

NONPROFITS AND BALLOT MEASURES

Published in cooperation with Nonprofit VOTE



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.

The IRS makes this distinction because advocacy on ballot measures is an attempt to influence the passage or defeat of a law or constitutional amendment – not the election or defeat of a candidate. Therefore, nonprofits may work for or against any ballot measure as a lobbying activity.

May a 501(c)(3) nonprofit work for or against a Ballot Measure?

Yes. Nonprofits are free to work for or against ballot questions up to normal lobbying limits.

For example, a nonprofit may choose to engage in any number of activities in support of or opposed to any ballot measure – nonprofits can make an endorsement and can communicate their position to their constituents and the general public, they can organize volunteers to work on a ballot measure, or they can host a forum or event.

What if my nonprofit provides neutral information about Ballot Measures?

If the materials on ballot measures are purely educational and don't advocate for the measures' support or defeat, distributing these materials is a nonpartisan voter education activity.

It is neither lobbying nor electioneering. There are no limits on the amount of nonpartisan/neutral voter education your nonprofit may do regarding ballot measures or any type of election.

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, its lobbying falls under the "*insubstantial part test*". In this case, it may only spend an "insubstantial" amount of money on lobbying, such as work for or against a ballot measure. "Insubstantial" is not clearly defined.

Nonprofits and Ballot Measures (continued)

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 lobbying or ballot question expenditures?

A nonprofit's activity for or against a ballot measure is tracked like other lobbying activities.

If you have taken the 501(h) election, you'll report your lobbying expenditures on your organization's annual Form 990 filing with the IRS.

Learn More

- *Laws on the Ballot Webinar, Nonprofit Vote*, <http://www.nonprofitvote.org/resources/laws-on-the-ballot/>
- "Ballot Measures and Public Charities," Alliance for Justice, www.afj.org
- "Maximize Your Lobbying Limit: Elect to Measure Your Lobbying Using the 501(h) Expenditure Test, Alliance for Justice," www.afj.org

A note on state campaign finance disclosure: Some states ask anyone spending more than a certain amount for or against a ballot measure to file a disclosure report. There is no limit on spending – just a disclosure. For more information, contact your state's campaign finance office.