

## **Ballot Measures and Public Charities**

### **Yes, You Can Influence That Vote**

Ballot measures allow voters to propose and enact laws. They include ballot initiatives, constitutional amendments, bond measures, and referenda.

Typically, ballot measures are created when a threshold number of signatures are gathered on a petition to express public support. After the signature threshold has been met, the measure is certified for the election and then presented to the public on a ballot for the voters' final decision.

In some states, however, measures may be placed on the ballot by a legislative body through a process known as the indirect initiative. Indirect initiatives may be first passed by the legislative body, then subsequently placed before the voters by a referendum petition. Other indirect initiatives may require a state constitutional amendment or must be submitted to the voters to repeal or amend a prior initiative measure.

501(c)(3) public charities can proactively initiate ballot measures, react to measures proposed by others, and support or oppose ballot measures and encourage the public to vote accordingly. Organizations may propose ballot measures (including indirect initiatives) and collect signatures so a ballot measure can be certified. Additionally, public charities can challenge the certification of any proposed ballot measure or oppose indirect initiatives by lobbying the legislative body. Additionally, even though public charities cannot support or oppose candidates for public office, they can urge voters to support or oppose particular ballot measures. The IRS considers ballot measure work to be a lobbying activity because members of the voting public act as legislators when they vote "yes" or "no" on the legislation proposed in ballot measures.

Public charities can engage in a limited amount of lobbying and that limitation is determined by how the organization measures its lobbying activity – either by the "insubstantial part test" or the "501(h) expenditure test." Under the insubstantial part test, any attempt to influence legislation may be considered lobbying. Under the 501(h) expenditure test, lobbying is separated into "direct lobbying" and "grassroots lobbying." Ballot measure work is considered direct lobbying under the 501(h) expenditure test.

More information about how public charities measure their lobbying and the corresponding definitions is available in [\*Being A Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities.\*](#)

In general, regardless of how it measures its lobbying, a public charity can:

- Publicly endorse or oppose ballot measures;
- Propose ballot measures;
- Draft language for ballot measures;
- Organize volunteers to gather signatures on petitions;
- Send staff to gather signatures or conduct other ballot measure campaign work;
- Contribute money to ballot measure campaigns;
- Loan money to ballot measure campaigns;
- Host ballot measure campaign events at their offices; and
- Register people to vote and encourage them to vote for or against a ballot measure.

It is important to know that many states consider ballot measure activity to be electoral activity. Regardless of federal tax law definitions, some states require all organizations—including 501(c)(3) organizations—that work on ballot measures to report their contributions and expenditures under state campaign finance and disclosure laws.

## **When does activity on a ballot measure count against a 501(c)(3)'s lobbying limit?**

If the organization measures its lobbying under the 501(h) expenditure test, it will need to count work on a ballot measure as direct lobbying once a petition is circulated among voters for signatures. The public charity will also count as direct lobbying its expenditures that oppose or support the measure once it has been certified. In states that require an act of the legislative body to place a measure on the ballot, the public charity will follow the same direct lobbying rules as they do for other types of legislation (e.g., count as direct lobbying any communications with legislators asking them to support or oppose the measure). “

Preliminary activities with no real purpose but to develop support for or opposition to a ballot measure should be treated as lobbying under IRS rules if the measure does circulate. To not be counted as lobbying, pre-circulation activities should have a number of purposes besides preparing for a possible initiative campaign. If preparation for a ballot measure campaign—which is very likely to occur—is one of those purposes, the organization will need to determine the proportion of pre-circulation costs, if any, to be reported as lobbying.

If the organization measures its lobbying under the insubstantial part test, there are no clear rules defining when ballot measure activity counts as lobbying. However, any work to place a measure on the ballot, including petitions or acts of legislative bodies, as well as any work to support or oppose a ballot measure will count as lobbying.

Examples of ballot measure activities that have been treated as lobbying under IRS rules include:

- Buying TV, radio, or newspaper ads to publicize the organization's views on the ballot measure
- Hiring people to circulate petitions
- Allocating one page of the organization's four-page newsletter to urging readers to vote “no” on the ballot measure (one-quarter of the cost of staff time, printing, and mailing the newsletter counts as lobbying)
- Contributions of money, property, or paid staff to a committee established to campaign for or against a ballot measure

Examples of expenses that fall outside the definition of lobbying include:

- Researching the issues, conducting surveys of voter attitudes, and possibly even community organizing or holding conferences, so long as these activities are not primarily focused on the ballot measure and are not a form of preparation for lobbying
- Communications to the public that refer to the ballot measure, but do not reflect a view on it
- Communications to the public on the general subject addressed by the ballot measure, which do not refer directly or indirectly to the ballot measure itself

\*These lists are not exhaustive.\*

## **Can a 501(c)(3) also support or oppose candidates on the same ballot?**

No. Public charities are always prohibited from supporting or opposing candidates for public office. Just because it may work on a ballot measure does not mean that it may also comment on candidates included on the same ballot. An organization cannot use its support of or opposition to a ballot initiative as a way to indirectly support or oppose a candidate. Even though the legislative measure appears on a ballot during an election, ballot measure work is a lobbying, not electoral, activity.

---

The information contained in this fact sheet and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code. Alliance for Justice publishes plain-language guides on nonprofit advocacy topics, offers educational workshops on the laws governing the advocacy of nonprofits, and provides technical assistance for nonprofits engaging in advocacy. For additional information, please feel free to contact Alliance for Justice at 866-NPLOBBY.

[www.advocacymatters.org](http://www.advocacymatters.org) | [www.allianceforjustice.org](http://www.allianceforjustice.org)