



Nonprofits and Ballot Measures

What is a ballot measure?

Ballot measures ask voters to vote on laws, bonding issues, or constitutional amendments. If the vote is on a proposed law, it's called a "ballot initiative". If the vote is on a law already passed by the legislature, it's called a "referendum".

How are ballot measures different from candidate elections?

The IRS considers activity on ballot measures lobbying – not electioneering. Ballot measure advocacy is an attempt to influence the passage or defeat of a law or constitutional amendment – not the election or defeat of a candidate – and is therefore nonpartisan in nature. As a result, 501(c)(3) organizations may engage the public on any ballot measure.

How can nonprofits work on ballot measures?

There are two ways to engage your community around ballot measures:

- 1. Provide nonpartisan education.** Your organization can distribute neutral educational materials designed to inform the public about both sides of the question. This is simply a voter education activity, and as such it is neither lobbying nor electioneering. There is no limit on the amount of voter education your nonprofit may conduct in regard to a ballot measure.
- 2. Take a stand.** Your nonprofit can advocate for a "yes" or "no" vote on a particular issue, up to normal lobbying limits. Your organization can engage in a range of activities to support or oppose any ballot measure—such as making an endorsement, communicating your position to constituents and the public, organizing volunteers to work on the measure, or hosting a forum or event. Keep in mind that if your organization does engage in ballot measure advocacy (as opposed to education), you will be subject to 501(c)(3) lobbying limits.



What are the 501(c)(3) lobbying limits for ballot measures?

Your lobbying limits depend on which test your nonprofit chooses to measure its lobbying.

1. If your nonprofit has elected to measure lobbying under the 501(h) expenditure test (highly recommended!), you will have clearer guidance and can do more lobbying. Under this test, you can spend as much as 20% of your annual budget on lobbying, including influencing ballot questions or legislation.
2. If your 501(c)(3) has not filed the 501(h) form, your lobbying falls under the "insubstantial part test." In this case, you may only spend an "insubstantial" amount of money on lobbying efforts. "Insubstantial" is not clearly defined.

How does my nonprofit select the 501(h) lobbying expenditure test?

File a one-page, one-time form with the IRS - Form 5768. Once submitted and approved, your nonprofit has higher and more clearly defined lobbying limits.

What about tracking expenditures?

A nonprofit's activity for or against a ballot measure is tracked like other lobbying activities. If you have selected the 501(h) test, you'll report your lobbying expenditures on your organization's annual Form 990.*

Resources

Bolder Advocacy (Alliance for Justice)

www.bolderadvocacy.org

- "501(c)(3) Public Charities and Ballot Measures"
- "Maximize Your Lobbying Limit: Elect to Measure Your Lobbying Using the 501(h) Expenditure Test"
- *Keeping Track: A Guide to Recordkeeping for Advocacy Charities*

National Council of Nonprofits

www.councilofnonprofits.org

- "The Powerful, Free, and Easy 501(h) Election: Benefits Galore!"

* While states do not limit your spending on ballot measures, you may be required to file a disclosure report. Contact your state's campaign finance office for more information.