

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 are 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)s can proactively initiate ballot measures or react to measures proposed by others. 501(c)(3)s may propose ballot measures (including indirect initiatives) and collect signatures so a ballot measure can be certified. Additionally, 501(c)(3)s can challenge the certification of any proposed ballot measure or oppose indirect initiatives by lobbying the legislative body.

501(c)(3)s can support or oppose ballot measures and encourage the public to vote accordingly. Even though 501(c)(3)s 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.

501(c)(3) organizations 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 501(c)(3) organizations measure their lobbying and the corresponding definitions is available in *Being A Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities*, available from Alliance for Justice.

In general, regardless of how it measures its lobbying, a 501(c)(3) 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, a 501(c)(3) will need to count work on a ballot measure as direct lobbying once a petition is circulated among voters for signatures. The 501(c)(3) will also count as direct lobbying its opposition to or support of 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 501(c)(3) 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).

If the organization measures its lobbying under the insubstantial part test, there are no clear rules defining when ballot measure activity counts as lobbying. Presumably, 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 501(c)(3)'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. 501(c)(3)s are always prohibited from supporting or opposing candidates for public office. Just because a 501(c)(3) may work on a *ballot measure* does not mean that it may also comment on *candidates* included on the same ballot. A 501(c)(3) 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.

For answers to your specific questions about ballot measure or lobbying activities, please feel free to contact Alliance for Justice at advocacy@afj.org or 866-NPLOBBY. 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 to nonprofits engaging in advocacy.



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