



BALLOT QUESTION PARTICIPATION BY PUBLIC CHARITIES

Public charities (Section 501(c)(3) nonprofit organizations) are allowed to participate in ballot question campaigns.

- They can contribute money
- They can endorse questions
- They can make in-kind contributions of resources, such as copying, employee time, stamps, office space, etc.

Pursuant to the Internal Revenue Code, Section 501(c)(3) nonprofit organizations are allowed to lobby. Expenditures supporting or opposing ballot questions are considered direct lobbying expenses by the IRS and are therefore allowed, within certain financial limits.

There are two ways to figure the amount of money that a nonprofit organization can spend on direct lobbying under the IRS Code. The general standard is that a nonprofit organization cannot spend a “substantial part of [its] activities” on lobbying. The IRS and the courts have not defined what “substantial” means with any clarity. The more definite way for nonprofit organizations to determine their lobbying limit is to make the Internal Revenue Code Section 501(h) election.

Under Section 501(h), some public charities are allowed to have up to 20% of their “exempt-purpose” expenses as lobbying. Exempt purpose expenditures include program services, administration and lobbying costs but do not include fundraising expenses. The 501(h) election is easy to do – an organization only needs to file one form (Form 5768) with the IRS and then it can take advantage of the clearly defined limits of that section. The chart below details how much an organization can spend on lobbying under Section 501(h).

Lobbying Ceilings under Section 501(h)

<i>Total Exempt-Purpose Expenditures</i>	<i>Total Direct Lobbying Expenditures Allowable</i>
Up to \$500,000	20% of exempt-purpose expenditures
\$500,000-\$1 million	\$100,000 + 15% of excess over \$500,000
\$1 million-\$1.5 million	\$175,000 + 10% of excess over \$1 million
\$1.5 million-\$17 million	\$225,000 + 5% of excess over \$1.5 million
Over \$17 million	\$1 million

Things a public charity can do to support a ballot question:

- Contribute money to a ballot question campaign.
- Donate staff time for collecting signatures, phone calling, or sign holding.
- Donate organizational resources such as space, phones, computers, and copiers.
- Put an article in its newsletter.
- Undertake a mailing to members or voters.
- Endorse the campaign.
- Encourage other groups to endorse and to support the campaign.

Things a public charity cannot do:

- Support or oppose *political candidates* or political parties (as opposed to questions). This is an absolute prohibition.
- Dedicate a “substantial” portion of its activities to lobbying (if it is a “non-electing” charity) or overspend its Section 501(h) lobbying ceiling (if it is an “electing” charity).
- Use federal grant funds for support for or opposition to ballot questions.
- Use a private foundation grant for lobbying activities if that foundation prohibits it.
- Private foundations have separate rules that they must follow with regard to lobbying. Community foundations can lobby like other Section 501(c)(3) groups.

Helpful Resources:

Alliance for Justice, www.afj.org

Charity Lobbying in the Public Interest, www.indepsec.org/clpi

- ***This general overview and summary is not meant to replace advice from legal counsel.***
- ***In addition to federal laws governing lobbying, public charities that participate in ballot measure campaigns must comply with state and, occasionally, local campaign finance and disclosure laws.***