

STUDENT VOTING AND COLLEGE POLITICAL CAMPAIGN-RELATED ACTIVITIES IN 2020

The COVID-19 pandemic is contextualizing nearly every aspect of life on and off our nation's campuses. College students are in places they never dreamed they'd be . . . literally. Some are in campus housing, or sharing an off-campus apartment with other students, as planned. Others are commuting to school from home, also as planned. But for many students, the college experience is playing out in an unanticipated remote location—or may shift that way at a moment's notice. Student voter registration, casting ballots (by mail or in person), and campaign-related activities on campus are guaranteed to feel and be different in most college communities during this fall's election season.

This issue brief speaks to institutional obligations and other matters relating to student voting. It also updates a September 2018 publication which offered illustrative permissible and impermissible college and university activities in connection with campaigns for public office.

Within the context of the Supreme Court's admonition that residency duration and other voter registration requirements must serve a compelling governmental interest, voting is controlled by the states. In normal times, presumptively simple steps necessary to participate in our country's democratic process can quickly feel complex to students. As Tufts University's Institute for Democracy & Higher Education [recently noted](#), "Decentralization has resulted in a morass of inconsistent and confusing registration and voting conditions . . . Uncertainty and unnecessary inconvenience are bad for all voters, but they uniquely affect the nation's 20 million college and university students."

With this fall promising to be a more uncertain time than any in memory for our nation's college students, their anxiety is sure to be amped up regarding how, when, and where to cast a ballot. Moreover, in light of the pandemic's impact on how and where students, faculty, and staff will engage with each other during the run up to Election Day 2020, previously understood rules of the road regarding political campaign-related activities on campus may require more nuanced consideration.

The IRS has not issued any additional guidance on [political campaign activities of Section 501\(c\)\(3\) tax-exempt organizations](#) since our 2018 issue brief. However, their activities, and those of higher education institutions in particular, continue to be a subject of considerable attention and public debate.

This issue brief was prepared by ACE Vice President and General Counsel Peter McDonough, with content in Section III contributed by the Washington, DC law firm Hogan Lovells US LLP (September 2020).

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, including the potential for changes in current law or current enforcement practices.

In July, 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." Somewhat paradoxically, the Trump administration and members of Congress have sought to **repeal or limit the Johnson Amendment** to free up church leaders to openly advocate for political candidates and positions. This provision, added to the U.S. tax code in 1954, prohibits all nonprofit organizations with 501(c)(3) tax exemptions from endorsing or opposing political candidates or otherwise conducting political campaign activities to intervene in elections to public office.

In this charged climate, political campaign-related activities that occur on a college campus or are perceived to be undertaken by the institution itself may be scrutinized. In addition, colleges and universities continue to be criticized by free-speech groups over their policies and practices.

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 which arise.

STUDENT VOTING

Colleges' and Universities' Statutory Obligations Regarding Student Voting

Since 1998, in order 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 "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.¹ 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.²

Given the uncertainty about conducting in-person classes throughout the fall, and students' varied and changing locations, colleges and universities should be making decisions about how they may best meet their HEA voter registration distribution obligation. The "physically in attendance" qualifier to HEA's distribution mandates³ may be interpreted by some institutions to limit their actual obligations in light of the nature and scope of their remote learning environments. But the underlying goals of this HEA obligation suggest that schools should consider providing their students with links to voter registration forms and related vote-enabling information even if they expect to have 100 percent remote learning in November.

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

1 20 U.S.C. §1094 (a)(23)(A) & (C). Note: Over 20 states and the District of Columbia permit same-day voter registration. See <https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>

2 20 U.S.C. 1094 §(a)(23)(D).

3 20 U.S.C. 1094 §(a)(23)(A).

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 coordinated by the National Association of Independent Colleges and Universities and backed by the Washington Higher Education Secretariat. Various 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 are creating online guides to help simplify how to vote and ensure that ballots are counted in an election year challenged by both the pandemic and heightened concerns about timely mail delivery. *Slate*, for example, is [providing a guide](#) to what it believes are “the safest, easiest, most reliable voting options in all 50 states and the District of Columbia.”

In light of the widely varying and oft-unanticipated locations where college students will find themselves this fall and their likely uncertainty about where and how they will be permitted to vote, 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. Links to user-friendly websites with information about voter eligibility, deadlines, and how and where to vote will be particularly helpful this year.

Campus efforts can be as varied as the schools themselves. Stanford University’s campus-wide campaign [StanfordVotes](#) registered [more students to vote](#) via the digital platform TurboVote in the beginning of 2020 than any other campus initiative in the country. Mesa Community College’s voter education website has helped the school to be tapped as a “[Voter Friendly Campus](#)” by the Campus Vote Project. The University of Richmond’s athletics department created the [Spiders Vote Initiative](#) to encourage voter registration, education, and participation among the school’s student-athletes, coaches, and staff.

Colleges and universities should take care to assure that the voting resources offered to their students are nonpartisan and that their communications with students are offered and received that way. 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 one; and (3) not naming any political parties, with the exception of identifying the political parties of all candidates named or depicted.

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.
- [Your Vote, Your Voice](#) links to [US Vote](#), which 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 site regarding “Absentee and Early Voting” with specific information about “Coronavirus and Voting by Mail-In Absentee Ballot.”
- Democracy Works developed a How to Vote guide to help voters understand what options states offers for casting a ballot and helps voters choose when and where to vote, as well as TurboVote, an online service to enable students to 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) non-profit, non-partisan voting registration and get out the vote (GOTV) technology platform in America.”
- Vote411, an initiative of the League of Women Voters Education Fund (LWVEF), offers a polling place locator and provides a broad range of additional registration and voting information.

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.

Being Aware of Barriers to Student Voting and Offering Solutions

USA.gov says that states “are making it easier for citizens to vote absentee by mail this year due to the coronavirus.” However, it underscores that “each state has its own rules for mail-in absentee voting,” and cautions that “[m]any are still in the process of deciding how they will handle voting during the pandemic.”

Despite (or because of) surges in student voting in recent years, institutions should be aware of state requirements that could undermine students’ access to the polls and recognize that not all states’ rule-changing efforts are inspired by nonpartisan intentions to maximize student voter participation in Election 2020. For years, Austin Community College in Texas self-funded temporary early-voting sites on nine of its 11 campuses. But in 2019, Texas passed a bill prohibiting early voting locations that did not remain open for the entire early voting period, potentially inhibiting setting up temporary mobile polling locations on college campuses. A number of states do not accept student IDs at polling places, or have restrictions such as requiring that the student ID cards be signed or issued within the past two years.

In addition, colleges and universities ought to be attentive to terminology confusion and practicalities to make voting truly accessible for their students.

“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.”⁴ Today, roughly half the states have durational residency requirements of 30 days or less, and the other half do not have any durational residency requirements at all, though they may impose a cutoff date 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.

⁴ *Dunn v. Blumstein*, 405 U.S. 330 (1972)

Not all voting necessarily must occur either in person at a polling location, or via sending ballots through the U.S. mail. The U.S. Election Assistance Commission (EAC) encourages 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” (emphasis added). Schools can press their local election officials for drop boxes on their campuses.

Many states expect absentee ballot applications and mailed-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 pre-paid return postage, but others don't. Requiring would-be voters to affix proper postage to registration submissions, ballot applications and mailed-in ballots is triggering legal challenges highlighting young voters who have never used a stamp.

This is not a small thing. College 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 hand-written thank you notes. “[C]ollege 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” (*Inside Higher Ed*). 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. Schools can help by making stamps easily available on campus.

A dozen states require witnessing or notarization of votes being submitted by mail or in a drop box. For students in such states who are expected to be on- or near-campus students this fall, colleges should consider providing day and/or nighttime locations and staffing (or volunteers) for witnesses and notary services.

POLITICAL CAMPAIGN-RELATED ACTIVITIES BY AND AT COLLEGES AND UNIVERSITIES

The Internal Revenue Service (IRS) is unambiguous about the fact that the Internal Revenue Code “absolutely” prohibits all 501(c)(3) organizations from participating in political campaign activity. 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 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 non-partisan manner also are perfectly fine, and indeed encouraged, as are other nonpartisan activities which describe, encourage, enable, and inform the democratic process.

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 provided 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 school websites which 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. **Recognizing that in fall 2020, students will be voting in many more jurisdictions than ever before, and adapting information accordingly.** Given the varying and unanticipated locations of many students due to the pandemic's impact, institutions may wish to provide information not only about the state where the school 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 voter registration deadlines, absentee ballot request deadlines, and ballot receipt deadlines.
- 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. Particularly during the pandemic, providing vote-by-mail information is essential. 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, even if they are taking virtual classes in the fall as a result of COVID. 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 and other resources to assist with the process of voting.** Schools 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 on- or near-campus students, colleges and universities may provide day and/or nighttime locations and staffing (or volunteers) for witnesses and notary services for students who need them to vote by mail.

- 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. In light of fall 2020's hybrid and remote learning environment, meeting these requirements may be particularly challenging, with students away from campus and unable to walk into campus offices or easily communicate with off-campus landlords, or obtain utility bills or paychecks that they normally receive during the school year. 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 below.)

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 above.)
- 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 track record of commenting on such issues in non-election years.
- N5. **Coordinating voter education activities with campaign events.**

Candidate Appearances

Permissible

- Y10. **Providing access to air time** 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 below. 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, if the format and content of the forum are presented in a neutral manner.
- Y13. **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.

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* "activity that attempts to influence legislation," including contacting, or urging the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation. This is a complex topic that warrants fuller analysis and advice. Generally speaking, for 501(c)(3) organizations other than private foundations, issue-specific lobbying is permissible if the activity is nonpartisan and not designed to influence the election of any particular candidate for office.

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.

Use of Institutional Resources

Permissible

- Y15. **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.
- 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 this issue brief 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. Student groups should not be permitted to use institutional resources to conduct fundraising activities on behalf of candidates. (See N14 below.)
- 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 above.
- Y20. **Providing links to the webpages**, 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 below.)

Impermissible

- N7. **Coordinating institutional fund-raising with fund-raising** 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. Note: 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 webpages**, 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 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 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 below.)
- 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, where the advertisement referred by name and title to the president of a 501(c)(3) nonprofit organization as a campaign supporter, when the ad expressly stated that the "titles and affiliations of each individual are provided for identification purposes only."

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 the classroom cannot be avoided." Given the volume of remote and hybrid classes being taught this year, 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 pertinent to its tax-exempt purposes, particularly if it has a track record of commenting on such issues in non-election 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 non-electoral 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, "it is my 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, an institution should analyze the interaction between the activities, as the interaction may affect whether the institution is engaged in political campaign intervention.