

# UC Participation in Ballot Campaigns: Legal Guidelines

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# 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...*

# 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.pacua.org/documents/ACE\\_Memo\\_CampaignRelatedActivitiesOnCampus\\_2011.pdf](http://www.pacua.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

