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FAITHFUL ENGAGEMENT: A GUIDE TO VIRGINIA BALLOT MEASURES FOR CHURCHES

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Faithful Engagement:

A Guide to Virginia Ballot Measures for Churches

CHURCH & MINISTRY
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Included in this Resource:

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Ballot Measures: What Your Ministry Can Do

Ballot measures – including initiatives, propositions, amendments, and referenda – are an increasingly significant feature of election cycles. These ballot measures offer an opportunity for the people themselves – not legislators – to enact laws. When it comes to engaging on ballot measures, most churches and ministries experience confusion about the permissible level of activity. And this is understandable. But churches and ministries can engage in ballot measure advocacy! And there are many ways to do so.

Ballot measure advocacy may include activities long before and after an election. The following provides a general overview of various activities at different stages of the process:

Permissible Activities After a Measure Has Qualified for the Ballot

- Engage community members and partner organizations.
- Form a 501(c)(4) social welfare organization to harness this type of organization's unlimited lobbying capacity.
- Build a coalition with other public charities and non-public charities. Public charities can form coalitions with other tax-exempt organizations (e.g., 501(c)(4) social welfare organizations and 501(c)(5) unions) as long as the coalition's activity remains nonpartisan.
- Develop a public education campaign about the topic covered by a measure.
- Publicize your organization's endorsement of or opposition to a ballot measure.
- Make contributions or loans to a ballot measure committee.
- Host a debate or forum about the ballot measure.
- Conduct a voter registration or get-out-the vote campaign.

Permissible Activities After Voters Have Approved a Measure

- Engage in administrative advocacy about regulations and other activities to implement and enforce the measure.
- Evaluate a ballot measure's impact. Findings from impact studies can support effective implementation and help other communities considering similar ballot measures.
- Participate in litigation to challenge, enforce, or defend a measure.

As with many aspects of legal compliance, multiple levels of government may still impose various obligations when engaging in political activities under federal and state law. But not all activity is treated the same. In particular, there is a distinction between endorsing a candidate and advocating for or against a ballot measure. We encourage you to review our **Churches and Politics Guide** for more information as your church or ministry consults its public theology, discerns God's particular call for your community, and works towards the common good.

Virginia 2026 Ballot Initiatives

In Virginia, two ballot measures have qualified for the November 2026 ballot. Virginians will have an opportunity to vote on:

Abortion

Whether the state constitution should create an expansive constitutional right to "reproductive freedom," potentially allowing for abortion on demand up to birth.

Marriage

Whether the state constitution should repeal the recognition of marriage as the union of one man and woman, replacing it with a requirement that the state recognize any marriage of two adults, regardless of "sex" or "gender."

Some churches and ministries want to understand their ability to oppose these initiatives in light of federal and state regulations. This short resource provides a general overview of compliance obligations when campaigning against a ballot initiative in Virginia. Although it does not exhaustively describe all compliance responsibilities, we hope it can acquaint churches and ministries with the legal landscape, so they can discern if and how to engage on ballot measures like these.

Federal Tax Law

Lobbying Limits

Advocacy for or against a ballot measure is an electoral activity, but federal tax law considers it lobbying. The public acts like a legislative body when voting on ballot measures, so the IRS treats activities to influence the public's votes on ballot measures the same as activities to influence legislators' votes on bills. This is permissible within certain lobbying limits. Churches or ministries must then track its contributions and expenditures related to ballot measure advocacy. More on that below.

Importantly, under IRS rules, lobbying does not include a church or ministry preaching generally about the sanctity of life, marriage, or human sexuality. And it does not include distributing neutral educational materials that do not expressly advocate for or against a ballot measure. But when a nonprofit does desire to speak for or against a particular ballot measure (e.g., Vote "NO"), the IRS's lobbying limitation comes into play.

The IRS requires that "no substantial part" of a nonprofit's activities attempt to "influence legislation" (including a ballot measure). Stated another way, a church or ministry must ensure that any "attempts to influence legislation" remain "insubstantial." If a ministry fails to comply, it could jeopardize the entity's tax-exempt status.

What are those lobbying limits? The exact lobbying limit for a ministry depends on whether it uses the default insubstantial test or the elective 501(h) expenditure test:

The **"Substantiality Test"** is the default test applied to all nonprofits. Under this test, the IRS will measure whether the nonprofit has engaged in "substantial" lobbying by evaluating all the facts and circumstances of the nonprofit's operations. There is no "bright line" rule. A 1952 federal court decision did determine that 5% of an organization's time and effort was an insubstantial part of its overall activities. But it's important to remember this is based on an organization's overall activities, not just its expenditures. [1]

The **"Expenditure Test"** – Some nonprofits (except for churches and private foundations) can elect the expenditure test instead. To do so, they must file the IRS Form 5768. Once elected, the IRS will measure the nonprofit's lobbying expenditures against a statutory cap. If expenditures exceed the cap, the government will levy a 25% excise tax, and it may revoke tax exempt status if the nonprofit "normally" exceeds the cap on a regular basis.

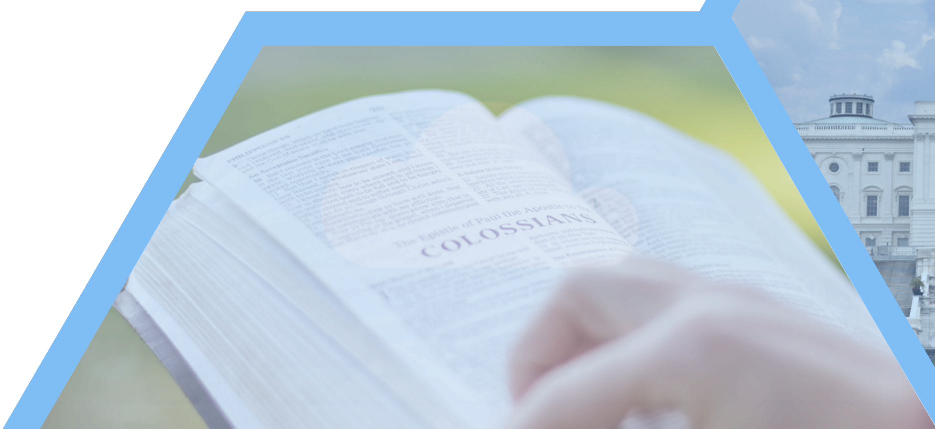
[1] Click here to see Form 990 Schedule C, Part II-B. This provides some guideposts on the relevant expenditures that ministries should track, if subject to the substantiality test. This includes reporting whether they used unpaid volunteers, paid staff, advertisements, mailings (to members, legislators, or the public), published statements, grants to others for lobbying, public events, or other means, and to report any expenditures for each such activity. This includes overhead and administrative costs. Charities using the insubstantial part test must also provide a "detailed description" of any lobbying activities that fall outside of those categories, which the form's instructions clearly state "should include all lobbying activities, whether expenses are incurred or not."

The Johnson Amendment Prohibition on Support or Opposition for Candidates for Public Office

The Johnson Amendment, enacted in 1954, is a provision in the U.S. tax code (Section 501(c)(3)) that prohibits all tax-exempt organizations, including churches and religious organizations, from engaging in political campaign activity, including the specific endorsement or opposition of candidates for public office. While it restricts direct political endorsements, it allows for non-partisan voter education, voter registration, and advocacy on moral or policy issues.

This is separate from advocacy related to ballot measures. Supporting or opposing a ballot measure, on its own, does not violate Johnson Amendment. This is because ballot measure elections involve enacting legislation, not selecting a candidate for public office. Historically, churches and ministries must ensure that their ballot measure activities and communications do not express or imply support or opposition for any candidates or political parties. For example, a church should not ask a candidate to endorse a ballot measure or use partisan factors to target its voter outreach.

But even that landscape may be changing. In reaction to a recent lawsuit challenging the constitutionality of the Johnson Amendment, the IRS signaled its desire to provide further guidance on the law's application to churches and other religious organizations.



Faithful Engagement

As always, the church should freely proclaim the Gospel, and, consistent with the church's discernment, exalt God's vision for human life and marriage: its beauty, value, dignity, and sanctity, at all stages.

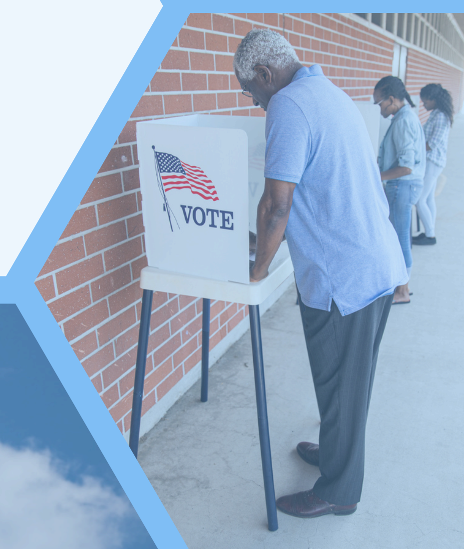
A church can also distribute neutral educational materials about a ballot measure.

But if a church or ministry engages in advocacy for or against a particular ballot measure, it should carefully track any associated expenditures and ensure they remain minimal. This will help mitigate the risk that your nonprofit's lobbying activity will be considered anything more than an "insubstantial" amount of your total activities.

Due to these reporting obligations, we encourage you to consult a tax professional for more information.

Key Takeaways

- You CAN always talk about issues in a general manner (e.g., sanctity of life);
- You CAN create or distribute neutral, nonpartisan educational materials;
- You CAN speak for or against a specific ballot measure, BUT you must limit it to an "insubstantial" amount of your total activities and track associated expenditures.



Virginia Campaign Finance and Disclosure Act

In addition to federal tax law, states typically regulate ballot measure activity through campaign finance and election laws. In Virginia, this includes the Campaign Finance and Disclosure Act, contained at Virginia Code Section 24.2-945, et seq. [2] Failure to comply most commonly results in the assessment of civil fines.

Referendum Committees

For churches or ministries opposing a statewide [3] ballot measure, obligations can arise once your organization crosses certain financial thresholds. In particular, once an organization, including a church or ministry, expends (or receives) $10,000 during a calendar year on efforts related to a statewide ballot measure, it becomes a Referendum Committee. Prior to that threshold, these obligations do not apply.

After reaching that threshold, all referendum committees must register with the Department of Elections by filing a Statement of Organization and then comply with all associated reporting obligations. Notably, reports can require itemized and detailed information about all expenses, and even more detailed information about contributors and the value of their contributions.

Exemption from Political Advertisement Disclaimers

In Virginia, referendum committees are exempt from political advertisement disclaimer requirements. However, the committee is still required to report the expenditure on its campaign finance reports.

[2] This is not the only law relevant to campaign finance in Virginia. Additionally, not all obligations imposed by this law are described in this resource, nor all circumstances that may trigger the application of this law. This resource focuses solely on political activities related to statewide ballot initiatives and the thresholds that trigger registration and reporting obligations.

[3] Note, there are different standards for initiatives that are more localized to a county or select counties.

Contributions and Expenditures?

According to the Virginia Department of Elections' guidance, contributions and expenditures include some, but not all, volunteer services. If a volunteer offers professional services (like accounting) for free, it constitutes a contribution. If a volunteer stuffs envelopes or knocks on doors, it does not.

Common expenditures include printing costs for the development of advocacy materials, or advertising costs.

Key Takeaways

- Churches and ministries can engage in ballot measure advocacy.
- If expenditures and contributions related to a statewide ballot measure remain under $10,000, churches and ministries do not have reporting and registration obligations under Virginia campaign finance laws.

Guidelines for Churches and Ministries: Federal and State Law

(see page 8)

Taken together, the following chart provides a general description of various potential ministry activities, and the probable, corresponding application of federal tax and Virginia campaign finance laws. Different facts and circumstances may affect the analysis of applicable law and compliance obligations. For specific questions, we encourage you to contact local counsel.

Note, the chart on the following page provides an overview of potential ministry activities and is not intended to limit actions carried out in an individual's personal capacity, when not acting in his/her role as an employee of the ministry.

Guidelines for Churches and Ministries: Federal and State Law

Activity	IRS	Virginia
Preach or publicize your church's or ministry's general view on an issue without expressly advocating for or against a ballot measure.	Not a lobbying expenditure.	Not applicable.
Publicize your church's or ministry's opposition to a ballot measure.	Track as lobbying expenditure.	Not applicable unless more than $10,000 spent, which would trigger registration as a referendum committee. But it should still be tracked. A separate organization operating as a referendum committee may need to report it as an in-kind contribution.
Make contributions or loans to a ballot measure committee.	Track as lobbying expenditure.	Not applicable unless more than $10,000 spent, which would trigger registration as a referendum committee. But it should still be tracked. A separate organization operating as a referendum committee may need to report it as an in-kind contribution.
Host a debate or neutral forum about a ballot measure.	Not a lobbying expenditure.	Probably not applicable.
Conduct a neutral voter registration or neutral get-out-the vote campaign.	Not a lobbying expenditure.	Probably not applicable.
Neutral educational information.	Not a lobbying expenditure.	Probably not applicable.
Bumper stickers, yard signs, T-shirts that take a position.	Track as lobbying expenditure.	Not applicable unless more than $10,000 spent, which would trigger registration as a referendum committee. But it should still be tracked. A separate organization operating as a referendum committee may need to report it as an in-kind contribution.
Third-party printed educational materials in the lobby or parking lot.	Not a lobbying expenditure.	Probably not applicable.
Third-party printed materials in the lobby or parking lot.	Probably not a lobbying expenditure.	Probably not applicable.
Utilizing ministry assets, such as email lists or digital platforms like Youtube, social media, church website, to take a position.	Track as lobbying expenditure.	Not applicable unless more than $10,000 spent, which would trigger registration as a referendum committee. But it should still be tracked. A separate organization operating as a referendum committee may need to report it as an in-kind contribution.
Volunteers or paid staff phone bank, text campaign, block walk, etc.	Track as lobbying expenditure.	Not applicable unless more than $10,000 spent, which would trigger registration as a referendum committee. But it should still be tracked. A separate organization operating as a referendum committee may need to report it as an in-kind contribution.

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The ADF Church & Ministry Alliance provides legal counsel and resources to ensure that churches and ministries are free to operate, teach, and serve consistent with God's call.

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