Budget Cuts, Lobbying & 501(c)(3)s (Part III): State and Local Ballot Measures
PLUS: Register Now for FREE Lobbying Training on May 17!

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Next Nonprofit Formation Seminar on May 25

Are your friends or colleagues interested in forming a nonprofit organization but overwhelmed by the legal process? If so, invite them to Public Counsel’s Nonprofit Formation Seminar on Wednesday, May 25.

Workshop: Nonprofit Legal Issues on May 26

Join us on Thursday, May 26 from 11am to 3pm for a "Lunch and Learn" workshop,

Californians make many crucial decisions through state and local ballot measures, including with respect to budgets. Given the legislative standoff over how to fill our state’s $26 billion budget gap, voters may yet have the opportunity to impact budget priorities if a special election is held on the temporary tax and fee increases that Governor Brown has proposed to prevent additional budget cuts. A Public Policy Institute of California survey issued last week found that majorities of adults (58%) and likely voters (56%) now favor a special election for this purpose. And given the current state of the budget discussion in Sacramento, it seems likely that the only way such a question could be put before the voters is through a ballot initiative.

Can a 501(c)(3) public charity support or try to defeat such a ballot measure without threatening its tax exempt status? Absolutely! Even though 501(c)(3) public charities cannot support or oppose elections or recalls of candidates to public office, your organization can urge voters to support or oppose ballot measures. The IRS considers ballot measure work to be a lobbying activity since members of the voting public act as legislators when they vote for or against the legislation proposed.

For that reason, a 501(c)(3) public charity may not only publicly endorse or oppose ballot measures, but also may propose or draft ballot measure language, organize volunteers or staff to gather petition signatures, contribute or loan money to ballot measure campaigns, host ballot measure campaign events and register voters while encouraging them to vote for or against a ballot measure.

Of course, all of these activities must still be measured against the overall lobbying limits for 501(c)(3) charities under the "insubstantial amount" or 501(h) expenditure tests that were described in Part I of this series. Further, your organization must avoid indirectly supporting or opposing a candidate for election when supporting or opposing the ballot measure itself. If a candidate is the leading proponent or opponent of a ballot measure and has linked his or her campaign to a particular ballot measure outcome, then caution is called for when you consider participation in the ballot measure campaign.
Does California regulate ballot measure activity under state lobbying rules? Absolutely! Nonprofits that work on ballot measures must comply with reporting requirements for ballot measure contributions and expenditures under state campaign finance and disclosure laws. A consideration for how much time and effort your organization may choose to expend on behalf of a ballot measure may be how much reporting you are willing to do. Your choices can range from no reporting, to event-based reporting, to periodic/continuous reporting, to reporting that requires disclosure of the names of donors. The reporting levels will depend upon a combination of three factors:

1. the source of funds used for ballot measure activity expenditure (donor funds versus non-donor funds such as interest, rental income or proceeds from the sale of assets);
2. the types of activities done in support or opposition to a ballot measure (contributions, independent expenditures, or exempt); and
3. the amount of activity done (meaning there is a threshold before a nonprofit is required to report anything).

Applying these complex legal rules to a particular activity is a very fact specific process, so general guidance is hard to give. Some of the ballot measure lobbying activities a charity undertakes may be exempt, others may be considered the responsibility of third parties to report, and still others may trigger a charity's own reporting obligation. For example, if a charity chooses to publicly endorse a ballot measure, the staff time spent to draft a press release -- assuming that the staff member spent more than 10% of his or her time in a calendar month engaged in ballot measure lobbying activities -- and the cost of posting it on the web, printing and mailing it to the press or communicating it to the broader public must all be tallied and counted as lobbying expenditures. $1,000 expended in a calendar year is the absolute minimum for any level of disclosure, so perhaps the safest advice for any charity thinking about participating in ballot measure lobbying is to have a very clear understanding of what it intends to do and how its ballot measure activities intersect with California's campaign finance laws before its expenditures of staff time or materials or cash to support or defeat a ballot measure reach $1,000 in a calendar year.

For answers to your more specific questions about supporting or opposing ballot measures, please feel free to contact Public Counsel or refer to these helpful resources:

- The Public Charity's Guide to the California Initiative Process
- FPPC Campaign Disclosure Manual for Ballot Measure Committees
- FPPC Campaign Disclosure Manual for Major Donor Committees
- FPPC Campaign Disclosure Manual for Independent Expenditure Committees

Nonprofit Legal Issues and How to Deal with Them, sponsored by Valley Nonprofit Resources. This workshop will provide an overview of key legal issues for small and medium-sized nonprofits, including governance (i.e., Board of Director duties), nonprofit tax law, charitable fundraising and solicitation law and employment law. The workshop fee is $20 and includes lunch. For more information and to register, contact Valley Nonprofit Resources at 818-990-0176 or dianahiri@aol.com.

Planned Giving Webinar Series for Nonprofits

Join us for a series of one-hour webinars designed to help executive directors, development directors and other marketing and fundraising staff learn how to create and implement a successful planned giving program. For more information and to register, click here.

Our Legal Services

Public Counsel's Community Development Project provides free legal assistance to qualifying nonprofit organizations serving low-income communities and addressing issues of poverty within Los Angeles County. If your organization needs legal assistance, visit our website or call (213) 385-2977, x200. For examples of why your organization may need legal assistance, click here.
Advocacy, Lobbying & Political Activity Training on May 17

Join us on **Tuesday, May 17** for a FREE live video conference training for nonprofits, co-sponsored by Public Counsel as part of Pfizer’s *Strategic Legal Thinking Seminars for Nonprofit Executives* training series.

It seems like every day brings news of a more drastic budget cut, defunding notification or payment in lieu of tax proposal that will negatively impact nonprofit organizations and the vulnerable individuals that they serve. Nonprofits do not need to be silent in the face of these threats for fear of jeopardizing their tax exempt status. By NOT lobbying for themselves or their clients, nonprofits fail to fully exercise their rights under federal tax laws which allow for generous lobbying limits. This seminar will discuss the issues nonprofits need to be aware of before engaging in advocacy activity, including:

- Federal tax law limits on lobbying
- Lobbying disclosure rules
- Lobbying vs. political campaign activity
- Balancing advocacy activity and broad community support

This program is designed for executive directors, chief administrative officers, and staff that engage in public advocacy.

The seminar will be held at the officers of DLA Piper, 500 South Hope St., Suite 2300, Los Angeles, CA 90071, from **7:30 AM to 12:30 PM**. Parking validation and a light breakfast will be provided.

Please visit our website for more information. Advance registration is required. To register, click here.

Using Mediation to Resolve Disputes

Mediation is a private process where a neutral third person (a “mediator”) facilitates a discussion between adverse parties in order to find a mutually acceptable resolution. Public Counsel has published a guide that discusses the benefits of attempting mediation before litigation and includes a list of local organizations that provide free or low-cost mediation services to individuals, nonprofits and small business. Please visit our website to access the guide.

CDP eNewsletter Archive Now Available Online!

Have you recently joined our mailing list and feel like you've been missing out on great information? If so, we have good news! Previous issues of the CDP eNewsletter are now available online.

Also, it is now much easier to join our mailing list. To sign up, click here.