

**KNOW YOUR RIGHTS  
TO ENGAGE IN POLITICAL ACTIVITIES  
By Robert J. Bezemek, PFT Legal Counsel**

Recently, the District issued guidelines concerning political activity by, among others, the faculty. PFT is concerned that some of these guidelines may be overly broad, or vague, or may dissuade or “chill” the exercise of freedom of speech by you and other faculty.

In order to assure that free speech is protected within Peralta, this statement sets forth PFT’s position concerning the free speech rights of the faculty.

It is important to recall that California’s public Community Colleges are intended by the legislature, and hence the People of the State, to maintain a climate of freedom of expression, which encourages the sharing and cultivation of a wide variety of differing viewpoints on college campuses. Freedom of expression supports the goals of community colleges in regard to inquiry, informed debate and the search for truth. Freedom of expression is necessary to provide students, employees and the public with a variety of ideas, encourage them to engage in critical thinking and help them understand conflicting opinions.

California law recognizes that employees, students and visitors have the right to engage in freedom of speech, including political advocacy, on college campuses.<sup>1</sup> Typical expressive activities include distributing literature on campus, addressing the Board of Trustees, holding meetings

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<sup>1</sup> Education Code section 7050 *et seq.*, California Constitution, Art. I, section 1

and rallies, engaging in speeches and debate, and soliciting contributions for political campaigns.

In general, the Federal and California Constitutional rights to freedom of expression and political activity that are enjoyed as a member of the larger community of Americans, are not restricted or limited simply because one is employed by a college. Employees are ordinarily free to speak and write publicly on any issue, as long as they do not indicate they are speaking on behalf of the District, or use District “funds, services, supplies or equipment” in these expressive activities. This later phrase is subject to considerable debate as to its meaning.

Because college campuses are public institutions, the law prohibits some uses of *district resources for political activities*. Education Code section 7054 expressly prohibits the use of community college district “funds, services, supplies, or equipment . . . for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.” This prohibition applies even where the Board initiated a ballot measure. While the terms “funds,” and “supplies” are relatively easy to understand, “services” and “equipment” are unclear, and there has been little judicial guidance, so figuring out what is prohibited can be challenging. Interpretations of the law are subject to disagreement and change. But it is generally agreed that restrictions must be narrowly construed to achieve a compelling governmental interest.

When you are unsure about whether a particular activity may be prohibited based on section 7054, you are encouraged to consult with the union or other knowledgeable sources for advice.

Here are some basic guidelines to bear in mind.

As employees you **MAY**:

- Use or rent college facilities, including classrooms, lecturer halls, and their messaging systems to hold meetings regarding partisan political matters, including have speakers on only one side of an issue, endorse candidates, make voting recommendations, and solicit campaign funds.<sup>1</sup>
- Distribute leaflets, handbills, political buttons and clothing, or hand out newsletters in traditional or “designated” “public forums” on campus (i.e. spaces generally available for such activities such as the grounds of the college, sidewalks, quadrangles, lawns, patios, cafeterias, plazas, and similar areas)
- Where the college has created a public forum out of faculty or staff boxes, distribute political advocacy through these boxes.<sup>2</sup> PFT believes that the Peralta boxes have been opened up, by historical practice and intent, for the distribution of political advocacy information from all sides in pending electoral matters.<sup>3</sup>
- Set up tables on campus, engage in public speaking, and hold meetings in campus facilities
- Circulate petitions, encourage voter registration, encourage voting
- Solicit support or contributions in public areas, areas generally available for conversation, and other public forums, as well as your office during non-work time.
- Participate in rallies or demonstrations
- Identify yourself as employees for identification purposes only in

providing endorsements

- Engage in campaign activity during your personal time or non-work time, including lunch hours and breaks, and vacation days
- Contribute personal funds to campaigns.
- Display buttons, clothing, insignias or symbols which convey your expressive speech
- Disseminate political views by email, blogs, electronic devices, listservs, internet or web-based communications, except as limited by section 7050 *et seq.*

In connection with some of these activities, District “time, place and manner” rules may apply and provide some limitations on when, where and how expression may occur, provided they are constitutionally valid, and are narrow in scope to implement a compelling College interest.

As employees **you generally MAY NOT do the following:**

- You may NOT send mass campaign emails from a District domain name. This restriction does not prohibit you from sending campaign emails from a non-District domain name, such as gmail.com. And, if candidates or supporters of candidates or ballot measures are permitted to send emails to you, or other employees or students at District domain name email accounts (i.e. @pccd.edu), which PFT believes is common, you may incidentally use your work address to forward emails you receive, or to send occasional non-mass emails to your colleagues and others.
- You may Not use District copy-machines or printers to produce

campaign literature.

- You may Not make public appearances regarding a campaign during work time. However, as faculty you have academic freedom rights to discuss controversial topics, including political matters, and to express your personal feelings about the issues, so long as they are germane to the goals of a college education, and you do not make agreement or disagreement with a particular point of view a criteria for assessing student performance, or go so far as to be considered to have engaged in “indoctrination” of your students.
- Use District funds or resources to make a political contribution or pay for campaign literature.
- Transfer District funds or resources to a third party for that party’s campaign activities.

### **BEST PRACTICES:**

Regardless of whether the law permits or allows the following, it is a “best practice” to:

- Use a personal phone or email account when urging the support or opposition to a ballot measure or candidate.
- If a third party contacts you at work to discuss support or opposition to a candidate or ballot measure, arrange to have the conversation during non-work time, and preferably on your personal electronic devices

1. In *Desert Community College District*, PERB Dec. No. 1921, 31 PERC 137 (2007) the PERB held that a union or employees are entitled to hold meetings on campus in classroom facilities, to determine endorsements for school board election. PERB expressly rejected the argument that the limitations of Education Code section 7054 apply to the premises of a public community

college's property. In fact, political activity on public property dates from colonial times. In California, in the Legislature adopted the Civic Center Act decades ago (Education Code section 38130, *et seq.*) allowing public use of school and college district premises for partisan political meetings.

2. This is the holding of the Supreme Court in *San Leandro Teachers Ass'n v. Governing Bd. of San Leandro Unified School Dist.* (2009) 46 Cal.4th 822, 835, which expressly held that faculty boxes could be opened to political activity.

3. Whether a designated public forum exists is a question of fact which involves the forum's past uses, the government's consistent policy and practice, and the forum's compatibility with expressive activity. *Stewart v. District of Columbia*, 863 F. 2d 1013, 1016 - 1017 (CA DC 1988) [permitting posting of religious banner when stadium allowed signs for Reagan/Bush campaign].