

# HANDBOOK OF ELECTION ISSUES



Office Of General Counsel

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**TABLE OF CONTENTS**

I.	INTRODUCTION.....	1
II.	THE LAW .....	1
III.	EXAMPLES .....	2
	A. WRITTEN MATERIALS .....	2
	B. DEBATES .....	3
	C. POSTERS .....	3
	D. USE OF FACILITIES .....	4
	E. USE OF E-MAIL .....	4
	F. PUBLIC RESOLUTIONS .....	5
	G. MISCELLANEOUS .....	5
IV.	CONCLUSION.....	6

# HANDBOOK OF ELECTION ISSUES

## I. INTRODUCTION

This is intended to be a general reference guide to issues which have arisen within the CSU in the past relating to the use of state resources in elections, and to provide general guidance to analyze new election issues which may arise in the future.

## II. THE LAW

The law prohibits the use of public funds for the purpose of political advocacy in election campaigns. As stated in the leading case which established this principle, Stanson v. Mott (1976) 17 Cal.3d 206, 210, 130 Cal.Rptr. 697, 699:

“[A] public agency may not expend public funds to promote a partisan position in an election campaign.”

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.”

Requiring state agencies to be politically neutral in election campaigns promotes equity and fairness in the democratic process. Indeed, recent court decisions have ruled that mandating involuntary support of political positions through fees or dues is also illegal, for it violates the payor’s First Amendment right to free speech.

State resources are implicated whenever any state property or asset is used in an election campaign, including land, facilities, equipment, supplies, telephones, computers, vehicles, employee time and funds.

While it is difficult or impossible to establish clear or bright lines which apply universally in every case, because each situation must turn on its particular circumstances, it is hoped that the following general information will be helpful. Further consultation with the University Counsel assigned to your campus is encouraged with respect to specific situations.

### **III. EXAMPLES**

#### **A. WRITTEN MATERIALS**

In Stanson, it was ruled that to determine whether written materials are informational, or promotional, reference must be made to their overall content, including style, tenor, and timing. Therefore, it is impossible to establish hard and fast rules which govern every situation. Information which leads to only one logical conclusion will always be suspect.

The closer in time to an election, the more scrutiny written materials can expect to undergo. In 35 Ops.Cal.Atty.Gen. 112, the Attorney General determined that a full page ad, which contained information and did not explicitly advocate a particular vote, was still political advocacy because the ad was placed the day before the election.

#### **B. 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 are fairly represented, and 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.

### **C. POSTERS**

Campaign posters, which advocate a position, are a campaign activity and no public money can be used in their production. Since portions of university campuses are public forums, however, the display of political posters on a campus is more complicated.

Posters can be displayed in traditional free speech areas, such as public kiosks or other bulletin board or information arenas. They also can be displayed in areas which are generally regarded as private space, belonging to particular individuals. This could include the interior of dormitory rooms and private office space, depending on the size and nature of the poster, and whether it creates any ambiguity of an “official” position being taken (e.g. office space which is open and adjoined to other public areas). Displays of political posters in other areas of the university, which are not devoted to public speech or considered to be private is not permissible.

Political posters are, of course, subject, like any other poster display, to content neutral time, place and manner restrictions. If, for example, the size or location of a poster were to create fire risk, access problems, or other health or safety issues, and there were existing applicable time, place and manner restrictions to prohibit such activity without regard to content, a political poster display could be prohibited. In the absence of content neutral time, place and manner restrictions, the university is always open to the charge that limitation on a particular political poster is the result of its content and therefore violative of the First Amendment.

### **D. USE OF FACILITIES**

Campaign groups which request the use of campus facilities for meetings, rallies or other gatherings must be treated like other outside public groups which request to use campus

facilities. If other groups are charged for the use of campus facilities, campaign groups should also be charged at the same rental rate. If the campus makes its facilities available to groups in general without any charge, campaign groups should also not be charged for use of the facilities.

#### **E. USE OF E-MAIL**

E-mail is generally provided 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. Even an effort to get out the vote, without advocating any particular position, is not appropriate. On the other hand, to the extent that a certain degree of personal communication is tolerated or allowed under applicable campus policy, a distinction must be drawn between what is, in fact, personal communication where political views are expressed, and what is more in the nature of a wide broadcast of political views.

Student e-mail accounts or webpages are more difficult, because it is generally accepted that they are widely available for largely personal use. Campus policy which prohibits the use of e-mail accounts and webpages for nonuniversity purposes is helpful in curbing political campaign activity. In the absence of campus policy, the line between appropriate personal communications and political advocacy is very difficult to draw. In short, a campus could become vulnerable to a charge of violation of the First Amendment if it attempted to interfere with student communications with political content.

#### **F. PUBLIC RESOLUTIONS**

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. To the extent that the timing of their expression is out of the

ordinary, or especially close to the time of an election, or to the extent that any peculiar or unusual publicity is sought or achieved in connection with the action, it could be argued that the true purpose of the expressed opinion was to sway the electorate, and therefore that it is prohibited political activity.

#### **G. MISCELLANEOUS**

Foundation funds are not “public,” even though the Foundation supports a public purpose. They may, therefore, be used for purposes of political advocacy, but only so long as consistent with a formal position taken by the Board of Trustees.

Faculty and staff may sign their name to letters or other written documents which advocate political positions. First Amendment rights to free expression are not sacrificed upon assuming public employment. Where the name of a campus employee is accompanied by a campus title, however, there may be some risk of confusion that the signature represents an official position of the institution. There is no strict prohibition on campus employees using their titles in advocating political positions, but care should be exercised depending upon the circumstances and the particular employee’s position.

It is appropriate for employees to wear political campaign buttons to work as an expression of their own personal opinion.

The university has no ability to restrict the use of its officially stated opinions, by others, as a part of their campaign advocacy. Care should be exercised, however, to ensure that the campus is not so closely affiliated with the campaign advocates to give rise to an argument that the official statement was really engineered for an outside purpose. Circumvention of the restrictions of the law is not permissible.

#### **IV. CONCLUSION**

Because there are no hard and fast rules in this area, and each situation presents unique and generally complicated fact circumstances, campuses are urged to consult with their University Counsel as they attempt to make decisions about appropriate behavior in the context of election issues.