

## OFFICE OF GENERAL COUNSEL

Advisory: *Prohibition on Political Campaign Intervention*

October 2, 2019

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The University strongly supports public and civic engagement by members of the University community, in both their professional and personal capacities. At the same time, as both a Section<sup>1</sup> 501(c)(3) tax-exempt organization and a state entity, the University is prohibited from engaging in political campaign activities: 1) supporting or opposing candidates for elective office (“electioneering”); and 2) supporting or opposing measures that have qualified for the ballot. These restrictions apply to the activities of the University overall, as well as to activities of individual University faculty and staff acting in their capacity as representatives of the University and/or using University resources.

Because of the upcoming election cycle, this advisory is timed to remind the University community of the applicable rules and about the importance of complying with them.

As a Section 501(c)(3) organization, the University of California is prohibited by federal law from intervening or participating in any political campaign activity in support or opposition to a political candidate or party. That prohibition also applies to activities conducted by our campus foundations and other Section 501(c)(3) organizations affiliated with the University.

As a state entity, the University is prohibited by state law from using its resources for campaign purposes in connection with a ballot measure that has qualified for the ballot. The University is permitted to engage in legitimate informational activities, and The Regents may take a position on a ballot measure at an open public meeting, but University resources may not be used to campaign for or against a ballot measure.

These prohibitions and how they apply to the University are more fully set out in the University Policy on [Restrictions on the Use of University Facilities and Resources](#) and in the University’s [Legal Guidelines for UC Participation in Ballot Campaigns](#).

It is important for all University employees to comply with these rules. There are potential criminal and civil penalties for misuse of public resources, and, in the case of the rules that apply to tax-exempt organizations, the University’s tax-exempt status could be jeopardized (and tax penalties imposed) by an activity that constitutes electioneering. This is true whether the prohibited electioneering activity is done directly by University faculty or staff, or using University resources.<sup>2</sup> In the case of electioneering, there are no exceptions for de minimis activities or specific statutory safe harbors. In other words, one instance of electioneering may constitute grounds for revocation of the University’s tax-exempt status.

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<sup>1</sup> All Section references, unless otherwise specified, are to the Internal Revenue Code of 1986, as amended.

<sup>2</sup> “Political” activity should be differentiated from “lobbying” activity (i.e., attempting to influence legislation). Lobbying activity by the University is permissible within the limitations provided by applicable state and federal law.

## Academic Activities and Activities Conducted in Personal Capacity

It is important to draw a distinction between prohibited political activities 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. Furthermore, it is important to reaffirm that the prohibition on political activity does not restrict individual members of the University community from exercising all political rights afforded to them as members of society. The University encourages members of the UC community to exercise their right to participate in the political process in their personal capacity. However, individuals should take care to ensure that their personal activities in connection with supporting or opposing particular candidates for public office or ballot measures are not done using University time, do not make use of University resources (including facilities and equipment) and cannot reasonably be interpreted as official statements of the University.

## Overview of the Law

Section 501(c)(3) of the Internal Revenue Code prohibits a tax-exempt organization such as the University (and affiliated Section 501(c)(3) organizations) from participating in, or otherwise intervening in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, which includes supporting or opposing a political party. This prohibition applies to elections at any level (i.e., local, state or federal), whether within the United States or in any foreign country in which the University or members of the University community are engaging in University-related activities.<sup>3</sup> It is important to note that an individual is considered a “candidate for public office” from the moment he or she holds himself or herself out (or is held out by others) as a candidate. Accordingly, the timing of interactions is important.

In addition, under California case law (including Stanson v. Mott<sup>4</sup>, the seminal California Supreme Court case on this topic), state agencies may not use their resources to campaign for or against measures that have qualified for the ballot. While state agencies may engage in legitimate informational activities (as distinguished from unlawful campaign activities), there is no bright-line distinction between the two. Merely avoiding express advocacy, while important, is not sufficient; courts will look at the style, tenor and timing of a particular communication or activity to determine whether it has crossed the line of what is permissible. In addition to case law, there is also a state statute restricting the use of state resources for campaign activity not authorized by law.<sup>5</sup>

## Permissible Non-Partisan Election-Related Activities

While the University (and University employees acting in their official capacities or with University resources) may not campaign for or against political candidates or ballot initiatives that have qualified for the ballot, the University is permitted to engage in certain kinds of non-partisan, educational activities that are related to elections. For example, the University may host or support voter registration drives that are conducted in a non-partisan manner. The University may also host or, in some cases sponsor, candidate forums so long as such forums are organized and conducted according to specific rules that ensure they are non-partisan, including that all legally qualified candidates are invited

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<sup>3</sup> See, e.g., Revenue Ruling 73-440, 1973-2 CB 177 (providing that restrictions under Section 501(c)(3) applies to activities carried on in a foreign country).

<sup>4</sup> 17 Cal.3d 206 (1976).

<sup>5</sup> See [California Government Code Section 8314](#).

and those participating are given equal opportunity to participate in such forums. In addition, because each campus may have its own policies and guidelines about use of campus facilities, it is important to check with relevant campus officials regarding rules that may apply to a particular proposed event.

### Specific Situations

What constitutes prohibited political activity in a given situation, either for state ballot measures or for federal Section 501(c)(3) purposes, must be based on all of the facts and circumstances. Even activities that are intended to be nonpartisan or that fall well short of an express endorsement of, or contribution to, a particular candidate, political party or ballot initiative campaign may violate the prohibitions on political activity. Therefore, before any member of the University community engages in an activity that implicates or appears to implicate these prohibitions, please contact the appropriate member of your campus leadership or a member of the Office of General Counsel for assistance.

### Links

[Restrictions on the Use of University Facilities and Resources](#) (Political Activity Policy)  
[Legal Guidelines for UC Participation in Ballot Campaigns](#)  
[Policy on Use of University Properties](#)  
[Internal Revenue Code Section 501\(c\)\(3\)California Government Code Section 8314.](#)

### Additional Information

If you have questions about this guidance, please contact [Ellen Auriti](#) or [Tom Schroeder](#) in the Office of General Counsel or your local campus counsel.