



**UNIONS MAY PROMOTE THE ILLINOIS RIGHT TO ORGANIZE AMENDMENT WITHOUT TAX IMPLICATIONS BUT IN-KIND CONTRIBUTIONS MUST BE DISCLOSED**

On May 26, 2021, the Illinois General Assembly adopted Senate Joint Resolution Constitutional Amendment No. 11 (“Amendment No. 11”), which will be submitted to the citizens of the State of Illinois for their consideration in the November 2022 general election. Amendment No. 11 is a proposed amendment to Article I of the Illinois Constitution and would add provisions addressing: (1) workers’ rights; (2) the creation of a fundamental right to organize and bargain collectively through representatives of workers’ own choosing; and (3) the protection of workers’ economic welfare and safety. If approved, Amendment No. 11 would bar the state or municipalities from enacting a prohibition on collective bargaining agreements requiring membership in a labor organization as a condition of employment.

As discussed below, this amendment in no way seeks to influence the selection, nomination, election or appointment of any individual to any Federal, State, or local public office or office in a political organization, but rather regards a profound question of public policy promoted by a political committee identified as a ballot initiative committee. As a result, it is our opinion that labor unions may make contributions to the ballot initiative committee from their general treasury accounts without incurring any tax liabilities. It would be prudent for union officers to consult the union’s bylaws to determine how such expenditures may be authorized.

**Ballot Initiative Committees**

Section 9-1.8 of the Illinois Election Code defines “political committees” to include a candidate political committee, a political party committee, a political action committee, a *ballot initiative committee*, and an independent expenditure committee. A “ballot initiative committee” consists of a person, group, association, corporation, etc., that accepts contributions and makes expenditures exceeding \$5,000 during a 12-month period in support of or opposition to a question of public policy or that makes electioneering communications related to the question. 10 ILCS 5/9-1.8(e).

The \$5,000 contribution/expenditure threshold applies at all stages of the process to secure a place on the ballot for the question and all efforts to secure passage or defeat of such question and applies regardless of the

method of initiation (citizens petition or governing body resolution). A ballot initiative committee can be formed by exceeding the threshold regardless of whether petitions were actually filed or whether the question was ultimately adopted by the governing body. *Id.*

Ballot initiative committees may accept contributions in any amount from any source, provided that the committee files the document required by §9-3 of the Election Code and files the disclosure reports required by the provisions of Article 9 of the Election Code. 10 ILCS 5/9-8.5(e).

### **No Tax Implications**

The IRS rules on this issue are clear. Labor unions may support ballot initiative committees by using general treasury funds.

Labor unions are permitted to make contributions from their general treasury accounts to a ballot initiative committee without incurring tax liabilities because such activities are considered “lobbying,” rather than taxable political expenditures.

To be clear, we are not tax attorneys, and this analysis is not offered as tax advice. This discussion is offered only to provide a general sketch of relevant issues so that you can discuss this matter further with your attorneys and tax professionals to determine your position and preferred approach.

### **Reporting Obligations**

Ballot initiative expenditures for non-direct member communications that are incurred to advocate passage of the Workers’ Rights Amendment are considered to be in-kind contributions to the ballot initiative committee, “Vote Yes for Workers’ Rights.” Under the Illinois Election Code, 10 ILCS 5/9-1.14 (b) (5), a communication exclusively between a union and its members is not an electioneering communication that has to be reported to the Illinois Board of Elections and is not considered to be a contribution. However, non-member communications, such as newspaper advertisements, bill boards and paid media statements, (radio, television and social media) are in-kind contributions that need to be disclosed to the ballot initiative committee on the Board of Elections In-Kind Notification Form. Attached to this release is the In-Kind Contribution Notification form that can also be found in the Illinois Board of Elections Guide to Campaign Disclosure, August 2021. We advise that media advertisement of any kind that are directed to the general public and not sent directly to union members households, phones or email accounts should be disclosed on his form and sent to Vote Yes for Workers’ Rights, the ballot initiative committee that has been established to promote the Workers’ Rights Amendment.

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# IN-KIND CONTRIBUTION NOTIFICATION

SEE PAMPHLET "A GUIDE TO CAMPAIGN DISCLOSURE" FOR GUIDANCE

The contributor must notify the committee of these donated goods or services  
within five (5) business days

**Do not send this form to the State Board of Elections.**

Enter full name, mailing address, and zip code below

If the In-Kind was donated by an Individual, employer & occupation must be provided.

To Candidate/Political Committee:

From:

Employer & Occupation (if applicable)

## **In-Kind Contribution**

Full Name, Mailing Address and Zip Code of Vendor (if applicable).	Date	Value
	Description	

The political committee must report this contribution on their Form D-2, Section A, Part 5.

\_\_\_\_\_  
Signature of Contributor

\_\_\_\_\_  
Date