

FAQ: Nonprofits and Ballot Measures

Ballot measures ask voters to vote on laws, bonding issues, or constitutional amendments. New York State allows ballot questions or propositions to be put before the voters by legislative action.

Can a nonprofit take a position for or against a ballot measure?

Yes. Activity on ballot measures is 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. 501(c)(3) organizations are free to take sides on ballot measures as a lobbying activity, subject to normal limits on lobbying. If an organization is communicating with the general public about a ballot measure, it is considered Direct Lobbying (rather than Grassroots Lobbying) because the organization is speaking directly to the decision makers. This is important because there are different limits on the two types of lobbying, with grassroots lobbying being more restricted than direct lobbying. Ballot measure advocacy is more a first amendment right to advocate on issues than a matter of tax law. Any organization or individual is free to express their opinion for or against a proposed law or constitutional amendment.

What are common activities for nonprofits on ballot measures?

Your organization can engage in a range of activities related to ballot measures, such as: making an endorsement, communicating your position to the public, organizing volunteers to work on passage or defeat of an initiative, or hosting an educational forum or event. You can also distribute neutral educational materials designed to inform the public about both sides of the question.

How much can a 501(c)(3) nonprofit spend on lobbying?

Your spending limits depend on which federal test your nonprofit chooses to measure its lobbying and how much you anticipate to spend on lobbying in one year

1. Under federal law, if your nonprofit has elected to measure its lobbying under the 501(h) expenditure test, you will have clearer guidance and can do more advocacy. Under this test, you can spend as much as 20% of your annual budget on lobbying, including influencing ballot questions or legislation. Filing the 501(h) form is generally recommended for nonprofits that do any significant amount of lobbying and advocacy.
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 generally assumed to be 3-5% of annual spending.¹
3. In New York State, if a 501(c)(3) expects to spend \$5,000 or more lobbying they must register with the Joint Commission on Public Ethics.²
4. In New York City, if a 501(c)(3) expects to spend \$5,000 or more lobbying on New York City legislation they must register with the City Clerk Lobbying Bureau.³

Are there any spending limits for ballot measure advocacy?

¹ *Lobbying Under the Insubstantial Part Test*, Bolder Advocacy, www.bolderadvocacy.org/wp-content/uploads/2012/11/Lobbying_under_the_insubstantial_part_test.pdf

² For more information, please see the Lawyers Alliance for New York’s [Advocacy](#) resources.

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There are no limits on spending on ballot measures, beyond the limits on lobbying discussed above. Some states require you to file an expenditure report if you devote substantial funds to ballot measure advocacy as, for example, a primary sponsor of a ballot measure or an active partner. Contact your state's campaign finance office for more information.

Staff Activity

There are no limitations to what nonprofit staff can do regarding ballot initiatives, except those set forth by the nonprofit itself as a matter of employee policy. As a matter of good policy, the decision to endorse or oppose a ballot measure should be made by the organization's Board of Directors.

Resources

- Bolder Advocacy, [501\(c\)\(3\) Public Charities and Ballot Measures: An online toolkit](#)
- National Council of Nonprofits, [A Guide to taking the 501h-election](#)
- National Council of Nonprofits, [The Benefits-of-filing-the-501h-election](#)
- Bolder Advocacy, [Lobbying Under the Insubstantial Part Test](#)

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