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

Public charities with 501(c)(3) tax exempt status can support or oppose New York ballot measures, because ballot measure advocacy is not covered by the IRS ban on partisan political activities. However, many ballot measure communications are covered by New York State and New York City campaign finance laws. As a result, before issuing a ballot measure communication it is important to determine whether doing so will trigger any obligations under those laws, such as registering as a political committee or posting a disclaimer or attribution.

This Legal Alert explains the compliance steps an organization engaged in ballot measure advocacy in New York should take.

1. Track and report advocacy to the IRS: Ballot measure advocacy is subject to the IRS' lobbying limit on 501(c)(3) public charities. Activities in support of ballot advocacy, including the use of staff time, must be tracked and reported annually on the IRS Form 990, Schedule C. (Private foundations, which are prohibited from engaging in lobbying, cannot support or oppose ballot measures.)

For information about the IRS' lobbying limit, see Lawyers Alliance, [FAQ's on Nonprofits and Lobbying](https://lawyersalliance.org/advocacy), available at <https://lawyersalliance.org/advocacy>

2. Comply with campaign finance laws: 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 (or to 50 or more members of the public if the communication is a paid digital ad).ⁱ 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).ⁱⁱ If you intend to issue a communication falling into either category, you should first consider whether you can fit within one of the following exceptions to the campaign finance laws. If not, you may need to set up an independent expenditures committee and follow the rules regarding reporting, disclaimers and more.

a. **Can you keep your communications within one of these exceptions to the campaign finance laws?**

Communicate only via the internet, without paying for ads, SEO, or boosting

Communications issued only via the internet are not considered campaign finance expenditures under the laws of New York State and New York City, so long as no money is spent to promote those posts. Actions that might convert an internet post into a regulated campaign finance expenditure include promoting the post via a paid ad, search engine optimization (SEO), or other form of boosting.ⁱⁱⁱ

Write an op ed

Writing an op ed supporting or opposing a ballot measure is not considered a campaign finance expenditure. The op ed must be published in a news outlet that is not owned or controlled by a political party, political committee, or candidate.^{iv}

Contribute money or your mailing list to a registered ballot measure committee, while your organization refrains from engaging in its own ballot measure communications

Donors to a registered NY ballot measure committee do not have their own campaign finance obligations. Instead, it is the obligation of the registered ballot measure committee to file reports regarding its donors. A donor that is a 501(c)(3) organization will need to report the contribution on Schedule C of its IRS 990, however.

While New York State does not limit the amount that a corporation can contribute to a ballot measure committee, any such contributions will be subject to the limits that the IRS imposes on lobbying by a 501(c)(3) corporation.

b. **If none of these options is realistic for your organization, set up an independent expenditure committee and report to election regulators**

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 before issuing a covered ballot measure 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 and other information; and
- A ban on foreign nationals controlling more than 5% of the votes on the Board of Directors.

To set up an independent expenditure committee for the purpose of New York State or NYC ballot measure advocacy, file Independent Expenditure Committee Campaign Finance Registration Form (CF-02—Type 8) with the State Board of Elections.^v An explanation of the filing, disclaimer and other obligations of a registered ballot measure committee can be found in *NYS Board of Elections, Campaign Finance Handbook (2022)* <https://www.elections.ny.gov/NYSBOE/download/finance/hndbk2022.pdf>. Additional filings, with the NYC Campaign Finance Board, must be made if the communications concern a NYC ballot measure. An explanation of those filing requirements can be found in *NYC Campaign Finance Board, Independent Expenditures Guide*, <http://www.nyccfb.info/independent-expenditures/independent-expenditures-guide/>

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Senior Policy Counsel Laura Abel at label@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

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ⁱ NY Elec. Law 14-107.1(a).

ⁱⁱ Rules of the NYC Campaign Finance Board, Rule 14-01.

ⁱⁱⁱ 9 NYCRR 6200.11(b)(2)(iv)(e).

^{iv} 9 NYCRR 6200.11(b)(2)(iv)(a).

^v The form and instructions are available at

https://www.elections.ny.gov/NYSBOE/download/finance/CF02IE_IndependentExpenditureCommitteeType8CFRegForm.pdf