



# How the Six Constitutional Amendments on the 2018 Ballot Would Affect Nonprofits

*Updated: August 16, 2018*

This fall, North Carolina voters will have the opportunity to decide whether six amendments will be made to the North Carolina Constitution. Many nonprofits – along with the people and communities they serve – would be affected by some of these proposed changes to the state constitution. Under federal tax law, 501(c)(3) nonprofits are allowed to advocate for or against ballot measures like these constitutional amendment. The Center has prepared [guidance for nonprofits on legal considerations for organizations considering taking positions on these amendments](#).

The following is an analysis of what each of the six proposed amendments would do and how they would affect the work of nonprofits.

## Income Tax Cap

**Language on ballot.** Constitutional amendment to reduce the income tax rate in North Carolina to a maximum allowable rate of seven percent (7%).

**What it would do.** The amendment would reduce the maximum state income tax rate from 10% to 7%. Currently, the individual income tax rate is 5.499%, and it will go down to 5.25% in 2019. The current corporate income tax rate is 3%, and it will go down to 2.5% in 2019. In the past decade, North Carolina's individual income tax rate has been as high as 8.25% for high-income individuals and couples.

**Argument in favor of amendment.** Lowering the maximum income tax rate in the state constitution will prevent future legislatures from reversing the income tax rate cuts from the past five years. Some analysts believe that higher income taxes will hamper the state's economic growth.

**Argument against the amendment.** After a recession, state revenue typically goes down. In the past, lawmakers have increased income tax rates – at least on high earners – to generate additional revenue. Without this option, the General Assembly and local governments will likely need to make significant cuts to public investments in education, healthcare, public safety, social services, and other traditional functions of government. It also will likely create pressure to increase revenue from sales tax, property taxes, and governmental fees. Additionally, some analysts believe that a lower cap on the state income tax could jeopardize the state's credit rating, making it more difficult for the state and local governments to borrow money for infrastructure projects in the future.

**How it affects nonprofits.** If this amendment passes, it is likely that the state will have revenue shortfalls after future recessions. This will increase the likelihood of legislative challenges to nonprofit sales tax refunds, property tax exemption, and state income tax exemption. It also would likely mean significant

cuts to state grants and contracts with nonprofits that provide public services and could create the need for the state and local governments to offload certain programs and services onto the nonprofit sector without compensating nonprofits for the full cost of providing these services.

**The Center's position. The Center opposes this amendment.**

### Photo ID for Voting

**Language on ballot.** Constitutional amendment to require voters to provide photo identification before voting in person.

**What it would do.** The amendment would require voters to show photographic identification for in-person voting in future elections. If the amendment passes, the General Assembly would need to pass separate enabling legislation with details about the types of photo IDs that would be acceptable and any hardship exceptions that may be made for individuals without photo ID.

**Argument in favor of amendment.** Requiring photo identification for voting reduces the likelihood of voter fraud during elections.

**Argument against the amendment.** There is virtually no evidence of documented voter fraud in North Carolina. The amendment makes no provision for the types of photo IDs that will be acceptable for voting, the process for enabling North Carolinians without current photo IDs from obtaining the necessary forms of identification to vote, or exceptions for individuals who may have difficulty obtaining photo IDs. Many North Carolinians – including seniors, people with disabilities, people in low-income communities, and people of color – do not currently have drivers' licenses and may have difficulty obtaining the necessary form of photo identification to vote in elections. Evidence from other states suggests that photo ID requirements lead to significantly lower voter turnout among people of color, low-income voters, and individuals in other demographic groups.

**How it affects nonprofits.** Nonprofits typically serve many of the people who would likely have difficulty obtaining photo IDs to vote. If the amendment passes, many nonprofits would need to devote greater time and expense to nonpartisan voter registration, voter education, and get-out-the-vote activities. The anticipated lower voter turnout rate among individuals served by nonprofits would diminish charitable organizations' voices in public policy advocacy, since fewer people in the communities they serve would vote in elections (meaning that elected officials will have less incentive to be responsive to their concerns).

**The Center's position. The Center opposes this amendment.**

### Executive Branch Power/State Board of Elections and Ethics Enforcement

**Language on ballot.** Constitutional amendment to establish a bipartisan Board of Ethics and Elections to administer ethics and election laws, to clarify the appointment authority of the Legislative and the Judicial Branches, and to prohibit legislators from serving on boards and commissions exercising executive or judicial authority.

**What it would do.** The amendment would (a) remove the Governor's ability to appoint some members of state boards and commissions, giving the state legislature the power to make these appointments; and (b) restructure the Bipartisan State Board of Elections and Ethics Enforcement as an eight-person board

appointed by legislators. Currently, the State Board has nine members who are appointed by the Governor.

**Argument in favor of amendment.** This would create a Bipartisan State Board of Elections and Ethics Enforcement with an equal number of Democrats and Republicans. This will force the board to make decisions in a collaborative, bipartisan manner.

**Argument against the amendment.** These changes would further limit the (already limited) powers of the Governor and would consolidate more power in the legislative branch of the state government. Also, the language of the amendment on the ballot is misleading since it suggests that it would “clarify” the appointment process when, in fact, it is making substantive changes to the manner of appointment of many state boards and commissions. Further, in the current politically polarized environment, it is unrealistic to expect a board with four members appointed by each major political party to arrive at consensus; this could make it impossible for the board to make decisions affecting elections, lobbying reporting and registration, and ethics enforcement.

**How it affects nonprofits.** The State Board of Elections and Ethics Enforcements regulates nonprofits’ state lobbying activities and nonpartisan voter registration work. A well-functioning board (i.e. one that isn’t consistently deadlocked along party lines) is important to ensuring that nonprofits receive fair treatment and clear guidance when engaging in these activities. Many nonprofits work closely with a variety of state boards and commissions. A major change in the process for selecting the members of these boards and commissions could lead to sudden shifts in their leadership and priorities and to greater political polarization. This could diminish the ability of nonpartisan 501(c)(3) nonprofits to effectively advocate with these boards and commissions on policy issues related to their missions.

**The Center’s position.** The Center opposes this amendment.

## Judicial Vacancies

**Language on ballot.** Constitutional amendment to implement a nonpartisan merit-based system that relies on professional qualifications instead of political influence when nominating Justices and judges to be selected to fill vacancies that occur between judicial elections.

**What it would do.** The amendment would give the General Assembly the ability to choose two candidates to send to the Governor to fill vacancies on state courts or the North Carolina Supreme Court. Under current law, the Governor appoints state court judges or Supreme Court Justices when vacancies occur between judicial elections.

**Argument in favor of amendment.** The amendment would replace the political process of appointment of judges by the Governor with a merit-based system to fill judicial vacancies.

**Argument against the amendment.** The amendment provides no details for the “merit-based” system for judicial appointments, so legislators would be able to choose the process by which they would select the individuals to recommend to the Governor to fill judicial vacancies. Effectively, this would replace one political appointment system with another political appointment system, and it would further limit the (already limited) powers of the Governor. Also, this could enable the General Assembly to engage in political “court packing” by creating additional positions on the Supreme Court or other state courts and choosing the individuals who will fill these positions.

**How it affects nonprofits.** Nonprofits often rely on the state court system to resolve issues related to their missions or operations. Because 501(c)(3) nonprofits must remain nonpartisan, changes that would politicize the process for selecting state judges or allow for political “court packing” could reduce nonprofits’ access to a fair judicial system.

**The Center’s position.** The Center opposes this amendment.

### Right to Hunt, Fish, and Harvest Wildlife

**Language on ballot.** Constitutional amendment protecting the right of the people to hunt, fish, and harvest wildlife.

**What it would do.** The amendment constitutionally enshrine the right to hunt, fish, and harvest wildlife. ([Official description of the amendment](#))

**Argument in favor of amendment.** A majority of North Carolinians support these rights, and this amendment would prevent future legislatures from passing laws prohibiting or limiting the ability of North Carolinians to hunt or fish.

**Argument against the amendment.** There have been no efforts to limit or eliminate the right to hunt, fish, or harvest wildlife, so this amendment is unnecessary. Also, it could potentially create challenges to existing limits on the time (e.g. Sunday morning hunting) or location (e.g. hunting in residential neighborhoods or public parks) of hunting and fishing.

**How it affects nonprofits.** While some individual nonprofits may support or oppose this amendment, it has no clear impact on the nonprofit sector generally.

**The Center’s position.** The Center does not have a position on this amendment.

### Victims’ Rights

**Language on ballot.** Constitutional amendment to strengthen protections for victims of crime; to establish certain absolute basic rights for victims; and to ensure the enforcement of these rights.

**What it would do.** The amendment would extend the state constitutional rights afforded to victims of certain crimes to include: the right to be treated with dignity and respect; the right to reasonable, accurate, and timely notice of a proceeding, upon request; the right to be present at any proceeding, upon request; the right to be reasonably heard at additional kinds of court hearings; the right to restitution in a reasonably timely manner, when ordered by the court; the right to information about the crime, upon request; and the right to reasonably confer with the prosecutor. Currently, victims of some types of serious crimes already have these rights by statute, but this amendment would extend these rights to all victims of crimes against the person and felony property crimes. If the amendment passes, the General Assembly will need to approve laws to develop a process for victims to assert these rights. ([Official description of the amendment](#))

**Argument in favor of amendment.** This amendment would ensure that victims of crimes have equal rights to those accused of crimes or convicted of crimes.

**Argument against the amendment.** Nonpartisan legislative staff estimate that this would cost the judicial system about \$11 million per year.

**How it affects nonprofits.** While some individual nonprofits may support or oppose this amendment, it has no clear impact on the nonprofit sector generally.

**The Center's position.** The Center does not have a position on this amendment.

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