

HANDBOOK OF ELECTION ISSUES



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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.) 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, email communications, social media accounts, vehicles, employee time and funds.

Some important exceptions are detailed below in this guidance document. For example, the CSU must assist with specific neutral election activities including get-out-the-vote campaigns and serving as a vote center or polling place. Additionally, the restrictions for election activities differ from engagement surrounding legislative advocacy.

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.

ANALYSIS OF COMMON ELECTION ACTIVITIES

A. Permissible Activity Re: Initiative or Ballot Measures

1. Endorsement By Board of Trustees

The Board of Trustees for the California State University is permitted to pass a resolution supporting or opposing a ballot measure that impacts the university. While it is permissible for the Trustees to communicate a position concerning an initiative that impacts the CSU or any campus, state law prohibits the CSU from engaging in political advocacy efforts to influence a

vote. California law requires that the CSU remain “entirely independent of all political and sectarian influence.” (Cal. Educ. Code §66607.)

2. Written Materials from the University

Public agencies, including the CSU, are permitted to provide written or oral information about a ballot proposition that is factual and moderate in tone, but may not advocate for a particular vote. To determine whether written materials are informational or promotional, the first level of 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*, 46 Cal.4th 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. (*Vargas*, 46 Cal. 4th at 35-36; see also *Guardians, Inc.*, 200 Cal.App.4th at 1130.)

The closer in time to an election, the more scrutiny written materials can expect to undergo, although timing is not always dispositive. *Id.* The Attorney General has 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. (35 Ops.Cal.Atty.Gen. 112.)

3. Participation By CSU Auxiliary Organizations

CSU auxiliaries are 501(c)(3) organizations created under the Education Code to support the university's public purpose. With limited exception, funds generated and held by the auxiliaries are not public funds. Accordingly, the statutory restrictions against advocacy discussed in this handbook do not apply to auxiliary organizations. However, both CSU policy and tax regulations limit auxiliary advocacy activity.

CSU policy prevents auxiliaries from using funds to support or oppose any candidate for political office, or any issue before the voters *except* that auxiliaries may engage in efforts to support a position formally taken by the Board of Trustees. (5 Cal. Code Reg. §42403(c)(1).) Auxiliaries should be careful to limit participation to auxiliary employees and resources, as state resources may not be used.

Auxiliary participation in election activities is further constrained by the tax code. Auxiliaries are 501(c)(3) organizations. To uphold their tax-exempt status, auxiliaries can devote no more than an "insubstantial amount" of their overall activities toward lobbying. A reasonable interpretation of this rule indicates that activities in support of lobbying should not exceed 3 to 5 percent of the organization's overall activities and resources, including its time and effort, which includes the time and effort of volunteers. See IRS [Guidance re Charities and Nonprofits/Lobbying](#); see also [IRS Revenue Ruling 2007-41](#).

4. Participation by Bodies Within the University

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.

B. On-Campus Events Concerning Election Matters

All on-campus events concerning election matters are subject to the published campus time, place and manner restrictions, which establish the requirements and procedures for all on-campus events. As a supplement to the campus policy, the following information is provided concerning specific events likely to occur concerning election matters. The list is not exhaustive, and campuses should consult the time, place and manner policy for all events.

1. 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.

2. Speakers

Every university campus is considered “a marketplace 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.

It is advisable to make a statement in the introduction of the speaker and in communications advertising the event that the CSU does not support or oppose the speaker’s position or 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.

3. Leafleting and Posters

The distribution of printed matter supporting a candidate or position and hanging of campaign posters are subject to the campus time, place and manner and university buildings and grounds policies.

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

4. 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 as a backdrop only, and that the context or setting of the filming does not imply an endorsement of the candidate.

C. Political Engagement by University Employees

1. General Rule

Employees do not give up their constitutional rights upon joining a public agency. With only limited exceptions, no restrictions may be placed on the private political activities of public employees. Public employees should not, of course, use public resources (including time on the job) to advocate a particular position on a ballot measure. This restriction applies to all university employees, including executives. Specifically, for example, no university employee on official business or using university resources should urge anyone to vote one way or another on a measure. University officials may separate their private from their official activities by taking vacation or reimbursing the university for any time or resources used in personal campaigning. Such time and resources can be recorded on a time sheet and reimbursed by the employee.

2. Use of Email

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.

By contrast, student e-mail accounts 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.

3. Signing Advocacy Letters

Faculty and staff may sign their name to letters or other written documents that advocate political positions taken on their own behalf. Where the campus employee's name is accompanied by a 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 it is 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.

4. Personal Opinions in University Publications

A university leader may not state a 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.

5. Employee 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 end 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.) Leave to vote is also covered by the various collective bargaining agreements.

6. Employee Who Volunteers as a Poll Worker

CSU employees who wish to volunteer as a poll worker should consult with their supervisor. The CSU shall approve leave for an employee to serve as a precinct officer for a state or local election, if the employee has available leave and provided campus operational needs are met. If such leave is denied due to campus operational needs, at the employee's request, the Appropriate Administrator shall explain to the employee the campus operational needs. Government Code section 19844.7 which discusses state employee participation, does not apply to CSU employees.

IV.

STATUTORILY ESTABLISHED POLITICAL ENGAGEMENT

A. Student Civic and Voter Empowerment Act

The Student Civic and Voter Empowerment Act was passed in 2019 to establish clear pathways for the Secretary of State to assist public postsecondary education institutions in meeting the voter registration and participating objectives set forth in the California Elections Code. The legislation specifically requires CSU to engage in certain activities to inform students about election dates and voter information through email, social media, and outreach events. (See Cal. Educ. Code §§ 66850-66852.)

Campuses are asked to engage student, faculty, staff and administrative representatives in developing a Civic and Voter Empowerment Action Plan to increase civic learning and democratic participation, with an emphasis on civic engagement, voter turnout and community building. Additional information about California Students Vote, including fact sheets and tool kits is available on the [website](#) of the California Secretary of State.

B. Election Centers and Polling Locations

The California Election Code provides that state-owned buildings, parking lots, and other facilities shall be made available free of charge for use as polling places and vote centers upon request. (Cal. Elec. Code §§12283-12284.)

Template facility use agreements are available to campuses through PolicyStat.

V.

PARTICIPATION IN THE LEGISLATIVE PROCESS

The strict prohibitions against using public funds and resources for political campaign activities apply to issues before the voters. These same restrictions do not apply, nor in any way limit, the CSU's ability to participate in the legislative process.

While state resources can be used for advocacy in the legislative process, positions taken on behalf of the CSU must be approved by the Board of Trustees and facilitated through the CSU Advocacy and State Relations department. At the beginning of every two-year legislative session, the Board of Trustees adopts a formal Statement of Legislative Principles for the California State University. The principles provide basic parameters to guide positions taken by the chancellor and system representatives on matters pending before the California legislature. The CSU name can only be used to represent positions taken subject to these principles and procedures. While individual employees can advocate for bills on other issues that may be important to a campus or system initiative, they may not represent or infer that the bill is supported or opposed by the CSU. For additional information, contact CSU Advocacy and State Relations.

Likewise, CSU has an office in Washington, D.C. who work to advance the interests of the CSU. The [Office of Federal Relations](#) leads system efforts to formulate and coordinate federal priorities for the CSU as approved by the Board of Trustees.

CSU employs federal lobbyists and is registered as such under the Lobbying Disclosure Act. As a result, the CSU and all CSU employees are subject to a detailed and complicated set of restrictions when it comes to providing gifts and travel to members of Congress and Congressional staff. Additionally, strict reporting rules apply and obligate the CSU to report lobbying activity, which is broadly defined, on a regular basis. Close coordination with the Office of Federal Relations is therefore required for federal lobbying activities. For more information about lobbying disclosure and ethics rules, see [here](#) or contact the Office of Federal Relations.

VI.

CONCLUSION

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