

Guidelines for Permissible Nonpartisan Candidate and Voter Education Activities

As 501(c)(3) tax-exempt organizations, children's hospitals are permitted by federal tax law to participate in nonpartisan candidate and voter education activities. This brief summarizes rules for nonprofit hospitals conducting these activities, including candidate visits, candidate forums, voter registration and candidate surveys.

Federal tax law forbids a section 501(c)(3) organization from participating or intervening—directly or indirectly—in any election campaign in support of or in opposition to a candidate for local, state or national public office. Violation of this prohibition may result in the revocation of a hospital's tax-exempt status and the imposition of excise tax on both the hospital and the hospital's managers.

Separate provisions of federal campaign finance law prohibit corporations, including nonprofits, from making political contributions to federal candidates. Therefore, it is important for hospitals to distinguish between prohibited political activities and permissible voter education and registration activities.

Note that this brief is intended as a reference guide and does not constitute legal advice or address all applicable authority and guidance on candidate and voter education activities. You should consult the relevant laws, rules and standards of conduct—or engage legal counsel and/or compliance personnel—should you have any questions about candidate and voter education activities in connection with a specific situation.

Permissible Voter Education and Registration Activities

Non-partisan voter education and registration activities generally are permitted and provide valuable contributions to public understanding of and debate about key issues. Whether conducted by a hospital individually or by a coalition of other 501(c)(3) organizations, it is important to keep the below in mind.

- Voter education and registration activities may not include any written or oral statements in support of, or in opposition to, any candidate or political party.
- Voter education and registration activities may not be designed or targeted to influence voter acceptance or rejection of any candidate or political party.
- Voter education and registration activities may not be coordinated with any candidate's campaign or with any political party.
- Voter education and registration activities should focus on a broad range of legislative issues or subjects. An emphasis on one area of concern in voter education and registration activities, for example, may indicate that the purpose of the activities is not non-partisan voter education or registration.
- All materials and publications associated with voter education and registration activities should include a disclaimer stating that the information or activity is in no way intended to reflect an endorsement for, or opposition to, any candidate or political party.

Voter guides present a particular risk for 501(c)(3) organizations. If a hospital is considering distributing a voter guide that compares candidates' positions, the hospital should consult with legal counsel and compliance personnel, as well as Children's Hospital Association (CHA) personnel, before moving forward. Below are some basic guidelines a hospital should consider for voter guides and candidate questionnaires.

- The questions and descriptions of the issues must be neutral and unbiased in their structure and content.
- The questionnaire should be sent to all legally qualified candidates running for the particular office. If only one candidate responds, it is not advisable to publish the questionnaire.
- The results should be reviewed by legal counsel and compliance personnel prior to publication.
- If using candidate answers to a questionnaire:
 - the questions in the questionnaire must be identical to the questions listed on the voter guide
 - the candidates' answers must be unedited (and the hospital should inform the candidates that their answers will not be edited)
 - the candidates must be given a reasonable amount of space to respond to questions in their own words (without requiring yes/no answers).
- Rating candidates on their qualifications for office or their agreement with the organization's positions is absolutely prohibited.
- The number of questions and the subjects covered must be sufficient to encompass most major issues of interest to the entire electorate.
- All materials and publications associated with the questionnaire, its distribution or other voter education activities should include a disclaimer stating that the information or activity is in no way intended to reflect an endorsement of, or opposition to, any candidate or political party. This disclaimer might look like: "The views expressed above are those of the candidates. This information is in no way intended to reflect an endorsement of, or opposition to, any candidate or political party."

The list above, while instructive, is not at all exhaustive. Ultimately, the IRS, in determining whether a hospital has, directly or indirectly, participated or intervened in any political campaign, will consider all of the facts and circumstances.

Public Forums: Nonpartisan Candidate Debates

Generally, a hospital organized as a 501(c)(3) organization may be able to host a public forum for candidates without running afoul of the prohibition against participating or intervening in any political campaign. Among other things, a hospital that wishes to host a public forum should do the below.

- Ensure that all legally qualified candidates from the voting district are invited.
- Ensure that each candidate is given an equal opportunity to present their views.
- Ensure that the forum addresses a broad range of issues the candidates would address if elected to office and are of interest to the public.
- Ensure that the questions for the forum are prepared and presented by a non-partisan, independent panel of individuals knowledgeable about the issues covered, e.g., representatives of the media, educational organizations, community leaders, and other interested persons.
- Ensure that candidates are not asked to agree or disagree with the positions, agendas, platforms or statements of the sponsoring organization.
- Ensure that the moderator enforces the ground rules, makes clear that the views expressed are those of each candidate and not of the sponsoring organization, and disavow any preference or endorsement by the sponsoring organization.

- Ensure that the moderator does not comment on the questions or answers in such a way as to imply approval or disapproval of any of the candidates.
- Ensure that the candidates do not collect contributions at the event.

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It is generally recommended that organizations hosting a public forum invite all candidates to appear at once, rather than having a separate visit for each candidate. Inviting one candidate at a time carries a high risk of being deemed unlawful participation or intervention in a political campaign. A hospital or other sponsor that nonetheless wishes to host one candidate at a time should engage legal counsel and compliance personnel before doing so.

Current Officeholders

Generally, a public figure who happens to be a candidate may be invited to speak at a hospital event in another capacity without triggering the requirement to provide equal opportunities to opposing candidates or making an impermissible corporate contribution. However, care must be taken to distinguish this appearance from a campaign event. Among other things, a hospital should observe the precautions below.

- The public figure must be invited to speak in his or her capacity as an officeholder, an expert in a field, or a celebrity or someone who has led a distinguished career. The public figure must have been chosen to speak solely for reasons unrelated to his or her candidacy.
- Neither the public figure nor the hospital personnel may mention the public figure's campaign at the event. Even questions from the audience about the candidacy may turn the appearance into a prohibited campaign-related event.
- All hospital communications regarding the event must clearly indicate the capacity in which the public figure is appearing.
- Neither the public figure nor the hospital may advocate the election or defeat of any candidate or raise funds for any candidate's election.
- No campaign activity may take place in connection with the public figure's appearance.
- The hospital should maintain a non-partisan atmosphere at the event.

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Issue Briefings

Generally, a hospital organized as a 501(c)(3) organization may conduct issue briefings to inform candidates running for public office of its position on issues. Such an issue briefing might be coupled with a facilities tour and generally would not involve a large number of hospital staff. Note that, if the candidate is an officeholder, such an issue briefing may constitute direct lobbying, which may be conducted by a 501(c)(3) organization only to a limited degree. In planning an issue briefing, a hospital should, among other things, ensure that:

- The issue briefing invitation is extended to all candidates running for a particular office and does not favor one candidate over another.
- No materials are specifically prepared for a particular candidate's use; only materials prepared on a non-partisan basis should be used and such materials should be made available to all candidates.

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What to Do if Approached by a Candidate Seeking to Speak at Your Hospital

- Explain to the candidate that, as a 501(c)(3) organization, the hospital may not endorse or oppose any candidate, allow campaign literature to be distributed on hospital premises or be involved in any campaign fundraising.
- Explore with the candidate what type of event he or she has in mind—debate, speech or issues briefing—and explain the restrictions for each.
- Engage legal counsel and compliance personnel before making any commitments.
- Make sure any hospital staff working on the event understand the restrictions.
- Ensure that all hospital materials produced in connection with the appearance include a disclaimer stating that the activity is in no way intended to reflect an endorsement for, or opposition to, any candidate or political party.