



MEMORANDUM

August 29, 2022

To: Presidents, The University of Texas System
Dr. Jennifer Cowley Daniel K. Podolsky, M.D.
Dr. Jay Hartzell ad interim Charles Mouton, M.D.
Dr. Richard C. Benson Giuseppe N. Colasurdo, M.D.
Dr. Heather Wilson William L. Henrich, M.D.
Dr. Sandra Woodley Peter W.T. Pisters, M.D.
Dr. Guy Bailey Kirk A. Calhoun, M.D.
Dr. Taylor Eighmy

From: Daniel H. Sharphorn, Vice Chancellor and General Counsel

Subject: Political Activity on Campus

We are about to enter in earnest the campaign season for the upcoming election cycle, when many U. T. System campuses will have questions about political activity on campus. Although the answers to these questions always depend on specific facts and circumstances, we thought it would be useful to generally summarize state law and the Regents' *Rules and Regulations* on this topic. When specific situations arise, please contact the U.T. System Office of Governmental Relations or the Office of General Counsel so we can assist.

General Overview

State law recognizes that state employees have the rights of freedom of association and political participation guaranteed by the federal and state constitutions, except as restricted by law. The general restrictions on political activities for state agencies and employees are found in Chapter 556, Government Code, which expressly includes institutions of higher education and university systems among state agencies subject to the restrictions imposed. Those principal restrictions are as follows:

- A state agency may not use any money under its control to finance or otherwise support a person's candidacy (Section 556.004(a)).
- A state officer or employee may not use official authority or a program administered by a state agency to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose. Although

“political purpose” is not defined by statute and appears to be a broad term, Texas courts have limited the application of the prohibition to candidate elections and partisan politics (Section 556.004(c)).

- A state officer or employee may not coerce or restrict contributions to a person or organization for political purposes (Section 556.004(d)).

The law imposes penalties for violations of these restrictions, including termination of employment and withholding of salary (Sections 556.007 and 556.008).

The Regents’ *Rules and Regulations* further recognize that freedom of speech and assembly are basic rights and are essential to intellectual development. However, these activities are subject to the well-established right of institutions of higher education to regulate the time, place, and manner in which these activities will be conducted so that they do not intrude upon or interfere with the academic programs and administrative processes of U. T. System or its institutions. To that end, the Regents’ *Rules* provide for the regulation of the time, place, and manner of political speech, regulate the presentation of guest speakers on campus, regulate the use of campus facilities and resources, and provide parameters for employees who participate in political activities. These *Rules* are more fully discussed below.

Institutional policies may further regulate political activity on individual campuses and may provide procedures and restrictions applicable to a specific situation. Finally, there are always political, local, and community considerations that transcend the regulatory framework discussed in this memorandum.

Keep in mind that under Section 51.9315 of the Texas Education Code, “Protected Expression on Campus,” individuals who are not affiliated with an institution have a constitutionally protected right to engage in lawful political activity in the common outdoor areas of campuses. However, this activity is also subject to the reasonable time, place, and manner restrictions as provided for in the Regents’ *Rules* and institution policies.

Use of Institutional Resources in Candidate Elections

Both state law and the Regents’ *Rules and Regulations* prohibit the use of institutional resources to finance or support a candidate or to interfere with or affect the result of an election or nomination of a candidate (Sections 556.004(a) and (c), Government Code; Rule 30103, Section 5, Regents’ *Rules and Regulations*; Rule 80103, Section 2.23, Regents’ *Rules and Regulations*). Thus, an officer or employee:

- May not use institution letterhead, computer hardware or software (including e-mail), copiers, faxes, telephones, or other resources or services to support or urge a vote for or against a candidate (even minimal or incidental use is prohibited);
- May not use an internal mail system to distribute political advertising;

- May not engage in activities supporting or opposing a candidate during paid work time unless accrued compensatory or vacation time is used or a leave of absence without pay is granted for this purpose; and
- May not use public funds to make political contributions to a candidate or political committee or coerce employees or other persons to make or not make political contributions.

However, it is permissible for an officer or employee to:

- Support or oppose a candidate on the officer's or employee's own time, as long as it is clear that the officer or employee is speaking in a private capacity and not speaking on behalf of the institution; and
- Use personal funds to make a political contribution to a candidate or political committee.

Frequently Asked Questions

Q: May I allow a political campaign or the news media (including print, broadcast, and online media) to list my name, employment title, and affiliation with a U. T. System institution as a supporter of a candidate or political campaign?

A: The law prohibits the use of official authority to influence the result of an election. Generally speaking, you may allow the use of your name, but you should not allow the political campaign or news media to list your employment title or affiliation with a U. T. System institution and should explicitly request that they not do so. In limited circumstances, it may be appropriate to allow the use of your job title for identification purposes only. In those limited circumstances, it is important to stress that your support for a candidate is in your capacity as a private citizen and does not reflect the position of your institution.

Q: I have been asked by the news media to comment on an institutional program that may be of particular interest to a candidate or campaign, such as a program that was established or supported by the candidate in the past. Is this permissible?

A: In such a case, it is permissible to provide objective facts about the program in response to the questions presented. However, care should be taken to avoid comments that could be perceived as institutional support for or opposition to the candidate's campaign, such as glowing or negative words about the candidate's accomplishments. The focus of the answers should remain on facts about the program, not about the candidate.

As is the current practice, please continue to give advance notice to the U.T. System Office of External Relations whenever you or your institution are approached by the news media to comment on any matter related to political campaigns.

Use of Institutional Facilities by Candidates and Political Organizations

Despite the state law restrictions on the use of public resources for a political purpose, there are instances in which institutional facilities may be used by candidates and political organizations. These entities may use institutional buildings or property

only as authorized by the Regents' *Rules and Regulations* (*Rules* 40501, 80101, and 80103) and institution policies.

Registered Organizations

The most common way for a candidate or political organization to appear on campus is by invitation from a registered student organization, although faculty or staff organizations and student government may also present off-campus speakers (*Rules* 40501 and 80104). Candidate debates on campus are usually handled in this manner.

The Regents' *Rules* specify that an application for use of an institutional facility to present an off-campus speaker must be made to the president at least 48 hours before the time the event is scheduled to take place (*Rule* 40501, Section 2.4), and your institution's policies may further specify the procedures for reserving facilities. Your policies also may provide reasonable and nondiscriminatory time, place, and manner restrictions for off-campus speakers. Under these rules and policies, the registered organization:

- Must retain control over the event and may not be a "front" for an off-campus person or organization;
- May not jointly sponsor the event with an off-campus person or organization in violation of *Regents' Rule* 80105; and
- Must make it clear that the organization, and not your institution, invited the speaker and that the views expressed do not represent the views of the institution.

Registered student, faculty, or staff organizations that receive state funds from any source may not request others to vote for or against a candidate (*Rule* 80103, Section 2.23). A registered student, faculty, or staff organization that does not receive state funds from any source may engage in these activities, subject to institutional time, place, and manner restrictions. However, faculty or staff members or student employees may not conduct these activities during paid work time.

Special Use Facilities and Institutional Programs

The Regents' *Rules* authorize the president to designate specific facilities as "special use facilities" (*Rule* 80106). Among other things, these facilities may be used for political conferences and conventions. Your institution must charge market-based usage rates that, at a minimum, ensure recovery of the operating costs of the facility that are attributable to the use. Although not specifically prohibited by the Regents' *Rules and Regulations*, no political fund-raising is allowed in special use facilities.

In very limited circumstances, an institution's president may determine that an appearance by a candidate is related to the educational role and mission of a college or department of the institution, such as hosting a candidate debate. The circumstances under which this can occur are rare, and because of the potential charge that state property is being used for a political purpose or to influence the result of an election, we caution against your institution itself sponsoring these events without detailed

information and analysis and further guidance from legal counsel. We also note that the Regents' *Rules* prohibit U.T. System from being a joint sponsor of a political gathering (*Rule* 80105, Section 1.3).

U.T. institutions are occasionally asked to serve as the location for a debate between candidates for elective office, where the debate itself will be hosted by an external organization, such as a local news station. Issues surrounding candidate debates are complex. Generally speaking, it is permissible for your institution to serve as a candidate debate location. Pursuant to Regents' *Rule* 80106, rates must be charged that, at a minimum, ensure recovery of all direct and indirect costs of the event. In addition, there are often additional significant issues to address related to these events. Please consult with your offices of governmental relations and legal affairs as you work through these issues.

Use of Institutional Facilities by Officeholders

If a candidate is also a current officeholder and wishes to make a campaign-related appearance on your campus, the considerations applicable to a candidate's use of institutional facilities will apply. If the appearance is not campaign-related but related *only* to the person's officeholder status, your institution must ensure that no campaign-related activities occur at the event. Such an event includes situations such as the institution inviting the officeholder to appear on campus to give a commencement speech, participate in a lecture series, or attend an event to honor the officeholder or another person. It also includes a fact-finding mission by the officeholder to learn more about your institution.

Special rules apply if the officeholder holds a federal office. Although public colleges and universities are generally exempt from congressional gift and travel restrictions, the Honest Leadership and Open Government Act of 2007 (HLOGA) and the Lobbying Disclosure Act of 1995 require the reporting of certain expenditures related to events that honor or recognize an official in the legislative or executive branch of the federal government. It is important to track expenses the institution incurs to host such an event and submit them as required by law. If you have any questions about this reporting requirement or the federal law, please contact the Office of General Counsel.

Frequently Asked Question

- Q: May an officeholder hold a press conference on my campus in connection with a fact-finding mission? May the officeholder invite the press to accompany him or her on the fact-finding mission?
- A: One of our primary missions is to provide high-quality educational opportunities to our students. Therefore, if the press conference or the presence of the press will disrupt your institution's academic processes, you should not allow this activity to occur in connection with a fact-finding mission. However, in some instances, the presence of the press will actually further your interests, such as a press conference to announce the creation of an institutional program. In such a case, you may decide to allow the press conference as long as there is minimal disruption to

academic processes, no campaign activity occurs, and other relevant institutional policies are followed, such as policies concerning filming on campus and time, place, and manner restrictions.

Photographs or Filming on Campus

Occasionally a candidate or officeholder who is authorized to appear on or visit a campus will bring along a person to photograph or film the event. A number of state laws and institutional policies govern photography or filming on campus. Additionally, depending on the circumstances and on specific institutional policies, a candidate or officeholder may be required to obtain insurance, a permit for filming or photography, or releases from persons who may appear in the photograph or film. Some campus images, such as the U. T. Austin Tower, are trademarked (see more on trademarks below).

An institution's office of external relations or legal affairs, as well as the U. T. System Office of External Relations and Office of General Counsel, are available to assist with questions related to a particular situation.

It is important to remember that you may not allow photography or filming for a political advertisement to occur on campus. If you are not sure about the intended use of the photograph or film, you should require clarification from the candidate or officeholder.

Use of Logos and Trademarks

Institutional logos and trademarks are valuable resources and must be protected from infringing or damaging uses by third parties. The U. T. System is diligent in monitoring the use of logos and trademarks and aggressive in acting to protect these resources.

The use of an institutional logo or trademark in a political advertisement, whether filmed or printed, or for another political purpose, such as an invitation to a political fundraiser or political event or an event conducted by or on behalf of an officeholder, is not permitted, and you should not authorize any such use.

If any such use is observed, please notify the Office of General Counsel, which will coordinate with counsel at your institution to preserve the rights of your institution in the logo or trademark.

Conclusion

The use of campus facilities and resources for political activities is a complex area of law in which the constitutional guarantees of freedom of speech and association intersect and sometimes collide with the constitutional guarantee that public resources will not be used for private, political purposes. We advise proceeding with caution in this area and encourage you to contact the Office of Governmental Relations or Office of General Counsel if you need assistance.

We also encourage you to contact the Office of Governmental Relations or Office of General Counsel if you have questions about ballot propositions, employees running for office, polling places on campus, or gifts that may be given in connection with campus visits, as those topics are outside the scope of this memorandum.

Resources

State Law:

- Chapter 556, Government Code (Political Activities by Public Entities and Individuals): <http://www.statutes.legis.state.tx.us/Docs/GV/pdf/GV.556.pdf>
- Section 2203.004, Government Code (Requirement to Use State Property for State Purposes): <http://www.statutes.legis.state.tx.us/Docs/GV/pdf/GV.2203.pdf>
- Section 39.02, Penal Code (Abuse of Official Capacity): <http://www.statutes.legis.state.tx.us/Docs/PE/pdf/PE.39.pdf>

Regents' *Rules and Regulations*:

- *Rule* 30103, Section 5 (Political Activities): <https://www.utsystem.edu/board-of-regents/rules/30103-standards-conduct>
- *Rule* 40501 (Speech and Assembly): <https://www.utsystem.edu/board-of-regents/rules/40501-speech-and-assembly>
- *Rule* 80101 (Category of Facilities and Authorized Users): <https://www.utsystem.edu/board-of-regents/rules/80101-category-facilities-and-authorized-users>
- *Rule* 80103, Section 2.23 (Support of a Candidate or Proposition): <https://www.utsystem.edu/board-of-regents/rules/80103-solicitation>
- *Rule* 80104 (Use of Facilities): <https://www.utsystem.edu/board-of-regents/rules/80104-use-facilities>
- *Rule* 80105 (Joint Sponsorship of the Use of Property or Buildings): <https://www.utsystem.edu/board-of-regents/rules/80105-joint-sponsorship-use-property-or-buildings>
- *Rule* 80106 (Special Use Facilities): <https://www.utsystem.edu/board-of-regents/rules/80106-special-use-facilities>

cc: Chief Legal Officers, by Institution
Chancellor James B. Milliken
Vice Chancellor for Governmental Relations Stacey Napier
Executive Director of Systemwide Compliance & Ethics Officer Jason King