

Proposition 30

Dos and Don'ts for Academic Senate & its Members

After the Regents' Endorsement

This summary of highlights is based on Office of General Counsel Guidance provided in Attachment 1 and outlines permissible activities in the Context of the Regents' endorsement of Proposition 30.

- A University official may use normal working hours to speak about the University's position on a ballot measure that the Regents have endorsed. It is not necessary to state the facts and arguments on the other side of the ballot measure. However, a speaker **may not** urge a particular vote. It would be helpful to say something like the following: "I am pleased to provide you with information about the impact of the ballot measure on the University and to tell you why our Board of Regents supports (opposes) it, but I cannot ask you to vote in a particular way."
- Senate offices may include information about a ballot measure endorsed by the Regents, including how the measure will affect the University if it passes and if it fails, in regular publications, such as newsletters and periodic reports from divisional chairs but **may not** recommend a specific vote. You may obtain such information from <http://www.universityofcalifornia.edu/news/article/28244>.
- Senate offices **may not** use staff, equipment, or other tangible resources for campaign purposes, including distribution of campaign materials prepared by others.
- Senate offices **may not** send special communications dedicated to the subject of the ballot initiative and timed to exert direct influence on recipients' votes.
- Individual members of the Senate, and all University employees, retain their individual right to campaign on a ballot measure.
- Individual members of the Senate and other University employees may identify their affiliation with the University when expressing support for a ballot measure. An express disclaimer of University endorsement is required where the context might reasonably cause confusion as to whether the endorsement is in an official or unofficial (i.e., private) capacity.
- Individual members of the Senate and other University employees may write op-ed pieces and letters to the editor in support of a ballot measure. Such writings **should not** be produced during the employee's working hours, but employees may use vacation time to engage in campaign activities.
- Individual University employees **should use** personal accounts when sending email to urge friends, relatives, colleagues, and others to vote in a particular manner.
- Using personal accounts, individuals may send email to colleagues at their University email addresses to urge a particular vote; individuals should not use University listservs for this purpose.
- Individual University employees may donate their own personal funds to a ballot campaign.
- Support organizations, such as alumni and emeriti organizations, may use their organizational resources to campaign for a ballot measure within the limits described in Attachment 1. Senate offices may not provide staff or equipment to such organizations for campaign purposes.

Resources:

- <http://www.ucop.edu/uer/sgr/ballotguidelines.html> (same as Attachment 1)
- <http://www.universityofcalifornia.edu/compaudit/documents/webinars/auriti-recording/lib/playback.html> (Recorded audio webinar)

Attachment 1

Institutional Advocacy - Legal Guidelines for UC Participating in Ballot Campaigns

University funds (including University paid time and equipment) may not lawfully be used for campaign purposes in connection with ballot propositions. University funds may be used for legitimate informational activities. These guidelines are intended to assist in drawing the difficult distinction between legitimate informational activities and unlawful campaign activities. The following questions and answers provide some general guidelines, but are not exhaustive. UC officials and staff should always consult with the General Counsel concerning the propriety of any specific course of conduct.

USE OF UNIVERSITY RESOURCES TO SUPPORT OR OPPOSE BALLOT MEASURES

1. **May UC use staff, equipment and supplies to generate promotional materials on behalf of ballot measures which have already qualified for the ballot?**

No. University resources may not be used for campaign purposes. This applies to all University resources coming from any University account.

2. **May UC analyze the effect of ballot measures?**

Yes. UC may use its resources to objectively evaluate a ballot measure's impact on the University and higher education.

3. **May UC make available on request the results of its objective evaluation of a ballot measure's impact?**

Yes. Indeed, UC is normally required to make its information available to the public on request under the California Public Records Act.

4. **Under what circumstances may the University, on its own initiative, distribute information concerning the impact of a ballot measure?**

University resources may be used under circumstances where the distribution is consistent with legitimate informational and not campaign purposes. There is no hard and fast rule for judging whether a communication is informational or promotional. Material which exhorts voters to "vote yes" is, of course, promotional; however, documents which do not contain such exhortations may nonetheless be considered promotional. Some of the factors courts look at in determining whether a publication or mailing is a "fair presentation of the facts" are the style, tenor and timing of the piece. Informational communication must state facts and arguments on both sides of the issue. The courts will look more favorably on such communications if they are consistent with the tradition of such communications on matters of University concern or are made because of a particular interest of the audience in receiving the information.

For example:

An article in a routine publication sent to University faculty, staff, students, alumni, or friends, which normally carries articles about planned future developments at a campus could appropriately feature an article detailing how bond funds would be spent should a measure pass so long as the article provides a complete picture of the bond issue and the arguments pro and con about it.

A special mailing of the same article made on the eve of the election might well be viewed as an improper campaign activity even if "informational" in content.

5. **May UC contribute resources to ballot measure campaigns which have already qualified for the ballot?**

No. Under state law, University resources may not be used to make contributions for campaign purposes.

6. **Are UC support organizations, such as alumni associations and foundations, under the same restrictions on using their resources for ballot measure campaigning?**

No, although restrictions do exist. Unlike the University, its support organizations are not considered part of the government. Alumni associations and foundations may contribute resources to a ballot measure campaign or may sponsor ballot measure campaign activities if several tests are met: resources dedicated for ballot measure campaign purposes must be raised from private sources and must not have come through any university account; no original donor restrictions may have been placed on funds eventually donated to a ballot measure campaign by the UC support organization; donations of funds or services to a ballot measure campaign must be reported to the FPPC; support organizations must keep annual political donations and expenditures below a specific dollar amount or jeopardize their non-profit status. A conservative interpretation of this IRS provision states that annual political donations and expenditures should not exceed 5% of the organization's time and effort.

7. **In what other campaign activities can UC alumni associations and foundations engage to support a ballot measure?**

UC support organizations can participate in the full array of activities in support of a ballot measure as long as the previously outlined test is met. These activities include making donations to the campaign organization; endorsing the ballot measure; sponsoring phone banks; and distributing campaign materials.

**SUPPORT OR OPPOSITION TO BALLOT MEASURES
BY UNIVERSITY EMPLOYEES**

1. **May a University employee support or oppose a ballot measure?**

An employee does not give up his or her constitutional rights upon joining a public agency. With only limited exceptions, no restrictions may be placed on the private political activities of public employees. Public employees should not, of course, use public resources (including time on the job) to advocate a particular position on a ballot measure. This restriction applies to all University employees, including high officials. Specifically, for example, no University employee on official business or using University resources should urge anyone to vote one way or another on a measure. University officials may separate their private from their official activities by taking vacation or reimbursing the University for any time or resources used in personal campaigning. Such time and resources can be recorded on a time sheet and reimbursed from a non-University account. Attached is a sample time sheet for such purposes. Under some circumstances an incidental and minimal use of public equipment or office space for campaign activities is permissible.

2. **May a University employee endorse a ballot measure in his/her private capacity and identify himself/herself by University title?**

Yes. A University official may allow use of his/her name and title for identification purposes in the same manner as others who sign an endorsement. An express disclaimer of University endorsement is required only where the context might reasonably cause confusion as to whether the endorsement is made in an official or unofficial capacity.

3. **May the Board of Regents pass a resolution supporting or opposing a ballot measure impacting the University?**

Yes.

4. **May a University official discuss the position of the Board of Regents in a public speech?**

Yes. A University official may use normal working hours to speak about the University's position on a ballot measure. Under these circumstances, it is not necessary to state the facts and arguments on the other side of the ballot measure. However, it is necessary to avoid urging a particular vote. It would be helpful to say something like the following: "I am pleased to provide you with information about the impact of the ballot

measure on the University and to tell you why our Board of Regents supports (opposes) it, but I cannot ask you to vote in a particular way."

5. **What are the potential consequences of improperly using University resources to promote or oppose a ballot measure?**

An individual who improperly uses university resources to campaign on a ballot measure may have to reimburse UC for the value of the resources used. In addition, the individual may face criminal sanctions for theft, misuse of university funds and fraud.