



# Nonprofit Rules of the Road: Supporting CWNRP – Yes on Prop 4



# Big Picture

- Can 501(c)(3)s support ballot measures? **YES!**
- All nonprofits must consider both federal tax law and state campaign finance laws

## Today's Goal:

- Identify what your nonprofit can do (or can't do!) for the election, and understand when campaign finance laws might come into play.



# Big Picture

	<b>501c.3s (Public Charities)</b>	<b>501c.4 501c.5 501c.6</b>	<b>527 State PAC Federal PAC</b>
Direct Candidate Advocacy	NOT Permitted	Permitted BUT Limited	Permitted Unlimited
Ballot Measure Advocacy	Permitted BUT Limited	Permitted AND Unlimited	Permitted BUT Limited
Voter Registration/GOTV	Permitted BUT must be nonpartisan	Permitted AND may be partisan, but if so will count as campaign intervention	Permitted AND may be partisan, without limits

# Supporting Ballot Measures

## **Federal tax law: Ballot measure advocacy = direct lobbying**

- A communication to the public about a ballot measure will be direct lobbying if it both refers to a ballot measure and reflects a view on that measure.
- Nonpartisan analysis, study or research is not lobbying.
- 501c.3 nonprofits may engage in *some* lobbying.
  - 501(h) election v. insubstantial part
- 501c.4 nonprofits may engage in *unlimited* lobbying.

# Nonpartisan Analysis, Study or Research

“...”nonpartisan analysis, study, or research” means an independent and objective exposition of a particular subject matter, including any activity that is “educational” within the meaning of [§ 1.501\(c\)\(3\)-1\(d\)\(3\)](#). Thus, “nonpartisan analysis, study, or research” may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. The mere presentation of unsupported opinion, however, does not qualify as “nonpartisan analysis, study, or research”.

26 CFR § 56.4911-2(c)(1)(2)

# What is educational?

The presence of any of the following indicates a communication is not educational:

- The presentation of viewpoints or positions **unsupported by facts** is a significant portion of the organization's communications.
- The facts that purport to support the viewpoints or positions are **distorted**.
- The organization's presentations make substantial use of **inflammatory and disparaging terms** and express conclusions more on the basis of **strong emotional feelings** than of objective evaluations.
- The approach used in the organization's presentations is **not aimed at developing an understanding** on the part of the intended audience or readership because it does not consider their background or training in the subject matter.

Rev. Proc. 86-43.

# 501(h) Expenditure Test

If the amount of exempt purpose expenditures is...	The lobbying nontaxable amount is...
≤ \$500,000	20% of the exempt purpose expenditures
>\$500,00 but ≤ \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
> \$1,000,000 but ≤ \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
>\$1,500,000 but ≤ \$17,000,000	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000
>\$17,000,000	\$1,000,000

# Insubstantial Part Test

- Applies to all 501(c)(3)s unless/until (h) election is made.
- “...no substantial part of [the organization’s] . . . activities” can engage in “propaganda” or otherwise attempt to “influence legislation”...
- Does an organization’s attempts to influence legislation, i.e., *lobbying*, constitute a substantial part of its overall activities?
- Facts and circumstances: **time** devoted (by both compensated and volunteer workers) and the **expenditures** devoted by the organization to the activity.
- Unlike expenditure test, no bright lines – maybe 3 – 5%?



# Supporting Ballot Measures

## Activity considered lobbying

- Publicly endorse or oppose ballot measures (*although won't count for much*)
- Propose ballot measures
- Draft language for ballot measures
- Staff time organizing and dispatching volunteers to call/canvass voters
- Compensated time serving in campaign staff capacity
- Contribute money to ballot measure campaigns

## Activity NOT considered lobbying

- Researching the issues, conducting surveys of voter attitudes, and possibly even community organizing or holding conferences, so long as these activities are not primarily focused on the ballot measure and are not a form of preparation for lobbying
- Communications to the public that refer to the ballot measure, but do not reflect a view on it
- Discussing broad social/policy issues, without mentioning specific legislation
- Preparing and distributing a “white paper” on a topic

# CAMPAIGN FINANCE



# Nonprofits and \$\$ to Ballot Measure Committees

Reporting OR Registration and Reporting if...

- **Major Donor Committee** - \$10,000 cumulative contributions/calendar year made to candidates or ballot measure committees using own funds (no soliciting or raising)
- **Calendar Year Filer** - If nonprofit does not raise money for political purposes, but spends more than \$50,000 in a twelve month period or more than \$100,000 in 4 consecutive years, will qualify as a committee and must disclose expenditures and donors in the amount contributed by the nonprofit
- **Independent Expenditure Committee** – Spend \$1,000 or more/calendar year making independent expenditures.

# Nonprofits and \$\$ to Ballot Measure Committees

## Registration and Reporting Required If...

- Solicit and receive \$2,000 or more for the purpose of making contributions or expenditures.
- Accept payments of \$2,000 or more subject to a condition, agreement, or understanding with the donor that all or a portion of the payments may be used for making contributions or expenditures.
- Have existing funds from a donor and a subsequent agreement or understanding is reached with the donor that all or a portion of the funds may be used for making contributions or expenditures in an amount equal to or greater than \$2,000.
- **Disclosure:** Donors identified above plus LIFO in amount of contributions made by nonprofit.
  - Exception for investment funds, etc.



# Special Note on In-Kind Reporting

In-kind contributions count towards the same thresholds as, and aggregate with, monetary contributions for purposes of qualifying as a committee. The following should be noted:

- Employee staff time – If a nonprofit's employee spends 10% or more of his or her compensated time, in a calendar month, on activities to support the Committee, the employee's salary will be an in-kind contribution. The date of the contribution is the payroll date and the amount is the pro-rata share of the gross salary attributed to activities supporting the Committee.
- For reporting purposes, you will need to provide the date, employee name, and amount to the Committee for each payroll period. If your payroll is the 1<sup>st</sup> and the 15<sup>th</sup>, you will need to provide the information to the Committee twice a month.
- Examples of other common in-kind contributions are phone banks, polling, research, fundraiser expenses, mailers, etc. For these types of contributions, you must provide the date, description of goods or services and fair market value (estimated or actual).

# Other Considerations

## **90 Day Expedited Reporting Period**

## **Aggregation/affiliation**

- Common leadership between organizations v. independence

## **Criticizing the candidates**

- 501(c)(3) – prohibited
- 501(c)(4) – counts against political activity limit

## **Directors, officers & employees acting in individual capacities**

# Thank you!



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