



Memorandum to Presidents

DATE: August 26, 2020
TO: Presidents, State-operated Campuses
FROM: Office of General Counsel
SUBJECT: *Political Activities on Campuses*

With the Presidential election season upon us, it is appropriate to remind campuses of applicable law and State University policy on the use of University facilities for political purposes. The Board of Trustees established the University's policy on non-commercial use of facilities by Resolutions 56-88 and 79-158, dated September 13, 1956 and June 27, 1979, respectively. The section on use of campus facilities for political purposes is discussed below. Please note that this memorandum supersedes all prior guidance in the area of political activities on campuses.

I. Political speech welcome on SUNY campuses:

As a public educational institution, we recognize the benefits of exposing students to political discourse and information, including partisan political speech. It follows that as a general policy stance, we welcome such discussions. SUNY campuses routinely offer some of our facilities to a wide range of speakers pursuant to SUNY's System-wide facilities use policies for [Commercial](#) and [Non-Commercial](#) organizations and, similarly, must open such facilities to political speech as well.

II. The First Amendment, the SUNY Use of Facilities Policies, and Political Speech:

The First Amendment is at its "zenith" when protecting political speech. While (as described below) employees may not use their official position to advocate for a political candidate, employees in their personal time, and students at all times, maintain robust First Amendment rights to advocate. This is so even if others find advocacy for a certain bona fide political position or candidate to be offensive. Short of clearly prohibited harassment or threats of violence (each of which, consistent with case law, are interpreted narrowly), campuses must exercise extreme care before limiting political speech beyond the neutral time, place, and manner restrictions placed on all speech (for example, not allowing protests in the library or the use of a bullhorn during sleeping or quiet study hours, as applied neutrally to all speech).

In reviewing requests for permission to use campus facilities, we must be guided by the principle of **viewpoint neutrality** and **even-handed treatment** as to all terms and conditions of use (e.g. rental charges, security costs, insurance). Neither the University, nor its representatives acting in an official capacity, may take or refuse any action or make any statement that aids or hinders a candidate. Outside entities seeking to engage in political discourse on campus should undergo the same process as any other speaker (for example, facility rental and other costs should be assessed at standard rates and they should receive the same review as events of comparable size, scope, and complexity). The campus may not provide better rates or terms as it could risk an accusation of unfair treatment towards one candidate. Costs borne by a candidate or a party for an event should be clearly labeled on marketing material. Due to the limited-time nature of political campaigns, campuses *may* choose to require advance payments for use of space for all campaigns even if it would allow prospective payment terms for other organizations. If a campus chooses to require advanced payment for campaigns, the requirement must be applied even-handedly to all campaign events.

Students and student groups should likewise be treated uniformly to any other type of student speech or event (for instance, if a sports club must reserve a room, but pays no fee, a political club should likewise have to reserve a room but pay no fee for that room; if a student concert requires payment for setup, security, catering, etc. then a student rally for a candidate should follow the same standards).

Students engaging in ordinary speech in their classrooms, residence halls, or other parts of campus that, were it non-political speech, would not result in discipline or a warning, should likewise not be disciplined or warned when that speech in the ordinary course is in favor or opposition to a political candidate, party, or issue even if other students, faculty, or staff do not agree with that political speech or find a particular candidate, party or stance on an issue to be offensive. If a campus or a student group invites a candidate to campus, a similar outreach should be made to other bona fide candidates for invitation to the same or a similar event or opportunity. If a candidate is invited in his or her position as an elected official (and consequently not charged the costs that a candidate would pay to come on campus), the campus should make clear that campaigning will not be allowed and that the individual is invited in their official capacity without comment about the merits of their candidacy.

When a campus allows use of its facilities for political speech, it should look to the SUNY System-wide Policy No. 5603, [Use of Facilities by Non-Commercial Organizations](#), available on the [SUNY System-wide Policies and Procedures website](#) and also attached. Campuses should also look to any local policies and procedures that contemplate facilities use or political activity on campuses. The Use of Facilities by Non-Commercial Organizations Policy, Section I. F. requires campuses to establish their own local policies and procedures.

Some relevant provisions of the SUNY Policy on the [Use of Facilities by Non-Commercial Organizations](#) applicable to the use of space for political speech are:

- a. **Use of Facilities for Political purposes generally:**

Section K.1. endorses the use of campus facilities for political purposes, stating that *“Every campus has a responsibility to develop its students as fully participating citizens; this includes the development of political literacy. The University has a definite responsibility for sponsoring some kind of non-partisan forum for the exchange of political ideas and for encouraging the formation of students’ own partisan organizations.”*

b. Student Partisan Political Organization Rights:

Section K.2 affirms that student partisan political organizations should not be treated different from “any other student organization” when it relates to “regulations governing recognition, membership, sponsorship and use of facilities. The campus, in permitting such groups to use its facilities, is responsible to see that there is equal opportunity for meeting of the various student groups – either for those groups’ own membership or for students generally;”

c. Event Purpose and Parameters:

Section K.3 reminds students the purpose of the event will “determine the type and extent of faculty or administrative control over the scheduling of such events” because the campus “is being represented to the public” in political events including the general public, and in turn, the campus must have assurance that “the activity is in conformity with its purposes.”

d. Non-partisan groups:

Section K.5 affirms that non-partisan groups may also be permitted to use campus facilities for discussion of political or civic issues, but that this should only happen through a “proper application to an administrative officer” and that approval of the application will be contingent upon “such conditions as the college council or administrative officer may require, and only if the desired facilities are available without interference with regular student or faculty activities.”

e. Partisan Political Organizations:

Section K.6 states that partisan political organizations may be permitted the use of University facilities under the same conditions required generally under the Use of Facilities by Non-Commercial Organizations Policy, but must also meet additional conditions, including:

- a. That the proposed meeting give promise of contributing to the educational purposes of the campus; and
- b. That the campus sees a reasonable possibility of making the facilities available for other viewpoints to be presented.

f. Use of Facilities to Incite or Procure Imminent Lawlessness:

Section K.7 states that campuses will not make University facilities “available for advocacy directed to inciting or producing imminent lawless action and which is likely to incite or produce such action.”

g. **Use of Campus Resources:**

Section C. relates to the use of campus support systems (e.g. telephone, email, photocopier, and printer). Pursuant to this provision, any use of campus support systems would have to be authorized by the campus President, or designee, and the group sponsoring the political speech must reimburse the campus.

III. Employee political activism:

With regard to individual SUNY employees' involvement in political campaigns, the following should be kept in mind: in keeping with State law and guidance from the Governor's Office of Employee Relations, State employees must not use their position to gain political favor, encourage or discourage political contribution or activity or interfere with an election or lawful political activity. State employees may not use State resources (including SUNY letterhead, computers, e-mail and telephones) for partisan political purposes, but have the right to make political contributions, and to be active in political campaigns during nonworking hours.

Additionally, individuals who recruit, interview or hire applicants for SUNY employment; make promotional, disciplinary or other employment decisions relating to a SUNY employee; or award or make decisions related to State contracts or grants, may not ask applicants, employees or current or prospective contractors or grantees, as the case may be, the individual's party affiliation, whether the individual has made campaign contributions to any party, elected official or candidate, or whether the individual voted for any elected official or candidate. No employee may be forced or pressured to contribute to a political campaign by another employee, nor threatened with any harm for making or withholding a contribution. Please see attached Governor's Office of General Counsel Memorandum to General Counsels, entitled *Updated Ethics Guidance on Political Activities*, dated August 25, 2020.

Individuals should not be admitted to SUNY property for the purpose of soliciting contributions from employees.

IV. More information:

You may find the guide [Political Campaign-Related Activities of and at Colleges and Universities](#), published by the American Council on Education and last updated in 2018, helpful as well, since it describes specific scenarios and their permissibility under Federal tax and election law, while noting that it does not treat First Amendment issues in depth. Further, this [ACE guidance on inviting Members of Congress and Senior Executive Branch Officials to campus](#) is also a useful resource.

More information is available from the [New York State Joint Commission on Public Ethics website](#).

If you have any questions, please contact your Campus Counsel, Associate Counsel Joseph Storch, or Associate Counsel Cara Palumbo Schrantz in the SUNY System Administration Office of General Counsel.

Enclosure

cc:

Chancellor Malatras
Chancellor's Cabinet
Presidents, Community Colleges
Office of General Counsel Attorneys
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Council of Chief Student Affairs Officers
State University Business Officers Association
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