information required by the FCPA is included in the report. [AG's Opinion 90-00211]

Electronic filing has been required since the beginning of the

2014 election cycle. Campaign committees and PACs receiving *$5,000* or less in an election cycle are exempt from filing FCPA reports electronically. [§17-5-8(g)] However, these campaign committees are still required to file disclosure forms on paper. These reports may be submitted by FAX, mail, or hand-delivery. [AG's Opinion 2012-028]

Candidates who spend more than *$1,000* on an "electioneering communication" will have met the filing threshold for campaign finance reporting. Therefore, the candidate must disclose its contributions and expenditures relating to the electioneering communication in accordance with Code of Alabama 1975, §17-5-8. However, the candidate is not required to duplicate any reporting. See also CHAPTER THREE, CAMPAIGN ADVERTISING, for further information on electioneering communication.

FILING LOCATIONS

1. **Reports for District, Circuit, Legislative, and Statewide Offices**

   For those candidates who are not filing online, reports are submitted to the Office of the Secretary of State. The mailing address is:

   Office of the Secretary of State
   P.O. Box 5616
   Montgomery, Alabama 36103-5616

   Candidates hand-delivering reports should bring them to the Elections Division located at 600 Dexter Avenue, Suite E-210, Montgomery, Alabama. Suite E-210 is located on the second floor of the State Capitol, which is in the east wing (just off the rotunda on the 2nd floor).

2. **Reports for local offices (municipal and county)**

   Municipal and county reports are submitted to the local office of the probate judge, unless a county candidate chooses to file electronically with the Secretary of State. **Municipal candidates may not file electronically.**

DEADLINES

According to the FCPA, forms that are hand-delivered or sent by regular United States mail must be received *on* or *before* the due date.

In order for disclosure reports sent by certified or registered United States mail to be deemed timely filed, they must be postmarked no later than the required filing date. [§17-5-10(b)]

For state campaign committees and state political action committees eligible to submit reports by FAX, the Secretary of State's FAX number is (334) 353-2295.

FILING SCHEDULE

During the election cycle, but no earlier than 12 months prior to an election, campaign finance disclosure reports are filed at specific times before the election.

The FCPA filing calendar for the current election year is available from the Secretary of State's office and is published on its website. Please take careful note of all deadlines as they may be subject to change.

The online FCPA reporting system contains a filing calendar for each election cycle; each candidate should choose the appropriate calendar for his or her race and the system will automatically generate the correct calendar for the candidate to follow.

Additionally, principal campaign committees and political action committees must disclose the receipt of any single contribution of *$20,000* or more within *two (2) business days* of receiving the contribution if the contribution is not reported in a monthly, weekly, or daily report. [§17-5-8.1(c)]

PRE-ELECTION REPORTS

1. Monthly Report

Monthly reports are due no later than the second business day of the following month and must include all reportable transactions for the previous full month. [§17-5-8(a)(1)]

2. Weekly Report

Weekly reports are due on the Monday of the following week for each of the four weeks before the election date; a week is defined as running from a Saturday to a Friday. The first weekly report shall include all reportable transactions that occurred since the most recently filed prior report. [§17-5-8(a)(2)]

3. Daily Report (if applicable)

Daily reports apply only to candidates for state legislature, state school board, and statewide offices. Daily reports do not apply to candidates for county and city offices or to candidates for district or circuit court, circuit clerk, or district attorney.

In some instances, campaign committees for state offices and political action committees are required to file daily reports. Beginning on the 8th day prior to the election, daily reports are due for principal campaign committees or PACs that receive or spend *$5,000* or more on that day with a view toward influencing the election. [§17-5-8(a)(3)] To clarify, daily reports would only be due on those days that the *$5,000* daily threshold is met.

Daily reports are due each filing day by 11:59 PM, *including Saturday* and *Sunday*. The last daily report, if applicable, is due by noon on the day before the election. [§17-5-8(a)

4. Major Contribution Report (if applicable)

Principal campaign committees must disclose the receipt of any single contribution of *$20,000* or more within *two (2) business days* of receiving the contribution if it is not

included in a monthly, weekly, or daily report. [§17-5-8.1(c)] The term "contribution" includes monetary and in-kind contributions as well as loans and the other transfers to the principal campaign committee or political action committee.

If not included on a monthly, weekly, or daily report, the contribution is to be filed on a **MAJOR CONTRIBUTION REPORT** form available in the electronic filing system or from the Secretary of State's Election Division.

5. Duplicate Reports

No duplicate reports are required by the law. A political action committee or principal campaign committee that is required to file a daily report is not required to also file a weekly report for the week preceding an election. A committee required to file a weekly report is not required to also file a monthly report in the month in which the election is held. A committee required to file a monthly report is not required to also file an annual report in the year in which the election is held. [§17-5-8(k)]

ANNUAL REPORTS

An annual report covering the previous year is due no later than January 31st of the succeeding year. [§17-5-8(b)]

Each principal campaign committee, political action committee, and elected state and local official who has not closed his or her principal campaign committee, shall annually file with the Secretary of State or judge of probate. [§17-5-8(b)]

No annual report is required to be filed by a person who holds office because he or she was appointed to serve the remainder of a term vacated by another person, until the person serving has created a principal campaign committee. [§17-5-8(b)]

PENALTIES

The 2013 revisions to the FCPA expanded the penalties for

noncompliance.

A candidate who intentionally violates a reporting requirement is guilty, upon conviction, of a Class A misdemeanor. [§17-5-19(b)]

A candidate who intentionally violates any section other than §17-5-7 of the FCPA is guilty of a Class A misdemeanor. [§17-5-19(a)]

Any person who intentionally violates §17-5-7, which addresses limits on candidates receiving campaign contributions and spending campaign money, is guilty, upon conviction, of a Class B felony. [§17-5-19(c)] See CHAPTER TWO, CAMPAIGN FUNDS, for further information on this section of the law.

The FCPA prohibits any candidate from accepting more than *$1,000* from a principal campaign committee of a federal candidate. [§17-5-15.1(a)] A candidate who violates this provision is guilty, upon conviction, of a Class C felony. [§17-5-15.1(b)]

Commencing with the 2018 election cycle, the appropriate election official, based on the location of filing, shall levy an administrative penalty against any person who fails to timely file a required report and who does not remedy the filing of the required report. The State Ethics Commission shall have the authority to levy an administrative penalty against any person who files a materially inaccurate report and who does not remedy the filing of the report. [§17-5-19.1(a)]

Civil penalties levied shall be paid to the appropriate filing official within 45 days of the finality of any review. All penalties collected by a judge of probate shall be distributed to that county's general fund, and all penalties collected by the Secretary of State shall be distributed to the State General Fund. [§17-5-19.1(e) and (f)]

The schedule of civil penalties shall be as follows [§17-5-19.1(b)(1-3)]:

- ⇨ the lesser of $300 or 10% of the amount not properly reported for a first offense in an election cycle;
- ⇨ the lesser of $600 or 15% of the amount not properly reported for a second offense in an election cycle; or
- ⇨ the lesser of $1,200 or 20% of the amount not properly reported for a third and all subsequent offenses in an election cycle.

A fourth failure to properly file a required FCPA report creates a

rebuttable presumption that the candidate is intentionally violating the reporting requirements. The Secretary of State or judge of probate shall notify the Attorney General or the appropriate district attorney of all persons who violate the filing requirements four or more times in an election cycle. [§17-5-19.1(c)]

Any penalties assessed may be paid with campaign funds. [§17-5-19.1(i)]

Any person upon whom a civil penalty has been imposed may seek a review by filing written notice with the Secretary of State or judge of probate within 14 days after notification of the imposed penalty. The Secretary of State or judge of probate shall refer such review to the State Ethics Commission. [§17-5-19.2(a)]

The commission may set aside or reduce a civil penalty upon a showing of good cause. The person seeking review shall bear the burden of proof. [§17-5-19.2(b)]

Any candidate who voluntarily files an amended report to correct an error without being prompted by the filing official, will not be subjected to the civil penalty. In the case of a candidate, the correction must be filed prior to the election at issue. In the case of a political action committee, the correction must be filed prior to the close of the calendar year. [§17-5-19.1(g)]

FORMS

FCPA candidate forms fall into two categories: 1) committee forms and 2) disclosure filings. Disclosure filings are submitted as pre-election reports (i.e. monthly, weekly, daily reports), annual reports (due each January, except for the year in which a candidate participates in an election), and termination reports (filed upon dissolution of a committee).

As noted previously, candidates who are required to file electronically will have access to all the forms online, and after registering with the online FCPA reporting system, will no longer file paper forms for any reason.

COMMITTEE FORMS

Candidates have two committee filings, the **APPOINTMENT**

OF PRINCIPAL CAMPAIGN COMMITTEE form, used to set up the committee, and the **STATEMENT OF DISSOLUTION,** filed when the committee is closed.

The importance of the mandatory committee filing has already been discussed on pages 4 and 5. Once a committee is formed and the threshold reached, a candidate continues filing disclosure reports until the committee is dissolved.

CHANGES/UPDATES. Whenever a change takes place in the committee, such as the addition or removal of officers or members, change of phone number or address, or change of name for the political committee, candidates may provide the new information by filing a new **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form as discussed on pages 4 and 5. [§17-5-5(c)]

STATEMENT OF DISSOLUTION. Once a candidate determines that he or she will no longer receive contributions or make expenditures, a **STATEMENT OF DISSOLUTION** form must be filed. [§17-5-5(d)] This form should be accompanied by a **TERMINATION REPORT** which itemizes all contributions/ expenditures of more than $100 received or made since the last itemized report. The **TERMINATION REPORT** is filed using FORMS 1A-5, discussed under the **ANNUAL REPORT** and pre-election report forms sections on this and the following pages. If the **TERMINATION REPORT** is not filed with the **STATEMENT OF DISSOLUTION,** then the candidate must file the requisite **ANNUAL REPORT** covering the last year of activity.

The candidate must also disclose how any excess funds will be used. See pages 21 and 22 for information on the law and excess funds.

FCPA DISCLOSURE FILINGS

Upon reaching the disclosure threshold by either raising or spending *$1,000*, a candidate is responsible for filing the following disclosure reports, itemizing contributions or expenditures of more than *$100*:

- ⇨ **Monthly Reports** — due no later than the second business day of the following month and must include all reportable transactions for the previous full month.

- ⇨ **Weekly Reports** — due on the Monday of the following week for each of the four weeks before the election date; for reporting purposes, a week is defined as running from a Saturday to a Friday.

- ⇨ **Daily Reports** — beginning on the 8th day prior to the election, daily reports are due for principal campaign committees and PACs that receive or spend *$5,000* or more on that day with a view toward influencing the election. [§17-5-8(a)(3)] To clarify, daily reports would only be due on those days that the *$5,000* daily threshold is met. **Daily reports do not apply to circuit, district, county, and city candidates.**

- ⇨ **Major Contribution Report.** Principal campaign committees and PACs must file a report disclosing the receipt of any single contribution of *$20,000* or more within *two (2) business days* of receiving the contribution if the contribution has not already been reported in a finance disclosure report.

FCPA REPORT FORMS (FORMS 1-5)

Form 1: *Summary of Contributions and Expenditures*. This FCPA form must be signed by the candidate or elected official and notarized. However, for electronically filed reports, the form is electronically signed and does not require notarization.

Form 2: *Cash Contributions*. The FCPA requires that cash contributions of more than $100 be itemized. If they choose to do so, candidates may itemize contributions of $100 or less, but this is not required by law. However, if contributions of $100 or less are not itemized, the law does require that they be totaled and reported. They may be reported as "non-itemized" contributions on **FORM 1**.

As mentioned earlier, some type of campaign bookkeeping system should be used to track contributors making small donations of $100 or less per contribution. If the combined contributions from any one contributor total more than $100, an itemized entry on **FORM 2** is then required.

For purposes of reporting contributions, the date of

receipt of a contribution shall be the first date the recipient of the contribution is able to make use of the contribution. In the case of a contribution in the form of a check, the date of the receipt is the earlier of: 1) ten days from the date that the check came within the recipient's control; or 2) the date that the check was deposited into the recipient's account. [§17-5-2(a)(3)(c)]

A political action committee and a principal campaign committee shall maintain a checking account, money market account, or other similar banking account. [§17-5-6]

Form 3: *In-kind Contributions*. An "in-kind" contribution is made when equipment, furniture, office space, or some other item of value other than money is contributed or used. A reasonable market value should be listed.

Form 4: *Receipts from Other Sources*. Receipts from other sources are usually funds received through interest payments on a political committee bank account, loans made to the committee or refunds.

Form 5: *Expenditures*. The FCPA requires that expenditures of more than $100 be itemized. Candidates may itemize expenditures of $100 or less, but this is not required by law. However, if the expenditures of $100 or less are not itemized, the law does require that they be totaled and reported. They may be reported as "non-itemized" expenditures on **FORM 1.**

As with contributions, some type of campaign bookkeeping system should be used to track small expenditures. If expenditures to the same vendor total more than $100, an itemized entry on **FORM 5** is then required.

For purposes of reporting expenditures, the date an expenditure is made is the date the instrument authorizes the expenditure. In the case of an expenditure made by check or electronic payment, the date of expenditure is the date of the check or electronic payment. [§17-5-2(a)(7)(c)]

No expenditure of funds may be made by any such committee except by check drawn on such account, electronic transfer from such account, a credit card the balance of which is paid from such account, or petty cash fund from which it may make expenditures not in excess of $100 to any person in connection with a single purchase transaction. [§17-5-6]

ANNUAL REPORT

The FCPA requires candidates and elected officials to file an **ANNUAL REPORT** by January 31st, which covers all contributions and expenditures for the campaign committee for the preceding calendar year. Each principal campaign committee, political action committee, and elected state and local official who has not closed his or her principal campaign committee, shall annually file with the Secretary of State or judge of probate. [§17-5-8(b)]

Persons who have been appointed to a public office are not required to file an **ANNUAL REPORT** until they become a candidate by either running for the same office or another office.

The **ANNUAL REPORT** is comprised of the same forms as the other FCPA disclosure reports, discussed in the previous section, with one exception.

FORM 1 of the disclosure reports is replaced by **FORM 1A,** a form specifically designed for the purposes of the **ANNUAL REPORT. FORM 1A** is designed with two sections.

Section I summarizes totals of contributions/expenditures since the last filing.

In the itemized sections of the **ANNUAL REPORT (FORMS 2-5),** candidates include those entries of more than $100 that have been received or spent since the last itemized report.

Section II is a **summary** of contributions/expenditures for January 1 – December 31 of the previous year. [**FORM 1A** must be notarized if filed on paper.]

WAIVER OF REPORT (OPTIONAL FORM)

Those principal campaign committees that have not reached the contribution/expenditure threshold are not required to file reports. However, an optional **WAIVER OF REPORT** form is provided for those who wish to place a record of their status in a formal FCPA report.

A **WAIVER OF REPORT** form may not be used by: 1) candidates who have a principal campaign committee that has met the contribution/expenditure threshold in any election cycle; 2) elected officials, filing an **ANNUAL REPORT**, regardless of whether they maintain a principal campaign committee.

PUBLIC ACCESS

The FCPA requires the Secretary of State and probate judges to make the campaign finance reports available for public inspection and copying during regular office hours.

However, the law specifies that information copied from the reports may not be sold or used by any political party or any political committee to solicit contributions or for commercial purposes, without the express written permission of the candidate or political committee reporting the information. [§17-5-11(2)]

POINTS TO NOTE

Campaign Activities. The FCPA contains other provisions, in addition to those dealing with campaign finance reporting. The Office of the Secretary of State recommends a complete reading of the act which is contained in the Code of Alabama 1975, §17-5-1 through §17-5-21.

Prohibitions. Candidates should note the statutes on conduct that are contained in §17-17-33 and §17-17-34 of the Code of Alabama. Among the prohibited activities are: making a contribution in someone else's name, buying votes, interfering with a person's right to freely cast a vote, soliciting money or anything of value by

physical force, job discrimination, financial reprisal, or threats, or fraudulently misrepresenting oneself as acting for a candidate.

Other sections of state law also address campaign behavior; see pages 20 through 24 for highlights of those statutes.

CHAPTER TWO

CAMPAIGN FUNDS

The FCPA has strict controls on the purposes for which a candidate may solicit campaign funds, how the funds can be spent, and when candidates can raise money. In the 2010 special legislative session, the Legislature, through Act of Alabama 2010-765, enacted new rules regarding from whom a candidate may receive funds and to whom a candidate may make contributions.

Additionally, Act 2013-311 and Act 2015-495 revised a number of provisions relating to fundraising and contribution limits.

FUNDRAISING

1. **Limitations on Campaign Committees**

   It is unlawful for one candidate's campaign committee to contribute to another candidate's campaign. However, a candidate is permitted to conduct a transfer of anything of value from one campaign committee to another campaign committee when the committees are for the same person. Political action committees (PACs) are permitted to make contributions to principal campaign committees (PCCs). [§17-5-15(b)]

   State and local campaign committees are prohibited from receiving more than $1,000 from a principal campaign committee of a federal candidate. [§17-5-15.1(a)]

PAC
Political Action Committee

PCC
Principal Campaign Committee

At-a-Glance Contribution Guide*

PAC	→	**PCC**	☑
PAC	→	**PAC**	⊘
PCC	→	**PCC**	⊘
PCC	→	**PAC**	⊘

*Note—this guide is for general illustrative purposes only. Please refer to *Section 1* above for special circumstances.

2. Accepting and Spending Campaign Funds

The law states that a candidate may only accept campaign contributions for three purposes [§17-5-7(b)(1)-(4)], namely, to:

- Influence the outcome of an election.
- Pay off a campaign debt.
- Pay all expenses associated with an election challenge, including quo warranto challenges.

Campaign funds, including excess funds left after the election, may be spent only for the following purposes [§17-5-7(a)(1)-(7)]:

- Expenditures of the campaign.
- Expenditures that are reasonably related to performing the duties of the office held [does not include personal and legislative living expenses].
- Donations to the State General Fund, the Education Trust Fund or equivalent county or municipal funds.
- Donations to an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any other charitable, educational, or eleemosynary cause of Section 501 of Title 26 of the U.S. Code.
- Inaugural or transitional expenses. [Warning: the Ethics Act prohibits converting to personal use contributions from an inaugural or transitional fund (§36-25-6).]
- Donations to a legislative caucus organization registered with the Clerk of the House, Secretary of the Senate, or both in the case of a bicameral caucus which does not operate as a political action committee. [§17-5-5.1]
- Legal fees and costs associated with any civil action, criminal prosecution, or investigation related to

conduct reasonably related to performing the duties of the office held.

3. **Use of Excess Campaign Funds While in Office**

The FCPA permits a campaign committee, during a two-year period beginning on the day after each general election and ending on the day of the next regularly scheduled general election, to pay qualifying fees to a political party and give up to $5,000 to the political party. The campaign committee can also pay the political party for any tickets to party functions, and state or local party dues. Campaign committees for independent candidates or write-in candidates can pay for similar expenses. [§17-5-7(d)]

FUNDRAISING PERIOD

Candidates may begin raising money 12 months prior to the election in which they intend to be on the ballot [§17-5-7(b)(2)]. However, FCPA provision §17-5-7(b)(2) prohibits candidates for legislative and statewide offices from *raising* money while the Alabama Legislature is in session, except within 120 days of a primary, primary runoff, or general election. [§17-5-7(b)(2)] These restrictions do not apply to loans candidates make to their own committee. [§17-5-7(b)(2)]

The fundraising prohibition does not affect expenditures. State candidates may continue to spend campaign funds while the Alabama Legislature is in session.

The fundraising prohibition does not apply to candidates for county or city offices. They may continue raising money when the Legislature is in session.

CONTRIBUTION LIMITS

State law limits state and local campaign committees from receiving more than $1,000 from a principal campaign committee of a federal candidate. [§17-5-15.1(a)]

Act 2013-311 specifically repealed previous statutes that limited corporate contributions to $500 per candidate per election. [§17-5-14(a)]

State law prohibits contributions, transfers of funds, or expenditures to any political action committee, or 527 political organization, from any political action committee, 527 political organization, or a principal campaign committee. [§17-5-15(b)]

It also prohibits contributions from one campaign committee to another campaign committee, except where an individual is giving from his or her campaign committee for one office to his or her campaign committee for another office. [§17-5-15(b)]

CAMPAIGN DEBT

Candidates should take particular note that the FCPA limits the fundraising period to clear campaign debts up to 120 days after the election. They are limited to raising only up to the amount of the debt plus the entire amount of filing threshold for that office (i.e., $1,000). [AG's Opinion 99-00090]

All contributions received after the election to retire any debt must be reported in the next regular report the campaign files:

> *"Under the FCPA, all contributions...by candidates, their principal campaign committees, and other political committees are to be reported regardless of the time when the contributions are received."* [AG's Opinion 96-00120]

BRIBES AND CORRUPT INFLUENCE

The FCPA prohibits a candidate or campaign finance committee from accepting, soliciting, or receiving a contribution as a bribe or for the intention of corruptly influencing the official actions of a public official or a candidate for public office. [§17- 5-7(c)]

PENALTY

Any person who intentionally violates the section that governs how and when money can be raised [§17-5-7] is guilty, upon conviction, of a Class B felony. [§17-5-19(c)] A Class B felony carries a penalty of up to $30,000 and/or not less than two and not more than 20 years imprisonment. [§§ 13A-5-6, 13A-5-11]

In general, the statute of limitations for a violation of the Fair Campaign Practices Act (Title 17, Chapter 5 of the Code of Alabama) is two years from the commission of the offense. However, the statute of limitations for a violation of §17-5-7 is 4 years. [§17-5-19(e)]

Violators can be prosecuted by either a district attorney or the attorney general. [§17-5-19(d)]

CHAPTER THREE

CAMPAIGN ADVERTISING

The FCPA specifies that campaign advertising and electioneering communication appearing in print, broadcast, and electronic media must clearly and distinctly identify the entity responsible for paying for the advertisement or electioneering communication. [§17-5-12(a)]

Campaign literature and advertisements must carry this information and broadcast materials must be identified at the beginning, during, or the end of the radio or television spot. [§17-5-12(a)]

Act 2011-697 created the definition of "electioneering communication". Electioneering communication involves any of the following types of communication:

1. Any communication circulated through federally regulated broadcast media;
2. Any mailing or other distribution;
3. Any electronic communication;
4. Any phone bank; or
5. Any publication. [§17-5-2(a)(5)]

These types of communication must also fulfill all of the four (4) following elements in order for it to meet the "electioneering communication" definition.

1. It must contain the name or image of a candidate;
2. It is made within 120 days of an election in which the candidate's name appears on the ballot;
3. The only reasonable conclusion from the presentation and content of the communication is that it is intended to influence the outcome of the election; and
4. The expenditure exceeds one thousand dollars ($1,000). [§17-5-2(a)(5)]

ELECTIONEERING COMMUNICATION DISCLOSURE REPORTS

Any person, including candidates, who spends more than *$1,000* on an "electioneering communication" is required to file a disclosure report. The reports must identify the source or sources of the funds used for the electioneering communication and the recipients of expenditures related to the electioneering communication. [§17-5-8(h)]

DISCLAIMER REQUIREMENT

The FCPA does not give a specific format for wording the disclaimer. However, the FCPA does state that political advertisements or electioneering communication must clearly and distinctly identify the entity responsible for paying for the advertisement or electioneering communication. The disclaimer must also be displayed on printed advertisements. Disclaimers for broadcasts must occur at the beginning, during, or end of a radio or television spot, stating that the communication was a paid advertisement and identifying the paying entity. [§17-5-12(a)]

Such words as paid advertisement by, paid for by, and paid political ad meet the requirements of the act; however, an advertiser is not limited to just those phrases. The attorney general has advised that:

> *"...words which indicate that the advertisement is a paid political advertisement meet the requirements of the law."* [AG's Opinion 94-00227]

In addition, the disclaimer must contain the identification of the person, nonprofit corporation, principal campaign committee, or entity placing the ad. Under the FCPA, the term "identification" means *full name and complete address* [§17-5-2(a)(7)]. The attorney general has stated that a complete address includes the street or post office box, city, and state. [AG's Opinion 94-00227]

Refer to page 27 for sample illustrations of typical political advertisements with disclaimers.

SAMPLE DISCLAIMER ADVERTISEMENTS

Elect
John Doe

Paid for by the
Committee to Elect John Doe
PO Box 5551212
Inacounty, AL 99999

Figure 1: Example of a political advertisement with a disclaimer.

Elect
Jane Doe to
Public Office

Paid political advertisement by
Committee to Elect Jane Doe
PO Box 1212555
Ourfair City, Alabama 99999

Figure 2: Example of a political advertisement with a disclaimer.

DISCLAIMER EXCEPTIONS

1. Act of Alabama 2011-697 lists (9) types of paid political advertisements and electioneering communications that

are excluded from the identification requirement. The disclaimer requirements do not apply if the advertisement is:

a. Designed to be worn by a person; [§17-5-12(b)(1)]

b. Placed as a paid link on an Internet website, if the message does not exceed 200 characters in length, and the link directs to another Internet website that has a disclaimer; [§17-5-12(b)(2)]

c. Placed as a graphic or picture link where a disclaimer is not practical due to the size of the picture, and the link directs to another Internet website that has a disclaimer; [§17-5-12(b)(3)]

d. Placed at no cost on an Internet website where there is no cost to post content for public users; [§17-5-12(b)(4)]

e. Placed on an unpaid profile account available to the public without charge or a social networking Internet website if the source of the message is obvious from the content or format of the message; [§17-5-12(b)(5)]

f. Distributed as a text message or other message via Short Messages Service if the message does not exceed 200 characters in length or requires the recipient sign up or opt in to receive it; [§17-5-12(b)(6)]

g. Connected with or included in software application where the user actively chooses to access the application from or through a website that has a disclaimer; [§17-5-12(b)(7)]

h. Sent by a third-party from or through a campaign website that has a disclaimer; [§17-5-12(b)(8)]

i. Contained in or distributed through any other form of technology where a disclaimer is not practical due to its size or nature. [§17-5-12(b)(9)]

2. *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995)

A U.S. Supreme Court ruling in *McIntyre v. Ohio Elections Commission* seems to provide one very limited exception for advertising identification. In that case, the court

upheld the right of an individual to distribute anonymous leaflets opposing a proposed school tax levy. The impact on the FCPA disclaimer requirements, however, is minimal. Alabama's Attorney General has written that the ruling:

> *"...is limited to individuals who distribute anonymous written material (particularly leaflets) in a non-candidate election."* [AG's Opinion 95-00218]

In all other circumstances, the advertising must carry identification.

APPLICATION OF DISCLAIMER

The advertising disclaimer must be on all types of non-excluded advertising, such as billboards, yard signs, bumper stickers, and pencils.

ROBOCALL DISCLOSURE

Every automated or pre-recorded communication made through an automated telephone dialing service (often referred to as a robocall) must contain a clear notice at the end of the communication stating that it is a paid political advertisement and identifying the person or other entity that paid for the communication. [§17-5-16(b)]

PENALTY

The Attorney General or a district attorney may prosecute any person who violates the FCPA. [§17-5-19(d)] Failure to comply with the advertising requirements is a Class A misdemeanor and, upon conviction, is subject to a fine of not more than $6,000 and/or imprisonment of not more than one year. [§13A-5-12; §17-5-19(a)]

CAMPAIGN ADVERTISING AT THE POLLING PLACE

The FCPA requires that all campaign advertising must be clearly marked. Another section of law, §17-9-50, prohibits anyone from campaigning within 30 feet of the polling place. Generally, that distance is interpreted as 30 feet from the door of the polling place. [AG's Opinion 82-00113]

Candidates frequently ask if supporters may wear campaign T-shirts or buttons when they go to the polling place to vote or when campaign workers are asked to accompany a voter who has requested assistance. AG's Opinion 93-00118 states that there is no provision that specifically prohibits an elector from wearing campaign buttons, badges, or T-shirts while inside the polling place to vote or assist another voter.

Also, nothing prohibits a voter from taking a sample ballot into the polling place, but a sample ballot should not be left in the polling place.

It should be noted that poll watchers, who can be appointed by the candidate or a political party, are prohibited from campaigning while inside the polling place, and the attorney general has held that wearing buttons, badges, or T-shirts suggests, either directly or indirectly, how a citizen should vote and therefore, constitutes campaigning. [AG's Opinions 93-00118 and 84-00020]

OTHER CODE SECTIONS OF INTEREST

MISCELLANEOUS OFFENSES
SECTIONS 17-17-36 through 17-17-45

This section of law prohibits such illegal voting as casting more than one ballot for the same office or knowingly attempting to vote when not entitled to do so.

Citizens are prohibited from bribing or attempting to influence voters, buying or selling votes, altering or changing the vote of an elector, or disturbing an elector on election day.

A candidate convicted of bribing or attempting to influence a voter is not allowed to hold the office to which he or she was elected for that term.

RIGHTS OF CITY, COUNTY, STATE EMPLOYEES
SECTION 17-1-4

City, county, and state employees have the right to participate in city, county, or state political activities to the same extent as any other citizen of the state, including endorsing candidates and contributing to campaigns. City, county, and state employees also have the right to join local political clubs and organizations and state and national political parties. They may also publicly support issues of public welfare.

IMPROPER USE OF STATE PROPERTY, TIME, ETC.
FOR POLITICAL ACTIVITIES
SECTION 17-17-5

No state, county, or city employee shall use public funds, property, or time, for any political activity.

It is unlawful for any officer or public employee to solicit any type of political campaign contributions from other employees who work for the officer or employee in a subordinate capacity.

It is unlawful for an officer or public employee to coerce or attempt to coerce a subordinate employee to work in a political campaign or cause.

USE OF STATE-OWNED PROPERTY
SECTIONS 36-12-60 through 64

It is unlawful for any state officer or employee to use or to permit to be used any state-owned property including stationery, stamps, office equipment, office supplies, or automobiles for political activity.

State employees are also prohibited from transporting campaign literature in either a state vehicle or in a private vehicle while mileage is being paid for by the state.

CHAPTER FOUR

FREQUENTLY ASKED QUESTIONS

The Elections Division receives many questions from candidates regarding the FCPA and how it relates to a particular situation or set of circumstances. The following is a discussion of some of those questions that are asked most frequently.

Should you have a question that is not addressed in this section, please contact the Elections Division for further assistance.

What is the difference between a "state office" and a "statewide office"?

The term "state office" refers to any elected position that is an official in Alabama *state government*. The term includes constitutional officers, legislative members, state school board members, and circuit and district judges, to name a few. The term does not include those positions in *county or municipal government*, such as county commissioner, county school board member, mayor or city council member.

The term "statewide office" refers to any state office that is elected in a statewide vote, such as governor, lieutenant governor, secretary of state, treasurer, attorney general, to name a few.

"Statewide office" does not include any state offices that are elected by district, such as members of the Legislature, circuit or district judges, or state school board members.

I am a candidate and have met the filing threshold for the office I want to hold. However, I do not have any opposition in my election. Do I have to file a campaign finance report?

Yes. In 2009, the Alabama Legislature amended the FCPA to require all candidates who have reached the filing threshold to file all campaign finance reports, even if the candidate has no opposition. See page 46 for additional information.

Must I set up a separate bank account for my principal campaign committee?

Yes. The FCPA specifies that principal campaign committee funds must be segregated and that there can be no commingling of personal funds with campaign funds. [§17-5-6]

A political action committee and principal campaign committee shall maintain a checking account, money market account, or other similar banking account and shall deposit any contributions received by such committee into such account. No expenditure of funds may be made by any such committee except by check drawn on such account, electronic transfer from such account, a credit card the balance of which is paid from such account, or out of a petty cash fund from which it may make expenditures not in excess of $100 to any person in connection with a single purchase transaction. [§17-5-6]

Am I allowed to campaign before I qualify for candidacy for an office?

Alabama's elections laws do not place a restriction on when a candidate can begin campaigning for office. As a practical matter, the FCPA provides that a campaign can raise or receive funds only for a period of twelve (12) months prior to an election. This restriction does not apply to a loan from a candidate to his or her own campaign committee. [§17-5-7(b)(2)]

I am running for a federal office. Do I have to report under the FCPA?

No. Alabama participates in the FEC State Filing Waiver program that waives the requirement that campaign finance reports filed with the FEC also be filed with the state election office, provided that the state has an adequate system to serve the public with electronic access to, and duplication of, reports and statements.

Do I have to keep receipts for the expenditures made during the campaign?

Yes. The FCPA states that the political committee treasurer

must keep a receipted bill or canceled check for every expenditure greater than $100 and for expenditures of $100 or less, if the aggregate amount of such expenditures to the same person during a calendar year is greater than $100. The receipts should be kept for a period of two years from the date of the expenditure.

I charge many of my campaign expenses on a credit card. Can I itemize only the total amount I pay to the credit card company?

No. The FCPA requires itemization and identification (full name and complete address) of:

> *each person to whom expenditures have been made... within the calendar year in an aggregate amount greater than $100.00, the amount, date and purpose of each expenditure...*[§17-5-8(c)(7)]

This issue is also addressed in AG's Opinion 95-00132 that says:

> *Several expenditures should not be lumped together under a general heading of credit card expenses.*

If a candidate could legally enter only the name and full identification of the credit card company, many expenditures of more than $100 could be hidden.

Do I have to file an APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE form even if I do not reach the campaign finance contribution/expenditure threshold of $1,000?

Yes. All candidates must file an APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE form within five days of qualifying (with a political party or as an independent candidate) or within five days of reaching the campaign finance contribution/ expenditure threshold.

I received an unwanted, unsolicited check from a PAC, and I

returned it. Must I report that as a contribution?

Act 2013-311 specifically amended the FCPA to authorize the return or refund of any lawful campaign contribution. A refund is permitted so long as the original contribution was reported in an itemized manner and the refund is also itemized in a report. [§17-5-7.1(a)] If the contribution is not deposited in the committee's bank account, it may be returned without any reporting requirement. The new provision requires candidates or PACs to refund or return any unlawful contribution within 10 days of receipt. [§17-5-7.1(b)]

Does the FCPA require that I put the address of my political committee on a campaign button?

Probably not. §17-5-12(b)(1) provides that disclaimer requirements do not apply if the advertisement is designed to be worn by a person. If the campaign button is designed to be worn by a person, a disclaimer is not required.

Is there any prohibition against my borrowing money from my campaign account, provided that I pay back the money plus the prevailing rate of interest?

The Ethics Act states in §36-25-6:

> *Contributions to an office holder, a candidate, or to a public official's inaugural or transitional fund* ***shall not be converted to personal use.***

The Office of Secretary of State further believes that such action is also prohibited by these sections:

§17-5-7(b)(1) of the FCPA —

> *...a candidate, public official, or principal campaign committee may only accept, solicit, or receive contributions:* ***to influence the outcome of an election.***

§36-25-5(a) of the Ethics Act —

> *No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.*

§17-5-7(a) of the FCPA —

> …A candidate, public official, or treasurer of a principal campaign committee as defined in this chapter, may only use campaign contributions, and any proceeds from investing the contributions that are in excess of any amount necessary to defray expenditures of the candidates, public official, or principal campaign committee, for the following purposes:
>
> 1. Necessary and ordinary expenditures of the campaign.
> 2. Expenditures that are reasonably related to performing the duties of the office held. For purposes of this section, expenditures that are reasonably related to performing the duties of the office held do not include personal and legislative living expenses, as defined in this chapter.
> 3. Donations to the State General Fund, the Education Trust Fund or equivalent county or municipal funds.
> 4. Donations to an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any other charitable, educational, or eleemosynary cause of Section 501 of Title 26 of the U.S. Code.

5. Inaugural or transitional expenses.
6. Donations to a legislative caucus organization registered under this chapter which does not operate as a political action committee.
7. Legal fees and costs associated with any civil action, criminal prosecution, or investigation related to conduct reasonably related to performing the duties of the office held.

Does a write-in candidate have to comply with the FCPA?

Yes, if the candidate has received contributions or made expenditures with a view toward bringing about his or her election. As with other candidates, the contributions or expenditures must reach the filing threshold of $1,000 to trigger the reporting requirements. [AG's Opinion 91-0084]

I have several groups, such as the Young Republicans or the Democratic Women, who want to work in my campaign. May I use campaign funds to donate to a group in return for its members help?

No. A candidate may not transfer campaign funds to any political action committee or 527 political organization, which generally covers most political groups except county and state parties, which are recognized as political action committees under the FCPA. [§17-5-15(b)] Candidates can only transfer funds to a political party, as a political action committee, within the restrictions of §17-5-7(d).

However, candidates are not prohibited from paying individuals directly who assist with the campaign.

I have several volunteers who work in my campaign. Must I assess a fair labor wage and report that as an in-kind contribution?

No. The FCPA lists in §17-5-2(a)(2)(b) several services that are not considered contributions including:

- ⇨ Value of services provided by individuals who volunteer

their time on behalf of a candidate.

- ⇨ The use of real or personal property and the cost of invitations, food, or beverages, voluntarily provided by an individual to a candidate when the voluntary personal service is on the individual's residential or business premises.

- ⇨ Any unreimbursed payment for travel expenses made by an individual who volunteered on behalf of a candidate.

- ⇨ The amount spent by a state or local political party for the preparation, display, mailing, or other distribution of a printed slate card or sample ballot, or other printed listing of two or more candidates for any public office. [Note: this exemption does not extend to the costs incurred by the committee when such a listing is placed on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising.]

- ⇨ The value or cost of polling data and voter preference data and information, if provided to a candidate or political committee, unless the information was compiled with the advance knowledge of and approval of the candidate or the political committee.

I am a member of the Alabama Legislature and am considering renting an apartment in Montgomery. Can I pay the rental expense from my campaign account?

No. The FCPA prohibits using campaign funds for personal or legislative living expenses. The Act lists such prohibited expenses as:

> *Household supplies, personal clothing, tuition payments, mortgage, rent, or utility payments for a personal residence; admission to an entertainment event or fees for a country club or social club, unless tied to a specific campaign event or functions involving constituents; and any other expense, excluding food and beverages, that would exist irrespective of the candidate's campaign or duties as a legislator. Personal and legislative living expenses shall not include expenses for food, beverages, travel, or communication incurred by the legislator in the performance of the office held.* [§17-5-2(a)(11)]

Can I pass out campaign materials on private property, such as an apartment complex, if there is a "no soliciting" sign?

That's a question that must be addressed with the property owner. Any enforcement of "no soliciting" would be between the owner and an individual who wishes to campaign. [AG's Opinion 96-00306]

Is it legal to pass out sample ballots at the polling place?

Yes, provided that those handing out the sample ballots are at least 30 feet from the door of the polling place. Also, those individuals distributing sample ballots should not in any manner attempt to intimidate or harass voters. Voters may take marked sample ballots into the polling place for personal use but should not leave them in the polling place.

May a candidate assist a voter?

Yes. Under the *Harris v. Siegelman* federal court order, a voter may request assistance from anyone other than those persons prohibited by federal law. [700 F. Supp. 1083 (1988)] Federal law prohibits assistance from the voter's employer or an agent of the employer or from an officer or agent of the voter's union. §17-9-13 was revised to incorporate this language and bring the text of this section into compliance with the terms of *Harris v. Siegelman*.

However, candidates should note that they may assist only if the voter requests the help. The voter is then required to sign the poll list in a designated column showing that assistance is requested, and the candidate must also sign the poll list.

Can citizens use video cameras at the polling place?

No. The United States Department of Justice wrote the following to the state prior to the 1994 general election:

> *We have found that no useful information is obtained, and federal law is likely to be violated, when private citizens form "ballot security" forces and attempt to take over the role of policing polling places. While this*

> *type of action often is proffered in the guise of helping law enforcement officials, the filming at or near the polls achieves nothing of the kind. Instead, we have found that such action intimidates lawful voters and interjects an element of fear into the process by which our republican form of government is guaranteed to our citizens.*

Instead, citizens or poll watchers who believe election violations are occurring at the polling place should immediately notify either the local sheriff, local district attorney or the attorney general's office.

At the end of the campaign, what must I do to dispose of campaign property?

Property purchased by or contributed to a principal campaign committee with a value of $500 or more shall be liquidated at fair market value or donated to a qualified entity not more than 120 days following the election. Any funds generated by the liquidation of the property shall be deposited in the candidate's principal campaign committee account. [§17-5-7.2(a)]

Property purchased by or contributed to a principal campaign committee that can be used by the person in the performance of his or her duties of the office he or she was elected to hold need not be liquidated as long as he or she holds office. [§17-5-7.2(b)]

CHAPTER FIVE

ELECTED OFFICIALS

The Secretary of State congratulates each candidate who wins his or her election! Before getting immersed in the details of the job, each elected official should take a few minutes to note the information in this chapter.

COMMISSIONS

All state officials must be commissioned by the Secretary of State and Governor before assuming office. County officials who meet certain requirements may also receive commissions.

The law dictates what documents must be filed and where for obtaining a commission. Generally, an elected official must file an oath and/or a bond at the state or county level, depending upon the office. County officials must also have a certification from their probate judge. The law requires the Office of the Secretary of State to charge everyone a $5.00 commissioning fee.

Information packets providing the specific requirements for each office are available from the Government Services Division in the Office of the Secretary of State.

FILING REQUIREMENTS

FCPA

All elected officials who have not closed their principal campaign committee must file an ANNUAL REPORT by January 31st each year, even if they have had no activity. [§17-5-8(b)] Remember, an ANNUAL REPORT is due not just for the year you are elected but for every year you are in office if your principal campaign committee has not been closed.

No annual report is required to be filed by a person who holds office because he or she was appointed to serve the remainder of a term vacated by another person, until the person serving has created a principal campaign committee. [§17-5-8(b)]

STATEMENT OF ECONOMIC INTERESTS

All elected officials must file a STATEMENT OF ECONOMIC INTERESTS with the Ethics Commission every year by April 30. For more information, contact the State Ethics Commission, (334) 242-2997.

JUDICIAL REPORTS

Judges have additional requirements and should consult Canons 6C and 7 of the Canons of Judicial Ethics relating to filing requirements and campaign conduct in general.

The requirement previously set forth in 12-24-2(a) to file a statement of disclosure two weeks prior to the commencement of the term of office for any judge or justice was repealed during the 2014 legislative session.

APPENDIX A

INDEPENDENT CANDIDACY

Those not qualifying through a political party may obtain ballot access by submitting a petition on or before 5:00 PM on the date of the statewide primary election. [§17-9-3(a)(3)] In 2016, the statewide primary is scheduled for March 1st.

The petition must contain the required number of signatures of registered voters in the jurisdiction in which ballot access is sought (i.e., statewide, countywide, district). The petition must be submitted to the Secretary of State, if seeking a state or federal office, or to the probate judge for a county office.

The appropriate election official will then verify the petition signatures and subsequently notify the petitioner as to whether he or she gained ballot access.

No qualifying fee is required.

SIGNATURES

FEDERAL CANDIDATES

A congressional candidate must submit a petition with enough signatures to meet or to exceed three percent of the qualified electors who cast ballots for the office of governor in the last general election for the district in which he/she is running. [§17-9-3(a)(3)] For the number of signatures needed in each district, call the Office of Secretary of State's Elections Division at (334) 242-7210. Candidates seeking a U.S. Senate seat would need the number of signatures for statewide candidacy.

STATE OR COUNTY CANDIDATES

The number of signatures on the petition must equal or exceed at least three percent of the qualified electors who cast ballots for the

office of governor in the last general election in the county, district, or other political subdivision for which he/she is seeking ballot access. For the number of signatures needed for a particular state office, call the Office of Secretary of State's Elections Division at (334) 242-7210. For the number of signatures needed for a particular county office, call the judge of probate in the county in which the office is located.

FAIR CAMPAIGN PRACTICES ACT

Independent candidates should be aware of their obligation to file an APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE form at the time they submit their petition or within five (5) days of exceeding the monetary threshold amount set forth by the FCPA. Act 2013-311 established a uniform $1,000 threshold amount for all candidates in all races throughout the state. (See CHAPTER ONE.)

ETHICS

Independent candidates must file a STATEMENT OF ECONOMIC INTERESTS with the State Ethics Commission simultaneously upon becoming a candidate. For information on filing the STATEMENT OF ECONOMIC INTERESTS, call the Alabama Ethics Commission at (334) 242-2997 or visit its website at www.ethics.alabama.gov.

PETITION REQUIREMENTS & SUGGESTIONS

A sample petition is available from the Secretary of State's office. It may be downloaded from the website www.sos.alabama.gov. The sample petition may be photocopied.

Each petition must include the following information:

- ⇨ A Statement that includes the name of the independent candidate, the date of the general election for which ballot access is sought, and the name of the office sought, including district number, if applicable. Petititions for the establishment of independent candidacy in a special election shall not be required to include the date of the special election at the top of each page. [Alabama Administrative Code, Rule 820-2-4-.05(1)]
- ⇨ Numbered pages.
- ⇨ Requested information for each person signing, which includes: name, residential address, county of residence, city of residence (if applicable), voting place, date of birth and signature. A signature is required but shall not be deemed invalid for lacking any portion of the requested information if the disclosed information is sufficient for determining the validity of the signature and that the voter is a qualified elector for the jurisdiction the petition covers.

The following are suggestions for the petition:

- ⇨ Have the voter sign in ink and write legibly.
- ⇨ Obtain signatures in excess of required number, as some signatures may not be valid or identifiable.
- ⇨ Keep a copy of the petition.

APPENDIX B

CHANGES IN LAW

ACT OF ALABAMA 2009-751

In the 2009 session, the Alabama Legislature approved Senate Bill 205. The bill was signed by Governor Bob Riley on May 22, 2009, and subsequently assigned act number 2009-751. The new law was precleared by the U.S. Department of Justice on November 16, 2009.

Act 2009-751 requires a candidate participating in an election to file all scheduled campaign finance reports once the candidate meets the filing threshold for the office for which he or she is running, even if the candidate has no opposition in the pending election. (See page 4 for more information on filing thresholds.)

Under Act 2009-751, if you are a candidate and have reached the filing threshold for the office you are seeking, you must file all campaign finance reports even if you have no opposition in your primary, special or general election.

ACT OF ALABAMA 2010-765

In the 2010 special session, the Alabama Legislature approved House Bill 9. The bill was signed by Governor Bob Riley on December 20, 2010, and subsequently assigned act number 2010-765.

Act 2010-765 bans any PAC, 527 organization, or private foundation from contributing to any other PAC, 527 organization, or private foundation. Act 2010-765 also makes it unlawful for principal campaign committees to contribute to any other principal campaign committee. However, the Act permits a transfer from one principal campaign committee to another principal campaign committee when committees are for the same person. Act 2010-765 permits PACs to contribute to principal campaign committees.

Act 2010-765 limits state and local campaign committees from receiving more than $1,000 from a principal campaign committee of a federal candidate.

Act 2010-765 permits a principal campaign committee, while the candidate is in office, to pay qualifying fees to a political party. Additionally, the principal campaign committee may pay dues to a political party and purchase tickets to political party functions or dinners, up to a maximum of $5,000. Campaign committees for independent candidates or write-in candidates can pay for similar expenses.

ACT OF ALABAMA 2011-566

In the 2011 session, the Alabama Legislature approved House Bill 425. The bill was signed by Governor Robert Bentley on June 9, 2011, and subsequently assigned act number 2011-566. The new law was precleared by the U.S. Department of Justice on August 22, 2011.

Act 2011-566 affects the dates of the presidential preference primary and the statewide primary elections. The presidential preference primary will now be held on the second Tuesday in March in which a President is to be elected beginning in 2012. The statewide primary will be conducted on the second Tuesday in March in the years in which a presidential primary is held. Statewide primaries will be held on the first Tuesday in June on the years in which there is no presidential preference primary.

The presidential delegates will also be elected in the presidential preference primary election. The change in the date for the presidential preference primary eliminates the early voting procedures that were once necessary to accommodate the counties celebrating Mardi Gras.

ACT OF ALABAMA 2011-687

In the 2011 session, the Alabama Legislature approved Senate Bill 136. The bill was signed by Governor Robert Bentley on June 14, 2011, and subsequently assigned act number 2011-687. The new

law was precleared by the U.S. Department of Justice on September 26, 2011.

Act 2011-687 changes the timing of filing FCPA campaign finance disclosure forms. The Act eliminates the 50/45 day and 10/5 day pre-election disclosure reports. It replaces them with periodic finance disclosure reports. The Act requires monthly disclosure reports beginning 12 months prior to the election. Monthly reports are due on the last day of each month. Act 2011-687 also requires weekly reports beginning on the month prior to the election. The weekly reports are due on the Friday of each week.

Beginning on the 8th day prior to the election, Act 2011-687 also requires daily reports for principal campaign committees and PACs that receive or spend $5,000 or more on any day with a view toward influencing the election. Once a principal campaign committee or PAC meets this daily amount, it must file daily reports up until the election date. Daily reports do not apply to elections involving county and city offices. Candidates for circuit and district offices are also exempt from daily reporting.

Principal campaign committees and PACs must disclose the receipt of any single contribution of $20,000 or more within 2 business days of receiving the contribution if it is not included in a monthly, weekly, or daily report.

Principal campaign committees and PACs must close their books 2 days prior to the specified reporting dates in order to complete the reports.

Act 2011-687 mandates electronic filing of disclosure reports beginning in the 2014 election cycle.

ACT OF ALABAMA 2011-697

In the 2011 session, the Alabama Legislature approved Senate Bill 284. The bill was signed by Governor Robert Bentley on June 14, 2011, and subsequently assigned act number 2011-697. The new law was precleared by the U.S. Department of Justice on September 26, 2011.

Act 2011-697 provides that all paid political advertisements and "electioneering communications" appearing in print media or broadcast must clearly and distinctly identify the entity responsible

for paying for the political advertisements and electioneering communication. Act 2011-697 defines the new "electioneering communications" term. The Act also lists 9 types of paid political advertisements and electioneering communications that are excluded from the identification requirement.

Act 2011-697 eliminates the requirement notice on the front page of printed campaign literature. Instead, the Act requires that printed political advertisements and electioneering communication must have a clear and unmistakable identification of the entity responsible for directly paying for the advertisements or electioneering communication. For paid broadcasts, Act 2011-697 gives the paying person or entity the option of placing an identification statement on the broadcast at the beginning, during, or at the end of the radio or television spot.

Act 2011-697 requires any person or entity, including candidates, that spends more than $1,000 on an electioneering communication to file disclosure reports. The reports must identify the source or sources of the funds used for the electioneering communication and the recipients of expenditures related to the electioneering communication. However, the candidate is not required to duplicate any reporting.

ACT OF ALABAMA 2012-173

In the 2012 session, the Alabama Legislature approved Senate Bill 133. The bill was signed by Governor Robert Bentley on April 2, 2012, and was subsequently assigned act number 2012-173. The new law was precleared by the U.S. Department of Justice on May 30, 2012.

Act 2012-173 amends the Code of Alabama, §17-8-1 to authorize the appointment of alternate election officials including additional inspectors and clerks to serve if an appointed inspector or clerk is unable to perform his or her duties.

ACT OF ALABAMA 2012-461

In the 2012 session, the Alabama Legislature approved Senate

Bill 11. The bill was signed by Governor Robert Bentley on May 15, 2012, and was subsequently assigned act number 2012-461. The new law was precleared by the U.S. Department of Justice on August 17, 2012.

Act 2012-461 adds a provision to §17-5-16 to require that all campaign-related automated or pre-recorded telephone calls contain a clear notice at the end of the call that the communication was a paid political advertisement and to clearly identify the entity that paid for the call.

ACT OF ALABAMA 2012-477

In the 2012 session, the Alabama Legislature approved Senate Bill 497. The bill was signed by Governor Robert Bentley on May 15, 2012, and was subsequently assigned act number 2012-477. The new law was precleared by the U.S. Department of Justice on February 6, 2013.

Act 2012-477 changes the timing of filing FCPA campaign disclosure reports to standardize the monthly and weekly periods for candidates and PACs and to eliminate certain duplicate filings during an election cycle.

ACT OF ALABAMA 2013-311

In the 2013 session, the Alabama Legislature approved Senate Bill 445. The bill was signed by Governor Robert Bentley on May 23, 2013, and was subsequently assigned act number 2013-311. The new law was returned by the U.S. Department of Justice in July 2013 as not needing preclearance under the holding of the recent U.S. Supreme Court decision in *Shelby County v. Holder*. The effective date of the Act was August 1, 2013.

This Act repeals the corporate campaign contribution limit, authorizes candidates and PACs to appoint designated filing agents, institutes a progressive administrative fine system for failing to comply with the Act, clarifies which duplicate reports were removed from the reporting schedule, and makes certain editorial changes throughout the Act.

ACT OF ALABAMA 2014-455

In the 2014 session, the Alabama Legislature approved House Bill 543. The bill was signed by Governor Robert Bentley on April 10, 2014, and subsequently assigned act number 2014-455.

Act 2014-455 repealed 12-24-2(a), Code of Alabama 1975, which removed the requirement for any judge or justice to file a statement of disclosure two weeks prior to the commencement of their term of office.

ACT OF ALABAMA 2015-477

In the 2015 session, the Alabama Legislature approved Senate Bill 148. The bill was signed by Governor Robert Bentley on June 11, 2015, and subsequently assigned act number 2015-477.

Act 2015-477 changes deadlines for the filing of certain notices and petitions relating to candidacies and the electing of delegates for presidential and vice presidential elections.

ACT OF ALABAMA 2015-495

In the 2015 session, the Alabama Legislature approved Senate Bill 241. The bill was signed by Governor Robert Bentley on June 12, 2015, and subsequently assigned act number 2015-495.

Act 2015-495 clarifies when campaign contributions and expenditures are made, clarifies the disposition of a campaign committee, and its assets upon its dissolution or termination.

Act 2015-495 also clarifies that legal costs associated with a civil action, criminal prosecution, or investigation that is reasonably related to the performance of duties can be paid using campaign funds. The Act decreases the civil penalties for failure to properly report contributions and expenditures and provides for the payment of civil penalties with campaign funds.

The Act authorizes the State Ethics Commission to affirm, reduce, or set aside civil penalties and to take investigative actions of potential criminal violations. The Act allows for the issuance of advisory opinions, as well as to provide a criminal penalty for disclosing information relating to a filed complaint.

The effective date for Act 2015-495 is September 1, 2015.

APPENDIX C

ONLINE FILING SYSTEM QUICK OVERVIEW

ONLINE SYSTEM REGISTRATION

1. Website - ***fcpa.alabama.gov*** + Committee Registration

2. Committee Registration Documents:

   - Candidate – ***Appointment of Principal Campaign Committee (PCC)***
   - Political Action Committee (PAC) – ***Statement of Organization***

3. Signed *original* committee document should be mailed to:

   Office of the Secretary of State
   Elections Division
   PO Box 5616
   Montgomery, Alabama 36103

4. Upon receipt of the signed *original* committee registration document, the Elections Division will activate the FCPA account. After activation, the registered user will receive two emails: 1) an email with a registration confirmation with their USER NAME; 2) an email with their temporary PIN with a link to the website to change the PIN to one of the user's choosing.

Note—if a FCPA report is due within 5 days, an emergency activation can be granted. In this circumstance, a committee should fax a copy of the committee registration document to 334-242-2444 so that the account can be immediately activated. However, the signed *original* committee document should be simultaneously mailed to the Elections Division.

SYSTEM TABS

The FCPA online filing system is operated by the use of a series of tabbed topic sections. This guide will give an overview of the contents

within each section, as well as a brief description regarding the most frequently used functions in the individual tabbed sections. For special circumstances or specific guidance, please call the ELECTIONS DIVISION at **334-242-7210** or **1-800-274-8683**. To reach the FCPA filing system HELP DESK, call **1-888-864-8910**.

1. ***Overview Tab***

   - Account Status—gives an overview of account ending balance and pending transaction balances
   - Transaction History Overview—gives an overview of ending balances by transaction
   - Reports Due—contains a listing of upcoming reports with the function to *view* and *file* sequential reports
   - Document Images—contains a function to save report images and add supplemental documents

2. ***Contributions/In-Kind Tab***

   - Contribution History—contains a listing of posted contributions with the function to *add* new contributions or *update* existing contributions
   - Contribution Maintenance—contains a function to search by contributor and perform contributor informational changes

3. ***Other Receipts Tab***

   - Receipt History—contains a listing of posted receipts with the function to *add* new receipts or *update* existing receipts (i.e., loans/interest/other)
   - Receipt Maintenance—contains a function to search receipts and perform receipt source informational changes

4. ***Expenditures Tab***

   - Expenditure History—contains a listing of posted expenditures with the function to *add* new expenditures or *update* existing expenditures
   - Payee Maintenance—contains a function to search by payee and perform payee informational changes

5. ***File Reports Tab***

   - Filing History—contains a listing of FILED reports with the function to *view* or *amend* posted reports

- Reports Due—contains a listing of upcoming reports with the function to *view* or *file* sequential reports
- Supplemental Forms—contains a function to *add* WAIVER OF REPORT or STATEMENT OF DISSOLUTION reports

6. ***Search Tab***

- Transaction Search—contains a function to quick-search posted transactions

7. ***Administration Tab***

- Committee—contains a function to *update* or perform committee informational changes

  Note—if making committee changes or updates, print and have each member sign the *amended* Principal Campaign Committee or Statement of Organization document and mail it to the Elections Division at PO Box 5616, Montgomery, AL 36103
- Officers—contains a listing of current committee officers with the function to *update* or perform informational changes
- Campaign—contains a function to *add* an election cycle's filing schedule
- Filing Schedule—contains a listing of all reports for an election cycle (includes all FILED reports and REPORTS DUE)
- Import Data Files—contains a function to *import* data files from other computer applications

ADDING REPORTS NOT FOUND IN THE REPORTS DUE LIST

The option to add reports not found in the Reports Due list can be accessed in two of the tabbed sections of the online filing system—see OVERVIEW or FILE REPORTS tabbed sections for access to this function. In the top center portion of these section pages there is a bordered note which reads, *"Need to begin filing reports that are not shown in the Reports Due list below? click here".* Click the link to begin the process of adding additional reports not listed.

AMENDING REPORTS

For necessary amendments that are related to the need to *update* or *delete* a posted CONTRIBUTION/OTHER RECEIPT/EXPENDITURE

entry, go to the relevant tab and perform the update/deletion activity by accessing the listed transaction in the transaction HISTORY section of the corresponding tabbed section.

Users may *add* any *omitted* transactions by clicking the add button in the corresponding transaction tabbed section.

Users should make all required additions/deletions/updates to transaction entries prior to amending the previously FILED report. Once that task is completed, go to the FILE REPORTS tab and to the FILING HISTORY section to locate the report which should be amended due to the changes that were implemented. Click AMEND so that the new adjustments will be populated into the amended report. Lastly, click FILE to submit the amended report once you are satisfied that all necessary changes are reflected. Click VIEW to access the amended report.

Important—it will be necessary to amend all other subsequent reports listed in the FILING HISTORY section that were FILED *after* the initial report and *prior* to the newly amended report so that the beginning balance in each subsequent report is accurate. The original report remains intact as it was initially filed; any amended reports are filed as separate reports.

PASSWORD RESET

If a user is unable to access the account due to an expired or lost PASSWORD/PIN, please call the ELECTIONS DIVISION at **334-242-7210** or **1-800-274-8683.** To reach the FCPA filing system HELP DESK, call **1-888-864-8910**.

NOTES

Office of the Secretary of State
State of Alabama