

Nonprofit Ballot Measure Advocacy Washington State

- Nonprofit 501(c)(3) and 501(c)(4) organizations may advocate for or against ballot measures in Washington State. Such activity is regulated *both* by the IRS and Washington campaign finance law.
- IRS (Lobbying) → Under the IRS regulations, nonprofit ballot measure advocacy is regulated as “lobbying.” From the moment the first petition to get a measure on the ballot is circulated, an organization’s work on that ballot measure will count toward the organization’s lobbying limit.¹
 - The way in which a 501(c)(3) will count its ballot measure activity towards its lobbying limit depends on whether the organization has made the 501(h) election.
 - Purely educational communications – ones that do not reflect a view for or against the ballot measure if it is part of nonpartisan analysis, study or research – will not count toward an organization’s lobbying limit. Only communications that *reflect a view* on a ballot measure count towards the lobbying limit.
- WA State Law (Campaign Finance) → WA State law regulates nonprofit ballot measure advocacy under its campaign finance law. Unlike IRS regulations, Washington law does not limit the amount of money a 501(c)(3) may spend on ballot measure advocacy. However, under certain circumstances, it may require some or all of the nonprofit’s expenditures, contributions, and/or donors to be disclosed to the Public Disclosure Commission (PDC).
 - When will an organization participating in WA state ballot measure advocacy be required to **register and report as a political committee**?
 - If the organization solicits or receives contributions earmarked or otherwise intended for ballot measure advocacy, *or*
 - The organization makes expenditures or contributions for ballot measure advocacy and the ballot measure advocacy is its *primary* purpose or *one of its primary* purposes.

¹ Lobbying limits are applicable only to 501(c)(3) organizations; 501(c)(4)s may carry out unlimited lobbying (so long as the effort furthers the organization’s tax-exempt purpose). Additionally, 501(c)(4)s are permitted to support or oppose candidates so long as that is not their *primary activity*, but 501(c)(3)s are **absolutely prohibited** from supporting or opposing candidates for public office, and therefore must heed caution when advocating for ballot issues that may be closely tied to a candidate(s).

- This means that if a nonprofit organization's *primary purpose* or *one of its primary purposes* is to affect ballot measure(s), it must register and report as a political committee. Similarly, if a nonprofit organization expects to receive or receives contributions to be used in support of or opposition to a ballot measure, it must register and report as a political committee.
- An entity that is otherwise obligated to register as a political committee must do so within two weeks of organization or within two weeks after the date on which it first has the expectation of receiving contributions or making expenditures, whichever occurs first.²
- When will an organization participating in WA state ballot measure advocacy be required to **register and report as an incidental political committee**?
 - Beginning in 2019, a nonprofit which does not qualify as a political committee may qualify as an incidental committee if it contributes or expects to contribute at least \$25,000 in the aggregate to Washington state election campaigns, including ballot initiative campaigns, in a given calendar year, and also receives a donation of \$10,000 or more from any one person or entity in that year. An incidental committee must register with the Commission and report its top ten donors who donate at least \$10,000 in a given year.
 - An incidental committee also has to file reports on the twenty-first day and the seventh day immediately preceding the date on which the election is held; and also on the tenth day of the first month after the election.
 - It also has to report the name and address of all of the recipients of its contributions to political committees (not independently made expenditures) made in excess of \$50 in any month where its total election contributions since its last report exceed \$200, and also report in any month when it received a payment that would change its previously-reported list of top ten donors.
 - An entity that is otherwise obligated to register as an incidental political committee must do so within two weeks after it has the expectation of hitting the \$25,000 monetary threshold referenced above and has received (and is therefore required to report) a donation in excess of \$10,000.
- Even if an organization does not meet the above thresholds for having to register as a political committee or an incidental political committee, when does the organization have to **report any of its contributions or expenditures**?

² A nonprofit planning to create a political committee should consult with an attorney, as there may be additional IRS reporting requirements that apply.

- If a nonprofit spends \$100 or more on ballot measure advocacy independently, i.e., not as a contribution to a political committee that will be reported by that committee, it must report that expenditure to the PDC on a Form C6 within five days of the expenditure – and potentially within 24 hours, if spent at least \$1,000 on an advertisement that appears within 21 days of the election.
- This applies not only to cash spent, but in-kind contributions, e.g., donated staff time, and is not limited to money spent on political advertising. *See, e.g., State v. Evergreen Freedom Found.*, 1 Wn. App. 2d 288, 404 P.3d 618 (Wash. Ct. App. 2017) (allegation that nonprofit organization provided pro bono legal services in support of an effort to get local initiatives onto the ballot and failed to report such services stated claim for violation of Fair Campaign Practices Act), *review granted*, 190 Wash. 2d 1002, 413 P.3d 11 (2018).
- If a nonprofit contributes over \$20,000 in the aggregate (either monetary or market value of in-kind contributions) to a ballot measure campaign in the preceding calendar year, or makes independent expenditures totaling over \$1,000 supporting or opposing one or more ballot measure during the preceding calendar year, it must file a Form C7 by the last day in February in the following calendar year. Expenditures greater than \$25 must be itemized, so nonprofits must keep track of each of their expenditures – and make sure that they match up with what the committee is reporting as contributions from that nonprofit.
- Under Washington law, a ballot measure is any proposition or question proposed to be submitted to voters of the state or any municipal corporation, including any initiative, recall, or referendum proposition, “from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.” RCW 42.17A.005(4). This language has been held to apply even if the ballot measure was filed *after* signatures have been gathered. *State v. Evergreen Freedom Found.*, *supra*. This means that expenditures made in support of or in opposition to a ballot measure once it has been filed need to be disclosed to the PDC, even if that measure may never make it on the ballot.
- **Special note for Lobbyist employers:** If you made contributions to any campaigns or political committees, including in-kind contributions like staff time, in any given month, with a value exceeding \$110, you must file a monthly political contribution report (PDC Form L3-c) for that calendar month. This includes monetary contributions to your organization’s own political committee as well as the value of staff time devoted to managing that committee’s operations. Employer contributions that are made through and reported by a registered lobbyist do not need to be reported on an L3-c, because the registered lobbyist is reporting this information on their L2 report.

- **Note:** Between September of 2015 and April of 2016, the State of Washington brought four separate lawsuits against non-profit organization lobbyist employers for having failed to file the required L3-c forms discussed herein.
- Non-monetary contributions made to a political committee in the form of anything of value provided for less than its full market value will be treated as an in-kind contribution. Thus, a nonprofit organization donating anything of value, including staff time and other non-monetary contributions, to a political committee, must inform the political committee of that donation, so the political committee can report it in a timely manner.
- What does the **political committee** have to report/disclose?
 - The committee itself is required to track and disclose contributions (monetary and in-kind) it receives from individuals, entities, and corporations – including nonprofit organizations.
 - The committee is required to report all of its expenditures and all of its debts.
 - A ballot measure committee is required to disclose the “Top Five Contributors” on political advertisements in support of a ballot measure costing \$1,000 or more. This requires that the top five contributors (whether individual or entity, e.g. nonprofit organization) having contributed in excess of \$700 to the committee in the 12-months prior to the ad’s publication be identified.
 - Note: nonprofit organizations that make monetary or in-kind contributions to a committee are *not* required to file their own disclosure reports if they do not employ any lobbyists.

The chart below lays out some common activities that a nonprofit organization might carry out in support of a ballot measure.

*All activities listed below that qualify as Lobbying under the IRS rules are designated as such for organizations that have made the **501(h) election**, and are considered “direct lobbying” for the purpose of IRS lobbying limits

Activity	Example	Lobbying under IRS rules?	Contribution to the PAC under WA campaign finance rules?
Communications – Public			
Communication <ul style="list-style-type: none"> ▪ With the public ▪ Refers to ballot measure ▪ Reflects view on ballot measure 	“Vote YES on Referendum 1”	Lobbying	Expenditure or contribution, depending on whether the nonprofit coordinated with the PAC; reportable directly to the PDC if an expenditure and cost more than \$100 to produce.
Communication <ul style="list-style-type: none"> ▪ With the public ▪ Refers to ballot measure ▪ Reflects view on ballot measure ▪ Is a letter to the editor/editorial or replies thereto and payment for the printed space or broadcast time is not normally required 	Letter to the Editor in a regularly scheduled newspaper titled “Why Washington should pass Referendum 1”	Lobbying	The letter itself is neither a contribution nor an expenditure (specifically exempted); potentially, the time spent preparing the letter, if worth more than \$100, might be reportable to the PDC as an expenditure or contribution (depending on whether the nonprofit coordinated with the PAC).
Communication <ul style="list-style-type: none"> ▪ With the public ▪ Refers to ballot measure ▪ Does <i>not</i> reflect view on ballot measure 	“Referendum 1 provides Washington voters the opportunity to decide on an important issue”	Not lobbying	Not contribution
Communication <ul style="list-style-type: none"> ▪ With the public ▪ On issue that is subject of the ballot measure ▪ Does <i>not</i> directly or indirectly refer to ballot measure 	“Increasing sales tax on cigarettes will generate more funds for the state”	Not lobbying	Not contribution
Communications – Internal			
▪			

Activity	Example	Lobbying under IRS rules?	Contribution to the PAC under WA campaign finance rules?
<p>Communication</p> <ul style="list-style-type: none"> ▪ Limited to members of a labor organization or membership organization (including a membership-based nonprofit) ▪ Refers to ballot measure ▪ Reflects view on ballot measure 	<p>“Vote YES on Referendum 1”</p>	<p>Not lobbying (member communications exception applies)</p>	<p>Not Contribution (if made by nonprofit to its own dues-paying members – internal communications are specifically exempted, regardless of cost).</p>
Research			
<p>Nonpartisan analysis, study or research</p> <ul style="list-style-type: none"> ▪ Includes sufficiently full and fair exposition of pertinent facts such that reader can draw own conclusions ▪ Distributed/made available to members of the general public (not just one side) ▪ Refers to ballot measure ▪ Reflects view on ballot measure 	<p>A 501(c)(3) publishes a report detailing fully and fairly the facts of a certain issue and, based on the findings in the report, expresses support for Referendum 1</p>	<p>Not lobbying</p>	<p>Dependent on the facts and circumstances, this activity may or may not constitute a contribution to a committee. For example, if the organization provides the report to the committee but does not make it available to anyone else, it would likely constitute a contribution to the committee.</p>

Activity	Example	Lobbying under IRS rules?	Contribution to the PAC under WA campaign finance rules?
Nonpartisan analysis, study or research <ul style="list-style-type: none"> ▪ Includes sufficiently full and fair exposition of pertinent facts such that reader can draw own conclusions ▪ Distributed/made available to members of the general public (not just one side) ▪ Discusses general subject of ballot measure ▪ Does <i>not</i> refer to ballot measure or reflect view on ballot measure 	A 501(c)(3) publishes a report detailing fully and fairly the facts of a certain issue that is the same issue as Referendum 1 – but the report does not mention the Referendum	Not lobbying	(See above)
Issue research	<ul style="list-style-type: none"> ▪ Conducting legal or factual research on the issue presented in Referendum 1 ▪ Conducting surveys of voters' attitudes towards Referendum 1 	Not lobbying, so long as not done merely as precursor to lobbying	Contribution if being performed for a PAC.
Organizing			
Organizing volunteers for event to support ballot measure campaign	Organization A turns out volunteers to a political rally with instructions to wear t-shirts and buttons saying "Vote YES on Referendum 1"	Lobbying (if Organization A has made the 501(h) election, only the actual expenditures, including staff time, count as lobbying)	Contribution or expenditure, depending on whether this event was coordinated with Referendum 1 PAC.
Organizing volunteers for event in support of general issue of ballot measure, but not the campaign itself	Organization B turns out volunteers to a political rally without discussing Referendum 1 or cooperation with the ballot measure campaign	Not lobbying	Not contribution

Activity	Example	Lobbying under IRS rules?	Contribution to the PAC under WA campaign finance rules?
Voter registration <ul style="list-style-type: none"> ▪ Including statements for or against ballot measure 	“Do you support Referendum 1? Register here to vote.”	Lobbying	Contribution or independent expenditure
Voter registration <ul style="list-style-type: none"> ▪ Non-partisan and neutral or no message 	“Election day is coming: register today.”	Not lobbying	Not contribution
GOTV <ul style="list-style-type: none"> ▪ Including statements for or against ballot measure 	“Today we decide whether Washington will increase its revenues while discouraging smoking: get out and vote ‘yes’ on Referendum 1!”	Lobbying	Contribution or independent expenditure
GOTV <ul style="list-style-type: none"> ▪ Non-partisan and neutral or no message 	“Vote today.”	Not lobbying	Not contribution
Fundraising			
Hosting fundraiser for ballot measure campaign	“Come support the Vote Yes on 1 Campaign”, and donations are non-tax deductible and made directly to the <i>committee</i> .	Lobbying (cost of event)	Contribution (cost of event is in-kind contribution to committee)
Hold fundraiser for organization’s own ballot measure advocacy	“Support our work to pass Referendum 1”, and donations are non-tax deductible and made directly to the <i>organization</i> .	Lobbying (cost of event)	Contribution (cost of event is in-kind contribution to committee) Raising money for ballot measure advocacy will require the organization itself to register as a political committee (and comply with reporting requirements). Also, any “earmarked” contributions made to one committee but intended for another committee must be reported on special Form E.
Coordinated Activities			

Activity	Example	Lobbying under IRS rules?	Contribution to the PAC under WA campaign finance rules?
Any other expenditure coordinated with or made at request or suggestion of campaign not otherwise lobbying or expenditure		Not lobbying	Could be in-kind if genuinely contributing something of value to the campaign

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