Ballot Measures Activities Exempt from California Disclosure Laws

Nonprofit organizations active in state or local California ballot measure campaigns must comply both with federal tax law and California ballot measure disclosure laws. Federal tax law permits public charities to engage in a limited amount of ballot measure advocacy. For more information on these limits, please visit www.afj.org. Under California law, organizations engaging in certain activities to pass or oppose a ballot measure may need to disclose their expenditures in support of or opposition to the ballot measure as well as the names of donors whose contributions were used to support the organization's ballot measure activities. However, the following activities are exempt from California's disclosure laws and can be done freely by an organization without fear of triggering any special disclosure reports.

Volunteer personal services vs. paid staff time. An individual (including individual employees of a nonprofit organization) may donate his or her personal or professional services to a ballot measure campaign without this being considered a "reportable" expenditure. Additionally, employees of an organization can provide personal or professional services to the campaign while "on the clock" (e.g., during that person's normal working hours), attend meetings in their capacity as an employee of the nonprofit organization, or work on the campaign at the direction of a supervisor of the organization, without this person's time being considered a reportable contribution from the organization if the employee spends 10% or less of his or her compensated time in a calendar month working on the campaign. Put another way, each employee of your organization can spend 10% or less of his or her compensated time in a calendar month on a ballot measure campaign without the organization needing to disclose the expenditure on employee compensation.

Note that federal tax law does not have any similar 10% exception; so all time spent working on the ballot measure campaign must be counted against the organization's direct lobbying limit even though this time will not trigger disclosure under California law.

In-Office Fundraisers. An organization may host a fundraising event in its office for another organization that is running a ballot measure campaign without needing to report the costs of the event as long as the total cost of the event is $500 or less and none of the money raised at the event is paid into the hosting organization's general treasury. For example, Organization A could spend $495 on food, beverages, invitations, and music for an event to benefit the Yes on B ballot measure campaign and the costs associated with this event will not trigger any campaign disclosure for Organization A. Note that to qualify for this exception, the event must be held in Organization A's offices (as opposed to a restaurant or other rental facility) and Organization A must pay for the food, beverages, or anything else of value to the event and cannot look to other organizations to subsidize the event.

Note that the entire cost of this event would be considered direct lobbying under federal tax law.

Member Communications. Payments made by an organization for communications to its members or employees (or their families) that include a message of support or opposition to a ballot measure campaign are not considered contributions or independent expenditures. To qualify as a "member" under California law, the recipient must either have the right to vote on certain corporate decisions (e.g., to elect at least one officer or director or vote to dissolve the corporation) or be designated as a "member" in the organization's Articles or Bylaws and either have a right to vote on changes to the organization's Articles and Bylaws or pay membership dues. Annual affirmation of membership status is not required.

Federal tax law has a much broader definition of "member" (anyone who has donated more than a nominal amount of time or money to the organization), but this distinction is not particularly relevant here because member communications count as "direct lobbying" under federal law – and all ballot measure communications are already considered "direct lobbying."

Newsletters. An organization may make statements in support or opposition to state or local ballot measures in its regularly-published newsletter without needing to disclose the expenditures if the organization sends the newsletter only to its members, employees, and "other affiliated individuals" (i.e., people who have requested to be added to the organization's mailing list or to receive updates from the organization). Any additional costs for expanding the circulation of the newsletter, for altering the size, style, or format, or for changes in publication schedule, such as a special edition(s), are considered contributions or independent expenditures.

Note that a portion of the cost of this newsletter will likely be considered lobbying under federal tax law. See Alliance for Justice fact sheet on Mixed Purpose Communications for additional information.

Public Education Campaigns. The organization may host a debate on a ballot measure or distribute impartial analysis of a ballot measure <u>and</u> if it does not express a view about the measure it will not need to disclose its expenditures on this event so long as the organization acts independently of any ballot measure campaigns (i.e., does not serve on a steering committee for the ballot measure campaign). If, however, the organization coordinates its activities with any coalitions working to support or oppose a measure, these costs will not likely qualify for this exception.

Such communications also would not count as lobbying under federal tax law.

Not urging action on the measure. The organization may spend money to communicate its endorsement of or opposition to a ballot measure without expressly urging voters to take action on the measure. So long as the organization acts independently of any ballot measure campaigns (i.e., does not serve on a steering committee for the ballot measure campaign) the organization will not need to disclose its expenditures. However, because the definition of "expressly urging" is quite broad, the organization should consult with an attorney to confirm that the communication falls within this exception.

Such communications would likely count as lobbying under federal tax law because the organization is still expressing a view on the ballot measure.

Contributions or Independent Expenditures totaling less than $1,000 per calendar year. If the organization's total contributions or independent expenditures (not including the six activities listed above) do not exceed $999 in a calendar year, the organization will not trigger any campaign disclosure reports.

Note that federal tax law does not have a similar threshold for reporting, so the organization should count all contributions and independent expenditures, even those that total under $999 in a calendar year, as lobbying under federal tax law.

The information contained in this fact sheet and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code. Alliance for Justice publishes plain-language guides on nonprofit advocacy topics, offers educational workshops on the laws governing the advocacy of nonprofits, and provides technical assistance for nonprofits engaging in advocacy. For additional information, please feel free to contact Alliance for Justice.

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11 Dupont Circle, N.W., 2nd Floor
Washington, D.C. 20036
Phone: 202-822-6070
Fax: 202-822-6068

www.allianceforjustice.org
advocacy@afj.org
866-NPLOBBY

1611 Telegraph Ave.
Suite 1006
Oakland, CA 94612
Phone: 510-444-6070
Fax: 510-444-6078