

# UC Participation in Ballot Campaigns: Legal Guidelines

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Ellen Auriti  
University of California  
Office of General Counsel  
[Ellen.Auriti@ucop.edu](mailto:Ellen.Auriti@ucop.edu)

# Overview

- Legal Context
- Ballot Initiatives: UC involvement
- Why it's important
- Information vs. Advocacy
- UC vs. Private Activity
- Examples – Permissible vs. Impermissible
- UC Alumni Assoc. and Foundations
- Non-Ballot Initiative Political Activities
- Resources

# Legal Context

Restrictions on UC involvement in campaign activities:  
based on status as 501(c)(3) entity and as state agency

- As a charity (I.R.S. rules: maintaining tax-exempt status)
  - UC may not endorse/oppose (or contribute to) candidates
  - UC may engage in direct and grassroots legislative lobbying, as long as it remains an “insubstantial” (~5%) part of UC’s activities
  - Non-partisan activities (hosting debates; voter registration drives) are OK, if consistent with tax-exempt purpose
- As a state agency:
  - **No advocacy on measures before the electorate**
  - The Regents may adopt a position on a measure in an open meeting, where all sides have opportunity to be heard
  - Distinction between *informational activities* (OK) and *advocacy/campaigning* (not OK)

# Ballot Initiatives: UC Involvement

- UC Legal Guidelines focus on ballot initiatives
- When might UC get involved?
  - Education facilities bonds
  - Funding/tax measures
  - Other measures of relevance to higher ed
- Key CA Supreme Court cases
  - Stanson v. Mott (1976) 17 Cal.3d 206
  - Vargas v. City of Salinas (2009) 46 Cal.4<sup>th</sup> 1

# UC Legal Guidelines

<http://www.ucop.edu/uer/sgr/ballotguidelines.html>

*“University funds (including University paid time and equipment) may not lawfully be used for campaign purposes in connection with ballot propositions. University funds may be used for legitimate informational activities. These guidelines are intended to assist in drawing the difficult distinction between legitimate informational activities and unlawful campaign activities.”*

# UC Legal Guidelines

- Focus on use of **University resources**
  - funds
  - paid time
  - equipment, materials, facilities
- Distinguish between “**legitimate informational activities**” and “**unlawful campaign activities**” for UC
- Distinguish between **University activities** and **private activities** of individual employees (w/o UC resources)

# Who May be Watching?

- Fair Political Practices Commission
- CA Attorney General
- CA Secretary of State
- I.R.S.
- Reporters/public inquiries

# Consequences

- Potential criminal and civil penalties for misuse of public resources
- Public official may need to reimburse agency from personal funds
  - “a public official who, in good faith, authorizes the improper expenditure of public funds is personally liable to replace such funds only if he failed to exercise **due care**...” (Stanson v. Mott)
  - Due care: When in doubt, consult counsel
- May trigger reporting obligations under Political Reform Act. Penalties for agencies that fail to report
- Negative PR; Reputational risk

# Information or Advocacy?

- “No hard and fast rules..”
- Courts will look to **style, tenor, and timing**
- **Permissible Informational activities:**
  - Provide fair presentation of the facts (both sides)
  - Objective, non-inflammatory language;
  - Do not urge voters to vote for/against a measure;
  - Deliver info thru regular channels.
- **Caution: Context counts!**
  - Even a communication that avoids explicitly urging a yes/no vote could be considered improper campaigning (e.g., special mailing close to election).

# UC or Private Individual Activity?

- Individual employees have constitutional right to engage in **private** political activities:
  - **On their own time** (still must devote full time/attention to job)
  - **Without using public/UC resources** (limited minor incidental use *may* be OK, but best practice: use only personal resources)
  - **Record-keeping** as appropriate (use of vacation or other leave; reimbursement to UC if non-incidental use of resources)
- Must take care to avoid confusion re: official/private roles

# *Individual Activities: Use of UC Title?*

*May a University employee endorse a ballot measure  
in his/her private capacity and identify  
himself/herself by University title?*

Yes. A University official may allow use of his/her name and title for identification purposes in the same manner as others who sign an endorsement. An express disclaimer of University endorsement is required only where the context might reasonably cause confusion as to whether the endorsement is made in an official or unofficial capacity.

*Presidents, Chancellors, and Deans almost  
always need to provide a disclaimer.*

# *PERMISSIBLE Activities for UC*

- Adoption by The Regents of a position on a ballot measure (at an open public meeting)
- Preparing objective analyses of the impact/effect of a measure on UC and higher education
- Responding to inquiries about the Regents' position in a way that provides a fair representation of the facts about the measure

# *PERMISSIBLE Activities for Individuals*

- Personally endorse a ballot measure via a letter to the editor or op-ed piece.
  - If reasonable potential for confusion: “Title for Identification purposes only...”
- Sign/appear in initiative endorsement
  - Again, disclaimer if needed to avoid confusion
- Contribute personal resources/volunteer time to a ballot initiative campaign

# *PROHIBITED Activities*

*Don't use UC time/resources to:*

- *produce buttons, bumper stickers, speeches, media spots; advocacy materials urging yes/no vote;*
- *Disseminate ballot initiative advocacy materials prepared by others;*
- *Give preference to campaign-related requests to use facilities;*

# Examples: Permissible Information

- Article in routine campus publication:
  - “important issues on ballot”
  - “informed voter participation is critical -- we hope you'll take the time to carefully evaluate the impact of these proposed measures and to consider the future of California in casting your ballot.”
  - “The ballot measure argument was signed by...and is opposed by....”
  - “Revenues raised by the measure would fund cancer research...”
- Reminder to Staff Assembly:

Federal law permits up to two hours off to vote... <sup>15</sup>

# Examples: Permissible Information

## Information Piece:

- Provide facts about ballot measure
- Info about who supports/opposes (and their stated rationale)
- State that Regents took oppose/support position;
- Objective info re: impact on UC (how much money will go to UC? Effect on UC students, patients?)
- “The University cannot tell you how to vote...”

## *Examples: Impermissible Campaigning:*

*Special UC mailing close to election:*

- *"Proposition XYZ is the only way to ensure that higher education will remain affordable and accessible. Your support in November is crucial."*

*UC Social Media (e.g., Facebook) campaign:*

- *"A vote for Prop ABC is a vote against Big Tobacco." (Slogan....)*
- *"Students deserve better classrooms. Your vote tomorrow can help make that a reality..."*

*UC web page: "Remember to vote on Prop XYZ," and including link only to the Pro XYZ Campaign.*

# What About UC Alumni Associations and Campus Foundations?

- Not subject to state agency restrictions
- May participate in campaign activities on ballot measures, BUT:
  - **May not use public/UC resources** (including paid UC staff or funds from UC accounts)
  - **Subject to 501(c)(3) limits** (no candidate endorsement; limit to “insubstantial” part of organization’s activities)
  - **Subject to donor restrictions**
  - **Must report to FPPC donations of funds/services to a ballot measure campaign**
  - Per UC policy, may only make campaign expenditures to support ballot measures that **have been endorsed by The Regents and that are clearly beneficial to UC.**

# Non-Ballot Initiative Political Activities

## Permissible activities include:

- **LEGISLATIVE LOBBYING:** UC may use its resources to engage in legislative lobbying (contact by authorized University officials with federal, state and local government officials on matters affecting UC).
- **VOTER REGISTRATION DRIVES, VOTER EDUCATION:** Permissible, as long as non-partisan, not favoring any party or candidate

## Check UC and campus policies:

### - Policy on Use of University Properties

- 41.10 University Neutrality on Religious and Political Matters
- 41.12 Use of University titles in non-official correspondence, statements, media
- 41.20 Use of University Name, Insignia, Seal, or Address

### - Campus Time, Place, Manner regulations

# Non-Ballot Initiative Political Activities

## Prohibited Activities include:

- **ENDORSEMENT OF OR CONTRIBUTIONS TO CANDIDATES.** UC may not endorse or contribute to candidates for elective office. Institutional officials should use care to avoid confusion between private and public roles.
- **PROVIDING CANDIDATES A FORUM TO PROMOTE THEIR CAMPAIGN**, particularly if all candidates are not given the same forum/access on the same terms.
- **PUBLISHING RATINGS OF CANDIDATES**, particularly if the ratings could be perceived as reflecting the views of the institution, and/or if institutional resources are used.

# RESOURCES

- UC Guidelines re: Participation in Ballot Initiative Campaigns:  
<http://www.ucop.edu/uer/sgr/ballotguidelines.html>
- Political Reform Act. Ca. Gov Code 81000 et seq.
- CA Supreme Court cases:
  - Stanson v. Mott (1976) 17 Cal.3d 206);
  - Vargas v. Salinas (2009) 46 Cal.4<sup>th</sup> 1
- ACE Guidelines: Political Campaign-Related Activities of and at Colleges and Universities (September, 2011)  
[http://www.nacua.org/documents/ACE\\_Memo\\_CampaignRelatedActivitiesOnCampus\\_2011.pdf](http://www.nacua.org/documents/ACE_Memo_CampaignRelatedActivitiesOnCampus_2011.pdf)
- IRS Fact Sheet 2006-17: Election Year Activities and the Prohibition on Campaign Intervention for 501(c)(3) organizations  
<http://www.irs.gov/newsroom/article/0,,id=154712,00.html>
- IRS Rev. Ruling 2007-41 (Includes higher ed examples of whether organization's activities violate 501(c)(3) rules re: political campaign activities): <http://www.irs.gov/pub/irs-drop/rr-07-41.pdf>
- IRS FAQs about the Ban on Political Campaigning by 501(c)(3) org's:  
[http://www.irs.gov/pub/irs-tege/501c3\\_polcampfaqs.pdf](http://www.irs.gov/pub/irs-tege/501c3_polcampfaqs.pdf)

# QUESTIONS

