

# Johnson Amendment Fifth Morsel: A Bit More About Ballot Measures

06.13.24 | Linda J. Rosenthal, JD



We're now at the fifth installment of our special series of tiny morsels of advice and information on the main challenge facing 501(c)(3) organizations in election season; namely, avoiding the dreaded "Johnson Amendment."

## *Setting the Stage*

In *The Johnson Amendment: Bite-Sized Morsels for 2024* (January 24, 2024), and Morsels First and Second, we set the stage. The so-called "politics ban" is real and can have serious consequences if violated. But it's not a big scary monster that gobbles up anything and everything that can arguably be described as "political" or related to "politics" or to "politicians."

It's simply a sentence fragment – added under dubious circumstances in the waning hours of the Senate vote in 1954 to overhaul the federal tax code. To qualify for the charitable tax exemption, an organization may not "... participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (**or in opposition to**) any candidate for public office." [bolding added in 1986].

## *Heading for the Escape Hatches*

There is wiggle-room galore in those 31 words: These exceptions and exclusions are wide enough to drive a truck through. Most notably: If there's no "campaign" by a "candidate" for "public office," there's no Johnson Amendment problem. The best strategy for the charitable community in the months ahead leading up to November 5, 2024, is to steer way clear of that tiny bullseye of the Johnson Amendment: Head for an escape hatch.

In Morsel [Third](#), we highlighted the best escape hatch of all: “lobbying.” If an organization is “attempting to influence legislation,” it is not participating or intervening in a political campaign. The sentence fragment just before the Johnson Amendment makes clear that an organization will qualify for 501(c)(3) exempt status so long as “... no substantial part of [its] activities ... is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)....”

“A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status,” according to the IRS at its “[Charities and Nonprofits/Lobbying](#)” website page. “Lobbying” is the IRS shorthand for “attempting to influence legislation.”

In Morsel [Fourth](#), we explored more about the items that are viewed as “attempting to influence legislation”; hence, outside the scope of the Johnson Amendment ban. Among them are “activities in support of, or opposition to, ballot referendums, or constitutional amendments.” They are viewed as “lobbying” even though they are “approved or rejected in the context of a ballot-box choice.”

This is a big deal.

Anyone even casually following the news is aware of the growing list of ballot measures in the November election around the nation. Many relate to highly charged social issues. It’s altogether likely that one or more of these initiatives will drive so many voters to the polls that it may tip the scales in candidate races, too.

### ***Ballot Measures: More Information***

“Ballot measure advocacy can be an [important tool for public charities](#) to help create better laws for the communities they serve. Ballot measures are often used to tackle issues not adequately resolved by current state policy or that elected representatives may be hesitant to sponsor.”

In the last post, we mentioned the “resource-rich website of [Bolder Advocacy](#)” which is a program of the Alliance for Justice. Although AFJ is a decidedly progressive nonprofit, the advice and information there applies to organizations and issues across the political spectrum.

Bolder Advocacy has produced an impressive library of advice on ballot-measure advocacy by nonprofits. See [Bolder Advocacy’s Ballot Measures Toolkit](#).

Because this election-year series is for bite-sized morsels of information only, we’re posting just the titles and links to some of AFJ/BA’s key Guides and Fact Sheets in the Ballot Measures Toolkit along with short summaries of the key points of each.

### ***From the Ballot Measures Toolkit***

- [501\(c\)\(3\) Public Charities and Ballot Measures](#): AFJ/BA summarizes key points in a single website page. They include: how and why 501(c)(3)s are permitted to participate in this kind of activity, and how the lobbying amounts are properly calculated. Also: “A public charity may collaborate with non-501(c)(3) entities on ballot measure advocacy efforts, as long as they remain 501(c)(3)-appropriate by never showing support or opposition to any candidates for public office”; further, a “public charity’s grant to another charity

specifically for work on ballot measure advocacy ... “ will count against its own lobbying limits...”

- [Ballot Measures and Public Charities: Yes, You Can Influence That Vote](#) (June 15, 2018, 3 pp. PDF): AFJ/BA discusses the IRS’s rationale for ok’ing ballot-measure participation: namely, because “members of the voting public act as legislators when they vote ‘yes’ or ‘no’ on the legislation proposed in ballot measures.” Further, public charities can proactively” engage in a wide-range of activities related to ballot measures...” including: “initiate ballot measures, react to measures proposed by others, and support or oppose ballot measures and encourage the public to vote accordingly.”
- [California Advocacy Resources](#): AFJ/BA provides a comprehensive list, in a single website page, of its own publications as well as others, including from official sources, about the separate and additional California laws affecting nonprofits who participate in ballot-measure advocacy. “Nonprofit organizations that engage in public policy advocacy in California may have reporting obligations under California’s [Political Reform Act](#) (PRA) and its implementing regulations. In addition, California’s citizen-initiated ballot measure process is regulated under the California Constitution and the California Election Code.”

### ***“Seize the Initiative”***

In [Seize the Initiative: A Legal Guide on Ballot Measures for Nonprofits and Foundations](#) (April 30, 2020, 39 pp. PDF) AJC/BA provides a comprehensive discussion of this topic including:

- The different types of ballot measures – (i.e., Statutory Initiatives, Initiative Constitutional Amendments, Referenda, Bond Measures, Policy Declarations) – and the rules that apply to each
- “Guidance on what activities 501(c)(3) organizations may engage in without jeopardizing their tax-exempt status”
- “Information that addresses the concerns of private and public foundations interested in supporting ballot measure work by public charities”
- Special topics including restrictions under OMB rules on use of federal grant money for ballot-measure advocacy.
- State laws: “Every state has its own rules governing organizations that are attempting to influence a ballot measure, ... ” These laws and regulations relate to just about everything from political committee registration to mandatory reports disclosing related activities and expenditures.” See [California Advisory Resources](#), above.

Perhaps the most important part of this Guide is “Section V: Ballot Measure Advocacy: A Step-by-Step Discussion of Each Stage of a Ballot Measure Campaign.” At over 20 pages long, beginning on page 17, the authors explain how a nonprofit may participate in the entire ballot-measure process or just at certain points along the way.

### ***Conclusion***

“As this critical form of direct democracy grows in popularity, nonprofit organizations need to be prepared to use the resources available to them to legally and effectively “seize the initiative.””

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