



MEMORANDUM

To: California Health Benefit Exchange Board
Peter V. Lee, Executive Director

From: Kathleen Keeshen, General Counsel

Date: September 11, 2014

Subject: Guidelines: Permissible Activities During Ballot Measure Campaigns

This November, California's voters will vote on an initiative measure, the Insurance Rate Public Justification and Accountability Act (the "Initiative"), which would require health insurance rate changes to be approved by the Insurance Commissioner before taking effect. The Executive Director recently reported to the Board that staff has fully evaluated the measure and has concluded that the measure, if passed, may have a significant detrimental impact on the operations of the Exchange.

Members of the Board have asked a number of questions regarding board members ability to take personal positions on the Initiative and whether the Board may take a position on the Initiative, the extent to which it may make that position known, and the extent to which individual members may provide information regarding the impacts of the Initiative on the Exchange when speaking publicly. This memorandum addresses those questions.

It is well-settled under California law that a public agency may not use public funds to campaign for or against a ballot measure. It is also well-settled that a public agency may expend public funds to prepare and distribute informational materials about the potential operational impacts of a pending ballot measure as Covered California has done in assessing the potential impact of the Initiative. Beyond these two extremes, the extent to which a public agency's activities could be determined to be "impermissible" campaign activities versus "permissible" informational activities depends on the style, tenor and timing of the activities.

Applying the principles under California law and Covered California's existing policies under its Incompatible Activities Statement we believe:

- The Exchange has acted within its authority to investigate and report to the Board and to a Joint Legislative Committee at a hearing on the potential impacts of the measure on its programs;

- Based on the results of that investigation, the Board may adopt a resolution, in the regular course of a board meeting, and express its position on the Initiative; and
- It would be impermissible for the board members or Exchange staff, in their official capacity to actively campaign for or against passage of the Initiative.

What follow are additional guidelines for Covered California officials, including board members and employees to observe when engaging in political activity related to ballot measure campaigns:

Covered California officials, including board members and employees may:

- Work on Initiative campaigns during their personal time, including lunch hours, coffee breaks, vacations, etc. or make “advocacy” public appearances during their personal time. Any Covered California official or employee who makes a public appearance advocating passage or defeat of the ballot measure during their personal time must state during their remarks that they are appearing as a private citizen concerned about the ballot measure, and that they are not speaking as an official or employee of Covered California. Additionally, if ever questioned, employees and officials may be required to provide copies of their schedules to substantiate that campaign activity was conducted only on personal time.
- Formally support a ballot measure in their private capacity in a way that allows their name to be publicly identified with the campaign. In the event an official takes a position in support or opposition in their private capacity, and the Board has not taken a position, the official must clearly indicate that he or she is taking the position in their private capacity and not in their official capacity and that in taking the position the official is in no way representing the position of the Board.
- Make a campaign contribution to the campaign supporting/opposing the measure using personal funds, and/or attend a campaign fundraiser during their personal time.
- Respond to telephone calls or letters regarding the campaign, as long as they limit their response to confirming Covered California’s analysis and expressed views on the measure and present balanced information.
- Have the Covered California Board of Directors officially endorse or oppose the ballot measure at a public meeting through adoption of a resolution, in the regular course of a regularly scheduled board meeting, expressing the position of the agency for or against the measure.

- To the extent the Board takes an official position on a ballot measure, officials may, in their official capacity, communicate that position upon inquiry from a voter, but they may not advocate passage or defeat of the measure, and may only discuss the issues in a balanced and informational manner.¹

Covered California officials, including board members and employees may not:

- Distribute campaign literature through the Covered California's internal mail system.
- Place campaign literature on employee bulletin boards, on the Covered California's web page (www.coveredca.org), or elsewhere on any of the Covered California premises.
- Place campaign bumper stickers on Covered California vehicles.
- Make public appearances regarding the ballot measure during compensated work hours (versus personal time or breaks), unless their comments are limited to communicating the facts of Covered California's analysis of the potential impacts of the Initiative and providing "balanced" information regarding the measure in response to public inquiries.
- Make telephone calls regarding the campaign during compensated work hours (they should use personal cell phones before or after work hours).
- Walk precincts, draft campaign ads, or perform other campaign-related tasks during compensated work hours, or assign subordinates to do the same.
- Add a link from the Covered California website to a campaign website.
- Send or receive campaign-related e-mails on Covered California computers (they should set up their own personal separate "Hotmail", "Yahoo", or "Gmail" accounts using their own personal computers).
- Use Covered California offices or conference rooms for campaign meetings.
- Hold a campaign rally on Covered California premises.

¹ As there is uncertainty concerning the expenditure of federal funds in connection with state lobbying or ballot measures, we recommend against the use of federally-appropriated funds to fund any public communications to broadly disseminate a "position" of the Board in connection with an initiative on which the Board takes a position. This recommendation does not apply to the dissemination or communication of an informational analysis of the Initiative and its impacts.

- Use Covered California copy machines, telephones, fax machines, computers, etc. for campaign purposes.
- Use Covered California stationary or letterhead for campaign related or personal correspondence. Moreover, the use of state employees to prepare any campaign or personal correspondence while they are on state time is prohibited.
- Campaign while in uniform (if applicable).
- Receive or personally deliver or attempt to deliver a contribution in the State Capitol, in any state office building, or in any office for which the state pays the majority of the rent other than a legislative district office. If a campaign contribution is mistakenly sent to a state office, it should be returned to the sender, not forwarded to a campaign. The sender may be informed of the proper address to send the contribution.
- Engage in partisan political activity prohibited under Covered California Incompatible Activities Statement.
- Use the prestige or influence of the State or Covered California for compensation from a source other than the State.
- Prepare, present, or publish any speech, article, or other writing related to the operation of Covered California for compensation from a source other than the State.