

Political Campaign Activities Overview of Legal Restrictions Applicable to UC

UC Campus Government Relations Call
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I.R.S. Restrictions (applicable to 501(c)(3) charitable organizations)

Ban on advocating/campaigning for/against **candidates for public office** (“electioneering”)

I.R.S. rules pertain to electioneering – they do not address **ballot measure** advocacy

Ban includes:

- Making/distributing public statements supporting or opposing candidates (or parties)
- Contributing (funds, resources) to political campaigns
- Endorsing or rating candidates
- Partisan use of organization’s resources to influence an election

Applicable to:

- University activities overall;
- Activities of UC staff/faculty in their capacity as representatives of the University;
- Activities conducted by campus Foundations and other Section 501(c)(3) organizations affiliated with UC

Violations may result in revocation of tax-exempt status and imposition of certain taxes

CA State Law Restrictions on State Entity Participation in Ballot Campaigns

Public entities like UC may not:

- **Campaign for or against measures that have been placed on an election ballot.** *Stanson v. Mott* (1976); *Vargas v. City of Salinas* (2009) - CA Supreme Court cases
- **Use or permit others to use public resources (e.g., UC resources) for a campaign activity.** See Cal. Gov.t Code § 8314). UC resources include UC-paid staff time, UC equipment (phones, letterhead), UC facilities

Applicable to:

- University activities overall;
- Activities of UC staff/faculty in their capacity as representatives of the University;
- Activities that make non-incidental use of UC resources

Unlawful activities (if conducted by public employees/officials acting in their official capacity *or* with public resources) include:

- Fundraising or contributing to a ballot measure campaign
- Building a campaign team/coalition to support ballot measure
- Campaigning/seeking to influence voters in the campaign

Consequences for violations of state rules:

- **Potential criminal and civil penalties for misuse of public resources**
- **Public official may need to reimburse agency from personal funds**
- **May trigger reporting obligations under Political Reform Act (penalties for failure to report**
- **Reputational risk/negative PR; Discrediting or diluting effectiveness of UC work**

PERMISSIBLE ACTIVITIES – Related to Political Issues Generally

- UC may conduct **non-partisan** voter registration drives
- UC may host non-partisan public candidate forums (not favoring any party or candidate, inviting all eligible candidates)
- UC may invite candidates to appear in a non-candidate capacity (caveat: should not reference election or allow campaigning at the event)
- Genuine curricular activities aimed at educating students about the political process (caveat: UC activity must be non-partisan)
- UC may engage in legislative lobbying (within permissible I.R.S. limits, complying with applicable reporting rules)
- Individual UC employees may participate in political campaign activities in their personal capacity (using non-UC resources, and disclaimer re: use of title for identification purposes, where necessary to avoid confusion)

PERMISSIBLE ACTIVITIES – BALLOT MEASURES

UC may work to support legislation intended to put a measure on the ballot

UC may help identify legislative sponsor; support the bill; inform internal stakeholders about **legislation** (caveat: may not build an *initiative* campaign)

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UC employees acting within scope of their authority may discuss the Board's position in response to public inquiries, as long as no UC resources are used to campaign for or against a ballot measure

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UC may engage in “legitimate informational activities” (provide public with educational materials that present **fair, objective, factual analysis** of impact on UC.

- Caveat: no “bright line” between legitimate informational activities and impermissible campaign activities;
- Courts look at style, tenor, timing of an activity/communication to determine if it was permissibly informational.

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 **Context counts!**

Factors that support conclusion that a communication is a permissible informational activity:

- ✓ Provides fair representation of the facts (both sides)
- ✓ Uses objective, non-inflammatory language; avoids slogans
- ✓ Does not urge a yes/no vote
- ✓ Delivered through regular channels/timing (i.e., not a special mailing right before an election...)

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Individual UC employees/officials, acting in their personal capacity, on their own time/initiative and using private (non-UC) resources, may engage in campaign activities.

- If using UC title, may need disclaimer (“for identification purposes only”).
- Must be voluntary (i.e., not directed by UC – decision to participate or not should have no bearing on an individual's employment at UC)

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Campus Foundations and Alumni Associations, as separate legal entities, are permitted to participate in ballot measure campaign activities using non-UC resources

Auxiliary org's are not subject to rules that apply to state agencies, but must follow applicable rules for 501(c)(3) public charities; rules re: use of restricted donations, reporting obligations, and Regents Policy 8302.

PERSONAL PARTICIPATION OF INDIVIDUAL UC EMPLOYEES IN CAMPAIGNING

Must be truly voluntary

- Conducted in personal (i.e., not official UC) capacity
- UC (thru managers, supervisors, official communications) should not ask employees to personally participate (or not) in campaign activities
- Decision to participate (or not) should have no bearing on UC employment



Must be done without use of UC resources

- Not staffed/supported by UC employees (e.g., admin staff)
- Use personal (not UC) phones, computers, etc.

UC employees participating in campaign activities must be clear they are not wearing “UC hat” and not speaking for UC

- If using UC title, may need disclaimer (“for identification purposes only”).
- Document time (personal time)

Provide Notice per Regents Policy 8301

- Requires Officers of the Regents/University and any member of the Senior Management Group (SMG) who intends to volunteer to give notice (thru Sec’y to Regents) and confirm compliance with rules.

Selected UC Policy/Guidance:

Ballot Campaigns: UC Legal Guidelines

<http://www.ucop.edu/state-governmental-relations/advocacy/legal-guidelines-ballot-campaigns.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.”

Includes FAQs

Focus is on use of University resources

(Funds, paid time, equipment, materials, facilities)

Distinction between “legitimate informational activities” and “unlawful campaign activities”

Applicable to University activities, not to private activities of individual employees

Selected UC Policy/Guidance:

Regents Policy 8301: Higher Education Bond Measure Information and Advocacy

Implementation Plan <https://regents.universityofcalifornia.edu/governance/policies/8301.html>

- Sets out process to be followed at UC each time a bond measure is proposed for the ballot; includes steps to be taken to consult with Regents; to apprise internal stakeholders re: applicable rules.
- States that following Regental endorsement (pursuant to Regents Policy 8302), UC auxiliary organizations could contribute their own privately raised funds to support a campaign;
- Requires that any Officer of the Regents, Officer of the University, or any member of the Senior Management Group who intends to participate (in their personal non-UC capacity) in an organization soliciting funds for or otherwise campaigning for a state bond measure must:
 - Provide 10 days advance written notification to the Chairs of the Regents' Committees on Finance and Grounds and Buildings;
 - Provide Secretary of Regents with written confirmation that he/she understands the requirements of Regents Policy 8301;
 - Refrain from pursuing such activities on UC time or with UC facilities or resources.
 - Make clear to others that he/she is not acting in official UC capacity

Selected UC Policy/Guidance:

Regents Policy 8302: Policy on State Funding of Capital Projects – UC Endorsement of Educational Facility Bond Measure Campaigns

<https://regents.universityofcalifornia.edu/governance/policies/8302.html>

States that Campus Foundations may only make financial expenditures for campaign purposes that are legally appropriate to support measures clearly beneficial to the University, such as educational facilities bond measures that include funding for the University of California, when such measures have been endorsed by The Regents.

Selected UC Policy/Guidance:

UC Presidential Policy: Restrictions on Use of UC Resources & Facilities for Political Activities (1970) <http://policy.ucop.edu/doc/1200368/FacilPolitActiv>

- UC name, insignia, seal may not be used in connection with political activity except as consistent with University regulations;
- In statements re: political issues, University titles shall be used only for identification (disclaimer needed if use of title might reasonably be construed as implying UC support/endorsement);
- No non-incident use of University resources for political activities;
- No display of political materials like posters, notices, banners, except as specifically authorized by campus time, place, manner regulations
- No University facility shall be used for political activities other than those open discussion and meeting areas provided for in campus regs
- Nonmembers of UC community not permitted to engage in political activities on UC grounds/facilities except as provided for by campus regs re: invitation of non-UC speakers to address meetings on campus

“A distinction must...be drawn between political activity on the one hand, and instruction and research on politically related subjects on the other; certainly, scholarly instruction and research on politics is not only appropriate but desirable. There must be an examination of all the facts and circumstances...”

Selected UC Policy/Guidance:

Policy on Use of University Properties

<http://policy.ucop.edu/doc/2710524/PACAOS-40>

- ❖ **41.00 All individuals or organizations using UC properties and services must avoid any unauthorized implication that they are sponsored, endorsed or favored by the University;**
- ❖ **41.10 As a State instrumentality, UC must remain neutral on religious and political matters.**
- ❖ **41.12 Use of University titles in non-official correspondence, statements, media (need for disclaimer if identification might reasonably be construed as implying UC support, endorsement or opposition to political, commercial or religious activity or issue);**
- ❖ **41.20 Use of University Name, Insignia, Seal, or Address (not to be used in connection with political purposes except as consistent with UC policy and applicable law).**

Selected UC Policy/Guidance:

UC Presidential Policy: Representation of the University on Letterhead and Business Cards (1999)

<https://policy.ucop.edu/doc/3000126/LetterheadBusinessCards#:~:text=The%20Policy%20on%20Representation%20of,research%2C%20teaching%2C%20and%20service>

Includes language specifying that:

- “while the University asserts the principle of academic freedom of expression, individuals or groups within the University community are not permitted to present opinions in ways that imply endorsement by the University.”
- “the University does not take a position on political or religious issues.”

Selected UC Policy/Guidance:

UC Presidential Policy: Relations of University Staff Members with State and Federal Officials (1970)

<http://policy.ucop.edu/doc/6000437/ReltnswFedStateOfficials>

- Employees may not give appearance of acting on behalf of the University when communicating with State or Federal officials unless authorized to do so.
- When corresponding with State and Federal officials, University letterhead should be used only when the writer is representing the University; letters expressing personal views should be written on personal stationery.
- UC's Sacramento Office or Washington Office, respectively, should be notified in advance re: visits to Sac'to or Washington in connection with UC business. When appropriate, an informal report of the results of such visits shall be sent to these offices as soon as possible.
- When employees give opinions as independent professionals, they must state clearly that they are speaking for themselves and not on behalf of the University of California.

Selected UC Policy/Guidance:

UC Regents Policy 4408: Public and Discretionary Statements By Academic Units (2024)

<https://regents.universityofcalifornia.edu/governance/policies/4408.html>

Sets forth the responsibilities and procedures for Academic Campus Units issuing Public Statements, including Discretionary Statements, including:

- Must be consistent with applicable law and University policy
- Public Statements may not promote, endorse, or oppose political campaigns or candidates for elected or appointed government office, or comment in support of, or in opposition to, specific ballot measures
- Discretionary Statements must have clear disclaimer that the Unit is not speaking for the University, all members of a Unit (unless unanimous), or the campus, as a whole.
- Discretionary Statement should be accompanied by explanation of whose views it represents
- Discretionary Statements should not appear on main home page of an academic unit's website

Discretionary Statements are communications by an Academic Campus Unit purporting to be made on behalf of the Academic Campus Unit and distributed, disseminated, posted online, or otherwise shared via mass distribution with University constituencies or the public, that are not part of the day-to-day, term-to-term operations of the unit, and that comment on institutional, local, regional, global or national events, activities or issues.

Public Statements are communications by an Academic Campus Unit or its lead administrator purporting to be made on behalf of the Academic Campus Unit and distributed, disseminated, posted online or otherwise shared via mass distribution with University constituencies or the public.

QUESTIONS?



EXTRA SLIDES

Selected Resources

Regents Policy 8301: Policy on Higher Education Bond Measure Information and Advocacy Implementation Plan
<http://regents.universityofcalifornia.edu/governance/policies/8301.html>

Regents Policy 8302: Policy on State Funding of Capital Projects - UC Endorsement of Educational Facilities Bond Measure Campaigns (addresses campus Foundation support of bond measures)
<https://regents.universityofcalifornia.edu/governance/policies/8302.html>

Legal Guidelines for UC Participation in Ballot Campaigns

<https://www.ucop.edu/state-governmental-relations/advocacy/legal-guidelines-ballot-campaigns.html>

UC Presidential Policy: Restrictions on UC Resources and Facilities for Political Activity (1970)

<https://policy.ucop.edu/doc/1200368/FacilPolitActiv>

CA Gov. Code 8314 (state employee use of public resources for campaign activities or personal purposes not authorized by law)

FPPC Regulation – 2 California Code of Regulations 18420.1 (payments by State or Local Agencies for a Campaign Related Communication – an agency’s announcement of a position on a ballot measure at a public meeting or in minutes prepared for the meeting is not a campaign contribution or expenditure)

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.4th 1

Selected Resources

ACE Guidelines: Student Voting and College Political Campaign-Related Activities (2024)

<https://www.acenet.edu/Documents/Student-Voting-and-College-Political-Campaign-Activities-Issue-Brief.pdf>

I.R.S. Guidance: Political Campaigns and Charities: The Ban on Political Campaign Intervention

https://www.stayexempt.irs.gov/se/files/downloads/PoliticalCampaigns_Print.pdf

I.R.S. Guidance: Frequently Asked Questions About the Ban on Political Campaign Intervention by 501(c)(3) Organizations

<https://www.irs.gov/charities-non-profits/charitable-organizations/frequently-asked-questions-about-the-ban-on-political-campaign-intervention-by-501-c3-organizations>

IRS Rev. Ruling 2007-41 (Includes higher ed examples of whether organization's activities violate 501(c)(3) rules re: political campaign activities)

<https://www.irs.gov/pub/irs-tege/rr2007-41.pdf>