

# HANDBOOK OF ELECTION ISSUES



Office of General Counsel

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# HANDBOOK OF ELECTION ISSUES

## I. INTRODUCTION

This is a general reference guide to issues that have arisen within the CSU relating to the use of state resources in elections and guidance for other election questions.

## II. THE LAW

The law prohibits the use of public funds for political campaign activity. As stated in the leading case which established this principle, *Stanson v. Mott* (1976) 17 Cal.3d 206, 210:

“[A] public agency may not expend public funds to promote a partisan position in an election campaign.”

[See also, *Vargas v. City of Salinas* (2009) 46 Cal.4th 1; *Peninsula Guardians, Inc. v. Peninsula Health Care District* (2011) 200 Cal.App.4th 1108; *DiQuisto v. County of Santa Clara* (2010) 181 Cal.App.4th 236; *Miller v. Miller* (1978) 87 Cal.App.3d 762.]

Government Code section 8314 similarly provides:

“It shall be unlawful for any elected state officer, appointee, employee, or consultant to use or permit others to use state resources for a campaign activity . . . which [is] not authorized by law.”

This rule of campaign neutrality is consistent with other laws that establish the foundational principle that the CSU must remain “entirely independent of all political and sectarian influence.” (Cal. Educ. Code § 66607.) (See also, a similar restriction applicable to the University of California in Cal. Const. art. IX, § 9.) It also furthers the California Constitutional proscription against gifts of public funds (Cal. Const. art. XVI, § 6), and the statute which prohibits the misappropriation of public funds. (Cal. Pen. Code § 424.) It is consistent with the

related proscription on the involuntary assessment of student fees to support political positions. See, *Smith v. Regents of University of California* (1993) 4 Cal. 4th 843. Requiring state agencies to be politically neutral in election campaigns also promotes basic equity and fairness in the democratic process.

State resources are implicated whenever any state property or asset is used in an election campaign, including land, facilities, equipment, supplies, telephones, computers, vehicles, employee time and funds.

It is impossible to establish clear or bright lines that apply universally in every situation, because the law is premised on reasonableness and balance, and the facts are different in each individual circumstance. Nevertheless, it is hoped that the following general information will be helpful in arriving at thoughtful decisions. Further consultation with the University Counsel assigned to your campus is encouraged with respect to any specific situation that is in doubt.

### **III. APPLICATIONS**

#### **A. WRITTEN MATERIALS**

To determine whether written materials are informational or promotional, the first level inquiry is whether they are prepared in response to a request from a citizen or an organization. If so, they are informational, so long as they are a “fair presentation of the facts.” *Vargas, supra* at 24-25. The second level of inquiry if the materials are not responsive to a specific request is factors such as style, tenor, and timing.

It is impossible to establish hard and fast rules which govern every situation. Typical campaign materials, such as bumper stickers, posters, advertising floats, television or radio spots are almost always advocacy, and cannot be purchased with taxpayer funds. Information that is presented with argumentative or inflammatory rhetoric, leads to only one logical conclusion, or urges a particular vote is also impermissible advocacy. On the

other hand, information that is primarily factual and informative and moderate in tone is generally regarded as appropriate for public fund expenditure, particularly if it is part of a larger or ongoing communication with a particular constituency -- e.g., a regular newsletter. Photographs and visual features to get voters' attention may also be consistent with the legitimate dissemination of information. Factual information about consequences that will result from the passage or failure of a political measure, even including some value judgments and opinions, may be acceptable so long as moderate in tone. Use of the pronouns "we" or "you" to connect with voters does not automatically disqualify a communication from being considered as information. The lack of an opposing viewpoint also does not automatically turn an otherwise legitimate communication into advocacy and therefore ineligible for public funds. Peninsula Guardians, Inc., *supra*

The closer in time to an election, the more scrutiny written materials can expect to undergo, although timing is not always dispositive. Peninsula Guardians, Inc., *supra*. In 35 Ops.Cal.Atty.Gen. 112, the Attorney General determined that a full page ad, which contained factual information, but did not explicitly advocate a particular vote, was campaign advocacy because the ad was placed *the day before* the election.

## **B. DEBATES**

It is the function of an educational institution to inform the public on both sides of important policy issues. Therefore, a debate, where both sides have an opportunity to present their opinions, is unquestionably an appropriate expenditure of public funds.

Where University officials are participants in a debate and advocate a particular point of view, they should make clear at the outset that they are presenting their own personal opinion and not an institutional position.

### **C. SPEAKERS**

Every university campus is considered “a market place of ideas.” *Healy v. James* (1972) 408 U.S. 169, 180. Broad latitude therefore must be provided for speakers from every spectrum to address groups on campus, both in formal and informal settings, subject only to reasonable campus time, place and manner restrictions. Reasonable restrictions are those which are designed to avoid material disruption of instruction and/or campus security. For further information and guidance, see the American Association of University Professors (AAUP) July 2007 statement on [“Academic Freedom and Outside Speakers.”](#)

Public funds may be used to pay speakers who advocate a particular point of view, and even advocate for a candidate or position in an election year. It is advisable to make a statement in the introduction of the speaker and also in communications advertising the event that the CSU does not support or oppose the speaker’s position or his/her candidacy. Balance in viewpoints need not be achieved at every speaking event. However, over time campuses should ensure that various points of view have been presented. The closer a speaker comes to the date of an election, the more compelling the need for balance.

### **D. “FREE SPEECH ZONES”**

Areas of campus may be designated as the usual gathering places where public speech occurs (“free speech zones”). These locations should be selected to accommodate large groups, appropriate for sound amplification, and away from places on campus where quiet is important (e.g. dwellings or academic buildings). Speakers can be directed to these locations as the usual place where it is accepted on campus that speech regularly occurs. They should not be regarded, however, as the only locations on campus where public speech is appropriate. Events and locations outside of the “free speech zones” are

subject to regulation as to appropriate time, place and manner that is reasonable under all of the circumstances.

Much care needs to be exercised in developing advance notice requirements for use of the campus for purposes of speech. It may be appropriate to require advance notice where large groups are anticipated, where sound amplification is required or used, where the speaker is not a member of the campus community, where unusual security issues are presented, and so on. A blanket advance notice requirement for all users would likely be viewed as an inappropriate prior restraint.

#### **E. LEAFLETING**

The distribution of printed matter is “permitted on campus,” but is also “subject . . . to reasonable directive by the campus president as to the time, place and manner thereof.” (Cal. Code Regs. tit. 5, § 42352(b)). A campus might for example prohibit leafleting at the bottom of an escalator or near roadways to avoid creating a dangerous condition.

#### **F. POSTERS**

Campaign posters, which advocate a position, are a campaign activity and no public money can be used in their production.

Political posters, like all other posters, are subject to content neutral time, place and manner restrictions. Campuses may, for example, have regulations to limit the size or location of all campus posters to protect against fire risk, access problems, or other health or safety issues.

Political posters can be displayed in traditional public areas, such as kiosks or other bulletin board or information arenas. They also can be displayed in areas which are generally

regarded as private space, belonging to particular individuals. This could include the interior of dormitory rooms and private office space, depending on the size and nature of the poster, and whether it creates any ambiguity about an “official” position being taken (e.g. office space which is open and adjoined to other public areas). Other displays of political posters are not permissible.

#### **G. USE OF FACILITIES**

Campaigns that wish to book campus venues for one-time events can be distinguished from other users of campus facilities, because they inform the public and bring discussion and debate on important public issues, which is part of the university’s mission. Nevertheless, like other users of campus facilities, campaigns must be treated equally. If the campus charges one campaign for the use of facilities, it must charge all campaigns. It is always wise where a campaign takes place on a campus to include a disclaimer in any printed materials advertising the event, and at the beginning of the event, that the CSU does not support or oppose any candidate or position, and that opinions expressed at the event are not those of the CSU.

#### **H. FILMING OF POLITICAL ADS ON CAMPUS**

CSU campuses are public property, and it is acceptable to use a CSU campus as location to film a political campaign advertisement. The political candidate must adhere to all time, place and manner restrictions that apply generally to filming on that campus. In addition, the campus needs to ensure in any filmed political advertisement that the campus serves a backdrop only, and that the context or setting of the filming does not imply an endorsement of the candidate.



## **I. USE OF E-MAIL**

Campuses provide e-mail for employees to conduct official University business.

Therefore, it is not appropriate for individual employees to conduct campaign advocacy or solicit funds by using their University e-mail accounts. On the other hand, to the extent that a certain degree of personal communication is tolerated or allowed under applicable campus policy, then personal communication which includes the expression of political views must also be tolerated. Even if it is appropriate for a campus to expend effort to promote and encourage voter registration, a broadcast effort to get out the vote on e-mail is not appropriate.

Student e-mail and webpages are generally accepted as being made available for personal use. A campus could therefore become vulnerable to a charge of violation of the First Amendment if it attempts to interfere with student communications with political content. Students or groups can be required to include a disclaimer when making political endorsements that their opinions are not the opinions of the CSU. Campus policy which limits the use of e-mail accounts and webpages for nonuniversity purposes would also limit the use of student e-mail or webpages for political campaign purposes.

## **J. PUBLIC RESOLUTIONS**

There is a rich tradition in academia that certain bodies within the university may express their common views on matters of public importance. The Academic Senate, for example, frequently “takes positions” on various matters in furtherance of its function within the institution.

There is no reason why such bodies cannot continue to express their viewpoints, even on matters which go before the electorate. University employees do not lose their personal right of individual or collective free speech because of university employment. Thus, a

deliberative body may take a position on an issue of importance to society or on a ballot proposition. But having exercised rights of expression, the body may not then spend state funds to publicize its point of view other than preparing the usual minutes of the meeting and engaging in the normal communications that follow the meeting. The body should include a statement indicating its position is not endorsed or sanctioned by the CSU. If the position is adopted in procedures that are out of the ordinary course – e.g., calling a special meeting just before an election only for the purpose of taking a political position – there is a possibility that such could be labeled illegal campaign activity.

#### **K. CSU AUXILIARIES**

CSU auxiliary funds are not “public,” even though they exist only to support the university’s public purpose. Auxiliary funds may, therefore, be used for purposes of campaign advocacy, but only if the position taken is consistent with a formal position taken by the Board of Trustees, and the maintenance of the auxiliary’s tax exempt status. General guidance for 501(c) (3) entities and political campaigns is found in [IRS Revenue Ruling 2007-41](#).

#### **L. SIGNING ADVOCACY LETTERS**

First Amendment rights to free expression are not sacrificed upon assuming public employment. Faculty and staff may sign their name to letters or other written documents that advocate political positions. Where the campus employee’s name is accompanied by his or her campus title, however, there is some risk of confusion that the name listed in support of a political issue represents an official position of the institution. The higher up in rank or office, the more likely that this confusion may exist, and/or that the signature is being solicited, in part, because of an implication of institutional endorsement. If a campus title and/or affiliation are clearly identified “for identification purposes only,” it may be possible for an endorsement to be considered personal, but very careful judgment

should be exercised in each instance before lending a university employee's name to a political candidate or position.

**M. PERSONAL OPINIONS IN UNIVERSITY PUBLICATIONS**

A university leader may not state his/her personal opinion on a political issue in a university publication, even if it is clearly identified as a personal viewpoint. So long as the publication is funded by the university, the expression of a partisan view is impermissible.

**N. CAMPAIGN BUTTONS**

Employees may wear political campaign buttons to work as an expression of their own personal opinion.

**O. USE OF UNIVERSITY STATEMENTS**

The university cannot restrict the use of its official opinions by others as a part of their campaign advocacy. Care should be exercised, however, to ensure that the campus is not so closely affiliated with the campaign advocates to give rise to an argument that the official statement was really engineered for an outside purpose. Circumvention of the restrictions of the law is not permissible.

**P. JOINT PRESS CONFERENCES INVOLVING ELECTED OFFICIALS**

At a campus press conference in which both elected and university officials are jointly present (e.g. groundbreaking or opening of a new facility), the public officials should only answer questions related to the campus event.

#### **IV. TIME OFF TO VOTE**

If a voter does not have sufficient time outside of working hours to vote at a statewide election, the voter may, without loss of pay, take off enough working time (not to exceed two hours) that, when added to the voting time available outside of working hours, will enable that voter to vote. The time must be taken at the beginning or ending of the employee work period unless otherwise mutually agreed. The employer is required to post notice of this opportunity ten days before every statewide election. (Cal. Elec. Code § 14000.) The Secretary of State has prepared a [sample notice form](#).

#### **V. CONCLUSION**

When questions regarding election issues arise, campuses are urged to consult with their University Counsel. Decisions about appropriate behavior in the context of election issues almost always depend on the peculiar facts of each situation.

A more detailed guide to the issues in this area is [“Political Campaign-Related Activities of and at Colleges and Universities”](#) published by the American Council on Education

The Internal Revenue Service also has a website resource guide on [“Charities, Churches, and Educational Organizations – Political Campaign Intervention.”](#)

[IRS Revenue Ruling 2007-41](#) also contains a useful discussion and examples in this area.