

Ballot Measures and Recalls

Basic Rules for 501(c)(3) Public Charities, 501(c)(4)s, and Unions

As states grapple with a host of contentious issues, including severe budget cuts, efforts to alter public employee rights and benefits, and legislation to curtail public services, organized efforts have emerged to oppose such actions, including recall elections and ballot measures. While organizations around the country may be eager to dive right in to all these activities, they need to make sure their participation is consistent with their tax exempt status. This fact sheet provides a general overview of whether and to what extent 501(c)(3) public charities, 501(c)(4)s, and unions can participate in ballot measures and recall elections.

Ballot measures allow voters to propose and enact laws. They include ballot initiatives, constitutional amendments, bond measures, and referenda. Recalls, which often take the form of a ballot question, focus on the removal (and often replacement) of an elected public official.

Can 501(c)(3) public charities support or oppose ballot measures?

Yes. Even though 501(c)(3) public charities cannot support or oppose candidates for public office, they can urge voters to support or oppose ballot measures (except for recalls, as explained below). 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. As described below, due to the electoral nature of recalls, it is likely that the IRS would treat them differently from ballot measures that focus on policy matters.

Public charities may engage in a limited amount of lobbying under federal tax law, 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, including ballot measures, 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.

In general, regardless of how it measures its lobbying, a 501(c)(3) public charity may:

- 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.

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. Consequently, caution should be exercised when a candidate is the leading proponent of a ballot measure and has linked his or her campaign to a particular position on the ballot measure.

It is important to know that many states regulate ballot measure activity under campaign finance rules. 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. For more information on these laws, access our resources on state laws at www.afj.org/stateresources or check with your state’s Department of Elections, Secretary of State or other ethics agency.

Can a 501(c)(3) public charity call for the impeachment or resignation of an elected public official?

Probably. Although no IRS precedent directly on point exists, calling for the impeachment or resignation of an elected public official is probably permissible for 501(c)(3) public charities (assuming doing so is connected to the organizations’ charitable purposes). In the case of impeachment, since a vote of a legislative body is required, the activity would probably count as lobbying, subject to the 501(c)(3)’s lobbying limits. Of course, organizations cannot comment on who should be elected to succeed the ousted official. In light of the lack of guidance, organizations should consult with legal counsel before engaging in any impeachment activities.

Can a 501(c)(3) public charity support or oppose a recall vote?

Probably not. A recall vote is a special election on the question of whether a state or local elected official should be removed from office. Recalls usually ask whether a public official should be removed from office and if so, who should be elected to serve the remainder of the term. While the IRS has issued no guidance on recall elections, it is likely that charities cannot campaign on either question, especially where the recall vote also functions to elect a replacement. In light of the lack of guidance, organizations should consult legal counsel before engaging in recall activities.

What about 501(c)(4) organizations and labor unions?

501(c)(4) organizations and labor unions can support or oppose ballot measures, and, because they can engage in an unlimited amount of lobbying, need not worry about lobbying limits or which activities count as lobbying. They can spend unlimited amounts to support or oppose ballot measures. Before proceeding with these activities, however, they should check state campaign finance and disclosure laws for any registration and reporting requirements.

In addition, as long as it is not their primary activity, 501(c)(4)s and unions may support or oppose candidates (in accordance with federal or state campaign finance laws). Therefore, they could urge elected officials to resign or push for impeachment. In addition, 501(c)(4)s and labor unions can work on recall elections. Recall elections would count as a political activity, and a 501(c)(4) or union may



be subject to tax on expenditures made for political activities. The tax is imposed on the lesser of the organization's annual net investment income or the aggregate amount expended on political activities during that year.

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