

# STUDENT VOTING AND COLLEGE POLITICAL CAMPAIGN-RELATED ACTIVITIES IN 2023





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# STUDENT VOTING AND COLLEGE POLITICAL CAMPAIGN-RELATED ACTIVITIES IN 2023

Fifty-two years ago, the 26th amendment to the U.S. Constitution lowered the voting age from 21 to 18. By one estimate, 50 percent of young people ages 18 to 29 voted in the 2020 presidential election, an 11-point increase from 2016 (39 percent).<sup>1</sup> As *The New York Times* noted this past spring, “turnout in recent cycles has surged for young voters, who were energized by issues like abortion, climate change and the Trump presidency.”<sup>2</sup> In Idaho, registration jumped 66 percent among 18- and 19-year-old voters in four years.<sup>3</sup>

*The Washington Post* reported that college student voter turnout doubled from 19 percent in 2014 to 40 percent in the 2018 midterms. It attributed the increase in part to campus get-out-the-vote initiatives and to the fact that students, like other voters, are more likely to cast a ballot in hotly contested elections.<sup>4</sup>

College students have a constitutional right to vote where they are residing while attending college.<sup>5</sup> The ramifications are obvious. Arizona State University’s campus-based enrollment has climbed in recent years to over 75,000.<sup>6</sup> The University of Illinois Urbana-Champaign has nearly 55,000 students.<sup>7</sup> In 2018, 11 percent of New Hampshire’s 1.3 million people were students enrolled in higher education—the highest per capita number of college students in the country.<sup>8</sup>

With 2024 fast approaching, this issue brief updates ACE’s September 2022 publication regarding institutional opportunities and obligations to encourage and enable student voting and attentiveness to campus political campaign-related activities. It offers illustrative examples of what is likely to be permissible and impermissible.

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- 1 Center for Information & Research on Civic Learning and Engagement, “Half of Youth Voted in 2020, An 11-Point Increase from 2016,” Tufts University, April 29, 2021.
  - 2 Neil Vidgor, “Republicans Face Setbacks in Push to Tighten Voting Laws on College Campuses,” *The New York Times*, March 29, 2023.
  - 3 Vidgor, “Republicans Face Setbacks.”
  - 4 Maricruz Ariana Osorio and Melissa R. Michelson, “College Students Have Been Voting at Record Rates. Why?,” *The Washington Post*, August 30, 2022.
  - 5 Patrick J. Troy, “No Place to Call Home: A Current Perspective on the Troubling Disenfranchisement of College Voters,” *Washington University Journal of Law and Policy* 22, no. 1 (January): 591–617.
  - 6 “Facts and Figures,” Arizona State University.
  - 7 “Campus Facts,” University of Illinois at Urbana-Champaign.
  - 8 Mike Kennedy, “States with Most College Students as a Percentage of Population,” *American School & University*, January 31, 2022.

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This issue brief was prepared by Peter McDonough, vice president and general counsel, ACE, and the Washington, DC law firm Hogan Lovells U.S. LLP (September 2023).

DISCLAIMER—This issue brief does not constitute legal advice. It incorporates and reflects high-level observations based on non-exhaustive research and does not analyze any specific factual scenarios taking into account potentially relevant details. Institutions should examine issues addressed here based on the context and facts of each situation, institutional policies, geographical and political context, and on their own counsel’s interpretation of relevant law. This is a fluid environment and topic that includes the potential for changes in current law or current enforcement practices.



Unfortunately, the rules for participating as voters in our country's democratic process can quickly feel complex to students. Voting is controlled by the states, within an increasingly fraught and contested context regarding the legality of varying and often-changing voter registration requirements. Indeed, this past term the Supreme Court decided an important case, ruling six to three in *Moore v. Harper* that state legislatures do not have exclusive, independent, and unfettered authority to set the rules regarding federal elections and that the Supreme Court of North Carolina could review the North Carolina legislature's congressional districting plans for compliance with North Carolina law. However, the Supreme Court also stated that federal courts "have an obligation to ensure that state court interpretations of that law do not evade federal law."<sup>9</sup>

Political campaign-related activities that occur on campus or those that are perceived to be undertaken by the institution itself will continue to be a subject of considerable attention and public debate, and it is prudent to presume they may be scrutinized within the broader current context of colleges and universities being increasingly criticized by elected officials and advocacy groups over their policies and practices. In July 2020, for example, President Trump directed the Treasury Department to look into colleges' tax-exempt status, tweeting that many institutions "are about Radical Left Indoctrination, not Education."<sup>10</sup> In recent years, however, the Internal Revenue Service (IRS) has not added to its guidance regarding political campaign activities of Section 501(c)(3) tax-exempt organizations.<sup>11</sup>

The legal authorities and guidance that inform this issue brief are most directly relevant to private institutions. Specific state laws that speak to political campaign activities at public institutions are not addressed. However, public institutions would be prudent to consider this guidance as likely analogous in most respects to applicable restrictions under relevant state laws.

Because of the inherent complexities and challenges in this area, each institution should consult its counsel as it develops policies or prepares to address issues that arise.

## STUDENT VOTING

### The Statutory Obligations of Colleges and Universities Regarding Student Voting

Since 1998, to remain eligible to participate in programs under the Higher Education Act (HEA), colleges and universities have been required to make good faith efforts in connection with federal and gubernatorial election cycles to help students register to vote. Institutions are required to "distribute a mail voter registration form . . . to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make such forms widely available to students at the institution," unless the state where the institution is located either does not require voter registration or provides for same-day registration.<sup>12</sup> It is incumbent upon the institution to make timely requests for forms from their states. An institution also can meet this distribution obligation through email messages to students with links to registration forms but those messages need to be exclusively devoted to voter registration.<sup>13</sup>

The "physically in attendance" qualifier to the HEA's distribution mandates may be interpreted by some institutions to limit their actual obligations toward those students who are attending remotely.<sup>14</sup> But the underlying goals of this HEA obligation suggest that colleges should consider providing their remote learners with links to voter registration forms and related voter information.

9 Amy Howe, "Supreme Court Rules Against North Carolina Republicans over Election Law Theory," *SCOTUSblog*, June 27, 2023.

10 Jeanine Santucci, "Trump Asks Treasury Department to Review Universities' Tax Exemption over 'Radical Left Indoctrination,'" *USA Today*, July 10, 2020.

11 "Published Guidance on Political Campaign Activity of 501(c)(3) Organizations," Internal Revenue Service, last reviewed or updated January 6, 2023.

12 20 U.S.C. §1094 (a)(23)(A) and (C). Over 20 states and the District of Columbia permit same-day voter registration. See National Conference of State Legislatures, "Same-Day Voter Registration," updated January 31, 2023.

13 20 U.S.C. 1094 §(a)(23)(D).

14 20 U.S.C. 1094 §(a)(23)(A).



One simple way colleges can comply with this institutional obligation is by distributing the National Mail Voter Registration Form. This form enables students and other U.S. citizens to register to vote in each state and to change their address or update other existing registration information. It also contains voter registration rules and regulations for each state and territory. The form was developed in accordance with the National Voter Registration Act of 1993 and is maintained by the U.S. Election Assistance Commission (EAC), an independent, bipartisan commission established by Congress in 2002 to serve as a national clearinghouse of information on election administration.

## **Encouraging and Enabling Student Voting: Education and Resources**

Colleges and universities have long supported voter participation and registration efforts, such as the Your Vote, Your Voice initiative, a national campus voter registration project that is coordinated by the National Association of Independent Colleges and Universities and backed by the Washington Higher Education Secretariat. Various other nonpartisan initiatives encourage institutions and their constituencies to enable student voting. For instance, the ALL IN Campus Democracy Challenge is a national awards program recognizing colleges and universities for their commitment to increasing student voting rates.

In addition, many media outlets have online guides to help simplify how to vote. One example is *The Washington Post's* interactive How to Vote in Your State platform.

Colleges and universities can provide tremendous help to their students by demystifying and simplifying the voting process, ideally using communication platforms and methods that students embrace. Offering links to user-friendly websites with information about voter eligibility, deadlines, and how and where to vote can be particularly helpful. Among nonpartisan resources to consider sharing with students:

- ALL IN to Vote, developed by the ALL IN Campus Democracy Challenge, helps students navigate the voting process.
- The National Association of Secretaries of State offers valuable information about registration, voter ID requirements, and polling places in all 50 states.
- U.S. Vote is the U.S. Vote Foundation's nimble website that helps U.S. citizens participate in elections. It includes excellent resources about how to register in different states as well as information about state deadlines for requesting absentee mail-in ballots.
- USA.gov, the official web portal of the federal government, maintains a page titled "Absentee Voting or Voting by Mail."
- Democracy Works developed its How to Vote guide to help voters understand what options states offer for casting a ballot and help voters choose when and where to vote, as well as TurboVote, an online service to help students vote in every election—local, state, and national.
- Vote.org, which aspires to use technology to simplify political engagement, increase voter turnout, and strengthen American democracy, describes itself as "the largest 501(c)(3) nonprofit, nonpartisan voting registration and get out the vote (GOTV) technology platform in America."
- Vote411, an initiative of the League of Women Voters Education Fund, offers a polling place locator and provides a broad range of additional registration and voting information.

Campus efforts can be as varied as the institutions themselves. Independence Community College is one of over 300 institutions that have partnered with the digital platform TurboVote to register students to vote and provide them with reminders of upcoming elections.<sup>15</sup> North Carolina A&T's Aggies Vote initiative was recognized in 2020 by the ALL IN Campus Democracy Challenge as having the best democratic engagement plan and the highest voter

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<sup>15</sup> "ICC Votes Initiative," Independence Community College.



registration rate of all Historically Black Colleges and Universities.<sup>16</sup> Whittier College was awarded a gold seal in the 2021 ALL IN Campus Democracy Challenge and earned a Voter Friendly Campus designation for 2021–22 from the Campus Vote Project after increasing its student voting rate from 51.6 percent in 2016 to 79.2 percent in 2020.<sup>17</sup>

Colleges and universities should take care to ensure that voting encouragement and resources offered to their students are nonpartisan and that their communications with students are likely to be received as such. Factors that tend to show that voter registration or get-out-the-vote communications are nonpartisan include: (1) limiting communications to urging individuals to vote or registering to vote and to describing the hours and places of registration or voting; (2) not naming or depicting any candidates, or alternatively naming all candidates without favoring any; and (3) not naming any political parties, with the exception of identifying the political parties of all candidates named or depicted.

Students may be advised that if they remain uncertain about their eligibility to vote, they may still go to the polls and cast a ballot on election day. Students whose eligibility is questioned at the polls can ask to cast a provisional ballot, which will be set aside for later consideration. It is their right to cast provisional ballots even if they are not allowed to cast a regular ballot, as these votes may be accepted in the final counts.

Institutions may want to provide shuttles or other transportation for students to local polling places or public transportation hubs on election days. Provided such transportation is offered to all students and is undertaken in a neutral and nonpartisan way, such efforts are permissible.

### **Being Aware of Barriers to Student Voting and Offering Solutions**

Despite (or because of) surges in student voting in recent years, institutions should remain attentive to state and county requirements that could undermine students' access to the polls. Voter ID registration requirements vary significantly among jurisdictions.<sup>18</sup> Moreover, the landscape can shift at the 11th hour. In recent years, a number of states have added or confirmed restrictions, such as requiring that the student ID used for voter identification be signed or issued within the past two years or, in the case of Idaho, precluding the use of student ID cards altogether and thereby triggering media reports of legal challenges with the accompanying continued confusion about registration requirements.<sup>19</sup>

In addition to offering clarity and precision to students regarding what is required from them in order to register to vote, colleges and universities ought to be attentive to practical constraints and potential confusion about terminology.

“Residency” is one of those words that may trip up students when it comes to voter eligibility. The U.S. Supreme Court recognized that states may require residency as a qualification to vote. However, requiring a minimum duration for that residency is unconstitutional unless the state can demonstrate that it is “necessary to promote a compelling governmental interest.”<sup>20</sup> Roughly half the states have durational residency requirements of 30 days or less; the other half do not have any durational residency requirements at all, though they may impose a cutoff date

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16 “HBCU Community of Practice,” ALL IN Campus Democracy Challenge.

17 “Whittier College Wins Gold Seal in 2021 ALL IN Campus Democracy Challenge,” Whittier College News, November 8, 2021; “Designated Campuses 2021–2022,” Voter Friendly Campus.

18 Voting Rights Lab, “Voting with Student ID in 2023: The State of the Law and Pending Legislation,” Voting Rights Lab, March 21, 2023.

19 Danielle McLean, “In These States, College Students Say Republicans Have Made It Harder for Them to Vote,” *The Chronicle of Higher Education*, February 19, 2020; Julie Luchetta, “Advocacy Groups File Lawsuit Against Idaho Law Banning Student IDs at the Polls,” Boise State Public Radio News, March 20, 2023; Fair Elections Center, “Student ID as Voter ID,” Campus Vote Project, 2019.

20 *Dunn v. Blumstein*, 405 U.S. 330 (1972).

for registering to vote prior to an election. Students who temporarily relocate from their home to another address to attend college should be able to choose to vote either where they reside while at college or where they consider their permanent home.

“Absentee” and “mail” ballots tend to be confusing as well, but needlessly so. An absentee ballot is a ballot that a voter requests, while a mail ballot is a ballot that is automatically sent to a voter without having been requested. Both absentee and mail ballots will look the same and be processed and counted the same way by election officials.

Not all voting necessarily must occur either in person at a polling location or via sending ballots through the U.S. mail. The EAC has encouraged ballot drop boxes, noting that they “should be placed in convenient, accessible locations, including places close to public transportation routes, near or on college campuses, and public buildings, such as libraries and community centers familiar to voters and easy to find.”<sup>21</sup> The National Conference of State Legislatures notes that “many states that permit or require ballot drop boxes set minimum requirements for where they must be located, how many a county must have, hours they must be available and security standards.”<sup>22</sup> Within applicable parameters, institutions can contact their local election officials to request drop boxes on their campuses or press for changes to the requirements and limitations.

Many states expect absentee ballot applications and mail-in ballots to have appropriate postage applied by the sender. Sometimes rules vary within states. In Florida, for example, some counties send out vote-by-mail ballots with prepaid return postage, but others do not. Requiring would-be voters to affix proper postage to registration submissions, ballot applications, and mail-in ballots has triggered legal challenges that highlight young voters who have never used a stamp.<sup>23</sup>

This is not a small thing. Students who intend to vote end up not doing so for want of a postage stamp. For many of them, stamps are as mysterious as handwritten thank-you notes. As *Inside Higher Ed* pointed out in 2018, “college students . . . will ‘go through the process of applying for a mail-in absentee ballot, they will fill out the ballot, and then they don’t know where to get stamps.’”<sup>24</sup> These students have never walked into a post office and have no idea where else a stamp can be purchased. Buying a stamp online comes with its own challenge: many students don’t own or have quick access to a printer. Colleges and universities can help by making stamps easily available on campus.

Several states require witnessing or notarization of votes being submitted by mail or in a drop box.<sup>25</sup> In such states, colleges should consider providing day and/or nighttime locations and staffing (or volunteers) with witnesses and notary services for their on- or near-campus students this fall.

Notwithstanding efforts in some locales to discourage convenient campus polling or ballot drop locations, some colleges and universities are able to serve as polling places to ensure adequate access by students. Institutions that do provide polling locations need to be mindful that every state has its own rules regarding what activity can take place in the vicinity of polls when voting is underway, e.g., signage, vote solicitation, among others, so universities should consult applicable state and local rules. The National Conference of State Legislatures has a helpful aggregation of links to state-specific resources, which notes that 46 states and the District of Columbia offer early in-person voting.<sup>26</sup>

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21 *Ballot Drop Box*, version 1.0 (Washington, DC: U.S. Election Assistance Commission).

22 National Conference of State Legislatures, “Table 9: Ballot Drop Box Laws,” updated February 14, 2022.

23 The Associated Press, “A New Battleground Emerges in the 2020 Election: The Cost and Hassle of Stamps,” *Fortune*, July 20, 2020.

24 Greg Toppo, “Students Don’t Vote . . . for Want of a Postage Stamp?,” *Inside Higher Ed*, September 27, 2018.

25 “What You Need to Know About Absentee Ballot Notary and Witness Signature Requirements,” U.S. Vote Foundation blog.

26 National Conference of State Legislatures, “Early In-Person Voting,” updated June 13, 2023.



## POLITICAL CAMPAIGN-RELATED ACTIVITIES BY AND AT COLLEGES AND UNIVERSITIES

The IRS is unambiguous about the fact that the Internal Revenue Service Code “absolutely” prohibits all 501(c)(3) organizations from participating in political campaign activity.<sup>27</sup> This prohibition includes directly or indirectly participating or intervening in any political campaign or election of a candidate for public office, regardless of whether that office is a local school board, a state comptroller, a member of Congress, or the president of the United States. For example, colleges and universities may not offer public statements in favor of or in opposition to any candidate for public office or make contributions to political campaign funds.

Generally speaking, potential penalties for improper political activity by a college or university 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.

However, 501(c)(3) organizations, including colleges and universities, may engage in electoral educational activities unrelated to a candidate for public office. These include nonpartisan voter education drives and get-out-the-vote initiatives. Hosting or presenting public forums and publishing voter education guides conducted in a nonpartisan manner also are perfectly fine, and indeed encouraged, as are other nonpartisan activities that describe, encourage, enable, and inform the democratic process.

### Institutional Engagement in Issue Advocacy and Public Policy Educational Activities

In contrast to the absolute prohibition on participating in political campaign activity, institutions may engage in an allowable amount of lobbying and issue advocacy as well as educational public policy activity. Lobbying is “activities [that are] attempting to influence legislation,”<sup>28</sup> including contacting, or urging the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation (including legislative proposals). Issue-specific lobbying must be nonpartisan and not designed to influence the election of any particular candidate.

Lobbying does not include nonpartisan analysis or communications of broad social policy that are intended to educate the public. Applicable tax regulations instruct that to be “educational,” a communication or activity must present “a sufficiently full and fair exposition of the pertinent facts.” The presentation of information must not be biased and must “permit an individual or the public to form an independent opinion or conclusion.”<sup>29</sup>

With the issuance of the Supreme Court’s abortion ruling in *Dobbs v. Jackson Women’s Health Organization*, the prevalence of gun violence, and heightened attention to the state of democracy and the election process, presidents, chancellors, and other institutional leaders may feel compelled to make formal statements and otherwise encourage engagement on issues that affect broad segments of their communities. Examples include the effort by 16 college presidents from the Washington, DC area who formed a coalition named the 120 Initiative to tackle gun violence by focusing on nonpolitical solutions and the many college and university leaders who issued statements in support of abortion rights following the *Dobbs* decision.<sup>30</sup> Earlier this year, ACE and PEN America collaborated on a resource guide that—among other things—helps higher education leaders in a challenging political environment to emphasize the importance of ensuring that all members of the campus community feel comfortable airing varying perspectives across campus and in the classroom.<sup>31</sup>

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27 “The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations,” Internal Revenue Service, last reviewed or updated June 9, 2023.

28 “Lobbying,” Internal Revenue Service, last reviewed or updated June 9, 2023.

29 Treasury Regulations, Section 1.501(c)(3)–1(d)(3)(i).

30 “Washington, DC-Area Universities Unite to Address Gun Violence Through Research-Based Recommendations for Action,” Consortium of Universities of the Washington Metropolitan Area, July 13, 2022.

31 See American Council on Education and PEN America, *Making the Case for Academic Freedom and Institutional Autonomy in a Challenging Political Environment: A Resource Guide for Campus Leaders* (Washington, DC: American Council on Education, 2023).



Whether issue advocacy or public policy activity undertaken by persons authorized to speak on behalf of the institution veers into prohibited political campaign activity is based on all the facts and circumstances. The illustrative examples included herein offer some guidance. Institutions inherently have varying levels of risk tolerance, but they should be aware of their continuing ability to undertake these important issue advocacy and public education roles.

Colleges and universities are the source of some of the deepest wells of expertise on subjects that are relevant to public policy issues of the day. Faculty are expected to write and engage publicly on topics and are often interviewed by the press to explain issues and provide their views. As a general matter, the activities of faculty who are not directed or authorized to speak on behalf of the institution ought not be attributed to the institution. The same is true for students.

Faculty hosting forums or presenting on public policy issues such as gun violence, state election laws, abortion, climate change, among others, can and should be undertaken, provided the programs are conducted in a manner that is defensible as educational within the meaning of the tax regulations described previously. When institutional resources are used or candidates for public office are invited, programs should comply with guidelines such as those described herein.

### **Campaign-Related Activities by Faculty and Staff**

American citizens have the prerogative and constitutional right to engage in partisan political activity. However, distinguishing between an individual faculty or staff member's own permissible civic engagement from that which would be impermissibly representative of the institution (actually or perceptively) is critical.

Colleges and universities can encourage individually motivated participation in political and social action while also helping their community members understand and attend to this distinction. Guidelines that are widely known and easily accessible should underscore community members' actions, and words should not imply that the institution embraces or is committed to any partisan political position or point of view.

## **ILLUSTRATIVE PERMISSIBLE AND (LIKELY) IMPERMISSIBLE ACTIVITIES (YES/NO)**

### **Student Voting**

#### **Permissible**

- Y1. **Creating and conducting voting information programming, including online webinars**, designed to increase student understanding of the electoral process or to encourage campus community members, including students, to become involved in the process. Such programming must be nonpartisan in the recruitment of instructors, the advertising or invitation to students, and the curriculum. The program should be widely publicized, although groups underrepresented in the electoral process may be targeted.
- Y2. **Participating in nonpartisan voter registration encouragement or get-out-the-vote activities**. Such activities by an institution, including its staff and faculty, are considered nonpartisan even when aimed at groups (such as students, 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—further—that particular geographic areas are not selected to favor any party or candidates.
- Y3. **Providing students with a clear summary of state registration and voting requirements**. Institutions may create or update existing websites that explain in practical terms voting laws, processes, and deadlines, including regarding voter registration, and link to nonpartisan tools for registering and voting. Colleges and universities may create and staff a nonpartisan telephone helpline and/or an email help desk for students to contact with questions about the voting process.

- Y4. **Students may be voting in various jurisdictions.** Given the varying locations of some students, institutions may wish to provide information not only about the state where the college or university is physically located but also about other states' laws. Offering links to explanatory websites is an efficient way to do this. Care should be taken to assure those websites are nonpartisan.
- Y5. **Providing periodic voter encouragement and deadline reminders.** Colleges and universities may send emails and text messages and use their social media platforms to encourage voter registration and voting and to remind students to be attentive to relevant deadlines, specifically those for voter registration, absentee ballot requests, and ballot receipt.
- Y6. **Providing clarity regarding current voting by mail options.** Students may be uncertain about the availability of voting by mail and their eligibility to obtain and submit a ballot. Give particular attention to residency eligibility, processes, and deadlines for students who wish to vote as residents of the community where the institution is physically located. Explain voting alternatives if a student is likely ineligible to vote in the community where their campus is physically located. This will allow students to make a fully informed decision as to where to register and vote.
- Y7. **Providing students with stamps, transportation to polling locations, and other resources to assist with the process of voting.** Institutions may wish to provide multiple locations where students living on or near campus can pick up hard copies of absentee ballot applications and make stamps easily available on campus for those applications and absentee ballots. They may wish to mail physical copies of absentee ballot applications to students and/or email applications. In states that permit it, colleges and universities may maintain drop boxes and collection points for students to return ballots on campus. For students who live on or near campus, colleges and universities may provide locations and staffing (or volunteers) for witnesses and notary services for students who need them to vote by mail. Providing students shuttles or other transportation to local polling places or public transportation hubs is permissible.
- Y8. **Telling students that the institution will quickly provide written confirmation of their residency and address verification and instructing them precisely where and how to make such a request.** Many states require proof of residency for voter registration. Colleges and universities can and should prioritize offering students proof of residency and address verification documents that students can use to help them vote.
- Y9. **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 or 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 actions that tie a position articulated in the guide to a particular candidate or election. (See N3.)

#### Impermissible

- N1. **Providing partisan links or other resources** regarding voter registration or voter education.
- N2. **Conducting voter education activities 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.
- N3. **Publishing ratings of the candidates**, particularly in situations where the ratings could be viewed as reflecting the views of the institution, or when institutional resources are used to prepare or publish such ratings without reimbursement at the usual and normal charge. (See Y9.)



- N4. **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 history of commenting on such issues in nonelection years.
- N5. **Coordinating voter education activities with a candidate's or party's campaign event.**

## Candidate Appearances

### Permissible

- Y10. **Providing access to airtime** on a 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.
- Y11. **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 in introducing 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.

*Please note that Y11 addresses situations in which the institution itself (acting through its officials/authorized persons) invites one or more candidates to speak. For situations involving student groups inviting a candidate to speak, please see Y18. For situations involving faculty or other staff inviting candidates to speak, the university should consider whether the actions of the faculty or staff member could be attributed to the university and whether university resources will be used to support a political candidate. See Y21–Y23 and N18–N19 for discussions of whether an individual's actions or statements would likely be attributed to the university. See N13 (prohibiting providing a forum to a candidate to promote his or her campaign if other candidates are not treated equally) and N9 (prohibiting providing university facilities to a candidate in a way that favors that candidate) for a discussion of the use of institutional resources.*

- Y12. **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, provided that the format and content of the forum are presented in a neutral manner.
- Y13. **Inviting candidates to appear in a noncandidate 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 noncandidate 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.

## Issue Advocacy

### Permissible

- Y14. **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. Lobbying is “activities [that are] attempting to influence legislation,”<sup>32</sup> including contacting, or urging the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation. Generally speaking, issue-specific lobbying is permissible for 501(c)(3) organizations other than private foundations if the activity is nonpartisan and not designed to influence the election of any particular candidate for office. Educational public policy communications that do not rise to the level of lobbying because they do not reference specific legislation (including legislative proposals) must present “a sufficiently full and fair exposition of the pertinent facts” such that the presentation of information enables an individual or the public “to form an independent opinion or conclusion.”<sup>33</sup>

### Impermissible

- N6. **Heightened and targeted lobbying and public policy education activities** conducted during a campaign season, directed at candidates’ signature issues or others that are closely aligned with candidates. For example, if an issue becomes a singular dividing issue between two candidates for public office and the institution makes issue advocacy statements close in time to the election when it had not previously issued communications on the topic. (*See N17 for a discussion of facts and circumstances relevant to a determination of whether an issue advocacy communication could result in political campaign intervention.*)

## Use of Institutional Resources

### Permissible

- Y15. **Establishing genuine curricular activities aimed at educating students** with respect to the political or electoral 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.
- Y16. **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.
- Y17. **Providing financial and administrative support to a student newspaper** even though the newspaper publishes editorial opinions on political and legislative matters.
- Y18. **Allowing established student groups to use institutional facilities** for partisan political purposes, including candidate appearances on campus, 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 identified in this issue brief. 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. Student groups should not be permitted to use institutional resources to conduct fundraising activities on behalf of candidates. (*See N14.*)

<sup>32</sup> “Lobbying,” Internal Revenue Service.

<sup>33</sup> Treasury Regulations, Section 1.501(c)(3)-1(d)(3)(i).



- Y19. **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 previously.
- Y20. **Providing links 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 N12.*)

### Impermissible

- 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. **Permitting social media platforms and other forums** affiliated with the institution to be used to express or provide support for particular candidates if the statements or 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.
- N12. **Providing links to the web pages**, or other space on a 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 distributed printed material, oral statements, or broadcasts that favor or oppose a candidate. Institutions should diligently monitor the content of the linked website for any changes.
- N13. **Providing a candidate with a forum** or sponsoring events that promote his or her campaign if other candidates are not treated equally, even if the forum or event 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.

- N14. **Using institutional resources to conduct political campaign fundraising activities.** Funds or contributions for political candidates or campaigns may not be solicited in the name of the university, on the university's campus, or through the use of campus resources, including by student groups.

## **Faculty, Administrator, and Staff Participation in the Election Process**

### **Permissible**

- Y21. **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 issue brief and that they are not acting at the direction of an institutional official. If the institution is identified, it should be communicated that the opinions expressed are not the opinions of the college or university.
- Y22. **A faculty member, administrator, or other employee may, if permitted by institutional policies and procedures, engage in federal or state and local 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 be extremely cautious about personal engagement in campaign activity and ordinarily refrain from it, as there is risk that such activity would be perceived as support or endorsement by the institution. (*See N18.*)
- Y23. **Public statements, oral or written, by institutional officials** (such as the president and deans) are permitted in support of a candidate, political party, PAC, or the like, where the institutional official clearly indicates that his or her comments are entirely personal and do not, and are not intended to, reflect or represent the views of the institution. For example, the IRS condoned a full-page advertisement in a local newspaper, paid for by a candidate, in which the advertisement referred by name and title to the president of a 501(c)(3) nonprofit organization as a campaign supporter, despite the ad expressly stating that the "titles and affiliations of each individual are provided for identification purposes only."<sup>34</sup>

### **Impermissible**

- N15. **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. Implied endorsements include public statements at a 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 issue brief, such a prohibition applies even if the candidate is an administrator or faculty member of the institution.
- N16. **Wearing campaign buttons while remote teaching or having a home office background containing posters** supporting a candidate or political party are particularly problematic. As a commentator noted years ago about teachers who unsuccessfully challenged New York City's policy prohibiting public school teachers from wearing political buttons in the classroom, "if they're using them as political billboards—announcing their partisan identifications from their chests—the question of the intrusion of politics in

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<sup>34</sup> "Internal Revenue Bulletin: 2007-25," Internal Revenue Service, June 18, 2007, last reviewed or updated: September 23, 2017.



the classroom cannot be avoided.”<sup>35</sup> Given the continued use of remote and hybrid classes being taught, risks in this regard are heightened. Many college and university faculty are teaching two feet from their computer’s camera, assuring that the size of a button—and its intrusion on the “classroom”—would be radically enlarged. That’s a problem. Similarly, care should be taken to assure that onscreen backgrounds are devoid of campaign posters, slogans, or other partisan political visuals while faculty and staff are engaging with students.

- N17. **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, particularly if it has a history of commenting on such issues in nonelection years. Whether a statement is delivered close in time to an election, whether the communication identifies specific candidates or approves or disapproves of a candidate’s positions or actions, whether the communication is part of an ongoing series of communications on the issue by the institution that are not related to the timing of any election, and whether the timing of the communication and identification of the candidate are related to a nonelectoral event are all relevant factors in determining whether an institution’s statement on a particular issue could result in political campaign intervention.
- N18. **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 that it is their personal opinion that Candidate U should be reelected, even though the president paid part of the cost of the newsletter.
- N19. **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 issue brief are combined or occurring simultaneously, the institution should analyze and assess the interaction between or among the activities, and the totality of the activities.

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<sup>35</sup> Stanley Fish, “Buttons and Bows,” *Opinionator* (blog), *The New York Times*, October 12, 2008.

