

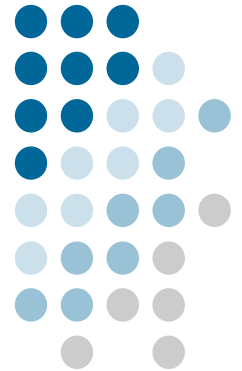


Northern California Grantmakers  
**Public Policy Committee**

# **The Public Charity's Guide to the California Initiative Process**

Funded by

The California Endowment  
The California Wellness Foundation  
East Bay Community Foundation  
Evelyn and Walter Haas, Jr. Fund  
Foundation Consortium for California's  
Children & Youth  
The James Irvine Foundation  
Marin Community Foundation  
McKay Foundation  
Omidyar Foundation  
Peninsula Community Foundation  
The San Francisco Foundation  
Charles and Helen Schwab Foundation



# Northern California Grantmakers

Realizing the Promise of Philanthropy  
to Advance the Common Good



**T**he *Public Charity's Guide to the California Ballot Initiative Process* is the second of two guides commissioned by the NCG Public Policy Committee on state and federal tax regulations that affect foundation activities related to California ballot initiatives. This Guide provides an analysis of how the federal IRS and California Political Reform Act regulations apply to public charities, including public foundations and operating charities.

Funding public policy advocacy—from policy research and analysis, public education campaigns, to engaging in or funding direct advocacy—represents an extremely effective way to leverage foundation resources for long term systemic change. As explained in this Guide, a range of activities related to lobbying and advocacy are available to public charities for use in efforts to impact public policy through the ballot initiative process.

California's ballot initiative process is part of a dynamic democratic system. The decisions voters make in such a system are based on available information—good or bad. Rather than shying away from engaging in public policy advocacy, public foundations and nonprofits can play a critical role in this process by framing the debate and educating the public and opinion leaders without jeopardizing their tax-exempt status and holding true to their mission.

The NCG *Public Charity's Guide to the California Ballot Initiative Process* outlines the manner in which public charities can play a significant role in a ballot measure debate. By presenting the relevant law in clear terms, this report provides a resource to assist public charities either begin or enhance public policy advocacy efforts. The Guide will also help private foundations better understand what their grantee organizations can do when engaging in work around ballot measures.

We would appreciate any feedback on the Guide and how it has affected your organization's ability to advance its mission and leverage resources through work on ballot measures. Please share your comments and insights and suggestions (with complete confidentiality) by sending an email message to CJ Callen, NCG's Senior Program Executive for Education in Philanthropy: [cjcallen@nccg.org](mailto:cjcallen@nccg.org).

The Northern California Grantmakers' Public Policy Committee exists to help foundations advance their missions and leverage their resources by supporting public policy efforts. We are extremely grateful to the members of the NCG Public Policy Committee and the foundations who made publication of these guides possible.

# Table of Contents

Page

<b>About the Authors</b> .....	iv
<b>I. Introduction</b> .....	1
A. Organization of this Guide .....	2
B. Limits to this Guide .....	3
C. Guide for Public Charities .....	3
D. California Ballot Measures .....	4
E. Ballot Measures at the Intersection Chart .....	5
<b>II. Ballot Measures and the Role of Nonprofit Organizations</b> .....	6
<b>III. Overview of the Legal Framework</b> .....	9
A. The California Political Reform Act .....	9
B. Federal Tax Law.....	11
C. Local Campaign Finance Ordinances .....	12
D. State Tax Law .....	12
E. Limits on Lobbying Imposed by Funding Sources .....	13
F. Limits in the Public Charity's Governing Documents .....	13
G. Candidate Issues .....	14
<b>IV. Specific Ballot Measure Activities</b> .....	15
A. Endorsements and Public Statements.....	15
B. Public Education Campaigns on Ballot Measures Issues.....	17
C. Hosting Debates or Speakers.....	19
D. Contributing Money to a Ballot Measure Committee .....	19
E. Contributing Staff, Space, or Resources to a Ballot Measure Committee .....	20
F. Lending Money or Making Pledges to a Ballot Measure Committee.....	21
<b>V. Fundraising for Ballot Measure Activity</b> .....	22
A. Qualifying as a Recipient Committee .....	22
B. Nondeductibility of Gifts for Lobbying Activities .....	23
C. Raising Money for Ballot Measure Committees.....	24
D. Grants from Private Foundations .....	25
<b>VI. Coalitions and Alliances</b> .....	26
A. California Political Reform Act Issues .....	26
B. Tax Issues .....	27

<b>VII. Forming a Ballot Measure Committee</b>	<b>30</b>
<b>VIII. Getting Measures on the Ballot</b>	<b>32</b>
A. Pre-Circulation	32
B. Petitions in Circulation	33
C. Legislation to Put Measures on the Ballot	34
<b>IX. Post Passage Activities</b>	<b>35</b>
<b>X. Community Foundations and Public Foundations</b>	<b>36</b>
A. The Section 501(h) Elections	36
B. Grantmaking Activities	38
C. Donor-Advised Funds	39
<b>Appendix A: The California Political Reform Act</b>	<b>41</b>
A. Key Definitions and Concepts	42
Contribution	42
At the behest of	44
Independent expenditure	45
Committee	45
Measure	45
B. Reporting Obligations under the Political Reform Act	46
Recipient Committees	46
Independent Expenditure Committees	47
Major Donor Committees	48
C. Reporting of Funding Sources	48
Gift for a project intended to be reportable campaign activity	48
Gift for a project that, as implemented, includes reportable activity	49
Gift for a project that includes no reportable activity	49
Unrestricted donation to an organization that engages in reportable ballot measure activities	49
Reporting donors as a Recipient Committee	50
<b>Appendix B: Federal Tax Rules</b>	<b>51</b>
A. 501(c)(3) Lobbying: Three Sets of Rules	51
Non-electing public charities	51
Electing public charities	52
Private foundations	52
B. Lobbying under Section 501(h)	54
1. Lobbying Expenditures: Key Definitions and Concepts	54
Lobbying expenditure	54
Direct lobbying communication	54
Grassroots lobbying communication	55
Specific legislation	56
Lobbying expenses	56
Subsequent use	57

2.	Activities Outside the Definition of Lobbying.....	58
3.	Exceptions to the Definition of Lobbying .....	59
	Nonpartisan analysis, study, or research .....	59
	Technical advice or assistance.....	60
	Self-defense lobbying .....	60
	Member communications.....	61
C.	Section 501(h) Lobbying Ceilings .....	61
D.	Lobbying under the "No Substantial Part" Test .....	62
E.	Whether to Make a Section 501(h) Election.....	64
F.	Grantmaking Activities.....	65
1.	Grantmaking to Other Public Charities.....	65
	General support grants .....	66
	Specific project grants .....	66
	Grantee subsequent use .....	67
	Prohibitions on lobbying in the grant agreement.....	67
2.	Grantmaking to Noncharities .....	67

**Appendix C: Resources ..... 69**

A.	Resources on Lobbying and Public Charities .....	69
B.	Resources on Lobbying and Private Foundations .....	69
C.	California Agencies Administering the Political Reform Act.....	70

## About the Authors

**Rosemary E. Fei** is a principal at the San Francisco law firm of Silk, Adler & Colvin, which specializes in representing nonprofit organizations. Ms. Fei's practice spans the full range of nonprofit and tax-exempt legal issues, with emphasis on political advocacy issues and nonprofit corporate governance. She is the Chair of the Board of Redefining Progress; a member of Asian Americans/Pacific Islanders in Philanthropy; a member of the Exempt Organizations Committee of the Tax Law Section of the American Bar Association; and a former director of CompassPoint Nonprofit Services and The Marine Mammal Center. She also serves on the Nonprofit Policy Council of the California Association of Nonprofits, and on the Public Policy Steering Committee of Northern California Grantmakers. Before joining Silk, Adler & Colvin, Ms. Fei was a general business lawyer, a Federal election law compliance officer and budget director for the Dukakis Presidential campaign, and an attorney in the U.S. Department of State. She received her undergraduate degree, summa cum laude, from The Wharton School, University of Pennsylvania, and she graduated from Harvard Law School, cum laude, in 1986.

**Diane M. Fishburn** is a partner at Olson, Hagel & Fishburn LLP, with 20 years of experience in political and administrative law. She earned both her B.A. and law degrees from the University of California, Los Angeles. She clerked with the New Mexico state supreme court and received the Order of the Coif and Distinguished Advocate awards. Ms. Fishburn was an attorney with the Fair Political Practices Commission from 1981 to 1985 and spent five years with the California Air Resources Board Office of legal affairs (1985-1990). Ms. Fishburn joined Olson, Hagel & Fishburn in 1990 and became partner in 1993. She advises private and public clients on campaign reporting obligations, financial disclosure, ethics, lobbying and conflicts of interest. She has expertise in state and local ballot measures and defends enforcement cases before the FPPC and other administrative agencies. She has presented numerous seminars on various aspects of political and ethics laws before groups of public officials, candidates, unions, trade associations and others. Ms. Fishburn is a past president of the California Political Attorneys Association.

**Barbara K. Rhomberg** is an associate at Silk, Adler & Colvin, which specializes in representing nonprofit organizations. Before joining Silk, Adler & Colvin, she was a nonprofit administrator at The Sierra Club Foundation and Citizens for Reliable and Safe Highways, worked for an Oakland City Councilmember, and practiced tax and corporate law. Ms. Rhomberg received her B.A. with high honors from the University of California at Berkeley in 1988. She earned her J.D. with distinction from Stanford Law School in 2000, where she was elected to the Order of the Coif and served as an executive editor of the Stanford Law Review.

**Silk, Adler & Colvin**  
235 Montgomery Street, Suite 1220  
San Francisco, California 94104  
(415) 421-7555 [www.silklaw.com](http://www.silklaw.com)

**Olson, Hagel & Fishburn**  
555 Capitol Mall, Suite 1425  
Sacramento, CA 95814  
(916) 442-2952 [www.olsonhagel.com](http://www.olsonhagel.com)

# I. Introduction

Californians make crucial public policy decisions through state and local ballot measures. When citizens are the legislators, the quality of policymaking depends on the depth of voters' knowledge of the issues and their understanding of the measures put before them. Many public charities wish to help voters make wise decisions by expanding their knowledge of the issues at stake and the effect that ballot measures would have if enacted. Often, however, charities are unfamiliar with the legal issues raised by ballot measure activities and uncertain about what they can do.

The purpose of this Guide is to help public charities become active participants in the California ballot measure process by clarifying the legal issues and decisions they may face. The Guide principally addresses the federal tax rules for public charities that engage in ballot measure activities, and the California Political Reform Act provisions that govern the disclosure obligations of participants in California ballot measure campaigns.

The legal terrain covered by this Guide—the intersection of two independent legal frameworks, each complex in its own right—is challenging. In light of this, we want to begin with four key ideas.

First, the federal tax rules that apply to Section 501(c)(3) charities and the California campaign finance disclosure laws that regulate ballot measure campaigns in this state are

separate legal regimes, with different goals, different analytical frameworks, and different definitions. The intersection between the two bodies of law becomes easier to understand if you think of the universe of ballot measure activities as having four regions. Some activities are lobbying for tax purposes, but are not reportable under the California Political Reform Act; others activities must be reported on campaign finance reports, but are not lobbying for tax purposes. Still other activities are both lobbying and reportable, or are neither lobbying nor reportable.

The diagram at the end of this Introduction shows where some of the activities discussed in this Guide fit at the intersection. Public charities can operate in all four regions of the diagram, as long as they understand which quadrant each of their ballot measure activities falls into, and the legal implications this has for the charity.

*Public charities must consider both tax and campaign finance law when engaging in ballot measure activities.*

Second, planning is key to avoiding unpleasant surprises. Public charities are permitted to engage in ballot measure lobbying and other legislative lobbying within tax law limits; in order to avoid exceeding those limits, charities must monitor how much lobbying they are doing in relation to their other activities. Electing public charities must ensure

their lobbying expenditures do not exceed their Section 501(h) spending caps for the year; non-electing charities must ensure that lobbying is not a substantial part of their activities. Also, both electing and non-electing public charities must report their lobbying expenditures on their federal tax forms. For most public charities, especially smaller ones, making a Section 501(h) election will enable them to confidently step up their involvement in legislative issues.

Planning is also crucial if a public charity engages in or funds ballot measure activities that must be reported under the California Political Reform Act, since the charity needs to be prepared to follow through with its campaign finance reporting obligations. Filing deadlines can come quickly, especially in the period just before an election, so it is important to investigate the campaign finance implications of proposed activities ahead of time. Alternatively, a charity can decide to avoid funding or engaging in reportable activities entirely, and then just be careful to implement that strategy properly, using this Guide and expert legal counsel.

*Planning is key to avoiding unpleasant surprises.*

Third, knowledge is power. Understanding the legal rules enables charities to greatly increase their public policy impact. Understanding that public charities really are allowed to get out and lobby is enough to empower some charity managers who have previously held back. Also, many activities with enormous potential to affect public policy are not

considered lobbying at all for tax purposes. By supplementing lobbying activities with nonlobbying public education, charities can make their lobbying limits go further. Knowing how to structure nonlobbying projects also enhances a charity's ability to attract private foundation funding. While you may not be excited about learning arcane tax concepts, knowing the rules is crucial to playing the game.

*Understanding the legal rules can empower charities and can enable them to greatly increase their public policy impact.*

Finally, we urge you not to be intimidated or deterred by the complexity of the tax and campaign finance laws discussed in this Guide. The policies you care about, and the people they affect, are worth the effort. Since Proposition 13 passed in 1978, ballot measures have played an ever increasing role in shaping California policy. When public charities enter the ballot measure arena, they enrich the public debate and broaden participation, meeting a vital need of our democratic system.

*The policies you care about, and the people they affect, are worth the effort.*

## **A. Organization of this Guide**

Some readers of this Guide will find detailed legal rules and analysis valuable; others may be looking for general overview of the legal issues that public charities face in the ballot measure arena. This Guide attempts to serve both audiences. The main body of the text provides an overview

of the legal framework and discusses how tax limits on lobbying and campaign finance disclosure requirements apply in a number of common situations. The more detailed legal rules and analysis are found in the appendices. Appendix A summarizes the provisions of the California campaign finance disclosure laws that relate to ballot measure campaigns, while Appendix B outlines the federal tax rules applicable to public charity lobbying. Appendix C lists additional resources for more information about tax and campaign finance laws.

## B. Limits to this Guide

Although this Guide provides an overview of the relevant laws, it is not intended to be legal advice, and cannot substitute for legal counsel.

We hope this Guide will help you to understand what facts might be important and what issues can arise; but the legal consequences depend on the particular facts of each situation. Many of the issues are potentially complex because there are so many factual variables, changes in any one of which could change the legal result. Also, this Guide gives a general overview of tax and disclosure laws, but for brevity's sake, many details and nuances have been omitted. For example, the specifics of the campaign reporting requirements—including when, where, and how to file disclosure reports—are not covered.<sup>1</sup> Also, this Guide does not address every legal issue that could arise for public charities involved in ballot measure issues.

---

<sup>1</sup> Additional information about filing deadlines and the mechanics of reporting can be found on the web sites of the FPPC and the California Secretary of State; both are listed in Appendix C.

Before undertaking any particular project, public charities should consult attorneys with the requisite expertise; this may require both a tax attorney knowledgeable about tax-exempt organizations, and an election law specialist versed in California campaign finance laws.

## C. Guide for Public Charities

This Guide is written for charitable organizations that are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, and classified as “not private foundations” under Section 509(a) of the Code. When we use the phrase *public charity* or just *charity*, we mean this the type of nonprofit organization.

We use the term *private foundation* to mean charitable organizations that are exempt under Section 501(c)(3) of the Internal Revenue Code, but classified as “private foundations” under Section 509(a). As most private foundation managers know, public charities are less stringently regulated under the tax laws than private foundations, and in particular the lobbying rules differ substantially. Managers and counselors of private foundations should refer to *The Private Foundation's Guide to the California Initiative Process*. [Appendix C](#) describes how to access this companion volume on the web site of Northern California Grantmakers.

The classification of Section 501(c)(3) charities as either private foundations or public charities does not depend on whether the organization is a grantmaker, nor does it depend on whether the word “foundation” appears in the organ-

ization's name. Community foundations are public charities, for example, and some museums and institutes are private foundations. If you do not know whether your charitable organization is a private foundation or public charity, consult your legal advisor.

#### **D. Guide for California Ballot Measures**

The campaign finance laws discussed in this Guide apply to state and local ballot measures in California. Charities based in other states must follow California's campaign finance laws when they get involved in California ballot measure campaigns. When public charities get involved in ballot measures in other states, the California Political Reform Act will not apply; but many states have campaign finance laws, so the law of the state where a ballot measure appears must be considered.

## Ballot Measures at the Intersection

These simplified examples illustrate the intersection between federal tax and California campaign finance laws. Each example is discussed in detail in The Public Charity's Guide to the California Initiative Process.

### Federal Tax Law – Section 501(h)

#### Not Lobbying

- Public education campaigns that don't reflect a view on a measure (and are not coordinated)\*
- Nonpartisan analysis, study, or research that doesn't expressly advocate for/against a measure (and is not coordinated)\*
- Post-passage monitoring, evaluation, advocacy regarding implementing regulations, or litigation

#### Lobbying

- Spending less than \$1000 in a year to expressly urge voting for/against ballot measures
- Stating a view on ballot measures without urging voters to take action (and without coordination)
- Contributing less than 10% of a paid staffer's time in any month to a Committee
- Drafting proposed language for a ballot measure

### California Political Reform Act

#### Reportable

- Public education campaigns that don't refer to a measure, or don't reflect a view, but are coordinated with a Committee\*
- Nonpartisan analysis, study, or research with a statement urging voters to support/oppose a ballot measure\*

- Spending \$1000 or more in a year to expressly urge voting for/against a ballot measure (or to urge signing/not signing a petition to qualify a measure)
- Contributions of money, substantial staff time, office space, or other resources to a Committee
- Preparing, before a measure is in circulation or on the ballot, for later express advocacy communications about the measure

\* For non-electing charities, it is possible these activities may be considered lobbying under some circumstances; the determination is based on all relevant facts, including the charity's intentions. Non-electing charities may not rely on the definitions provided under Section 501(h).

## II. Ballot Measures and the Role of Nonprofit Organizations

The California Constitution reserves to the voters the powers of initiative and referendum through the use of citizen petition. Initiatives enable voters to adopt statutes or constitutional amendments. The more rarely used power of referendum enables voters to reject laws enacted by the legislature. Both types of measures are qualified for the ballot through the gathering of signatures of registered voters.

State law confers similar powers on the voters of California cities and counties to adopt or reject ordinances through the initiative and referendum process. Also, some cities and counties are governed by their own “charters,” akin to a local constitution; such charters may grant additional initiative and referendum rights to voters and may require voter approval of amendments to the city or county charter.

In addition to initiatives and referenda placed on the ballot by voter petition, California law also permits the legislature to place measures on the ballot. Both amendments to the California Constitution and state bond measures require voter approval, and statewide ballots frequently include measures put before voters by legislation rather than petition. Local boards of supervisors and city councils have similar powers to put measures on the local ballot.

We use the term *ballot measures* to refer to initiatives, referenda, constitutional amendments, and bond measures, at both the state and local levels, placed on the ballot by either legislation or petition.<sup>2</sup>

*We use the term ballot measures to refer to initiatives, referenda, constitutional amendments, and bond measures, at both the state and local level, placed on the ballot by either legislation or petition.*

Nonprofit organizations often play major roles in campaigns to pass or defeat ballot measures. While individuals and businesses may set out to gather signatures or campaign for a measure on their own, typically ballot measure supporters and opponents organize themselves into, align themselves with, or contribute their time and money to, coalitions, committees, and other nonprofit organizations that are involved in the debate.

---

<sup>2</sup> We do not include recall campaigns in this category, however. The power to recall elected officials is also reserved to voters by the California Constitution, but recalls involve a different set of issues for public charities because federal tax law prohibits Section 501(c)(3) organizations from intervening in campaigns on behalf of (or in opposition to) candidates for public office. Therefore, this Guide only addresses ballot measures on legislative issues.

Section 501(c)(3) public charities can be important players in ballot measure campaigns. Public charities are often deeply affected by ballot measures through the constituencies they serve, and groups that never previously considered engaging in public policy activities may resolve to actively support or oppose a measure that would, if passed, impact their work. Other public charities embrace the ballot measure process as a tool to shape public policy to advance their missions. Public charities are permitted to engage in limited lobbying activities, so they may campaign for or against measures without jeopardizing their exempt status as long as they stay within the appropriate limits on the scope of their lobbying; they also can engage in many types of activities that are not considered lobbying for tax purposes but which still influence the passage or implementation of a measure.

*Public charities are permitted to campaign for or against ballot measures without jeopardizing their exempt status as long as they stay within the appropriate limits on the scope of their lobbying; they can also engage in many types of activities that are not considered lobbying for tax purposes but which still influence the passage or implementation of a measure.*

Section 501(c)(3) private foundations also may play a significant role in ballot measure campaigns, although they cannot engage in or fund activities that are treated as lobbying under federal tax rules. For

more information about private foundations and ballot measures, see *The Private Foundation's Guide to the California Initiative Process*. [Appendix C](#) describes how to access this companion volume on the web site of Northern California Grantmakers.

Other nonprofit organizations with broader and longer-term missions also get involved in ballot measure campaigns. These include trade or professional associations and unions, which are exempt from federal taxes under Sections 501(c)(6) and 501(c)(5) of the Internal Revenue Code, respectively. Both business and labor organizations can, consistent with their tax exemption, engage in unlimited lobbying in support of their missions. Established issue advocacy organizations that are exempt as Section 501(c)(4) social welfare organizations also participate in ballot measure campaigns. All of these types of organizations, including public charities, may have to file reports under the Political Reform Act if they engage in reportable ballot measure activity.

When a controversial measure is on the ballot, it is common for new organizations with names like "No on Measure C" or "Yes on Proposition 47" to spring up for the sole purpose of supporting or opposing the measure. These groups formed primarily to influence a particular ballot measure are called *Ballot Measure Committees* in this Guide.<sup>3</sup>

---

<sup>3</sup> The term "Ballot Measure Committee" is not used in the Political Reform Act; we use it in this Guide for convenience.

*We use the term Ballot Measure Committee to refer to a group that is formed primarily to enact or defeat a particular ballot measure.*

Ballot Measure Committees may be created informally, as unincorporated associations, or may be established more formally as California nonprofit public benefit corporations or limited liability companies. For federal tax purposes, they will usually qualify as tax-exempt "social welfare" organizations under Section 501(c)(4) of the Internal Revenue Code, a status which allows unlimited lobbying on public policy issues but does not permit donors to claim income tax charitable deductions for their donations.

# III. Overview of the Legal Framework

This Guide principally addresses two bodies of law that govern ballot measure advocacy by public charities in California—the federal Internal Revenue Code provisions that limit legislative lobbying by public charities, and the California Political Reform Act provisions that require public disclosure of ballot measure campaign financing.

This section starts with a brief overview of the California Political Reform Act and introduces its terminology. A more detailed description of the campaign finance disclosure law appears as Appendix A to this Guide. Next, since many readers will be somewhat familiar with tax restrictions on lobbying by public charities, we give only an extremely broad brush introduction to the tax rules. A more detailed summary of the Internal Revenue Code provisions on legislative lobbying by public charities appears as Appendix B to this Guide. In subsequent sections of the Guide, we apply these two bodies of law to various types of ballot measure activities.

Along with introducing the principal bodies of law covered by this Guide, this section discusses a number of other legal issues that may be relevant to public charities involved in ballot measure work. These include local campaign finance disclosure laws; restrictions on the use of funds imposed by funding sources; restrictions on a public charity’s activities contained in its own governing documents; and issues that arise

when ballot measure campaigns become intertwined with candidate elections. A detailed discussion of these issues is beyond the scope of this Guide; public charities that spot issues on this list that potentially affect their ballot measure activities should consult legal counsel for more information.

## A. The California Political Reform Act

The Political Reform Act, which was adopted through the initiative process in 1974, requires detailed public disclosure of the role of money in California politics. It applies to both state and local elections, and to campaigns for and against both candidates and ballot measures.

In the ballot measure context, the Political Reform Act is a sunshine statute—it requires the public disclosure of contributions and expenditures made to support or oppose ballot measures. The Act does not limit ballot measure spending;<sup>4</sup> California law allows individuals and organizations to spend as much as they choose on ballot measure campaigns as long as they comply with the applicable reporting obligations. Public charities are covered by the Political Reform Act, and may have campaign finance reporting obligations as a result of their ballot measure activities.

---

<sup>4</sup> There is one exception to this general rule; the Political Reform Act prohibits ballot measure contributions or expenditures by foreign nationals.

*Public charities are covered by the Political Reform Act, and may have campaign finance reporting obligations as a result of their ballot measure activities.*

In general, charities trigger reporting obligations under the Political Reform Act through three types of activities:

- Making contributions (cash or in-kind) for ballot measure activities of \$10,000 or more during a calendar year;
- Receiving contributions for ballot measure activities of \$1,000 or more during a calendar year; and
- Making independent expenditures urging voters to adopt or reject a measure of \$1,000 or more during a calendar year.

Any group that receives contributions of \$1,000 more is called a *Recipient Committee*, and must file campaign finance reports on both the contributions it receives and the contributions and independent expenditures it makes. (Ballot Measure Committees are a type of Recipient Committee.) Organizations that are not Recipient Committees, but have reporting obligations based on the amount of their contributions or independent expenditures, are either *Major Donor Committees* or *Independent Expenditure Committees*. All campaign finance reports are public documents, accessible to anyone.

*Contribution* has a broad and multi-faceted meaning under the Political Reform Act. It can mean a transfer of money or property for the

purpose of supporting or opposing a ballot measure, or with the knowledge that the transferred money will be used for that purpose. It can also mean the provision of staff, office space, mailing lists, poll results, or other resources to a Ballot Measure Committee, or payments for activities that are done at the behest of or in coordination with a Ballot Measure Committee.

An *independent expenditure* is a payment for a communication to the public that expressly or unambiguously advocates the qualification, passage, or defeat of a ballot measure, and which is not made at the behest of or in coordination with a Ballot Measure Committee.

### Further Information

A more detailed description of the Political Reform Act provisions applicable to public charities appears as **Appendix A** to this Guide.

In this Guide, we use the term “contribution” only for payments that meet the definition of a contribution for ballot measure activities under the Political Reform Act; similarly, the term “independent expenditure” is used only as it is used in the Act, to describe payments for communications urging voters to adopt or reject a measure. Together, making contributions, receiving contributions, and making independent expenditures are reportable *ballot measure activities*, i.e., activities that have to be reported in campaign finance disclosure filings if the applicable dollar thresholds are met.

## B. Federal Tax Law

Ballot measures are considered to be legislation for tax purposes, and encouraging voters to cast their votes for or against a ballot measure is treated as lobbying. All public charities are permitted to engage in lobbying activities, although Section 501(c)(3) limits the amount of lobbying public charities can do. As long as they observe the Section 501(c)(3) limits on the amount of their lobbying, all public charities may endorse or oppose ballot measures and urge voters to pass or defeat measures without jeopardizing their exempt status.

*As long as they observe the Section 501(c)(3) limits on the amount of their lobbying, all public charities may endorse or oppose ballot measures and urge voters to pass or defeat measures without jeopardizing their exempt status.*

How much lobbying a public charity may do is determined under one of two tests, and nearly all<sup>5</sup> public charities can choose which of the tests will apply. By filing a one-page form with the IRS, a public charity can elect to have the amount of its permissible lobbying measured under the Section 501(h) expenditure test. Charities that make the Section 501(h) election (which we call *electing public charities*) may lobby freely as long as the amount of money they spend on lobbying communications does not

---

<sup>5</sup> Some public charities, like churches, are not eligible to make a Section 501(h) election; their lobbying is always restricted under the “no substantial part” test. See IRC Section 501(h)(3), (4).

exceed certain spending caps, which are calculated based on the charity’s budget. Public charities that do not make a Section 501(h) election (or *non-electing charities*) are governed by the more nebulous “no substantial part” test, meaning that their lobbying activities cannot amount to a substantial part of their overall activities.

Under Section 501(h), one spending cap applies to overall lobbying expenditures; a second and much lower cap applies to expenditures for “grassroots” lobbying.<sup>6</sup> Any communication made to legislators which refers to and reflects a view on legislation is treated as direct lobbying for tax purposes. Under a special rule for ballot measures, the IRS treats the public as the legislature, so that nearly all lobbying on ballot measures is considered direct lobbying under Section 501(h), rather than grassroots lobbying.

*Lobbying on ballot measures is considered direct lobbying under Section 501(h), rather than grassroots lobbying.*

A communication to members of the public which refers to a ballot measure and reflects a view on the measure is likely to be lobbying for tax purposes. However, there are important exceptions and nuances to this lobbying definition, especially for charities who have made the Section 501(h) election. The dissemination of

---

<sup>6</sup> As of December 16, 2003, legislation was pending in both houses of Congress (H.R. 7 and S. 476) to that would eliminate this separate and lower limit for grassroots lobbying. If enacted into law, these measures would provide that only one limit, for the total amount of direct and grassroots lobbying, would apply to the lobbying activities of electing public charities.

nonpartisan research, study, and analysis is not considered lobbying for tax purposes, for example. At least for electing charities, neither are public education campaigns about issues addressed by ballot measures that do not refer to the measure, or the distribution of neutral and unbiased information about a measure that does not reflect a view.

*Lobbying expenditures include not only the costs to deliver or distribute lobbying communications, but also the costs to research and prepare them.*

All public charities must report the amount of their lobbying expenditures on their annual federal tax return, Form 990. Lobbying expenditures include not only the costs to deliver or distribute lobbying communications, but also the costs to research and prepare them, including the full costs of staff time and a reasonable allocation of overhead, as well as out-of-pocket payments. Charities that do not make a Section 501(h) election must also attach a detailed narrative statement to IRS Form 990 describing their lobbying activities.

### **C. Local Campaign Finance Ordinances**

The campaign finance reporting requirements of the California Political Reform Act apply to both state-wide propositions and local ballot measures at the city or county level. However, some California cities and counties have additional campaign finance laws that apply to campaigns for or against ballot measures in that jurisdiction. For example, San Francisco and Los

Angeles both have local laws that apply to local ballot measure campaigns.

This Guide does not cover any local campaign finance laws. Charities that are considering getting involved in a local ballot measure should investigate whether local campaign finance laws will apply to their activities in addition to the Political Reform Act.

#### **Further Information**

More information about the tax rules relating to lobbying by Section 501(c)(3) public charities appears in **Appendix B** to this Guide. In addition, the Alliance for Justice publishes a number of booklets that explain the federal tax law rules on lobbying by Section 501(c)(3) public charities in greater detail. These and other resources on public charity lobbying are listed in **Appendix C** to this Guide.

### **D. State Tax Law**

Charitable organizations in California that are exempt from federal tax under Section 501(c)(3) of the Internal Revenue Code are typically exempt from state income taxes under Section 23701d of the California Revenue & Tax Code. The state tax rules regarding lobbying by public charities parallel the federal rules, so lobbying that is permissible under Section 501(c)(3) is also consistent with an organization's California tax-exempt status. The California Franchise Tax Board has slightly different reporting requirements, however. California charities must report their lobbying activities on FTB Form 3509, including a narrative description of their lobbying activities,

a schedule of expenditures, and copies of any materials published.<sup>7</sup>

## **E. Limits on Lobbying Imposed by Funding Sources**

Grants or gifts made to charitable organizations often come with their own set of restrictions and limits. In determining whether to engage in ballot measure activities, a public charity must ascertain which funds it may use for this purpose.

Federal grant funds cannot be used to lobby for or against ballot measures, under rules enforced by the Office of Management and Budget. (These rules are described in OMB Circular A-122.) State and local government grants and contracts may also come with prohibitions on use of government funds for lobbying. In addition, grants received from other charitable organizations, especially private foundations, may restrict the use of grant funds for lobbying; more rarely, individual gifts may also include lobbying restrictions.

*For any potential source of funds for ballot measure activity, a charity should check correspondence to determine whether funds from that source may be used for the proposed activity.*

For any potential source of funds for ballot measure activity, a charity should check the contract, grant agreement, or donor correspondence as appropriate to determine whether funds from that

source may be used for the proposed activity. Note that restrictions imposed by funding sources on the use of funds, including specifically those imposed in Federal grants, generally apply only to money received from that source, and not to other resources of the charity obtained from other donors or grantors.

Gifts, grants, and contracts made to charitable organizations may also be restricted to fund only specified purposes or activities, like providing childcare services or public education about water policy. These restrictions must also be observed in determining whether a source of funds exists for the proposed ballot measure activity.

## **F. Limits in the Public Charity's Governing Documents**

Organizations that are exempt from tax under Section 501(c)(3) are either nonprofit corporations, trusts, or unincorporated associations. (Most California-based charities are nonprofit public benefit corporations.) In each case, the nonprofit organization has governing documents that set forth its purposes and limit its activities. A nonprofit corporation has Articles of Incorporation and Bylaws, for example, while a trust has a Trust Agreement or Declaration of Trust. These governing documents may include limits on political and legislative activity that are more stringent than those required by the Internal Revenue Code; a charitable organization should therefore check its own governing documents to determine whether they permit ballot measure lobbying or other ballot measure activities. In some cases, it may be possible to amend the

---

<sup>7</sup> In practice, the FTB will generally accept forms that report only the total amounts of direct and grassroots lobbying, with a simple statement that further information will be provided on request.

governing documents to eliminate unnecessarily strict lobbying limits. If so, such amendments should be made before the charity engages in any lobbying activity.

## **G. Candidate Issues**

Ballot measure campaigns can sometimes become intertwined with candidate elections. If a particular ballot measure becomes closely identified with one candidate or political party, or if a candidate or party controls the committee promoting or opposing a measure, Section 501(c)(3) organizations must take extra care in planning and documenting their own activities to prevent any appearance of intervening in the candidate election, since electioneering with respect to candidates is strictly prohibited for Section 501(c)(3) organizations. While this concern should not prevent public charities from supporting or opposing ballot measures, nonprofit counsel should be consulted before proceeding if there appears to be any risk that a charity's ballot measure activities could be interpreted by its opponents as supporting, opposing, or assisting any candidate for public office.

*If a particular ballot measure becomes closely identified with one candidate or political party, or if a candidate or party controls the committee promoting or opposing a measure, Section 501(c)(3) organizations must take extra care in planning and documenting their own activities to prevent any appearance of intervening in the candidate election.*

In some circumstances, lobbying can be a form of partisan political activity to influence candidate elections. For example, when lobbying efforts are targeted to the district where an election is taking place, timed to coincide with a contested election, and focused on wedge issues that distinguish the candidates, the lobbying efforts may be interpreted as campaign intervention. Again, consult nonprofit counsel before proceeding if a charity's lobbying efforts could be construed as an effort to sway the outcome of a candidate election.

Also, mentioning candidates or elected officials in communications about ballot measures, or coordinating activities with candidates or elected officials, can sometimes implicate federal or state campaign finance laws. Campaign finance laws related to candidates are beyond the scope of this Guide, but any charity that considers referring to a candidate (or elected official running for re-election) in mass media advertising should consult election law counsel before proceeding.

## IV. Specific Ballot Measure Activities

When a public charity contemplates engaging in ballot measure activities, it must consider both whether the activity is lobbying for tax purposes, and whether it may lead to reporting obligations under California campaign finance laws.

Applying these complex legal rules to a particular activity is a fact-specific process, so general guidance is difficult to give. Careful planning, and building in time and a budget for consultation with legal counsel as the facts evolve or specific communications are drafted, is indispensable to safely maximizing a public charity's impact in the ballot measure context. With this caveat, we discuss in broad terms some of the ballot measure activities that public charities undertake.

*Careful planning, and building in time and a budget for consultation with legal counsel as the facts evolve or specific communications are drafted, is indispensable to safely maximizing a public charity's impact in the ballot measure context.*

### A. Endorsements and Public Statements

A public charity can publicly endorse or oppose a ballot measure. For tax purposes, this activity is lobbying, and

any amount the charity spends to communicate its position to voters will be a lobbying expenditure. For example, staff time spent to draft a press release is a lobbying expenditure. The costs of posting the statement on the charity's web site, mailing it to the press, or communicating it to the public must also be counted as lobbying expenditures.

*A public charity can publicly endorse or oppose a ballot measure. For tax purposes, this activity is lobbying, and any amount the charity spends to communicate its position to voters will be a lobbying expenditure.*

For public charities that make a Section 501(h) election, there are special rules that determine when communications with members are treated as lobbying. (These special rules do not apply to charities governed by the "no substantial part" test.) Under these rules, electing public charities can communicate with their own members about legislation that is of direct interest to the charity without having to treat the costs of such membership communications as lobbying, as long as members are not encouraged to contact legislators or to mobilize others to contact legislators. It is not clear how this rule applies in the context of ballot measures where the charity's members are part of the

electorate who may vote on a measure. It is reasonable to believe the exception applies, and that public charities can communicate with their own members about ballot measures that are of direct interest to the organization without having to treat the costs of such membership communications as lobbying. However, subject to advice of legal counsel, electing public charities wishing to use this exception should limit their communications to discussing the contents of the measure and the charity's position on it, and refrain from urging members to vote for or against it.

Under the campaign finance laws, communications from an organization to its members are not reportable contributions or independent expenditures; by regulation, the Fair Political Practices Commission has adopted specific requirements for this exception which should be consulted prior to making any communications to members.

If a charity communicates its endorsement or opposition to the public with messages that expressly advocate the passage or defeat of a measure—like “Defeat Measure A” or “Support Proposition 43”—the charity will have engaged in an independent expenditure under California's campaign finance laws. (As discussed below, if the public statement is coordinated with a Ballot Measure Committee, it might be considered a contribution to the Committee rather than an independent expenditure.) If the charity's costs to prepare and distribute communications that expressly advocate the passage or defeat of a measure are \$1,000 or more during a calendar year, the

charity will have to file campaign finance reports.

On the other hand, if the charity communicates its endorsement of or opposition to a measure without expressly urging voters to take action, its communications might not meet the definition of an independent expenditure under campaign finance laws. For example, a statement such as “Measure B is good for the environment,” without more, is probably not an independent expenditure. However, if a public charity is going to spend \$1,000 or more to communicate its stance on a ballot measure, it is advisable to have an election law attorney review the communication, since a review of the entire communication and all of the relevant facts and circumstances may be needed to determine whether or not it is reportable ballot measure activity under California's campaign finance laws.

If the text, timing, or distribution of the charity's public statements are coordinated with a Ballot Measure Committee, the charity's expenses will be treated as contributions to the Committee instead of independent expenditures. Coordination with a Ballot Measure Committee would cause the charity's communications to be treated as in-kind contributions even if the messages do not expressly advocate the passage or defeat of a ballot measure. In-kind contributions must be reported on the Ballot Measure Committee's campaign finance reports; the public charity would also have to report the contribution on its own campaign finance reports if it is required to file as a Major Donor Committee (because it contributes

\$10,000 or more during a calendar year) or a Recipient Committee (because it receives contributions for ballot measure activity of \$1,000 or more during a calendar year).

A public charity may authorize another organization (like a coalition of organizations or a Ballot Measure Committee) to list it as an official endorser or opponent of a ballot measure in the other organization's communications. Because this step is inexpensive to implement, it will make very little dent in a charity's lobbying limits for tax purposes, and is unlikely to trigger any reporting obligations under campaign finance laws. However, if a public charity wants to take a more active role in a coalition—like co-signing letters—additional issues are raised, which are discussed in Section VI on "Coalitions and Alliances."

## **B. Public Education Campaigns on Ballot Measures Issues**

A public charity can educate voters about the content and potential impact of ballot measures, through distributing reports, publishing fact sheets or articles, making radio appearances, or other means. If the charity's reports, fact sheets, or speakers refer to a ballot measure and reflect a view on its merits, these communications will generally be considered lobbying and all costs of preparing and conducting the educational efforts will be lobbying expenditures. For example, "myth versus fact" hand-outs on ballot measures are typically lobbying, since they usually reflect a view on the merits of the measure even if they do not explicitly endorse or oppose it.

Similarly, an article or letter-to-the-editor that criticizes or lauds a ballot measure will likely be lobbying for tax purposes. (As discussed below, these educational efforts may be reportable under campaign finance laws if they urge voters to support or oppose a measure, or are coordinated with a Ballot Measure Committee.)

### **Further Information**

**The line between lobbying and non-lobbying activities is much less clear under the "no substantial part" test than under the Section 501(h) expenditure test. A non-electing charity's intentions and the context of its actions may both be relevant to determine whether particular educational activities are lobbying. For more information about non-electing charities, see [Appendix B](#).**

For tax purposes, disseminating the results of nonpartisan study, analysis, or research is not considered lobbying. For this exception to apply, the communication as a whole must be an objective examination of the measure, including a sufficiently full and fair exposition of the pertinent facts to enable the audience to form an independent opinion or conclusion on the issue. Mere assertions of opinion or a one-sided view will not qualify. A scholarly, dispassionate study of a ballot measure, regardless of its conclusions for or against, epitomizes this exception. If a report qualifies as nonpartisan analysis, study, or research, preparing and distributing it will not be lobbying even if it reflects a view on the merits of the ballot measure.

Another nonlobbying educational activity is to provide voters with neutral and objective information about a ballot measure without reflecting any view on its merits. A neutral description of the content of a proposed ballot measure, or a factual statement regarding the top contributors to each side, would not be lobbying under tax rules because such communications do not reflect a view on the measure. This approach requires careful unbiased scrutiny of the communication, however, since a communication may reflect a view even though it avoids any blatant praise or condemnation of a measure.

Before any ballot measure has been proposed, and even while a ballot measure on the same topic is pending, public charities may fund or engage in public education campaigns that discuss public policy issues without referring to the ballot measure. For example, a charity may conduct a public education campaign about the role of wilderness areas in preserving biodiversity at the same time a park bond measure is pending. This type of early background education can completely change the political environment in which voting on a ballot measure will occur. Under the Section 501(h) rules for electing public charities, the education campaign will not be lobbying if it does not refer to the ballot measure.

If any of these voter education activities are coordinated with a Ballot Measure Committee, the costs of conducting the activities will be treated as in-kind contributions to the Ballot Measure Committee under California campaign finance laws. This is true whether or not the educational activities are considered lobbying for

tax purposes, and whether or not the activities mention the ballot measure or take a position on the measure. In-kind contributions must be reported on the Ballot Measure Committee's campaign finance reports; the public charity would also have to report the contribution on its own campaign finance reports if it is required to file as a Major Donor Committee (because it contributes \$10,000 or more during a calendar year) or a Recipient Committee (because it receives contributions for ballot measure activity of \$1,000 or more during a calendar year).<sup>8</sup>

If a public charity's educational activities are not coordinated with a Ballot Measure Committee, the charity's expenditures would only be reportable under campaign finance laws if the charity expressly urged voters to support or reject the measure. Communications that advocate passage or defeat of a ballot measure are independent expenditures, and must be reported if the public charity spends \$1,000 or more during a calendar year.

---

<sup>8</sup> This is one situation in which the state law reporting obligation might possibly have tax consequences; the treatment of coordinated educational activities as an in-kind contribution to a Ballot Measure Committee could cause the IRS to take the position that these activities should be treated like in-kind donations to the committee for tax purposes as well (just like a donation of mailing labels), so that the costs of the educational activities would be lobbying expenses regardless of whether they qualified as a lobbying communication under the tax rules. On the other hand, as long as the charity isn't physically delivering a stack of reports or flyers to a Ballot Measure Committee but rather is carrying out its own public education campaign, the tax rules that determine when educational efforts are and are not lobbying should control.

## **C. Hosting Debates or Speakers**

If a public charity hosts a debate about a ballot measure featuring speakers from both sides, it will not be considered either lobbying for tax purposes or reportable ballot measure activity under the Political Reform Act. To be considered a nonlobbying activity, the public charity must be strictly neutral in the organization and presentation of the event. Spokespersons from both sides of the issue should be invited, and the moderator should refrain from stating any position or making any editorial comments about the ballot measure. If the format of the debate involves questions from the moderator, the questions should be neutral and not imply support or opposition to the measure.

If it is not possible to get both pro and con speakers at the same event, a public charity could host them at two different meetings. As long as both meetings receive equal publicity (and there is no reason to expect that attendance at one meeting will greatly exceed attendance at the other), and as long as the charity is neutral in introducing the speakers, hosting both speakers in turn should not be lobbying for tax purposes or reportable ballot measure activity under campaign finance laws.

A public charity that is not neutral in choosing and presenting speakers on ballot measure issues probably would be treated as having engaged in lobbying itself. For example, if a charity organizes a public event to consider an upcoming ballot measure, and invites only one

speaker who will represent only one side of the debate, the costs of the event would likely be lobbying expenditures. Under campaign finance laws, the event costs may also be a reportable contribution or independent expenditure if there is coordination with a Ballot Measure Committee or the public communications concerning the event include express advocacy on the measure.

If a public charity invites a speaker to address a broader topic—for example, water policy in general—and the speaker happens to discuss an upcoming ballot measure, this does not necessarily transform the costs of the event into lobbying expenditures for the charity. If the charity made it clear at the event that the speaker's views were his or her own and did not represent the position of the organization, and if the charity did not invite the speaker with any expectation that the ballot measure would be discussed, the lobbying messages of the speaker should not be attributed to the organization. The charity should be sure and document its expectations when it arranged to host the speaker, and disclaimers made at the event, against the eventuality of an IRS audit. These types of events will not generally raise any obligations under the campaign finance laws.

## **D. Contributing Money to a Ballot Measure Committee**

A public charity can contribute money to a Ballot Measure Committee as long as the goal of the Committee—passing or defeating a particular measure—advances the exempt purposes of the

charity. Such a contribution will be a lobbying expenditure for tax purposes.

*A public charity can contribute money to a Ballot Measure Committee as long as the goal of the Committee—passing or defeating a particular measure—advances the exempt purposes of the charity.*

When a public charity distributes money to any organization that is not exempt under Section 501(c)(3), it must take steps to ensure that its funds are used solely to further a charitable purpose and not used for something inappropriate (like candidate electioneering or private benefit). A contribution to a Ballot Measure Committee is no exception. Hence, a public charity contributing funds to a campaign to pass or defeat a measure should enter into a grant agreement with the Ballot Measure Committee in which the Committee agrees to use the charity's donation solely for the purpose of supporting or opposing the measure, to return any funds not spent for that purpose, and to report back to the charity about how its funds were actually used.<sup>9</sup>

For campaign finance reporting purposes, a transfer of money to a Ballot Measure Committee is a

---

<sup>9</sup> If this proves impractical in the rush before election day, a public charity should at a minimum send its contribution with a cover letter that restricts the use of its funds and requires the return of any funds that are not spent for the intended purpose. If the Ballot Measure Committee will not be required to provide reports on the use of the charity's contributed funds, the charity may be able to sufficiently document the proper use of its grant by obtaining the Committee's campaign finance disclosure reports. However, the burden is on the charity, in the event of an IRS audit, to demonstrate that it appropriately monitored any grants to non-501(c)(3) organizations.

reportable contribution. The Ballot Measure Committee will have to report the contribution on its Recipient Committee reports, and, if the contribution is \$100 or more, also identify its source. In addition, the donor public charity may have its own reporting obligations. It will have to report the contribution if it is required to file as a Major Donor Committee (because it contributes \$10,000 or more during a calendar year) or a Recipient Committee (because it receives contributions for ballot measure activity of \$1,000 or more during a calendar year).

## **E. Contributing Staff, Space, or Resources to a Ballot Measure Committee**

Under the Political Reform Act, providing goods or services to a Ballot Measure Committee is considered to be a contribution to the Committee. For example, donating a mailing list and address labels to a Ballot Measure Committee would be a contribution, with the value of the contribution measured by the fair market value of the list and labels. Providing office space is also a contribution, again measured by the fair market value of the office space provided. Lending paid staff to a Ballot Measure Committee is a contribution if a staff member spends ten percent or more of his or her compensated time during a calendar month working on behalf of the Committee. All of these contributions would be reported by the Ballot Measure Committee, naming the charity as the source of the contribution, and also by the public charity if qualifies as a Major Donor Committee (because it contributes \$10,000 or more during a calendar

year) or a Recipient Committee (because it receives contributions for ballot measure activity of \$1,000 or more during a calendar year).

For tax purposes, providing staff, space, or other resources to a Ballot Measure Committee would be a lobbying expenditure. The amount of the lobbying expenditure under Section 501(h) would be either the public charity's cost to provide the resources or the fair market value of the resources, whichever is greater. Costs include staff time provided to the Committee, as well as staff time necessary to prepare resources (for example, mailing labels) donated to the Committee.

The ten-percent threshold under campaign laws for having to report staff time contributed to a Ballot Measure Committee does not apply under tax rules; staff time contributed to a Committee is a lobbying expense from the first minute.

As discussed in subsection D above, when a public charity distributes money to any organization that is not exempt under Section 501(c)(3), it must take steps to ensure that its funds are used only to further a charitable purpose. The same is true for other types of resources provided to a Ballot Measure Committee. If a public charity donates office space to a Committee, it should enter into an agreement with the Committee about what activities may be carried on the space; similarly, if a mailing list is donated, the charity should restrict the use of the list to a mailing that furthers a charitable purpose by supporting or opposing a ballot measure. In

particular, a charity should make sure that its list will not be passed on to any candidate or candidate-controlled organization.

## **F. Lending Money or Making Pledges to a Ballot Measure Committee**

Loans and enforceable pledges are both treated as contributions for campaign finance purposes at the time they are made. As with other contributions, they will have to be reported by the Committee on its campaign finance reports; the public charity will also have to report the contributions if the charity's total contributions during the year are \$10,000 or more, or if the public charity receives contributions for ballot measure activity of \$1,000 or more during the year.

For tax purposes, a bona fide loan to a Ballot Measure Committee is not likely to be considered a lobbying expenditure as long as the charity has a genuine expectation of repayment. If there is no genuine and reasonable expectation of repayment, the loan may be considered a lobbying expenditure when the loan is made. Any loan to a Ballot Measure Committee (or any other non-charitable entity) should bear interest at market rates and be documented with a promissory note. The tax treatment of pledges depends on a number of factors, including whether the pledge is likely to be enforceable and the accounting method of the charity; counsel should be consulted before making a pledge to a Ballot Measure Committee.

# V. Fundraising for Ballot Measure Activity

Fundraising for ballot measure activities raises a number of additional legal issues for public charities. On the tax side, donations to charities that are earmarked for lobbying purposes are not tax-deductible by the donor. Under campaign finance laws, public charities that raise money for ballot measure activity must determine whether the donations that the charity receives are reportable contributions that must be disclosed in campaign finance reports.

*Most charities will find it best to draw upon reserves of previously-donated funds instead of soliciting new gifts for ballot measure work that is either lobbying for tax purposes or reportable ballot measure activity under campaign finance laws.*

Of course, a public charity may engage in many types of activities related to ballot measures that are neither lobbying under IRS rules nor reportable contributions or independent expenditures under the Political Reform Act. Fundraising for these types of activities—like distributing nonpartisan analysis, study, and research, disseminating neutral and unbiased information about a ballot

measure, or hosting nonpartisan debates about a measure—does not raise these special issues, as long as care is taken to keep these projects both nonlobbying and nonreportable.

## A. Qualifying as a Recipient Committee

When public charity makes contributions for ballot measure advocacy or makes independent expenditures to support or oppose a ballot measure, a key question is how the charity funded these activities. If the charity received donations for its ballot measure work, and if these donations are treated as “contributions” under the Political Reform Act, the charity will qualify as a Recipient Committee if the contributions received total \$1,000 or more during the year. It will then be required to report on all the contributions it receives, and identify the donors who made contributions of \$100 or more. On the other hand, if the charity funded its ballot measure work with its “own” money, and did not receive contributions, the charity will not be a Recipient Committee (but may have to report its ballot measure activities a Major Donor or Independent Expenditure Committee).

Under California campaign finance laws, the term *contribution* has a broad definition. It includes not only payment made for the purpose of influencing the passage or defeat of a ballot measure, but also payments made when the donor knows or should know that the payment (or funds with which the payment will be commingled) will be used by the recipient to make contributions or independent expenditures.

*If a donor makes a gift or grant to a public charity with the direction, agreement or understanding (explicit or implicit) that the funds will be used for reportable ballot measure activity, the gift or grant will be a reportable contribution.*

Even if there is no such understanding between the donor and the charity, a donation may still be reportable if the donor knew or had reason to know that the charity would use the donation for reportable contributions or independent expenditures. Depending on the circumstances, even unrestricted donations may be treated as contributions if the charity has a history of ballot measure activity or if donors have some other reason to know that the charity will make contributions or independent expenditures.

### **Further Information**

The definition of *contribution* is explored further in [Appendix B](#), which also includes a section on the reporting of funding sources.

Applying the broad definition of “contribution” to donations received by a public charity is a complex and fact specific determination. In addition, as of this writing, there is litigation pending between the state agency that enforces the Political Reform Act and a nonprofit organization concerning the application of the disclosure requirements to donations received by the organization.<sup>10</sup> Ultimately this case may provide additional guidance on the definition of “contribution” and the Act’s reporting requirements. Consequently, we advise public charities who use donated funds to make reportable ballot measure contributions or independent expenditures to consult election law counsel to determine if the charity must file Recipient Committee reports.

In addition, public charities should be aware of the campaign finance laws when soliciting gifts for ballot measure activities. If the charity indicates to the donor that the gifts may be used for reportable activities, or if the donor directs this use, the donations are likely to be reportable contributions.

## **B. Nondeductibility of Gifts for Lobbying Activities**

A public charity can receive tax-deductible charitable gifts for the general support of all its activities, including its lobbying on ballot measures or other legislation. If the charity has a program that includes some lobbying along with other

---

<sup>10</sup> The litigation is between the Fair Political Practices Commission and the American Civil Rights Coalition, Inc., and concerns the Coalition’s involvement in Proposition 54.

nonlobbying activities, it can generally raise funds earmarked for the program and those gifts will still be deductible for the donor.

*Donations to a Section 501(c)(3) organization are not tax-deductible if there is an agreement or understanding between the charity and the donor that the funds will be used for lobbying activities.*

However, donations to a Section 501(c)(3) organization are not tax-deductible if there is an agreement or understanding between the charity and the donor that the funds will be used for lobbying activities. Therefore, it is best for a public charity to avoid soliciting or accepting gifts earmarked for ballot measure lobbying. If such gifts are solicited or accepted, the public charity should (in the interest of good donor relations) disclose to the donor that gifts for lobbying are not tax deductible as charitable gifts. At a minimum, the public charity must avoid stating or implying that donations earmarked for lobbying are deductible, including in any receipt or acknowledgement provided to the donor.

Many ballot measure activities that public charities may engage in are not lobbying for tax purposes; funds donated for nonlobbying projects are deductible by the donor, even if the projects relate to ballot measure education. With care, tax-deductible funds may be raised for projects that relate to ballot measures, but are not lobbying for tax purposes.

## **C. Raising Money for Ballot Measure Committees**

Ballot Measure Committees typically qualify for exemption under Section 501(c)(4), a status that allows unlimited lobbying. A public charity may fundraise for a Section 501(c)(4) organization, including a Ballot Measure Committee, to help support the other organization's advocacy for or against a specific ballot measure, if the public charity determines that the Section 501(c)(4) organization's lobbying will further its charitable purposes. Because the purpose of this fundraising is to support the ballot measure lobbying of the other organization, any fundraising costs the charity incurs will be lobbying expenditures for tax purposes.

Fundraising solicitations for gifts to Section 501(c)(4) organizations are required by law to disclose to potential donors that gifts will not be tax-deductible. If a public charity's staff and volunteers solicit donations that will be payable to a Ballot Measure Committee or other Section 501(c)(4) organization, they must become familiar with and follow these specific disclosure rules.<sup>11</sup>

While a public charity may fundraise for a Ballot Measure Committee by encouraging donors to contribute directly to the Committee, charities should avoid acting as a conduit by accepting and acknowledging gifts and then passing

---

<sup>11</sup> Information about the disclosure requirement is available on the IRS website, [www.irs.gov](http://www.irs.gov). Click on "Charities & Non-Profits," and then "Social Welfare Orgs," and then "Solicitation Notice." The disclosure of nondeductibility is required by Section 6113 of the Internal Revenue Code, which the IRS interpreted in Notice 88-120, 1988-2 CB 454.

them along to a Ballot Measure Committee. First, it could be tax fraud for a donor to claim a charitable deduction for a gift if the donor and the charity had an agreement or understanding that the charity would pass the gift on to a Section 501(c)(4) organization; if the charity provides the donor with an acknowledgment stating that the gift was deductible, the charity may be found to have abetted the tax fraud and could be liable for tax penalties. Secondly, it is illegal under California campaign finance laws to act as intermediary for reportable contributions without disclosing the true source of the funds to the Recipient Committee that ultimately receives the contribution. (The Recipient Committee is required to report both the intermediary and the true source of the funds on its campaign finance reports.) Therefore, charities that raise money for a Ballot Measure Committee should instruct donors to make their gifts directly to the Committee. It is permissible to collect checks which are made payable to the Committee and to forward those checks to the Committee; there are also no reporting obligations associated with this activity.

In the event that a charity does deposit a check intended for a Ballot Measure Committee or other noncharitable organization, the charity should consult with counsel to make sure the transaction is properly reported (for tax, campaign finance, and GAAP financial statement purposes) or, alternatively, reversed by returning the donor's money.

## D. Grants from Private Foundations

Private foundations are subject to special tax rules that are not applicable to public charities; one of these rules prohibits private foundations from engaging in or funding any lobbying activities. Therefore, while a public charity may lobby to a limited extent on ballot measures or other pending legislation, it cannot get funding from private foundations that is earmarked for lobbying activities.

Private foundation can give core operating support to public charities that lobby, and can in some circumstances support part of the budget of a project that includes some lobbying. Private foundations can also fund activities that either do not meet the definition of lobbying, or qualify as nonlobbying activities under an exception. For more information about private foundations and ballot measures, see *The Private Foundation's Guide to the California Initiative Process*. [Appendix C](#) describes how to access this companion volume on the Northern California Grant-makers' web site.

## VI. Coalitions and Alliances

Public charities interested in public policy often participate in coalitions or alliances with other organizations interested in the same issues. Some coalitions are loose and informal, consisting of little more than a group of organizations that share information and gather from time to time to discuss mutual concerns. Other coalitions are formally established as independent legal entities, with their own bylaws and other governing documents, their own governing boards, and their own tax-exempt status as Section 501(c)(3), (4), or (6) organizations.

When a public charity belongs to or participates in a coalition engaged in ballot measure activities, a number of special issues arise.

### A. California Political Reform Act Issues

Under the Political Reform Act, any person or group—even a loose and informal group—can meet the definition of a “committee.” This may trigger campaign finance reporting obligations for the coalition as a whole, and also for constituent organizations that contribute staff time, resources, or money to support its activities.

For example, if a coalition raises \$5,000 from various members to produce and mail a brochure that urges readers to “Support Measure M,” the coalition meets the definition

of a Recipient Committee—it raised \$1,000 or more in contributions for reportable ballot measure activity. The coalition’s brochure is an independent expenditure because it expressly urges voters to support the ballot measure; hence, the money raised for this project from coalition participants will be reportable contributions. The coalition will have to file an initial notice that it qualifies as a Recipient Committee with the Secretary of State, and also file periodic reports listing its contributors and itemizing its expenses.

If the coalition is formed primarily for the purpose of supporting or opposing a ballot measure, it will not only be a Recipient Committee, but will also be the type of Recipient Committee that is primarily formed for political purposes—in other words, it will be a Ballot Measure Committee as we use the term in this Guide. As such, the coalition will be subject to additional requirements under the Political Reform Act (regarding the name of the coalition, disclaimers that must appear on its communications, and the contents of its campaign finance reports) that are not covered in this Guide.

If the coalition meets the definition of a Ballot Measure Committee, any expenditures made by a coalition member that are made “at the behest” of the coalition will be treated as reportable contributions to the coalition. For example, if a public charity carries out a public education

campaign regarding a ballot measure issue, and the contents, timing, and target audience are determined after substantial discussions between the charity's representatives and representative of the other members of the coalition, all of the costs of the public education campaign are likely to be treated as an in-kind contribution to the coalition in its role as Ballot Measure Committee. The coalition would have to list the contribution on its Recipient Committee reports; the public charity will also have to report the contribution if its total contributions made during the year are \$10,000 or more or if the public charity itself qualified as a Recipient Committee.

If a coalition or alliance is merely a forum for sharing information and ideas, its activities are not likely to trigger any reporting obligations under the Political Reform Act. But if the coalition raises money or splits the costs of joint projects, careful legal review may be necessary to determine whether the coalition's activities include reportable ballot measure activity under campaign finance laws, and whether the coalition has become a Recipient Committee or even a Ballot Measure Committee, with potentially significant reporting consequences for all its participants.

*If the coalition raises money or splits the costs of joint projects, legal review may be necessary to determine whether the coalition's activities include reportable ballot measure activity under campaign finance laws.*

These California Political Reform Act provisions apply to any coalition that gets involved with California ballot measures, including coalitions that have members based in other states. The California rules do not apply to ballot measure activities in other states (even if conducted by California entities). Of course, many states have their own campaign finance reporting rules that apply to campaigns for or against ballot measures in those states. When a public charity participates in a ballot measure campaign in a state other than California, the law of that state must be investigated to determine if any reporting obligations will be triggered.

## **B. Tax Issues**

When a public charity participates in a coalition that is engaged in lobbying activities, questions often arise regarding which activities of the coalition are attributed to the public charity and which expenses of the public charity must be treated as lobbying expenditures.

When a coalition makes a lobbying communication that is jointly signed by members—for example, a publicly distributed letter that refers to and reflects a view on a ballot measure—each organization that signed the joint communication has engaged in lobbying. However, a public charity that participated in the joint lobbying communication treats only its own costs as lobbying expenditures, without including the costs paid by other members of the coalition. For example, a public charity's own staff time spent planning, researching, writing, and editing the letter, plus any amount the

charity spent to print or distribute the letter, would be lobbying expenditures for the public charity. Similarly, if a coalition of groups agrees to gather signatures to put a measure on the ballot, a participating charity must treat as lobbying expenditures its own costs of circulating petitions, as well as the cost of staff time spent planning the coalition's campaign.

*A public charity that participated in a joint communication treats only its own costs as lobbying expenditures, without including the lobbying costs paid by other members of the coalition.*

Many coalitions serve as clearinghouses of information; members use coalition meetings and lists to exchange information about developments in their field. When a public charity communicates with other coalition members about pending ballot measures, it is not always clear whether such internal coalition communications should be treated as lobbying by the charity issuing the update. The issue turns on whether members of the coalition are considered to be a segment of the "public" who will vote on the measure, because communications to the public that both refer to and reflect a view on a ballot measure are lobbying communications. This is a judgment call based on the particular facts of the situation. If the coalition has a well-defined membership, and communications are made to persons in their capacity as representatives of their organizations and not as individual participants, it is likely that communications to coalition members that refer to and reflect a view on a ballot measure are not lobbying

communications. (However, such communications may be made in preparation for later lobbying communications by the coalition or its members, in which case a charity's costs may still be lobbying expenditures.) On the other hand, if a coalition or alliance is diffuse or amorphous, with a constantly shifting indefinite membership, the coalition itself may be a segment of the public, with the result that communications to members that refer to and reflect a view on ballot measures are themselves lobbying communications.

If a coalition raises money to fund its activities through dues, donations, or otherwise, a public charity that wishes to donate must consider whether the coalition is an independent entity or a project of one of its members, and more particularly, what tax status the coalition has. Some coalitions formally incorporate, obtain an employer identification number from the IRS, and apply for exempt status as a Section 501(c)(3) charity, a Section 501(c)(4) social welfare organization, or a Section 501(c)(6) business league. For example, Northern California Grantmakers is formed as an independent public charity, separate from its member foundations. However, the failure to formally incorporate does not rule out the possibility that the coalition is an independent legal entity. If the coalition is governed by its members as an entity separate from and not under the control of any particular member, it may be an unincorporated association. And depending on its activities, the coalition may be a noncharitable entity like a Section 501(c)(4) social welfare organization. On the other hand, a coalition may be a project of one

individual member, with members having an advisory role but the sponsoring organization assuming responsibility for, and controlling the use of, any coalition funds. In this case, the coalition has no independent tax or corporate status; it is simply part of the sponsoring organization, and shares its tax status.

When considering making donations to any coalition, a public charity must know who will be the legal recipient of the donation, since the recipient's identity can affect the public charity's legal obligations in making the gift. The public charity should determine whether the coalition is a legal entity with its own Employer Identification Number and tax status, or a project of one its members. If there is any ambiguity about whether the coalition is a charitable organization or a project of a charitable organization, any donations should be restricted with grant agreements to ensure that funds are used for charitable purposes and that any funds not so used are returned.

## VII. Forming a Ballot Measure Committee

While public charities may lobby, federal tax law limits the amount of lobbying they can do. Ballot measure campaigns, especially for statewide measures, often require enormous resources over a short time period, which may easily swamp even a large public charity's annual lobbying limit. Therefore, public charities with a strong interest in a particular ballot measure may create a separate Section 501(c)(4) organization as a vehicle for the charity's donors and volunteers to get more involved. Such a committee may be formed by one public charity acting alone, or by a coalition of organizations interested in a particular ballot measure, as discussed in the preceding Section VI.

*Segregating ballot measure activity into a separate legal entity helps the public charity keep its own lobbying within appropriate limits. It also may simplify recordkeeping.*

Segregating the ballot measure activity into a separate legal entity helps the public charity keep its own lobbying within appropriate limits. It also may simplify recordkeeping and public campaign finance reporting of contributions and expenditures for ballot measure activity. Use of a

separate entity also reduces any donor confusion about the deductibility of gifts.

There are disadvantages to creating a Section 501(c)(4) organization as well. Forming a new legal entity will entail some time and money to set up a new nonprofit corporation, limited liability company, or unincorporated association, and to determine its governance structure; and once the entity exists, it will have compliance costs like accounting and tax returns. The sponsoring charity will have to set up careful boundaries between the two organization to avoid any subsidy flowing from the charity to the Section 501(c)(4) organization, since any subsidy could not only be a lobbying expenditure on tax returns, but could also be a reportable ballot measure contribution for campaign finance reporting purposes (assuming the new entity qualifies as a Recipient Committee).

Under the Political Reform Act, the new entity will probably be a Recipient Committee because its purpose will be to raise and spend money to advocate the adoption or defeat of a ballot measure. In addition, a new Recipient Committee created in response to a proposed or pending measure will be considered "primarily formed" for that particular

measure under the Act (which means it is a Ballot Measure Committee as we use that term in this Guide). If the Committee will be used to support involvement in more than one ballot measure, then it will be considered a "general purpose" committee. The distinction between a "primarily formed" and "general purpose" committee is important for reporting and disclaimer purposes. One consequence being a Ballot Measure Committee is that any activities of the public charity that are done at the behest of the Committee will be treated as reportable ballot measure contributions. When a charity establishes a Ballot Measure Committee or meets the Political Reform Act definition of a sponsor of the Committee, the charity's ballot measure activities may be presumed to be coordinated with the Committee.

The advantages of creating a Ballot Measure Committee may outweigh the disadvantages for charities with the ability and desire to become heavily involved in a ballot measure campaign. However, when creating a Ballot Measure Committee, it is important to do it right. Under campaign finance laws, the Committee will be subject to disclosure and disclaimer requirements applicable to "primarily formed" committees (which are not discussed in this Guide); also, the Committee's relationship to the founding charity or charities may qualify it as a sponsored committee, leading to more special reporting requirements (also not covered in this Guide). Election law counsel will be needed to help steer the new Committee through these rules as well as the recordkeeping and reporting requirements applicable to all Recipient Committees.

Also, the new Committee would be subject to federal and state corporate income taxes unless it operates in accordance with the tax rules for a Section 501(c)(4) exempt organization (and, on the state level, an organization exempt under Section 23701f of the California Revenue and Tax Code).

Further, the benefits of establishing a separate Ballot Measure Committee could be lost unless care is taken to organize and operate the Committee as legal entity separate from the charity. If the Committee were treated as project or component of a public charity rather than as a separate legal entity, the charity would have to treat the Committee's income and expenses as the charity's income and expenses. This could lead to unanticipated lobbying expenditures and Political Reform Act reporting requirements for the public charity. Nonprofit organization counsel can help a charity to properly set up the new organization and to structure the relationship between the Committee and its sponsoring charities so that the Committee is an independent legal entity and the Committee's activities are not attributed to its affiliated charity or charities.

## VIII. Getting Measures on the Ballot

Campaigns to change state or local public policy through the ballot measure process usually begin several months, and sometimes even years, before petitions begin to circulate to put a specific measure on the ballot. Nonprofit organizations, including public charities, are often at the heart of such efforts. In this section, we look generally at the pre-circulation and signature-gathering phases of a campaign to put a measure on the ballot by petition, as well as at efforts to get a legislative body to place a measure on the ballot.

### A. Pre-Circulation

The activities during the pre-circulation phase include coalition building and joint exploration among the various nonprofit organizations (and some-times businesses or government entities) interested in the topic of the potential ballot measure; consideration of alternatives to a ballot measure solution; polling to determine the public's views on the topic generally in order to get context for any future advocacy; drafting ballot measure language and support (or sometimes opposition) statements; polling to determine public reactions to specific draft ballot measure provisions, or test public opinion of specific possible spokespeople or specific phraseology, or determine which arguments for or against a measure resonate best with voters; and organizational capacity

building generally (such as developing membership or supporter lists or a door-to-door canvassing function, or obtaining advice on the legal parameters of ballot measure activity, or researching the details of the ballot measure process).

It is during this phase that the difference between charities that have made a Section 501(h) election and those that have not will be most pronounced. Under Section 501(h), a ballot measure placed on the ballot by petition does not become "specific legislation" until signature gathering begins, meaning that communications about the proposed measure do not fall within the definition of lobbying. Expenditures incurred during the pre-circulation phase may be lobbying expenditures, however, if they are incurred "in preparation" for making a communication to the public that will occur *after* circulation commences and that will refer to and reflect a view on the ballot measure.<sup>12</sup> Electing charities can safely treat the process of deciding whether to go forward with a ballot measure, and some activities that go into developing the measure itself, as nonlobbying, because they

---

<sup>12</sup> Note that, for electing charities, if for any reason the measure never gets circulated for petition signatures, then activities that were counted under Section 501(h) as preparation for later lobbying communications, can be retroactively ignored. This is known as a false start. Since no specific legislation ever came into being, no lobbying can have occurred, even though some activities during this earlier period would have counted as lobbying had the measure gone forward to circulation.

are not directed at a communication that will be made on the measure after circulation; the same would not be true for a non-electing charity. In addition, much of the polling, research, and organizational development activities during this phase may support not just eventual ballot measure lobbying, but a variety of other nonlobbying activities of the charity; if such polling, background research, and organizational capacity building are engaged in *primarily* for nonlobbying purposes, an electing charity might not need to count the activities as lobbying at all. On the other hand, activities like drafting the language of the proposed ballot measure and polling to test potential campaign slogans are nearly always lobbying expenditures because they are primarily done for the purpose of later lobbying communications.

Under the Political Reform Act, preliminary research concerning the content or viability of a proposed initiative and the drafting of the language of the measure will not generally result in any campaign finance reporting obligations, because the proposal is not yet a “measure.” Spending during the pre-circulation phase to develop campaign messages or materials may have to be reported later, however, when actually used by a Committee in communications to the voters that are reportable ballot measure activity.

Also, a coalition created to qualify a measure for the ballot will become a Ballot Measure Committee once signature gathering begins, assuming it raises money or coordinates joint projects. Issues related to coalitions and alliances are further discussed in Section VI.

It is important to emphasize again that applying both tax and campaign finance rules to a particular activity is an intensely fact-specific process, which unfortunately makes general guidance difficult to give. Advice of counsel may be needed to determine whether pre-circulation activities are lobbying expenditures or potentially reportable ballot measure activity.

## **B. Petitions in Circulation**

Signature gathering to put a measure on the ballot is a direct lobbying activity, whether done by paid staff or volunteers. When a public charity participates in a signature gathering effort to qualify a measure, its lobbying expenditures will include staff time spent planning, organizing, and carrying out the petition drive; the costs to prepare any materials used (like banner signs or leaflets); and other expenditures primarily made as part of the petition drive (such as transportation of volunteers, purchase of clipboards, mailing of petitions, etc.).

*Signature gathering to put a measure on the ballot is a direct lobbying activity, whether done by paid staff or volunteers.*

For campaign finance purposes, signature gathering to qualify a ballot measure is reportable ballot measure activity. If a public charity conducts a petition drive independently of any Ballot Measure Committee, its costs to gather signatures will be independent expenditures, which must be reported if the charity makes \$1,000 or more in independent expenditures during a calendar year. If the public charity

coordinates its drive with a Ballot Measure Committee, its costs may be treated as contributions instead. The Committee would report the in-kind contributions on its Recipient Committee reports, and the public charity would also have its own reporting obligations if it qualifies as a Major Donor Committee or Recipient Committee.

### **C. Legislation to Put Measures on the Ballot**

Ballot measures can also be placed on the ballot by the state legislature, county boards of supervisors, or city councils. When a public charity supports a legislative effort to get a measure on the ballot through a legislative body vote, the lobbying rules applicable to non-ballot measure legislation apply. The reason is that while members of the public are considered “legislators” with respect to the ultimate ballot measure, the action to put it on the ballot will be taken by a legislative body. Hence, a communication to the public that reflects a view whether a ballot measure should be put to a vote of the electorate will not be lobbying under the Section 501(h) rules unless the communication urges recipients to take action. For non-electing charities, efforts to pass legislation by contacting legislators or influencing public opinion are likely to be lobbying, unless educational efforts qualify as nonpartisan study, analysis, and research.

Under the Political Reform Act, a ballot measure placed on the ballot does not become a “measure” triggering the campaign finance reporting obligations discussed in this

Guide until the legislative body votes to place it on the ballot. However, California also has a “sunshine” law requiring disclosure of spending to lobby statewide legislative and administrative officials, and many cities and counties have local lobbying disclosure laws as well, which *could* be triggered by activities of nonprofits directed at convincing legislators to send a measure to a vote of the people. Lobbying disclosure laws are not discussed in this Guide, and charities should consult counsel about the reporting requirements that may apply to their lobbying contacts with legislators and public officials.

## IX. Post-Passage Activities

The public policy process does not end with the passage of legislation. Post-passage activities relating to the implementation and evaluation of ballot measures can be a highly effective strategy for public policy impact, and may be conducted with relatively minimal legal constraints.

*Post-passage activities relating to the implementation and evaluation of ballot measures can be a highly effective strategy for public policy impact.*

For example, once a ballot measure has been enacted, a public charity can litigate to challenge its constitutionality or interpret its provisions; this is not lobbying for tax purposes, and not reportable under state campaign finance laws.

A public charity may also engage in administrative lobbying of government agencies charged with promulgating regulations to implement the measure, and then monitor, evaluate, and publicize their progress; advocacy on administrative regulations is not subject to the tax restrictions on legislative lobbying. Such administrative advocacy is also not subject to the campaign finance disclosure rules applicable to ballot measure campaigns, but may be subject to lobbying disclosure rules applicable to contacts with legislators

and administrative agency decision-makers which are beyond the scope of this Guide. Charities should consult counsel to determine whether any state or local lobbying registration and reporting rules might apply to their participation in administrative rule-making following a ballot measure.

*Advocacy on administrative regulations is not subject to the tax restrictions on legislative lobbying.*

Finally, stepping back to retrospectively evaluate the impacts of legislation or constitutional amendments adopted by voters will not typically be lobbying, nor will it be reportable for state law purposes. (If a communication discusses a proposal to change the law, however, it could be lobbying if the elements of a lobbying communication are present.)

# X. Community Foundations and Public Foundations

Community foundations are classified under IRS rules as public charities, and are not subject to the more stringent restrictions applicable to grantmakers that are classified as private foundations. Other grantmakers who receive funding from a broad base of donors may also be public charities rather than private foundation under IRS rules, and such organizations are sometimes called *public foundations*.

Since they are public charities, community foundations and public foundations can engage in limited lobbying activities—they can endorse or oppose ballot measures, make lobbying expenditures, and contribute to ballot measure campaigns. The legal rules discussed throughout this Guide apply to community foundations as well as to operating charities. This section highlights a few issues that may be of particular interest to community foundations and other public foundations.

*Since they are public charities, community foundations can engage in limited lobbying activities—they can endorse or oppose ballot measures, make lobbying expenditures, and contribute to ballot measure campaigns.*

## A. The Section 501(h) Election

Community foundations and public foundations are eligible to make the Section 501(h) election. For some, the election can provide welcome clarity and certainty regarding the scope of their permissible lobbying.

### **Further Information**

The advantages and disadvantages of the Section 501(h) election are covered briefly in [Appendix B](#). For more information about Section 501(h), see the resources listed in [Appendix C](#).

However, for large charities, the election might not be advantageous. The maximum lobbying ceiling under Section 501(h) is \$1 million per year,

regardless of the size of the charity.<sup>13</sup> Once a charity reaches exempt purpose expenditures of \$17 million, its lobbying limits under Section 501(h) will not get any larger, no matter how much its expenditures grow. One million dollars could easily represent an insubstantial part of a large community foundation's overall expenditures. Therefore, a sufficiently large community foundation could spend more than \$1 million per year on lobbying and still claim that its lobbying was insubstantial relative to the rest of its activities. In these circumstances, the Section 501(h) expenditure test may actually be more limiting than the "no substantial part" test. Community foundations should discuss this with counsel in determining whether the election makes sense for them.

Community foundations often have separate management and policies for donor-advised funds as compared to unrestricted or field-of-interest funds. Because of this, community foundations sometimes do not realize that grants made from donor-advised funds count as exempt purpose expenditures under Section 501(h). Similarly, the expenses of incubated or fiscally sponsored projects that are legally part of the community foundation count as exempt purpose expenditures of the community foundation. Counting advised-fund grants and sponsored project spending could mean that a community foundation has a higher lobbying limit under Section 501(h) than its managers first realized—

unless the community foundation is already over \$17 million in exempt purpose expenditures, as discussed above.

As large organizations, however, community foundations are more likely than many charities to have dedicated development staff and investment managers. Under Section 501(h), the costs of a discrete fundraising unit and costs to manage investments do not count as exempt purpose expenditures. Capital expenditures also do not count. This could result in a lower lobbying limit under Section 501(h) than foundation managers first realized. Therefore, if a community foundation has made or is considering making a Section 501(h) election, its managers should estimate the community foundation's annual lobbying ceilings based not on its total budget for the year, but rather on its estimated exempt purpose expenditures as defined in the Section 501(h) rules.

In calculating its annual lobbying expenditures under Section 501(h), a community foundation must include any lobbying expenditures made from its donor-advised funds and fiscally sponsored projects. (For community foundations that do not make the Section 501(h) election, lobbying grants from donor-advised funds or lobbying activities of sponsored projects count as activities of the community foundation in applying the "no substantial part" test.)

Supporting organizations may also affect a community foundation's Section 501(h) calculation. Supporting organizations are legally separate charitable organizations that qualify as

---

<sup>13</sup> Enacted in 1976, this limit has never been adjusted to reflect inflation; had it been, this limit would now exceed \$3 million. As of this writing, there are no active legislation proposals in Congress to index the 501(c)(h) limits.

public charities because of their close legal relationship with another public charity, often a community foundation, that receives substantial and broad-based public support. If the community foundation has the right to appoint the majority of the governing board of the supporting organization, the community foundation and the supporting organization are an affiliated group for Section 501(h) purposes, and all expenditures of the affiliated group are aggregated in calculating both the Section 501(h) expenditure limits that apply to the group, and the annual lobbying expenditures made by the group. On the other hand, if the community foundation does not appoint a majority of the supporting organization's governing board, and if the majority of the supporting organization's governing board is not made up of individuals who also serve on the community foundation's governing board, then the two charities may not be affiliated (in which case the supporting organization's expenditures would not count in calculating the community foundation's Section 501(h) limit or lobbying expenditures). A community foundation that has supporting organizations should have counsel review the relationship between the community foundation and each supporting organization to determine whether any supporting organizations are affiliated with the community foundation for Section 501(h) purposes.

## **B. Grantmaking Activities**

Community foundations may carry out direct charitable programs, but most of their activities consist of grantmaking to other public charities. Community foundations therefore

need to know when grants to other charities may be treated as a lobbying expenditures by the grantor.

For community foundations that do not make a Section 501(h) election, there are no tax regulations that specifically address when grants to other public charities will be treated as lobbying expenditures by the foundation. However, tax regulations applicable to private foundations include a number of specific rules that address when a grant to a public charity will (and will not) be treated as a lobbying expenditure by the private foundation. While these rules do not technically apply to grantmakers that are public charities, it is likely that the IRS would apply similar rules to community foundations and public foundations with respect to their grants to public charities. Therefore, the overview of federal tax law in [Appendix B](#) includes a section that describes these private foundation rules applicable to grants to public charities.

### **Further Information**

Additional discussion of the lobbying rules that apply to grantmaking activities appears in [Section F of Appendix B](#).

For community foundations that have made a Section 501(h) election, there are specific regulations that apply when grants are earmarked for lobbying projects. If grants to public charities are not earmarked for lobbying, there are no specific regulations that technically apply to the grantor public charity. Again, we believe the rules applicable to private foundations set forth the principles

that the IRS would likely apply to community foundations and public foundations for grants to public charities that are not earmarked for lobbying.

In addition to public charity grants, community foundations may also make charitable grants to entities that are not exempt under Section 501(c)(3). Contributions to Ballot Measure Committees, which are lobbying expenditures, are discussed in [Section IV. D](#) to this Guide. Also, community foundations can make controlled grants earmarked for a specific nonlobbying project of a non-Section 501(c)(3) grantee. By using controlled grants, community foundations can fund charitable projects of noncharitable organizations, without risking any lobbying expenditures. Controlled grants are discussed in [Appendix B](#).

### **C. Donor-Advised Funds**

Community foundations and other public charities that maintain donor-advised funds are sometimes asked by their fund advisors to approve grants for ballot measure lobbying. The suggested grantee may be another public charity, or it may be a Ballot Measure Committee or other Section 501(c)(4) organization. Alternatively, a community foundation or public foundation interested in a pending ballot measure may actively try to interest its fund advisors in grants for ballot measure lobbying.

*A community foundation can make grants for ballot measure lobbying if its Board decides such grants are consistent with its mission and purpose.*

All public charities, including community foundations, can engage in ballot measure lobbying to a limited degree. Therefore, a community foundation can make grants for ballot measure lobbying if its Board decides such grants are consistent with its mission and purpose. Any grant that is earmarked for lobbying will count as a lobbying expenditure by the community foundation and will have to be reported on the foundation's tax returns. If a community foundation makes a grant to a noncharitable entity, like a Ballot Measure Committee, the foundation should take some additional steps to ensure the grant funds are used only for charitable purposes; grants to noncharities are discussed in [Section IV. D](#) of this Guide.

*Community foundations must be wary, however, of being used as a conduit by donors seeking to circumvent tax or campaign finance rules.*

Community foundations must be wary, however, of being used as a conduit by donors seeking to circumvent the tax rule that gifts for lobbying are non-deductible, or seeking to avoid having their names disclosed on campaign finance reports. If a donor, before making a gift, seeks any kind of explicit or implicit agreement from the community foundation that the community foundation will approve a grant for lobbying with the donated funds, the community foundation should consult counsel before accepting the donation. Any gift made pursuant to such an understanding is earmarked for lobbying and is not a deductible gift for federal tax purposes. Even

without such an understanding, an inference of earmarking could arise if a donation were received by a community foundation for a donor-advised fund, and within a short period of time, a grant from that fund in the same amount were made by the community foundation. To rebut any such inference, community foundations that make lobbying grants from donor-advised funds should maintain documentation that gifts were unrestricted when originally received from the donor, and that the donor's advice as to the disposition of the funds was legally nonbinding. Good acknowledgement letters and grant request forms are often key to such documentation.

Under the California campaign finance laws, any payment for the purpose of influencing the passage of a ballot measure, or made at the behest of a Ballot Measure Committee, is a reportable contribution. If donors to advised funds make gifts with the intention that the gifts be granted out for ballot measure lobbying, such gifts could be treated as contributions, causing the community foundation to meet the definition of a Recipient Committee with an obligation to file campaign finance reports. Alternatively, if gifts are implicitly earmarked by the donor to be granted to a Recipient Committee, the community foundation could be treated as an intermediary under campaign finance laws. An intermediary is required to report the source of the funds to the Recipient Committee, and the Recipient Committee must disclose both the donor and the intermediary in its reports. This is yet another reason to consult counsel if the donors seek an implicit agreement or indicate at the time the gift is made that they

want the funds to be used for ballot measure lobbying.

Even when the donor's original gifts were not earmarked in any way for lobbying, and might even have been made months or years before a donor recommends a grant to a Ballot Measure Committee, it remains unclear how donor-advised grants will be treated under the California Political Reform Act. Although the donor advisor's recommendation carries no legal weight, and the community foundation is clearly the legal owner of the donor-advised funds it holds,<sup>14</sup> the Fair Political Practices Commission could require that the donor-advisor be reported as the source of the community foundation's contribution to a Ballot Measure Committee. Therefore, this is yet another situation where consulting with legal counsel in advance is indispensable.

---

<sup>14</sup> Unless the community foundation is the legal owner of the fund with full discretion and control as to its use, the donor-advised fund arrangement will fail for federal income tax purposes.

# Appendix A:

## The California Political Reform Act

The Political Reform Act, which was adopted through the initiative process in 1974, requires detailed public disclosure of the role of money in California politics. It applies to both state and local elections, and to campaigns for and against candidates and, more importantly for charities, ballot measures. The California Fair Political Practices Commission (FPPC) is the state agency charged with the principal responsibilities for interpreting, implementing, and enforcing this campaign finance law, though many campaign disclosure reports are filed with (and made available to the public by) the California Secretary of State.

In the ballot measure context, the Political Reform Act is a sunshine statute—it requires disclosure of contributions and expenditures made to support or oppose ballot measures. The Act does not limit ballot measure spending<sup>15</sup>; California law allows individuals and organizations to spend as much as they choose on ballot measure campaigns as long as they comply with the applicable reporting and other disclosure obligations.

In general, reporting obligations are triggered under the Political Reform Act by three types of activities:

- Making contributions for ballot measure activities of \$10,000 or more during a calendar year;
- Receiving contributions for ballot measure activities of \$1,000 or more during a calendar year; and
- Making independent expenditures urging voters to adopt or reject a measure of \$1,000 or more during a calendar year.

Individuals or organizations that pass any one of these three milestones are considered “Committees” under the Act, and must file public campaign finance disclosure reports.

The definitions of **contribution** and **independent expenditure** under the Political Reform Act are discussed in more detail below.

In this Guide, we use the term “contribution” only for payments that meet the definition of a contribution for ballot measure activities under the Political

---

<sup>15</sup> There is one exception to this general rule; the Political Reform Act prohibits ballot measure contributions or expenditures by foreign nationals.

Reform Act; similarly, the term “independent expenditure” is used only as it is used in the Act, to describe payments for communications urging voters to adopt or reject a measure. Together, making contributions, receiving contributions, and making independent expenditures are *reportable ballot measure activities*, i.e., activities that have to be reported on forms filed with the Secretary of State and other filing officials if the applicable dollar thresholds are met.

If a public charity does make contributions or independent expenditures for ballot measure activities, a key question is whether the charity will be required to disclose its sources of funding for those activities—its donors and grantors, in other words—in its own campaign finance reports. This often complex question is discussed below under “Reporting of Funding Sources.”

The Political Reform Act also mandates that ballot measure advertisements include a disclosure statement that indicates who is paying for the ads. Disclosure rules also apply to broadcast advertisements or mass mailings for or against ballot measures that are independent expenditures. In addition, other types of communications may be required to include a statement about funding sources if the Committee paying for them has received \$50,000 or more from a single contributor. These disclosure rules are beyond the scope of this Guide.

## A. Key Definitions and Concepts

Understanding the campaign finance disclosure rules begins with the definitions of the key terms.

*In general, reporting obligations are triggered under state campaign disclosure laws by making contributions to ballot measure campaigns, receiving contributions for ballot measure campaigns, and making independent expenditures urging voters to adopt or reject a measure.*

**Contribution.** The term *contribution* has a broad and multi-faceted meaning under the Political Reform Act and the regulations interpreting it. Because the meaning of this term is pivotal to the Act’s disclosure scheme, it merits close attention by public charities involved in ballot measure advocacy.<sup>16</sup>

The basic definition of a contribution is a payment to any person or organization for the purpose of influencing either the qualification of a measure for the ballot or the passage or defeat of a ballot measure. Hence, if someone makes a donation to a charity for the specific purpose of supporting the charity’s efforts to oppose a particular ballot measure, or in response to a solicitation from the charity

---

<sup>16</sup> As this Guide went to press, litigation was underway between the FPPC and the American Civil Rights Coalition, Inc. regarding when donations to a nonprofit organization should be treated as reportable ballot measure contributions. The outcome of this case may affect the definition of a contribution under the Political Reform Act and FPPC regulations implementing the Act.

asking for such support, the donor has made a contribution and the charity has received a contribution.

However, the donor's intentions are not always determinative; it is also a contribution to transfer money or property if, at the time of making the payment, the donor knows or has reason to know that the payment (or funds with which the payment will be commingled) will be used to make ballot measure contributions or expenditures. For example, if an organization's fundraising letter indicates an intention to use the donations raised for ballot measure expenditures, a supporter who donates in response to the letter will be deemed to have made a reportable contribution, since he or she had reason to know the charity would use the contribution for ballot measure activity. This is also the case if conversations with representatives of the charity have given the donor reason to expect that the gift will be used for ballot measure activity. If the donor knows or has reason to know that only a part of the donation will be used to make contributions or expenditures, the donated amount is apportioned on a reasonable basis to determine the amount that will be deemed to be a contribution.

Whether a donor knows or has reason to know that the donation will be used for reportable ballot measure activity depends on the circumstances. If the charity receiving the donation has not made ballot measure contributions or independent expenditures of at least \$1,000 or more in the current calendar year or in any of the preceding four calendar years, a presumption arises that the donor did not have reason to know that the donation would be used for ballot measure activity. (However, this favorable presumption goes away if there is evidence that the donor did have actual knowledge of the charity's intention to use the gift for ballot measure activity.)

Any payment made to an organization formed or existing primarily for political purposes—that is, formed primarily to support or oppose candidates or ballot measures—is treated as a contribution unless full and adequate consideration is received in return. Thus, all donations to Ballot Measure Committees are treated as contributions, regardless of what the donor knows or intends regarding the Committee's use of the funds. Also, making bargain sales to Ballot Measure Committees or offering discounts that are not available to the public are treated as contributions. Payments made "at the behest of" a Ballot Measure Committee also are contributions, as discussed further below.

If a gift is made to a person or organization other than a Ballot Measure Committee, and the donor expressly restricts the use of the donation so that it is clear that the funds may not be used to make independent expenditures or contributions for ballot measure (or candidate) campaigns, the gift will not be treated as a contribution. This is true even if the recipient subsequently engages in ballot measure activities.

Contributions include not only outright monetary donations, but also loans, pledges of future financial support, or the provision of in-kind goods or services.

For example, donating a mailing list and address labels to a Ballot Measure Committee would be a contribution (with the value of the contribution measured by the fair market value of the list and labels). Providing office space is also a contribution, again measured by the fair market value of the office space provided. Lending paid staff to a Ballot Measure Committee is a contribution if a staff member spends 10 percent or more of his or her compensated time during a calendar month working on behalf of the committee.

***At the behest of.*** Any payments made “at the behest of” a Ballot Measure Committee are considered contributions to the Committee. Expenditures are made *at the behest* of a Ballot Measure Committee if they are made at the direction of; in cooperation, consultation, coordination, or concert with; at the request or suggestion of; or with the express prior consent of the Committee or any of its agents. Generally, an expenditure is presumed to be made at the behest of a Committee if the expenditure is based on information provided by the Committee or its agents about the Committee’s needs or plans, or if the expenditure is made by or through the Committee or its agents. With respect to public communications in particular, an expenditure for such a communication is presumed to be made at the behest of the Committee if the Committee or its agents have made or participated in making decisions concerning, or substantially discussed with the expending party, the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement, of the communication. In-kind contributions do not have to relate to public communications; for example, a payment for consulting services may be an in-kind contribution if it is made at the behest of a Committee, even if the consulting does not result in a public communication.

Under this broad definition, a charity can be deemed to have made a contribution to a Ballot Measure Committee if it undertakes an activity that is coordinated with the Committee. For example, if a charity distributes a research report that was planned in coordination with a Ballot Measure Committee, the charity has likely made a contribution to the Committee. Expenditures that are contributions because they were made at the behest of a Committee are often referred to simply as *coordinated* expenditures.

*A charity can be deemed to have made a contribution to a Ballot Measure Committee if it undertakes an activity that is coordinated with the Committee.*

Due to the breadth of the concept of coordination, it may be advisable in some circumstances for charities involved in ballot measure issues to avoid using the same consultants as a Ballot Measure Committee. It is possible, for example, that using the same communications firm to design and implement a nonpartisan public education campaign on the topic of a ballot measure that the Committee is using for its campaign ads could cause the nonlobbying education efforts to be treated as an in-kind contribution to the Committee.

***Independent expenditure.*** An *independent expenditure* is a payment for a communication to the public which expressly advocates the qualification, passage, or defeat of a ballot measure, and which is not made at the behest of a Ballot Measure Committee (i.e., it is not a contribution).

An independent expenditure meets all three of the following elements:

- The expenditure is for a *communication* to the public, which can take any form (including mail, e-mail and any other Internet communications, radio, television, billboards, door hangers, and flyers).
- The communication includes *express advocacy* of the qualification, passage or defeat of a ballot measure (e.g., Vote against 99, Reject Prop. A, Support Measure C); and
- The communication is *independent*, meaning it is not made "at the behest of" the Ballot Measure Committee or its agents (see additional discussion above).

What constitutes "express advocacy" in the context of campaign communications has been the subject of substantial discussion, regulatory action, and litigation. The two basic elements are a clear reference to the measure, and a call to action by the voters. The use of specific words of advocacy such as "vote for," "support," "cast your ballot," "vote against," "defeat," "reject," and "sign petitions for" clearly qualifies as express advocacy. Whether more ambiguous words qualify as "express advocacy" must be analyzed on a case-by-case basis with reference to all aspects of the communication; the most recent court decisions strongly suggest that the types of unambiguous words cited above are essential, and more ambiguous statements do not qualify as express advocacy. For instance, "Measure A is bad public policy" alone is probably not express advocacy but "Measure A is bad public policy – don't forget to vote on Tuesday" may cross the express advocacy line. On this issue, a careful legal review of any public communications is highly recommended.

***Committee.*** Any individual or organization that makes contributions of \$10,000 or more during a year, receives contributions of \$1,000 or more during a year, or makes independent expenditures of \$1,000 or more during a year is considered a *Committee* under the Act. If a public charity crosses one of these contribution or independent expenditure thresholds, the charity will be a Committee for campaign finance purposes. The various types of Committees, and their reporting obligations, are discussed below under "Reporting Obligations under the Political Reform Act."

***Measure.*** A *measure* is any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure, whether or not it qualifies for the ballot.

For a measure placed on the ballot by a legislative body, the proposal does not become a “measure” until the legislative body votes to place it on the ballot. Consequently, expenditures in support of the proposal prior to that time are not usually subject to campaign reporting requirements.<sup>17</sup>

For a measure placed on the ballot through the petition process, the proposal does not become a measure for reporting purposes until the signature gathering process begins.

Note, however, that payments made prior to a proposal becoming a measure may be reportable if they are made to directly support the qualification of the measure for the ballot, or the campaign for or against the measure, or are used or relied on in the qualification or campaign process. For example, if a poll is conducted before a proposal becomes a measure which tests possible campaign messages, and the poll results are later relied on in crafting the message appearing in campaign communications on the measure, then the payment for the poll will likely be an in-kind contribution to the Ballot Measure Committee when the results are used.

## **B. Reporting Obligations under the Political Reform Act**

Any individual or entity that meets the definition of a “committee” is required to file campaign finance disclosure reports; the types of committees most relevant to charities involved in ballot measure campaigns are discussed below. While the Fair Political Practices Commission is the agency that interprets and enforces the Political Reform Act, disclosure reports are filed with (and made publicly available by) the California Secretary of State. In addition, reports may have to be filed with county clerks in some circumstances.

This Guide does not cover the details of campaign finance reporting obligations; rather, its purpose is to explain when a charity may have reporting obligations. Legal counsel experienced with Political Reform Act reporting should be consulted if a charity thinks it may have a reporting obligation.

***Recipient Committees.*** Any person or organization that receives contributions of \$1,000 or more in a calendar year for the purpose of influencing California state or local elections is considered to be a *Recipient Committee*. Recipient Committees must file an initial notice within 10 days of meeting the definition of a Recipient Committee (or, if it qualifies shortly before an election, within 24 hours of meeting the definition). Recipient Committees must also file periodic campaign finance reports disclosing the contributions they receive, and all the contributions and independent expenditures they make, to support or oppose a

---

<sup>17</sup> However, California law imposes registration and reporting requirements on direct lobbying of the legislative branch which may apply depending on the nature and extent of lobbying contacts made, and which are beyond the scope of this Guide.

measure. The frequency with which reports are due varies depending on the length of time before an election; in the weeks just before election day, some contributions and expenditures must be reported within 24 hours.

Recipient Committees are required to disclose the name and address (and for individual donors, the occupation and employer) of any contributor who gives aggregate contributions during the year of \$100 or more. If this donor information is not obtained, the Recipient Committee is required by law to return the contribution. Contributions of less than \$100 from a single donor do not need to be individually listed in campaign finance disclosure reports. In-kind contributions and loans are listed along with monetary contributions.

If a Recipient Committee obtains a contribution through an intermediary, it must disclose the name, address, occupation, and employer of both the original donor and the intermediary who delivers it to the Committee.

If a Recipient Committee receives contributions of \$5,000 or more during a calendar year from a single donor, it must notify that donor that the donor may itself have reporting requirements as a "Major Donor Committee." (The Major Donor Committee requirements are discussed below). The notice must be in writing and must include specific language approved by the FPPC.

Recipient Committee reports also include itemized lists of payments of \$100 or more made during the reporting period, loans made and received, payments made on behalf of the Committee by agents or independent contractors, and accrued (i.e., unpaid) expenses. For entities that qualify as a Recipient Committee but also engage in activities unrelated to elections, the Recipient Committee reports only cover the income, expenses, and activities attributable to their reportable ballot measure activity.

Some Recipient Committees are formed for the express and only purpose of supporting or opposing candidates and ballot measures. These are called "primarily formed" committees and are subject to additional reporting, naming, and disclaimer requirements. In this Guide, we refer to Committees that are primarily formed to support or oppose a single ballot measure as a "Ballot Measure Committee." Often Recipient Committees are "sponsored" by a group or coalition of other persons or organizations, or "controlled" by a candidate or officeholder. Special reporting requirements apply to these types of Recipient Committees.

***Independent Expenditure Committees.*** Any person or organization who is not a Recipient Committee (because it does not receive \$1,000 in contributions during the year) but makes independent expenditures of \$1,000 or more during the calendar year with its own money, is an *Independent Expenditure Committee*. An Independent Expenditure Committee must file periodic campaign disclosure reports listing the independent expenditures it makes. The frequency with which reports are due varies depending on the length of time before an election; in the weeks just

before election day, some independent expenditures must be reported within 24 hours.

**Major Donor Committees.** Any person or organization who is not a Recipient Committee (because it does not receive \$1,000 in contributions during the year) but makes contributions to candidates or Committees of \$10,000 or more during the calendar year with its own money is a *Major Donor Committee*, and must file periodic campaign finance reports disclosing the contributions it makes. In the 16 days prior to election day, some contributions must be reported within 24 hours. A person or organization can become a Major Donor Committee as a result of a single large reportable contribution to a single Recipient Committee, or through a series of smaller reportable contributions to several different Recipient Committees made in a single year.

### C. Reporting of Funding Sources

When a public charity makes contributions or independent expenditures for ballot measure activities, a key question is whether the charity will be required to disclose the source of its funds—i.e., to name its donors—in its own campaign finance reports. In other words, the public charity must determine whether it is a Recipient Committee that received and spent contributions for reportable ballot measure activities, or whether it is a Major Donor or Independent Expenditure Committee that engaged in ballot measure activities with its “own” money.

This determination can be complex and is highly dependent on the specific facts of a particular situation. Also, as of this writing, there is litigation underway between the FPPC and a nonprofit organization that may shed additional light on when organizations must file Recipient Committee reports disclosing the names of their donors.<sup>18</sup> The outcome of this case could affect the reporting obligations of charities. In this section, we look at some general principles that apply when a donor transfers money to an organization, like a public charity, who may be involved in ballot measure activity but is not a Ballot Measure Committee, candidate committee, or political action committee.

**Gift for a project intended to be reportable campaign activity.** If a donor makes a gift or grant to a public charity with the direction, agreement or understanding (explicit or implicit) that the funds will be used for reportable ballot measure activity, the gift or grant will be a reportable contribution. Thus, if a donor agrees to fund a particular project, and the project the donor agreed to support constitutes reportable campaign activity, then the donor will be treated as having made a contribution and the charity will be treated as having received a contribution. (If the donor goes beyond providing financial support, and actually participates in decisions concerning the reportable activity, the donor may also be

---

<sup>18</sup> This litigation is between the FPPC and the American Civil Rights Coalition, Inc. The FPPC alleges that the Coalition must file Recipient Committee reports disclosing its donors, but the Coalition has challenged both the FPPC rules and the application of the rules to its circumstances and facts.

considered a sponsor of a Recipient Committee and have additional reporting requirements.)

***Gift for a project that, as implemented, includes reportable activity.***

The situation is somewhat different if the donor agrees to fund a particular project of a public charity without knowing or agreeing to the aspects of the project that make it reportable campaign activity. The donor may still be deemed to have made a reportable contribution to the organization if the donor knew or should have known that the donation would be used for reportable activity by the public charity. Reporting obligations in this case would depend on a fact-specific inquiry to determine if the donor had the requisite knowledge to cause the donation to be treated as a contribution within the meaning of the campaign reporting laws. Relevant facts will include the description of the funded project, the statements in the solicitation and award documents, discussions between the donor and the charity about the project, involvement of the donor in implementation, and the charity's history of ballot measure activity generally.

***Gift for a project that includes no reportable activity.*** If a donor makes a gift or grant to an organization with the agreement or understanding that the funds will be used for a particular project, and the project includes no reportable activities (i.e., no independent expenditures or ballot measure contributions, in cash or in kind), then the donation will not be reportable. This is true even if the organization engages in reportable activity with other funds.

***Unrestricted donation to an organization that engages in reportable ballot measure activities.*** If a public charity engages in reportable ballot measure activity, and the charity pays for the activity with donated funds, it could meet the definition of a Recipient Committee. If so, it will have to report the contributions it receives to fund its ballot measure activities, as well as its expenditure for those activities.

A threshold question is whether the public charity can identify a source of funds other than grants and donations for its ballot measure activities. If the public charity can identify another source of funds, such as earned income or investment income, it usually will not have to disclose its donors.

If the public charity cannot identify a source of funding other than grants or donated funds for its ballot measure activity, the charity will have to assess whether particular grants or donations it received meet the definition of a "contribution" within the meaning of the campaign disclosure laws. The broad meaning of "contribution" is discussed above. As applied to a charity that receives charitable gifts, donation made with the direction, agreement, or understanding (explicit or implicit) that the public charity will use the donated funds to engage in the reportable ballot measure activity is a reportable contribution.

But even if the donor did not direct that the donation be used for reportable ballot measure activity, and even if there was no agreement or understanding

between the charity and the donor regarding how the funds will be used, a donation can still be treated as a contribution under the Political Reform Act if the donor knew or had reason to know that the payment (or funds with which the payment will be commingled) would be used for ballot measure activity. A charity's history of ballot measure activity is one important factor in determining whether donors will be deemed to have made contributions, since that history may give donors a reason to know their donations could be used for reportable ballot measure activities. It is not the only factor, though, since a charity's correspondence or statements to donors also could give donors a reason to know that their contribution would be used for ballot measure activity.

***Reporting donors as a Recipient Committee.*** If a public charity receives \$1,000 or more in contributions during a calendar year and thus qualifies as a Recipient Committee, it will have to allocate its reportable ballot measure expenses to the donations available to fund them. To give an example, if a charity determines it is a Recipient Committee, and that it had \$100,000 in donations available to fund its \$15,000 in independent expenditures, the charity would treat 15% of each available donation as a contribution, reporting the names of all donors deemed to have contributed \$100 or more. For example, a donor who gave \$500 to the charity would not be identified by name, address, occupation, and employer, because the donor's deemed contribution (calculated as 15% of \$500) is only \$75, less than the threshold for naming contributors. A donor who gave \$700 would be identified, though, since the deemed contribution (15% of \$700) is \$105 and passes the threshold for naming donors. In making this calculation, the public charity would exclude all unavailable donations. Gifts or grants are unavailable for ballot measure activity if they were earmarked by the donor for specific projects that are not reportable ballot measure activity, or if the donors prohibited use of their funds for reportable ballot measure activity.

If a donor is treated as making a contribution of \$100 or more, the public charity will identify the donor in its Recipient Committee report. Donors who are deemed to have contributed less than \$100 from a single source do not need to be listed individually. In some circumstances, contributions from individuals and entities they control must be aggregated. A Recipient Committee must notify donors that they have been reported as contributors if the amount of the contribution attributed them is \$5,000 or more.

# Appendix B:

## Federal Tax Rules

Ballot measures are considered legislation for federal tax purposes, and encouraging voters to cast their votes for or against a ballot measure is treated as lobbying. Therefore, public charities must understand the tax rules concerning legislative lobbying to understand the limits on their permissible ballot measure activities. This Appendix provides an overview of the tax rules, with an emphasis on their application to ballot measures. More information about public charity lobbying may be found in the resources listed in [Appendix C](#).

*Ballot measures are considered legislation for federal tax purposes, and encouraging voters to cast their votes for or against a ballot measure is treated as lobbying.*

### A. 501(c)(3) Lobbying: Three Sets of Rules

With respect to lobbying, the Internal Revenue Code divides the universe of Section 501(c)(3) organizations into three groups, each subject to a different set of rules: electing public charities, non-electing public charities, and private foundations. Although this Guide focuses on public charities, organizations that receive private foundation funding also need to be aware of the lobbying rules applicable to their funders, so the private foundation rules are mentioned below.

Almost all public charities that consider engaging in lobbying have a choice to make. They can file an election under Section 501(h) of the Internal Revenue Code to have the scope of their permissible lobbying activities determined under an expenditures test; or, if no 501(h) election is made, they will be governed by the “no substantial part” test.

***Non-electing public charities.*** Public charities that cannot<sup>19</sup> or do not make the Section 501(h) election are *non-electing public charities* governed by the “no substantial part” test. This test arises from language in Section 501(c)(3) itself, which states an organization will be eligible for tax-exempt status under Section 501(c)(3) only if “no substantial part” of the organization’s activities consists of influencing or attempting to influence legislation.

There is no clear legal standard establishing how much lobbying is allowed before attempting to influence legislation will be considered a substantial part of an

---

<sup>19</sup> Some public charities, like churches, are not eligible to make a Section 501(h) election; their lobbying is restricted under the “no substantial part” test. See IRC Section 501(h)(3), (4).

organization's activities. The few court cases interpreting the "no substantial part" test have established that substantiality is not a strict percentage test, where up to x% is permissible, but anything more than x% is not.<sup>20</sup> Rather, the test considers all facts and circumstances bearing on whether lobbying activity is substantial, including not only the percentage of spending devoted to lobbying, but also Board and volunteer time, statements by representatives of the organization, the importance of the legislative activity to the organization's mission, and even perhaps the public image that the organization projects. In addition, there is no precise definition of exactly what constitutes "attempting to influence legislation" under the "no substantial part" test.

**Electing public charities.** For public charities that make the Section 501(h) election by filing a one-page form with the IRS, the scope of their permissible lobbying activities is determined by an expenditure test described in Sections 501(h) and 4911 of the Internal Revenue Code, and roughly 45 pages of implementing IRS regulations. Collectively, we call these laws and regulations the "Section 501(h) rules." Section 501(h) is an exception to the "no substantial part" test.<sup>21</sup>

The Section 501(h) rules impose an annual dollar limit on the electing charity's overall lobbying expenditures. A second, more stringent annual dollar limit applies to the charity's "grassroots" lobbying expenditures.<sup>22</sup> Both the overall and the grassroots lobbying limits are calculated as a sliding percentage of the organization's total exempt-purpose expenditures. For charities with exempt-purpose expenditures of \$500,000 or less, the overall lobbying limit is 20% of their exempt-purpose expenditures; the percentage is lower for larger organizations. The lobbying ceiling is capped at \$1 million per year, regardless of the size of the organization. Because the 501(h) test is based on expenditures alone, lobbying time spent by volunteers does not count against a charity's 501(h) limit.

The Section 501(h) rules also define in detail what constitutes lobbying for electing public charities, and provide a number of exceptions to the lobbying definition. Because of these definitions and exceptions, not every expenditure aimed at influencing legislation is treated as a lobbying expense. Any activity that does not fall within the definition of lobbying in the Section 501(h) rules, or falls within an exception, does not count against an electing charity's annual expenditure limit.

**Private foundations.** Private foundations are effectively prohibited from engaging in lobbying themselves, or from funding a grantee's lobbying, by Section 4945 of the Internal Revenue Code.<sup>23</sup> Section 4945 imposes a punitive two-tier

---

<sup>20</sup> See *Christian Echos Nat'l Ministry, Inc. v. United States*, 470 F.2d 849, 855 (10<sup>th</sup> Cir. 1972).

<sup>21</sup> See IRC Section 501(c)(3).

<sup>22</sup> As this Guide went to press, legislation was pending in Congress to eliminate the grassroots lobbying limit. If this legislation is enacted into law, electing public charities will have only one lobbying ceiling, limiting the aggregate amount of grassroots and direct lobbying expenditures.

<sup>23</sup> Private foundations are also subject to the "no substantial part" test as a requirement of their Section 501(c)(3) status, but this has little practical significance because of the stricter prohibition in Section 4945.

excise tax on any “taxable expenditure” made by a private foundation; taxable expenditures include amounts paid or incurred to “attempt to influence legislation.”

*Private foundations are effectively prohibited from engaging in lobbying themselves, or from funding a grantee’s lobbying, by Section 4945 of the Internal Revenue Code.*

However, these sanctions only apply if a private foundation makes an expenditure that falls within the Section 4945 definition of a “taxable expenditure.” Section 4945 and the IRS regulations interpreting it define the types of activities that will be treated as taxable lobbying expenditures, and carve out a number of exceptions for activities that are permissible to a private foundation (and not taxable expenditures) even though they may be undertaken in an attempt to influence legislation.<sup>24</sup>

*Section 4945 and the IRS regulations carve out a number of exceptions for activities that are permissible to a private foundation even though they may be undertaken in an attempt to influence legislation.*

These rules defining lobbying for Section 4945 purposes are similar in most respects to the Section 501(h) definitions that apply to electing public charities. Indeed, the Section 4945 definition of lobbying applicable to private foundations actually refers to the regulations defining lobbying for Section 501(h) electing public charities, and the two sets of rules have a number of parallel regulations carving out nearly identical exceptions to the definition of lobbying. However, there are some differences between the lobbying exceptions applicable to private foundations and those applicable to electing public charities.

By observing the rules defining lobbying, private foundations can and do provide grant funding for activities that are intended to influence ballot measures. Such permissible activities either do not meet the definition of lobbying, or qualify as nonlobbying activities under an exception, or involve private foundation funding of public charity grantees whose lobbying activities are not attributable to the private foundation. For more information about private foundations and ballot measures, see *The Private Foundation’s Guide to the California Initiative Process*. [Appendix C](#) describes how to access this companion volume on the web site of [Northern California Grantmakers](#).

---

<sup>24</sup> Treas. Reg. Section 53.4945-2(a).

## B. Lobbying under Section 501(h)

In this section, we give an overview of the rules that define lobbying expenditures for electing public charities. (Lobbying under the “no substantial part” test is discussed below in subsection D.) This overview is not specific to ballot measures, but if a concept is more relevant or differently applied in the ballot measure context, the overview points that out. First, we look at the basic definition of lobbying; next, we look at activities falling outside the definition of lobbying; and finally, we describe some exceptions to the definition of lobbying.

### 1. Lobbying Expenditures: Key Definitions and Concepts

**Lobbying expenditure.** An expenditure will be treated as lobbying if it is for either a “grassroots lobbying communication” or a “direct lobbying communication,” and no exception applies.<sup>25</sup> The term *communication* should be understood in its broadest sense, encompassing printed materials, letters, radio and television broadcasts, websites and e-mails, speeches, press releases, and one-on-one conversations by phone or in person.

*An expenditure will be treated as an attempt to influence legislation if it is for either a “grassroots lobbying communication” or a “direct lobbying communication,” and no exception applies.*

**Direct lobbying communication.** A *direct lobbying communication* is an attempt to influence any legislation through communication with a legislator, an employee of a legislative body, or (under some circumstances) any other government official or employee who may participate in the formulation of legislation.<sup>26</sup> Such a communication will be treated as a direct lobbying communication if and only if both of the following two elements are present:

- The communication refers to specific legislation; and
- The communication reflects a view on the legislation.

In the case of a ballot measure, the general public in the state or locality where the vote will take place is considered to be the legislative body. Consequently, individual members of the public are considered “legislators” for the purpose of the direct lobbying definition, and communications to the public or a segment of the public that refer to a specific ballot measure and reflect a view on the measure are direct lobbying communications (unless, as discussed below, an exception applies).<sup>27</sup>

---

<sup>25</sup> See Treas. Reg. Section 53.4911-2(a)(1).

<sup>26</sup> See Treas. Reg. Section 56.4911-2(b)(1).

<sup>27</sup> See Treas. Reg. Section 56.4911-2(b)(1)(iii).

*In the case of a ballot measure, communications to the public or a segment of the public that refer to a specific ballot measure and reflect a view on the measure are direct lobbying communications (unless an exception applies).*

**Grassroots lobbying communication.** A grassroots lobbying communication is an attempt to influence legislation by affecting public opinion. A communication to the public or a segment of the public is considered to be grassroots lobbying if and only if all three of the following elements are present<sup>28</sup>:

- The communication refers to specific legislation;
- The communication reflects a view on the legislation; and
- The communication encourages the recipient to take action with respect to the legislation.

The third requirement of a grassroots lobbying communication, often referred to as the “call to action” requirement, is satisfied if the communication urges the recipient to contact a legislator or an employee of a legislative body. A communication also contains a call to action if the communication states the recipient should contact any other government official or employee who may participate in the formulation of legislation—for instance, executive branch officials—if the purpose of urging contact with the government official or employee is to influence legislation. For example, a communication urging recipients to contact the Governor to influence the Governor’s budget proposal is a grassroots lobbying communication.

A communication that does not explicitly encourage recipients to contact legislators or officials may nevertheless be treated as a grassroots lobbying communication if it includes statements that are treated as a call to action under Section 501(h) rules. For instance, identifying one or more legislators who will vote on the legislation as opposed to the communication’s view with respect to the legislation, undecided, or the recipient’s representative in the legislature, is treated as a call to action. Similarly, if a communication includes a petition or tear-off postcard for the recipient to use, or includes a legislator’s address or phone number, it has a call to action.<sup>29</sup> A special rule applies to paid mass media advertisements about highly publicized legislation within two weeks of a legislative vote; if this rule applies, a call to action is not required for a communication to be considered grassroots lobbying.

Because the general public is the legislature with respect to ballot measures, communications supporting or opposing ballot measures will generally be direct lobbying, not grassroots lobbying.<sup>30</sup>

---

<sup>28</sup> Treas. Reg. Section 53.4911-2(b)(2).

<sup>29</sup> Treas. Reg. Section 56.4911-2(b)(2)(iii).

<sup>30</sup> Some ballot measures are placed on the ballot through a vote of a legislative body. State bond measures in California, for example, are put before the voters by an act of the legislature, and constitutional amendments are

**Specific legislation.** To fall within the definition of either direct or grassroots lobbying, a communication must refer to “specific legislation.” *Legislation* is defined to include action by Congress, any state legislature, local council, or similar legislative body, or action by the public on ballot initiatives, referenda, constitutional amendments, or similar procedures.<sup>31</sup> Because they are voted on by legislative bodies, budgets and the confirmation of federal judicial nominees by the Senate fall within the definition of specific legislation.

*Specific legislation* includes not only legislation that has been actually introduced, but also a specific legislative proposal that the organization supports or opposes. There is little firm guidance on how detailed a proposal must be to be considered “specific legislation;” we generally advise that if a proposal is detailed enough to tell a legislator how to draft a bill, it is specific legislation. For example, urging a legislator to “get criminals off the street” is not a specific legislative proposal. But if the communication urged mandatory life sentences for all persons convicted of specifically enumerated offences, it would likely qualify as a communication referring to a specific legislative proposal. In the case of a referendum or initiative placed on the ballot by petition, the measure becomes specific legislation when the petition is first circulated among voters for signature.<sup>32</sup>

*In the case of a referendum or initiative placed on the ballot by petition, the measure becomes specific legislation when the petition is first circulated among voters for signature.*

**Lobbying expenses.** All costs of preparing a direct or grassroots lobbying communication are lobbying expenditures, including the costs to research, draft, and review the proposed communication, and to publish, mail, or broadcast the final product.<sup>33</sup> This includes the cost of employee time preparing or delivering the communication. In addition to all directly-related costs, a reasonable share of overhead and other indirect costs must be allocated to lobbying activities and counted as lobbying expenses.

Expenses incurred in preparation for making a lobbying communication are also lobbying expenditures. For example, if a public opinion poll is taken for use in crafting an effective lobbying message, the costs of the poll are lobbying expenditures.

---

sometimes initiated by the legislature. Any public communications encouraging recipients to contact legislators in support of or opposition to legislation to place a ballot measure before the voters would be grassroots lobbying.

<sup>31</sup> Treas. Reg. Section 56.4911-2(d)(1)(i). “Legislation” also includes a proposed treaty required to be submitted by the President to the Senate for its advice and consent from the time the President’s representative begins to negotiate.

<sup>32</sup> Treas. Reg. Section 56.4911-2(d)(1)(ii).

<sup>33</sup> Treas. Reg. Section 56.4911-3(a).

*All costs of preparing a direct or grassroots lobbying communication are lobbying expenditures, including the costs to research, draft, and review the proposed communication, and to publish, mail, or broadcast the final product.*

**Subsequent use.** If research or educational materials or other communications (like publications or videotapes) are not initially lobbying communications, but are subsequently used by the organization in lobbying, the question arises whether the original costs to produce the research materials or communications should be treated as preparation-to-lobby expenses. If the organization later uses the communications or research materials in a grassroots lobbying communication—i.e., a communication that refers to and reflects a view on specific legislation and urges recipients to contact legislators—there are specific IRS regulations that apply. These *subsequent use rules* decide whether the initial costs are lobbying expenses based on a “primary purpose” test. If the organization’s primary purpose in creating or preparing the materials was not for use in lobbying, the costs to prepare the materials are not lobbying expenses.

The subsequent use rules also provide two safe harbors. First, an organization does not have to treat the costs of creating research materials or a publication as lobbying expenditures if, prior to or contemporaneously with the grassroots lobbying use, the organization makes a substantial public nonlobbying distribution of its research or publication. Unless the research or publication qualifies as nonpartisan analysis, study, or research (described in more detail below), the nonlobbying distribution must be at least as extensive as the grassroots lobbying distribution in order for this safe harbor to apply. Second, an organization does not have to treat the costs of compiling research or preparing a publication as lobbying expenditures if they were paid more than six months before their later use in a grassroots lobbying communication.

If the subsequent lobbying use of the research or publication is carried out by a different organization that is unrelated to the charity that prepared the original non-lobbying materials, the lobbying will not be attributed to the charity that prepared the materials—and its original costs of preparation will not be treated as lobbying expenditures—unless there is clear and convincing evidence that the charity prepared the materials for the primary purpose of lobbying use. To meet this standard, the IRS would have to show that the charity that prepared the nonlobbying research or publication, and the second organization that subsequently used the materials in lobbying, colluded or coordinated their efforts.

The subsequent use rules in the IRS regulations only address the use of research materials or nonlobbying communications in subsequent grassroots lobbying communications. Since members of the public are legislators in the ballot measure context, ballot measure lobbying is usually direct lobbying and the subsequent use rules do not technically apply. But since the IRS has no regulations addressing the situation in the ballot measure context, it is reasonable to believe

that the same “primary purpose” test would determine whether the costs of undertaking research or developing materials should be treated as preparation-to-lobby expenses when the materials are later used in ballot measure lobbying.

As noted above, initiatives and referenda do not become specific legislation until petitions to place them on the ballot begin to circulate. In the pre-circulation phase of an initiative, organizations interested in the topic of a proposed ballot measure engage in a variety of activities related to it, such as coalition building, polling, drafting ballot measure language, research on the topic, and organizational capacity building. Electing charities often assume that none of their expenses before signature gathering begins are lobbying, but some of these activities may be undertaken in preparation for lobbying once the measure is in circulation, in which case the IRS may treat them as lobbying expenditures.

## 2. Activities Outside the Definition of Lobbying

Some activities are not lobbying because they do not fall within the basic definition of either a direct lobbying communication or a grassroots lobbying communication (and also are not undertaken in preparation for direct or grassroots lobbying communications). For example, a public education campaign on policy issues that does not refer to any specific legislation falls outside the definition of lobbying.<sup>34</sup> Communications that discuss legislation but do not reflect any view on its merits are also outside the definition of lobbying (but remember that a communication can reflect a view even though it avoids any blatant statements of support or opposition to the legislation).

In the case of legislation pending in or proposed to a legislative body, a communication to members of the public that refers to and reflects a view on the legislation, but does not contain a call to action, usually falls outside the definition of lobbying.<sup>35</sup> Such a communication is not direct lobbying because it is not made to legislators, legislative employees, or government officials who may participate in the formulation of legislation; and it is not grassroots lobbying because it contains no call to action. (In the ballot measure context, however, the public is the legislature; a communication that refers to a measure and reflects a view on its merits is direct lobbying regardless of whether a call to action is included.)

Post-passage litigation regarding the constitutionality and interpretation of laws, including laws adopted through ballot measures, is also not treated as lobbying; once passed, a law is not “specific legislation.” Administrative agency

---

<sup>34</sup> Treas. Reg. Section 56.4911-2(c)(2) actually states an “exception” for examinations and discussions of broad social and economic problems; these are not treated as lobbying communications, even if the nature of the problems are such that government would be expected to deal with them ultimately. In the authors’ view, this is not really an exception to the general definition of lobbying; but it confirms that charities can communicate about public policy issues without making lobbying expenditures if their communications address broad issues, not specific legislation.

<sup>35</sup> A call to action is not necessary in the case of certain mass media advertisements. See Treas. Reg. Section 56.4911-2(b)(5). A call to action can also be implied rather than express. See Treas. Reg. Section 56.4911-2(b)(2)(iii).

regulations are also not “specific legislation,” so advocacy regarding regulatory rulemaking is not lobbying under Section 501(h).

### 3. Exceptions to the Definition of Lobbying

Even if a communication falls within the general definition of a direct or grassroots lobbying communication, the expenses to produce and distribute it will not be treated as lobbying expenditures if the communication falls within one of four exceptions.

***Nonpartisan analysis, study, or research.***<sup>36</sup> It is not lobbying to distribute or otherwise make available the results of nonpartisan analysis, study, and research, either to the public or to legislators. For the purposes of this exception, *nonpartisan analysis, study, or research* means an independent and objective exposition of an issue, including a sufficiently full and fair exposition of the pertinent facts to enable the recipient to form an independent opinion or conclusion on the issue. To qualify for this exception, a communication cannot be a mere presentation of unsupported opinion. A communication can qualify as nonpartisan analysis, study, or research even if it both refers to specific legislation and reflects a view on the legislation.

*It is not lobbying to distribute or otherwise make available the results of nonpartisan analysis, study, and research.*

*Nonpartisan analysis, study, or research means an independent and objective exposition of an issue, including a sufficiently full and fair exposition of the pertinent facts to enable the recipient to form an independent opinion or conclusion on the issue.*

The results of nonpartisan analysis, study, or research may be made available to the public by any suitable means, including speeches, published reports, or website postings. The distribution cannot be confined or directed solely to people interested in one side of the issue, however, so if a research report is distributed only to likely proponents or opponents of a ballot measure, it will not qualify for this lobbying exception.

Under IRS rules, nonpartisan analysis, study, or research cannot directly encourage the recipient to take action with respect to specific legislation, meaning it cannot contain a call to action urging recipients to contact their legislators. The tax law rules do not address what, if anything, might constitute a “call to action” in the context of ballot measure direct lobbying; the safest course of action is to refrain from directly encouraging recipients to vote for or against the measure in any communication intended to qualify as nonpartisan analysis, study, or research.

---

<sup>36</sup> Treas. Reg. Section 56.4911-2(c)(1).

**Technical advice or assistance.**<sup>37</sup> If a governmental body, committee, or subcommittee makes a written request to a charity for technical advice or assistance on legislation, the charity's costs incurred to comply with the request are not treated as lobbying, even if the response reflects a view on specific legislation and would not qualify as nonpartisan analysis. For example, if a legislative committee requests that a charity testify at a hearing on a proposed bill, the charity's costs to research, prepare, and present its testimony are not treated as lobbying expenditures. The request must be made in writing, in advance, and in the name of the committee, subcommittee, or governmental body, rather than an individual member; and the response must be made available to every member of the requesting body. For the exception to apply, the charity's opinions or recommendations may only be given if specifically requested by the committee or body, or if directly related to materials requested by the committee or body. In the ballot measure context, this exception could only be relevant if legislative hearings are held on a proposed ballot measure.

*If a governmental body, committee, or subcommittee makes a written request to a charity for technical advice or assistance on legislation, the charity's costs incurred to comply with the request are not treated as lobbying,*

**Self-defense lobbying.**<sup>38</sup> Charities are permitted to engage in direct lobbying of legislators regarding legislation that might affect the existence of the charity, its powers and duties, its tax-exempt status, or the deductibility of donations to the charity, without such lobbying counting against its Section 501(h) lobbying limit. For example, a charity can engage in direct communications with California legislators to urge the enactment of more generous state income tax deductions for charitable donations, and the costs would not be considered lobbying expenditures under Section 501(h). However, only direct lobbying is covered by this exception; any grassroots lobbying that urges members of the public to contact their representatives in support of or opposition to legislation will count against a charity's grassroots lobbying limit.

Also, this exception does not cover all legislation that might conceivably affect a charity's operations, but is generally understood to encompass legislation which is in some way specific to the tax-exempt status of charities or the deductibility of gifts to them, or in some way affects the rights or duties of tax-exempt charities as a class differently from other types of organizations. There is limited guidance on the scope of this exception, so legal counsel should be consulted before using it. Ballot measure lobbying is generally direct lobbying, and charities have been able to use this exception in several appropriate ballot measure cases.

---

<sup>37</sup> Treas. Reg. Section 56.4911-2(c)(3) (referring to Treas. Reg. Section 53.4945-2(d)(2)).

<sup>38</sup> Treas. Reg. Section 56.4911-2(c)(4).

**Member communications.**<sup>39</sup> Under Section 501(h), some communications between a charity and its members are treated more leniently than communications with nonmembers. A *member* for this purpose is any one who pays dues or contributes more than a nominal amount of time or money to the electing charity. (A “life member” with more than a nominal connection with the charity also counts, even if the life member is not a current donor or volunteer, as long as the charity has a limited number of them.) Under these rules, communications that are directed only to members can both refer to and reflect a view on legislation without being considered lobbying, as long as (1) the legislation discussed is of direct interest to the charity and its members, and (2) the communication does not encourage members to either contact their legislators or ask any one else to contact their legislators.

IRS regulations do not indicate whether these membership communication rules apply in the context of ballot measures if the charity’s members are part of the electorate who may vote on a pending ballot measure. It is reasonable to believe the exception applies, and that public charities can communicate with their own members about ballot measures that are of direct interest to the organization without having to treat the costs of such membership communications as lobbying. However, we recommend that electing public charities wishing to use this exception limit their communications to discussing the contents of the measure and the charity’s position on it, and refrain from urging members to vote for or against it.

If a member communication refers to and reflects a view on specific legislation, and also encourages members to contact their legislators, the communication is treated as a direct lobbying expenditure. (A comparable communication to a nonmember would be considered grassroots lobbying.) If the communication encourages members to ask their friends and neighbors (who are not members) to contact their legislators, the communication is grassroots lobbying. The cost of communications that are primarily but not exclusively made to members must be allocated between lobbying and nonlobbying, or direct lobbying and grassroots lobbying, in accordance with detailed IRS regulations.

### **C. Section 501(h) Lobbying Ceilings**

A public charity that makes the Section 501(h) election may lobby without penalty or risk to its exempt status as long as it keeps its lobbying expenditures below certain ceilings, which are calculated based on the charity’s “exempt purpose expenditures” for the year. *Exempt purpose expenditures* are almost everything spent by the charity to accomplish its exempt purposes, including program expenses (both lobbying and nonlobbying), administration and overhead expenses, and straight-line depreciation of assets used for charitable purposes. Fundraising costs paid to an outside vendor or consultant or incurred by a separate development unit within the charity are not exempt purpose expenditures, but other fundraising costs (for example, the cost of time spent by the executive

---

<sup>39</sup> Treas. Reg. Section 56.4911-5.

director fundraising) do count as exempt purpose expenditures. Other exclusions from the definition of exempt purpose expenditures are capital expenditures, and expenses related to managing investments or generating unrelated business income.

An electing charity's overall lobbying ceiling is a declining percentage of exempt purpose expenditures, calculated as follows:

- 20% of the first \$500,000 of exempt purpose expenditures; plus
- 15% of the second \$500,000 of exempt purpose expenditures; plus
- 10% of the third \$500,000 of exempt purpose expenditures; plus
- 5% of exempt purpose expenditures over \$1,500,000, up to a \$1 million limit.

The overall lobbying ceiling is capped at \$1 million per year regardless of the level of a charity's exempt purpose expenditures. The grass roots lobbying limit is one-quarter of the total lobbying limit.<sup>40</sup>

For example, a public charity with \$2 million in exempt purpose expenditures has an overall lobbying limit of \$250,000 for the year. (This is 20% of the first \$500,000 in exempt purpose expenditures, or \$100,000; plus 15% of the second \$500,000, or \$75,000; plus 10% of the third \$500,000, or \$50,000; plus 5% of the remaining exempt purpose expenditures, which in this case is 5% of 500,000 or \$25,000.) The charity may spend all of this amount on direct lobbying expenditures, or may spend it on a combination of direct and grassroots lobbying; but in no event can more than a quarter of its overall limit (in this example \$62,500) be spent on grassroots lobbying.

To prevent a large charity from breaking itself into a series of smaller ones to obtain a higher total lobbying limit for the group, the Section 501(h) rules include anti-abuse provisions that treat certain closely affiliated charities as one unit in calculating their lobbying limits.

## **D. Lobbying under the “No Substantial Part” Test**

There is significantly less guidance available to determine what qualifies as lobbying under the “no substantial part” test for public charities that cannot or do not make a Section 501(h) election. In contrast to the pages of specific rules and examples for electing public charities, IRS regulations addressing lobbying by non-electing charities consist of a few brief paragraphs.<sup>41</sup>

---

<sup>40</sup> As of this writing, legislation is pending in Congress to eliminate the separate cap for grassroots lobbying expenditures.

<sup>41</sup> See Treas. Reg. Section 1.501(c)(3)-1(c)(3)(ii), (iv).

Under the “no substantial part” test, a charity engages in lobbying when it does any of the following:

- Contacts legislators to propose, support, or oppose legislation
- Urges the public to contact legislators to propose, support, or oppose legislation
- Advocates the adoption or rejection of legislation

Asking executive branch officials to support or oppose legislation is considered lobbying under this definition.

The term “legislation” is defined to include action by Congress or by any state legislature, local council, or similar governing body, or action by the public in a referendum, initiative, constitutional amendment, or similar procedure. Hence, advocating the passage or defeat of a ballot measure is a lobbying activity for a non-electing public charity. On the other hand, participating in a regulatory proceeding is not lobbying.

Nonpartisan analysis, study, or research is not considered lobbying for non-electing charities.<sup>42</sup> To qualify as nonpartisan, a publication must present a full and fair exposition of the facts sufficient to allow a reader to form an independent opinion.<sup>43</sup>

Although nonpartisan analysis, study, and research may be treated as a nonlobbying educational activity when considered by itself, the IRS may take other activities of a non-electing charity into account when it determines whether nonpartisan analysis should be considered lobbying. The IRS takes the position that under the “no substantial part” test, nonlobbying educational activities may be part of a broader campaign to influence specific legislation.<sup>44</sup> In other words, if a non-electing charity advocates the adoption or defeat of legislation, the IRS may consider educational activities related to that legislation to be part of the charity’s lobbying effort—even if the educational activities would not be lobbying when considered in isolation.

While there is no formal exception for providing technical assistance to a government body, the IRS determined in one case that responding to an official request to testify on the possible effects of proposed legislation was not a lobbying activity for a non-electing charity.<sup>45</sup> It is unclear whether any kind of “self-defense” exception applies when non-electing charities communicate to legislators about changes in the law affecting their existence or tax-exempt status.

---

<sup>42</sup> See Treas. Reg. Section 1.501(c)(3)-1(c)(3)(iv); Rev. Rul. 64-195, 1964-2 CB 138; Rev. Rul. 70-79, 1970-1 CB 127.

<sup>43</sup> See *Haswell v. U.S.*, 500 F.2d 1133, 1144 (Ct. Cl. 1974).

<sup>44</sup> Judith E. Kindell and John Francis Reilly, “Lobbying Issues,” in IRS, Exempt Organizations Division, Exempt Organizations Continuing Professional Education Technical Instruction Program for FY 1997, at page 276.

<sup>45</sup> See Rev. Rul. 70-449, 1970-2 Cum. Bull. 111.

In determining whether a non-electing charity's lobbying activities are substantial, staff and volunteer time spent preparing to support or oppose legislation is counted along with the time spent on actual lobbying activities.<sup>46</sup>

Without the detailed Section 501(h) rules, there is much less certainty regarding where the line is drawn between lobbying and nonlobbying activities. A charity's intentions and aims, the context of its actions, and the balance or bias in its communications may all be relevant to determine whether particular communications are lobbying. In some circumstances, the Section 501(h) rules might indicate how the IRS or a court would view a particular situation, or might be applied by analogy in the absence of rules covering non-electing charities.<sup>47</sup> However, the Section 501(h) rules are not authoritative for non-electing charities, and the IRS may consider many factors in determining whether the activities of a non-electing charity are in support or opposition to legislative proposals.

## **E. Whether to Make a Section 501(h) Election**

For most public charities, the advantages of making a Section 501(h) election substantially outweigh any disadvantages. The Section 501(h) rules provide clarity and certainty regarding how much lobbying is allowed; no such clarity is possible under the "no substantial part" test, where the only guidance is a few dated court cases.

Also, the Section 501(h) election will generally allow public charities to be more vigorous legislative advocates without jeopardizing their exempt status. Detailed definitions of lobbying that apply to an electing charity exclude many activities commonly thought of as lobbying, but these definitions are not necessarily available to non-electing charities. In other words, fewer activities will constitute lobbying under the 501(h) election than under the "no substantial part" test. Some of the more important examples are using volunteers to lobby; endorsing legislation without spending money to promote the endorsement; public commentary on legislation pending before a legislature without a call to action; and self-defense lobbying. In addition, the level of lobbying permitted to smaller organizations under Section 501(h) (up to 20% of program and administrative expenditures) would clearly be considered a substantial activity, and would exceed the level of lobbying permitted under the "no substantial part" test.

However, for a charity with a very large budget, the maximum lobbying ceiling of \$1 million could represent an insubstantial part of its activities overall. For example, \$1 million spent on lobbying would make up less than 3% of the budget of a charity that spent \$30 million per year (though under the "no substantial part" test, not only expenditures but also the activities of volunteers and other factors would be considered to determine whether the lobbying was

---

<sup>46</sup> See *League of Women Voters v. U.S.*, 148 Ct. Cl. 561 (1960).

<sup>47</sup> See *Haswell v. U.S.*, 500 F.2d 1133, 1144 (Ct. Cl. 1974) (using Section 4945 regulations to interpret the nonpartisan analysis exception in the "no substantial part" test).

substantial). Hence, for very large charities, Section 501(h) will often be more limiting than the “no substantial part” test. Also, because the grass roots ceiling is so low, it is possible that a charity that only engages in grass roots lobbying could spend more than Section 501(h) permits, and still be able to claim its lobbying was insubstantial relative to the rest of its activities.

A public charity can make a Section 501(h) election at any time during its fiscal year by filing IRS Form 5786. The election will be effective for the entire year in which the form is filed. In other words, for a public charity that files its taxes on a calendar year basis, an election filed at any time during 2004 will be effective retroactive to January 1, 2004. The election remains in effect for subsequent years without further action by the charity. The Section 501(h) election can be revoked if a public charity wishes to return to the “no substantial part” test by filing another Form 5786, but the revocation will only take effect at the beginning the next tax year.

## **F. Grantmaking Activities**

The lobbying rules for electing and non-electing public charities discussed above apply when a charity pays its own staff or hires outside contractors to engage in an activity directly. This section discusses the rules that apply when an electing or non-electing charity makes grants to other organizations. (For additional information about the lobbying rules applicable to a private foundation grantmaker, see *The Private Foundation’s Guide to the California Initiative Process*, which is listed in [Appendix C.](#))

### **1. Grantmaking to Other Public Charities**

When a public charity makes a grant to another public charity that is restricted for a particular project, the outcome is often obvious: if a grant to an operating charity is restricted for a project that includes no lobbying, the grant is not a lobbying expenditure, but if the grant is earmarked for an activity that is lobbying, the grant would be treated as a lobbying expenditure.

But what about unrestricted grants to other public charities, or restricted grants for projects that are only partially funded by the grantmaking charity and include both lobbying and nonlobbying activities? For private foundations, there are IRS regulations that address these situations. Grantmakers that are public charities, like community foundations or other public foundations, are not technically covered by the private foundation rules, but there are no comparable IRS regulations that address their situation. Under these circumstances, applying the private foundation rules (which govern the treatment of grantors that are absolutely prohibited from lobbying) should be a safe approach for public charity grantors.

**General support grants.** A *general support grant* is an unrestricted grant or donation which the grantee's Board of Directors may decide to use for any of the grantee's programs or expenses. When a private foundation makes a general support grant to a public charity, the grant will not be treated as a lobbying expenditure—even if the grantee uses the funds to engage in lobbying activities—as long as the grant is not “earmarked” for lobbying.<sup>48</sup> A grant is *earmarked* for lobbying if the grant is made pursuant to an oral or written agreement that the grant funds will be used for that purpose.<sup>49</sup>

Public charities may make general support grants to other public charities without concern that any lobbying activities of the grantee will be attributed to the grantor.

By analogy, public charities may make general support grants to other public charities without concern that any lobbying activities of the grantee will be attributed to the grantor. However, the grant must be truly unrestricted in order to take advantage of this rule. If staff members of the grantor and the grantee have a tacit agreement that the grant will be used for a particular purpose, the grant is earmarked for that purpose and must be analyzed as a specific project grant.

**Specific project grants.** A *specific project grant* is a restricted grant made to support one or more specific projects or programs of the grantee. When a private foundation makes a specific project grant to a public charity, the grant will not be a lobbying expenditure as long as two requirements are met. First, as with a general support grant, the grant cannot be earmarked for lobbying. Second, the amount of the grant cannot exceed the amount budgeted by the grantee public charity for nonlobbying activities of the project.<sup>50</sup>

For example, imagine that a public charity applies for a grant for a specific project with a \$100,000 budget, \$80,000 of which will be spent on nonlobbying activities and \$20,000 on lobbying communications. A private foundation makes a \$50,000 grant to the public charity specifically for the project, but not earmarked for the lobbying portion of the project. So long as the amount of the grant is less than the nonlobbying portion of the budget, the grant will not be treated as a lobbying expenditure by the private foundation.

Similarly, a public charity grantor can fund projects of other public charities that include lobbying, without counting any part of the grant as a lobbying expenditure, if the amount of the grant is less than the nonlobbying portion of the project budget. The grantor should obtain either a project budget from the grantee

---

<sup>48</sup> This rule applies whether or not the grantee public charity has made a 501(h) election.

<sup>49</sup> Treas. Reg. Section 53.4945-2(a)(5)(i), (6)(i).

<sup>50</sup> Treas. Reg. Section 53.4945-2(a)(6)(ii). This rule is also known as the “McIntosh rule” after case involving a private foundation that came to this conclusion. The decision in that case is now reflected in the IRS regulations.

clearly showing the nonlobbying allocation, or a signed statement from the grantee of the nonlobbying amount.

**Grantee subsequent use.** What if a public charity makes a grant to another public charity to produce a nonlobbying communication—for example, a nonpartisan research report—and the grantee subsequently uses the report in lobbying communications?

As discussed above, for electing public charities, the Section 501(h) subsequent use rules apply a primary purpose test to determine whether a later grassroots lobbying use of nonlobbying materials will cause the original cost of producing the materials to be treated as lobbying expenditures. These subsequent use rules provide that if the grantee and grantor are unrelated organizations, the grantee's later lobbying use of grant-funded research or publications will not cause the grant to be a lobbying expenditure unless the IRS can show, by clear and convincing evidence, that the grantor funded the research or publication primarily so it could be used for lobbying. To make this showing, the IRS would have to demonstrate some cooperation or collusion between the grantee and grantor.

For grantors that are non-electing charities, there are no specific rules that address a grantee's subsequent lobbying use of grant-funded research or publications. When a private foundation makes a grant to a public charity to fund a nonlobbying communication that is later used by the grantee in lobbying, IRS rules provide that the private foundation's grant will not be characterized as a lobbying expenditure unless either (1) the foundation knew (or reasonably should have known) at the time it made the grant that the grantee's primary purpose in preparing the report was to use it in lobbying, or (2) the foundation's primary purpose in making the grant to the public charity was for lobbying.<sup>51</sup> In the absence of a comparable rule for non-electing public charities that make grants, the IRS would probably apply a similar primary purpose test.

**Prohibitions on lobbying in the grant agreement.** One final important point on the subject of lobbying attribution and grants: even if federal tax law permits a public charity grantee to use funds from a grantor to lobby without attribution to the grantor, this flexibility is lost if the grant agreement includes an absolute lobbying prohibition. In that case, the contractual agreement is binding on the grantee, even if it is more stringent than what tax law requires. Grantors should therefore draft their grant agreements carefully, to protect themselves while maintaining maximum flexibility for their grantees.

## 2. Grantmaking to Noncharities

Public charities can make grants to organization that are not themselves exempt under Section 501(c)(3); but they must ensure that the funds are used for charitable purposes, and not used to support or oppose candidates for public office,

---

<sup>51</sup> Treas. Reg. Section 53.4945-2(d)(v)(B).

to benefit private persons, or for other inappropriate activities. Generally, this means that a public charity should engage in some pre-grant due diligence to determine that the proposed grantee can carry out the charitable purpose of the grant, and then should enter into a grant agreement with the grantee that describes the charitable activities or project to be funded, requires reports back to the grantor, and provides that the grantee must return any funds that were not spent for the restricted purposes stated in the grant agreement. A charity should generally not make an unrestricted or general support grant to any noncharitable entity.

The Section 501(h) rules specifically address transfers by electing public charities to noncharitable organizations that lobby (like Section 501(c)(4) affiliates or Ballot Measure Committees). For transfers that are not "controlled grants" (as defined below), the transfer will be treated as a grassroots lobbying expenditure to the extent of the recipient organization's grassroots lobbying spending. If the charity's transfer is larger than the amount recipient's grassroots lobbying expenditures, the remainder of the transfer will be direct lobbying to the extent of the recipient's direct lobbying spending. In other words, if an electing charity grants \$5,000 without restrictions to a Section 501(c)(4) recipient that makes \$10,000 of grassroots lobbying expenditures during the year, the charity must treat the entire \$5,000 as a grassroots lobbying expenditure. But if the recipient spends only \$1,000 on grassroots lobbying and \$10,000 on direct lobbying, then the charity must treat \$1,000 of its unrestricted \$5,000 grant as grassroots lobbying, and the remaining \$4,000 of the grant as direct lobbying. In general, a Ballot Measure Committee's activities will consist entirely of direct lobbying, so a charity's grant to a Ballot Measure Committee would be considered a direct lobbying expenditure by the charity.

The rules are different for controlled grants. A *controlled grant* is a grant that is restricted by the charity to a specific nonlobbying charitable project of the recipient. For a grant to qualify as a controlled grant, the charity must maintain records to establish that the grant was used by the recipient for a nonlobbying charitable purpose. Public charities that make controlled grants to noncharities must enter into a signed, written agreement with the grantee that describes the project to be funded and requires the grantee to report back to the grantmaker about the use of funds and to return any funds not spent for the project. A controlled grant is not treated as a lobbying expenditure by an electing charity.

For non-electing charities, there are no specific rules to address the treatment of grants to noncharitable entities. Grants to a Ballot Measure Committee will be treated as lobbying activities, as are grants that the charity intends to be used for lobbying purposes. By analogy, grants for charitable activities that meet the definition of a "controlled grant" above probably would not be treated as a lobbying activity for a non-electing grantmaker (assuming that all the facts and circumstances indicated that the grant was not intended to influence legislation).

# Appendix C: Resources

## A. Resources on Lobbying and Public Charities

- *Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities.* Written by Gail M. Harmon, Jessica A. Ladd, and Eleanor A. Evans; published in 2000 by the Alliance for Justice. Available at [www.allianceforjustice.org](http://www.allianceforjustice.org).
- *Seize the Initiative.* Written by Gregory L. Colvin and Lowell Finley; published in 1996 by the Alliance for Justice. Available at [www.allianceforjustice.org](http://www.allianceforjustice.org).

The Alliance for Justice publishes a number of other useful guides to charity advocacy; the full list appears on its website.

- *The Nonprofit Lobbying Guide, Second Edition.* Written by Bob Smucker; published in 1999 by Charity Lobbying in the Public Interest. Available at [www.clpi.org](http://www.clpi.org).
- [www.NPAction.Org](http://www.NPAction.Org). Website on nonprofit advocacy hosted by OMB Watch that includes extensive information on lobbying rules in each state.
- *IRS 1997 Exempt Organizations Continuing Professional Education Technical Instruction Program.* This IRS publication includes an article, mostly in question and answer format, on lobbying issues by IRS employees Judith E. Kindell and John Francis Reilly. It is only resource listed that covers the lobbying rules for non-electing charities. The article is available at [www.irs.gov](http://www.irs.gov). (On left side of page, click on "Charities & Non-Profits." Then, on the left side of that page, click on Topics "EO Tax Law Training." On the main part of that page, click on "FY 1997," then "Lobbying Issues.")

## B. Resources on Lobbying and Private Foundations

- *The Private Foundation's Guide to the California Initiative Process.* Written by Rosemary E. Fei, Diane M. Fishburn, and Barbara K. Rhomberg; published in 2003 by Northern California Grantmakers. Available at [www.ncg.org](http://www.ncg.org). (To access the Guide, click on "Programs & Services," and on that menu choose "Public Policy" and then "Resources.")
- *Foundations and Ballot Measures: A Legal Guide.* Written by Thomas R. Asher; published in 1998 by the Alliance for Justice. Available at [www.allianceforjustice.org](http://www.allianceforjustice.org).

- *Myth v. Fact: Foundation Support of Advocacy.* Written by Thomas R. Asher; published in 1995 by the Alliance for Justice. Available at [www.allianceforjustice.org](http://www.allianceforjustice.org).

### **C. California Agencies Administering the Political Reform Act**

- *California Secretary of State.* Campaign finance disclosure reports are filed with, and made public by, this agency. More information and forms are available at [www.ss.ca.gov](http://www.ss.ca.gov) under "Campaign and Lobbying Information."
- *California Fair Political Practices Commission.* This agency interprets and enforces the Political Reform Act. More information and publications are available at [www.fppc.ca.gov](http://www.fppc.ca.gov).