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August 2, 2017

501(c)(3) Organizations Can Support or Oppose Ballot Measures But Must Comply with IRS Limits and Campaign Finance Rules

When New Yorkers vote in November, they will find several high-profile proposals on the ballot. One would authorize a constitutional convention to consider amending the state constitution. Another would allow judges to revoke the pension of a politician convicted of corruption. Public charities with 501(c)(3) tax-exempt status are free to support or oppose these ballot measures, because ballot measure advocacy is not covered by the IRS' ban on partisan political activities. Organizations that decide to do so should consider taking two steps to comply with tax and campaign finance obligations:

1. Track and report advocacy to the IRS: Ballot measure advocacy is subject to the IRS' lobbying limit. Activities in support of ballot advocacy, including the use of staff time, must be tracked and reported annually on the IRS Form 990.
2. Set up an independent expenditure committee and report to election regulators:

New York State Board of Elections' campaign finance rules cover state or local ballot measure advocacy that:

- takes place during the same calendar year in which the measure will be on the ballot;
- *and* is distributed to 500 or more members of the public (communications over the internet do not count).

NYC Campaign Finance Board rules cover advocacy regarding NYC ballot measures that is communicated via:

- radio, TV, cable or satellite broadcast,
- 500 or more telephone calls,
- mailing 500 or more copies,
- other printed material, *or*
- any form of paid ad (including internet ads, although free internet posting, emails and social media are not covered).

By setting up a separate independent expenditure committee, it is possible to avoid subjecting the entire organization to campaign finance obligations, which may include:

- Registering with the Board of Elections (required prior to making an expenditure on such a communication)
- Filing disclosure statements and periodic reports with the Board of Elections (disclosing contributions and expenditures), and making similar disclosures through the NYC Independent Expenditure Disclosure System.
- In the communication, disclosing the spender's identity (for communications costing at least \$1,000).

Lawyers Alliance staff are available to help qualified nonprofits understand and comply with tax and campaign finance obligations. Please contact Senior Policy Counsel Laura Abel at label@lawyersalliance.org, (212) 219-1800 ext. 283, or visit www.lawyersalliance.org for further information.

This alert is meant to provide general information only, not legal advice.

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