

MEMORANDUM

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Political campaign-related activities of and at colleges and universities

We summarize here “dos” and “don’ts” of potential entanglements of colleges and universities and their personnel, in campaigns for public office. The summary is not exhaustive and omits legal citations. It is based on judicial and Internal Revenue Service (IRS) rulings under Section 501(c)(3) of the Internal Revenue Code; IRS guidance; and the Federal Election Campaign Act of 1971, as amended, as well as Federal Election Commission regulations that apply to colleges and universities.

This memorandum mainly addresses 501(c)(3) institutions and draws on legal authority and guidance that are not addressed to other institutions. In addition, state law requirements that govern campaigns for state and local office vary and are not addressed here. Also not specified here are the penalties for improper political activity by and at a college or university. They can include loss of the institution’s tax-exempt status, imposition of taxes on the institution and its responsible managers, and other risks, including federal or state government lawsuits, audits, and investigations.

The IRS has not issued any additional precedential guidance on the political campaign activities of Section 501(c)(3) tax-exempt organizations since the last publication of this memorandum. Nevertheless, the political campaign activities of tax-exempt organizations continue to be a subject of considerable controversy and public discourse. In late 2013, the IRS released proposed regulations defining political activity for Section 501(c)(4) social welfare organizations. These regulations were met with near-universal criticism from both sides of the political spectrum. Many critics argued that the proposed regulations stifled free speech. After receiving more than 150,000 comments, the IRS withdrew the proposed regulations.

The political activities of Section 501(c)(3) organizations have also continued to be in the news. In late 2014, the mayor of Houston created a firestorm when she subpoenaed the sermons from pastors of local churches that opposed a city ordinance prohibiting anti-gay discrimination. During the 2016 primary season, colleges and universities have attracted criticism from free-speech groups over their policies and practices. In response to various reports, Republicans on the House Ways and Means Oversight Subcommittee announced that the subcommittee would hold hearings on protecting the free exchange of ideas on campuses.

In this election year, political campaign-related activities of and at colleges and universities are likely to continue to be scrutinized. We recommend that the institution’s counsel be consulted before proposed actions are taken in this area. This memoran-

dum states general propositions, is not legal advice, is educational in nature, and does not address the advisability as a matter of institutional policy of engaging in the activities identified herein.

I. Illustrative Permitted Activities

A. Voter education (including voter guides) and voter registration

- Y1. **Conducting training programs** designed to increase public understanding of the electoral process or to encourage citizens to become involved in the process, provided that such training is nonpartisan in the recruitment of instructors, the selection of students, and the curriculum. The program should be widely publicized, although groups underrepresented in the electoral process may be targeted.
- Y2. **Annually preparing and distributing a compilation of voting records of all members of Congress on major legislative issues** that involve a wide range of topics, without political skew and without editorial opinion, provided that the information is not geared to coincide with the election period. Guides such as these should avoid rating candidates, even if the rating criteria are nonpartisan (e.g., based on professional qualifications) and should not be accompanied by a statement or by actions that tie a position articulated in the guide to a particular candidate or election. (See N2.)
- Y3. **Circulating unbiased questionnaires** to all candidates for an office, and tabulating and disseminating the results, provided that the questionnaires cover a broad range of subjects and neither reflect political skew nor contain editorial opinion. Candidates should be given a reasonable amount of time to respond to the questionnaires. To the extent the questionnaires include questions with “yes” or “no” answers, candidates should be given an opportunity to explain their answers.
- Y4. **Conducting public opinion polls** with respect to issues (rather than candidates), provided that the questions are framed to be fair and neutral, accepted polling techniques are used, and the questions do not directly or indirectly concern records or positions of particular candidates or parties. With respect to such activities of faculty, the limitations should be addressed with due regard for academic freedom.
- Y5. **Participating in nonpartisan voter registration activities**, even when aimed at groups (such as urban voters, young people, or minorities) likely to favor a certain political candidate or party, provided that the activities are not intended to target voters of a particular party or to help particular candidates, and provided further that particular geographic areas are not selected to favor any party or candidates.

B. Candidate appearances

- Y6. Providing access to air time** on a college- or university-owned radio station on an equal basis to all legally qualified candidates for a public office, in a manner consistent with the limits imposed by Federal Communications Commission standards.
- Y7. Providing opportunities to speak** at college or university events on an equal basis to all legally qualified candidates for a public office. If the institution chooses to invite candidates to speak individually in their capacity as a candidate, it must take steps to ensure that all such legally qualified candidates are invited and that none are favored in relation to the activity. For example, if a university invites one candidate to speak at a well-attended annual banquet, but invites another candidate to speak at a sparsely attended general meeting, the university will not have provided equal opportunity to participate. An explicit statement should be made as part of the introduction of the speaker and in communications concerning the speaker's attendance that the institution does not support or oppose the candidate. Campaign fundraising at the event should be prohibited. The institution must make reasonable efforts to ensure that the appearances constitute speeches, question-and-answer sessions, or similar communications in an academic setting and are not conducted as campaign rallies or events.
- Y8. Conducting institution-sponsored public forums** to which all legally qualified candidates for a public office (or for the nomination of a particular party) are invited and given equal access and opportunity to speak, if the format and content of the forum are presented in a neutral manner.
- Y9. Inviting candidates to appear in a non-candidate capacity**, provided that the individual is chosen to speak solely for reasons other than his or her candidacy, the individual speaks only in his or her non-candidate capacity, no reference to the election is made, and the organization maintains a nonpartisan atmosphere on the premises or at the event. Campaigning at the event should be prohibited. The institution should clearly indicate the capacity in which the candidate is appearing and should not mention the candidacy or the upcoming election in any communications announcing the candidate's attendance.

C. Issue advocacy

- Y10. Engaging in usual and permissible lobbying and public policy education activities**, within the constraints ordinarily applicable to such activities conducted by a college or university. This is a complex topic that warrants fuller analysis and advice. Special caution is indicated with respect to

heightened, different, or targeted lobbying and public policy education activities conducted during a campaign season.

D. Use of institutional resources

- Y11. Establishing genuine curricular activities aimed at educating students** with respect to the political process. For example, the IRS approved a political science program in which, as part of a for-credit course, university students participated in several weeks of classroom work to learn about political campaign methods, and then were excused from classes for two weeks to participate in campaigns of their choice, without the university influencing which campaigns were chosen.
- Y12. Rearranging the academic calendar** to permit students, faculty, and administrators to participate in the election process, if the rearrangement is made without reference to particular campaigns or political issues, provided that the recess is in substitution for another period that would have been free of curricular activity.
- Y13. Providing financial and administrative support to a student newspaper** even though the newspaper publishes editorial opinions on political and legislative matters.
- Y14. Allowing established student groups to use institutional facilities** for partisan political purposes, provided that such groups pay the usual and normal charge, if any, for use of institutional facilities by student groups. Fees usually are not required for traditional, on-campus student political clubs. Generally, groups other than student groups should be charged. Administrators and faculty should take special care in relation to any such proposed student activities, to avoid the appearance of institutional endorsement and to observe the other principles this memorandum identifies. Subject to applicable law, institutions may as a matter of their own general policy decline to permit their facilities to be used for such purposes.
- Y15. Adopting a voluntary payroll deduction plan** that would allow individual employees to direct a portion of their wages to the political action committees (PACs) for their respective unions, provided that the institution's activities with respect to the PAC are ministerial and simply involve transferring the funds earmarked by the employees to the PAC chosen by the employee, the institution has absolutely no role in the management or governance of the PAC or any influence over the selection of candidates or political parties to be supported by the PAC, the institution's name is not used or otherwise acknowledged in connection with any contributions made by the PAC to any candidates for public office, the institution is reimbursed for costs associated with the plan, the institution takes steps

to ensure that no employee associates the PAC with the institution, and the institution does not allow employees to participate in PAC activities during work hours other than in the performance of the ministerial activities described above.

Y16. Providing hyperlinks to the web pages, or other space on the institution's website, of all legally qualified candidates for a public office, if a tax-exempt purpose (e.g., "voter education") is served by offering the link and the link is made in a manner that, after taking into account the format and other content on the institution's website, does not favor one candidate over another. (See N13.)

E. Participation in the election process by faculty, administrators, and other employees of the institution

Y17. Members of the college or university community are entitled to participate or not, off-hours, as they see fit, in the election process, provided that speaking or acting in the name of the institution is prohibited except as described in this memorandum, provided further that they are not acting at the direction of an institutional official, and provided further that, if the institution is identified, the fact that the opinions that are expressed are not the opinions of the college or university should be communicated.

Y18. A faculty member, administrator, or other employee may, if permitted by institutional policies and procedures, engage in federal campaign-related activity that is (a) outside normal work hours; (b) within ordinary work hours, if the time is made up within a reasonable period by devoting a comparable number of extra hours to work for the institution; (c) charged to vacation time to which the person is then entitled or occurs during a regular sabbatical leave; or (d) during a leave of absence without pay taken with the institution's approval. The institution should consult applicable state law concerning permitted volunteer activities by employees in connection with campaigns for state or local office. Senior institutional officials, such as the president and the vice president for governmental affairs, should ordinarily refrain from or otherwise limit campaign activity, as there is risk that such activity would be perceived as support or endorsement by the institution. (See N16.)

Y19. Public statements, oral or written, by institutional officials (such as the president and deans) in support of a candidate, political party, PAC, or the like, where the institutional official clearly indicates that his or her comments are personal and not intended to represent the views of the institution. For example, the IRS condoned a full-page advertisement in a local newspaper, paid for by a candidate, where the advertisement referred by name and title to the president of a 501(c)(3) organization as a campaign

supporter, when the ad expressly stated that the “titles and affiliations of each individual are provided for identification purposes only.” (See N15.)

II. Illustrative Prohibited (or, in Some Instances, Questionable) Activities if Undertaken by the Institution or by an Individual Whose Actions Are Attributable to the Institution

A. Voter education (including voter guides) and voter registration

- N1. Conducting “voter education” activities**, such as those involving questionnaires, if confined to a narrow range of issues or skewed in favor of certain candidates or a political party. For example, the IRS has disapproved such activities that involved selected voting records of certain incumbents on a narrow range of issues, such as “land conservation.”
- N2. Publishing ratings of the candidates**, particularly in situations where the ratings could be viewed as reflecting the views of the institution, or institutional resources are used in connection with the preparation or publication of such ratings without reimbursement at the usual and normal charge. (See Y2.)
- N3. Endorsing, expressly or impliedly, a candidate for public office.** Examples of express endorsement include the placement of signs on university property that show support for a particular candidate, and contributing to political campaign funds. Examples of implied endorsement are public statements at a college or university event by an official of the institution, praising a particular candidate in relation to the holding of public office, and a pattern of institutional activities in relation to or support of a particular candidate. As with all of the prohibitions discussed in this memorandum, such a prohibition applies even if the candidate is an administrator or faculty member of the institution.
- N4. Commenting on specific actions, statements, or positions taken by candidates**, including incumbents, in the course of their campaigns. The institution is not forbidden to comment on specific issues pertinent to its tax-exempt purposes, particularly if it has a track record of commenting on such issues in non-election years.
- N5. Promoting action (voting) with respect to issues that have become highly identified as dividing lines between the candidates.** This principle does not bar the institution from commenting on issues critical to its tax-exempt purposes, if it has a track record of commenting on such issues in non-election years with respect to such issues.
- N6. Coordinating voter education activities with campaign events.**

B. Use of institutional resources

- N7. Coordinating institutional fundraising with fundraising** of a candidate for public office, political party, PAC, or the like.
- N8. Reimbursing college or university officials** for campaign contributions.
- N9. Providing mailing lists, use of office space, telephones, photocopying, or other institutional facilities or support** to a candidate, campaign, political party, PAC, or the like free of charge. If mailing lists or facilities are sold or rented to a candidate or campaign, the items must be made available to all other candidates on the same terms and at fair market prices. Additionally, the institution should be prepared to show that it did not take the initiative in making the items available and that the sales or rentals are part of an ongoing pattern in which similar items are provided to unrelated, nonpolitical entities. Counsel should be consulted on the potential for taxation of revenues generated by such sales or rentals.
- N10. Using institutional letterhead** in support of a candidate, political party, PAC, or the like.
- N11. Sponsoring events** to advance the candidacy of particular candidates.
- N12. Using message boards and forums** affiliated with the institution's website to support particular candidates, if the statements of the provider of the information can be reasonably attributed to the institution. A disclaimer that states that the opinions are neither those of the institution nor sanctioned by the institution is recommended in those public discussion areas where the information could reasonably be attributed to the institution.
- N13. Providing hyperlinks to the web pages**, or other space on a college or university's website, of one or more candidates for public office in a manner that favors one candidate over another. Generally, information posted on an institution's website that favors or opposes a candidate for public office is treated the same as if it were distributed printed material, oral statements, or broadcasts that favored or opposed a candidate. Institutions should diligently monitor the content of the linked website for any changes.
- N14. Providing a candidate a forum** to promote his or her campaign if other candidates are not treated equally, even if the forum is not intended to assist the candidate. For example, the IRS concluded that a charitable organization violated the prohibition on campaign intervention when the candidate solicited funds on the organization's behalf, because the content of the solicitation included campaign rhetoric.

C. Participation in the election process by faculty, administrators, and other employees of the institution

N15. Public statements, oral or written, by institutional officials (such as the president and deans) in support of a candidate, political party, PAC, or the like, where there is risk that the statements would be perceived as support or endorsement by the institution. For example, the IRS has indicated that it would be inappropriate for a column titled “My Views” to appear in a university’s monthly newsletter in which the university president stated, “it is my personal opinion that Candidate U should be reelected,” even though the president paid part of the cost of the newsletter.

N16. Remarks at an institutional meeting by an institutional official in support of a candidate, political party, PAC, or the like. For example, institutional officials should not make statements that could be perceived as support for a particular candidate at a meeting of the board of trustees.

The foregoing is not exhaustive. Considerable judgment in the application of these principles is likely to be required. When activities that are separately identified in this memorandum are combined, an institution should analyze the interaction between the activities, as the interaction may affect whether the institution is engaged in political campaign intervention.