



**PHIL McGRANE**  
IDAHO SECRETARY OF STATE

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**Re: Nonprofit political activity and Idaho's campaign finance laws**

In recent weeks, there has been a significant increase in the number of questions surrounding Idaho's campaign finance reporting requirements as they apply to nonprofit organizations participating in political activities. Many of these questions arise out of the application of Idaho Code § 67-6606, Expenditures by Nonbusiness Entities, and the resulting reporting requirements. This guidance is intended to assist any nonprofit organization or other nonbusiness entity that intends to engage in political activity in Idaho, outlining the reporting requirements that may result and helping to avoid unintended consequences.

**Background**

Idaho's campaign finance disclosure laws aim to 1) promote public confidence in government and 2) promote openness in government by promoting transparency in the financial support or opposition in election campaigns as outlined in Idaho Code § [67-6601](#).

Idaho values and recognizes each individual's right to free speech as guaranteed by the First Amendment of the United States Constitution, and that political speech is the highest form of protected speech. Idaho's campaign finance disclosure requirements only apply to *paid* political activity and are not intended to impede or restrict speech in general. When engaged in paid political speech, the narrow focus of the disclosure requirements are on promoting transparency regarding the finances of these political activities.

This guidance is specifically for nonprofit organizations and other nonbusiness entities. Idaho Code § 67-6602(12) defines a "**nonbusiness entity**" as:

“any group of two (2) or more individuals, a corporation, association, firm, partnership, committee, club or other organization that:

- (a) Does not have as its principal purpose the conduct of business activities for profit; and,
- (b) Received during the preceding or current calendar year contributions, gifts or membership fees, which in the aggregate exceeded ten percent (10%) of its total receipts for such year.”

Groups that meet this definition can report their political activity in one of two ways:

- (1) By forming a political committee (PAC), which only requires disclosing the names and addresses of those who have contributed to the political committee to further its efforts to support or oppose candidates or measures through its expenditures; or
- (2) Reporting as a nonbusiness entity, which requires the disclosure of all higher-level donors to the nonprofit or other organization for any reason, political or otherwise.

The Secretary of State's office encourages nonprofit organizations that engage in political activity to consider forming a PAC as the primary means of reporting. This ensures that only donors contributing specifically for the purpose of advancing political activities are disclosed pursuant to Idaho's campaign finance laws. Most nonprofits have many donors who pay dues or donate for purposes other than paid political speech, which are not intended to be regulated by Idaho's campaign finance laws.

### **Forming a Political Committee (PAC)**

A nonprofit or other nonbusiness entity may form a PAC in Idaho. The PAC may be comprised of some, all, or a combination of members and nonmembers of a nonprofit. Forming and reporting as a PAC ensures that only the specific donors to the PAC are required to be reported. PACs are specifically excluded from the nonbusiness entity reporting requirements. As a PAC, all funds must be accounted for separately and used solely for the purpose "of supporting or opposing one (1) or more candidates or measures."<sup>1</sup> Due to this separation, only donations made to the PAC are required to be reported. Because the PAC is reporting separately, even if membership overlaps with a non-business entity, only the PAC has the responsibility to report its donors.

While a PAC is a separate entity, there are no prohibitions on coordination or cooperation between a nonprofit and a PAC. For example, a PAC may solicit contributions or distribute materials during a meeting of the nonprofit, provided that any contributions, whether monetary or in-kind, are kept separate from the organization's general funds and are reported by the PAC.

This method of reporting is preferred as it only requires that contributions made for the purpose of advancing the political activity be reported. The nonprofit is not required to disclose donors to its organization; only donors to the PAC, and therefore the specific political activity, are disclosed.

### **Reporting as a Nonbusiness Entity**

As a general rule, nonprofits and other organizations that meet the definition of a nonbusiness entity do not have donor disclosure requirements in Idaho. An exception to this general rule is when these organizations engage directly or indirectly in *paid* political activity that is regulated under Idaho's campaign finance laws. When triggered, a nonprofit may be required to report the names and addresses of many of its donors.

If a nonprofit makes donations to a candidate or PAC, or makes expenditures directed to voters in support or opposition to a candidate or measure, using the organization's funds that, when aggregated, exceed \$1,000, then the nonprofit must report as a nonbusiness entity. This requirement may be triggered by a single contribution or multiple small expenditures, including in-kind contributions, or a combination thereof; therefore, it is important to track all paid political activities. These activities may include contributions to candidates, printing of flyers, paid broadcast messages via radio, TV, text, or social media, donations of food and space, and other commonly paid political activities.

If the \$1,000 limit is exceeded, pursuant to Idaho Code § 67-6606, a nonbusiness entity report must be filed within 30 days. This requires reporting the name and address of anyone whose donations, membership dues, or other payments to the nonprofit during the past two years exceed

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<sup>1</sup> Idaho Code 67-6602(14).

a total of \$500. Although these donations or payments may be made to the nonprofit to fund its core mission or for reasons unrelated to political activity, such as serving the poor or helping the environment, and not made to fund expenditures aimed at voters, the law requires reporting in order to identify the original sources of the political funding.

The donor reporting requirements are much broader for nonbusiness entities, which is why the Secretary of State's office recommends the formation of a PAC.

### **Additional Considerations**

Idaho's campaign finance laws are intended to promote transparency in *paid* political activity. There are many activities related to supporting or opposing candidates or measures that are not paid and, as such, *do not* require reporting or disclosure. These include activities such as public speeches, speaking at organizational meetings or services, social media posts, emails to members, common gatherings, distributing materials paid for and reported by others, volunteering, or other nonpaid political messaging. If an activity's primary purpose is not political and the political activity or speech is merely incidental to the primary activity, then it does not require reporting. Any payments for printing, using space, social media promotion, food, or other items with an identifiable market value must be tracked and reported.

If, after reviewing this guidance, an organization needs additional assistance or clarification regarding the reporting requirements under Idaho's campaign finance laws, it is encouraged to contact the Idaho Secretary of State's office.