

Political Speech, Free Expression, and the First Amendment

Leslie K. Cooper, General Counsel

Samantha Blevins, Associate General Counsel, Sr.

Melissa Flores, Associate General Counsel, Sr.

Office of the General Counsel

Maricopa County Community College District



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Political Speech on and off Campus

- Every election year prompts the desire to engage in political activity.
- MCCCDC recognizes and welcomes the educational benefits of exposing students to political debate and information, including partisan political speech, within the limits of Arizona state law.



What the law says:

- ARS §15-1408:

A person acting on behalf of a community college district, or a person who aids another person acting on behalf of a community college district, is **prohibited** from using or spending community college district resources for the purpose of influencing the outcome of an election.

- ***What does that mean?***



What does “college resources” mean?

- Monies (even small or nominal amounts)
- Accounts
- Credit
- Facilities and district vehicles
- Postage
- Telecommunications
- Computer hardware and software, including district webpages and email
- Personnel (paid time)
- Equipment and materials
- Buildings
- Or any other **thing of value** of the community college district



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What does "Influencing the outcome of elections" mean?

It means using district resources in any manner that is not impartial or neutral either to support or oppose:

- a candidate for nomination or election to public office;
- the recall of a public officer; or
- a ballot measure, question or proposition, including any bond, budget or override election; or
- To circulate a petition for the recall of a public officer or for a ballot measure, question or proposition.



Scenario 1

1. A candidate reaches out to a college program offering a partnership between their campaign and the political science program whereby students are granted credit hours for interning with the campaign. **Is this a permissible activity?**



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Answers to Scenario 1

Scenario 1: This is likely permissible as long as the college does not use its resources to attempt to influence the outcome of an election. Allowing a student to gain college credit for a candidate's political campaign is not using college resources (credit) in an attempt to influence the outcome of an election (helping the candidate win), but the internship must be part of a larger body of internships offered and there should be no agreement between the college and the candidate (or candidates political party) to only provide internships for them.



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Scenario 2

Your college wishes to assist in a “get out the vote” campaign in collaboration with the Democratic party. As part of the campaign, the college will add its logo and president’s signature to a letter about candidates endorsed by the party. **Is this permissible?**



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Answers to Scenario 2

Scenario 2: While participating in a “get out the vote” campaign is a permissible action, having it be connected to a specific political party is impermissible.



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Scenario 3

Scenario 3: A student club has invited a local candidate to come speak to the club. This candidate intends to speak about her political platform and encourage the group to vote for her. **Is this permissible?**



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Answer to Scenario 3

Scenario 3: Arizona statutes apply only to employees (and those acting on behalf of employees), so as long as this is truly a student-initiated event, it is permissible.



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Scenario 4

Scenario 4: An employee wants to distribute informational pamphlets in the workplace regarding a proposed bond election for the District. **Is this permissible?**



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Answer to Scenario 4

Scenario 4: As long as the pamphlets present factual information in a neutral manner, this is permissible. May college resources be used? If the employee receives permission to utilize college resources, college resources may be used.



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Scenario 5

Scenario 5: A college wishes to host a nonpartisan, public candidate debate to educate voters about issues or candidates; and invites all candidates to participate. Only one candidate agrees to come. **May this debate go on as scheduled?**



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Answer to Scenario 5

Scenario 5: Since it is prohibited to promote one candidate over the other and only one candidate agreed to come, the College should discuss with the Office of General Counsel whether this event should be cancelled.



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Scenario 6

Scenario 6: An employee gets an email on her MCCC CD email from a candidate for election asking the employee to support their election.

- Does the receipt of the email violate the statute?
- Can the employee forward the email to her closest friends?



Answer to Scenario 6

Scenario 6: The receipt of the email does not violate the statute, but forwarding the email or printing it could constitute the use of district resources, if it was done to influence an election.



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On their own time, employees may:

- Join a political party
- Attend and participate in political meetings
- Sign candidate nomination, recall, initiative, and referendum petitions
- Vote in any municipal, special district, school, county, state or federal election
- Volunteer work for a candidate or ballot proposition issue
- Make contributions to and solicit contributions on behalf of candidates, political parties or campaign committees
- Express opinions or display badges, buttons, and bumper stickers
- Any other lawful political activities, as long as the employees do not represent that they are acting on behalf of their College or the Maricopa County Community College District



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While at work, can an employee:

- Wear red to support k-12 teacher?
- Wear Red4Ed-branded clothing to support k-12 teachers?



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Answers:

- An employee can wear red or Red4Ed to support k-12 teachers as it is not influencing an election.
- However, an employee cannot wear a “No on Prop 305” button or clothing as that would be an attempt to influence an election.



While at work, can an employee:

- Have a “No on 305” or “Vote for Ducey” bumper sticker on their car?



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While at work, can an employee:

- Yes, an employee can have a “No on 305” or “Vote for Ducey” bumper sticker on their car, provided it is not within 75 feet of a polling location on election day.



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Can I miss work in order to vote?

Voters who do not have three consecutive hours before or after work while the polls are open may take paid time off work at the beginning or end of their shift so that they have three consecutive hours to vote. However, the employee should request this time off from their employer the day before the election and the employer may specify the hours during which the employee may absent himself.

A.R.S. § 16-402.



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Free Expression—HB 2563

- HB 2563 requires community colleges adopt policies in line with the statute and to form free expression committees that will report (annually) to the Governor and Legislature regarding free expression incidents.
 - Policy must highlight that public community colleges promote the dissemination of knowledge and to ensure the fullest degree of intellectual freedom and free expression.
 - community college cannot shield individuals from speech protected by the First Amendment, including ideas and opinions that may be unwelcome, disagreeable or deeply offensive.
 - Students and faculty can discuss any problem as allowed by the First Amendment (within the limits of reasonable viewpoint and content-neutral restrictions on time, place and manner of expression)
 - Reservations are **not required** in order to use Public Areas for Public Expression activities. Reservation may be made for large activities.



More from HB 2563

- Any speech restrictions must be clear, published and provide alternative means of expression.
- Students and faculty may assemble and engage in spontaneous expressive activities that do not materially and substantially disrupt the function of the college/district.
- The college/district cannot charge a fee for added security.
- The policy must also outline the range of disciplinary actions for a student who engages in individual conduct that materially and substantially infringes on the rights of others.

Free Speech and the First Amendment

1. The First Amendment does not require the government to provide a platform to anyone, but it does prohibit the government from discriminating against speech on the basis of the speaker's viewpoint.
2. Speech that is not protected by the First Amendment, includes the following:
 - Expressive activities that violate state or federal law or court-identified defamation.
 - Harassment—harassment must be so severe and pervasive that it unreasonably interferes with an individual's access to educational opportunities or benefits provided by the college.
 - A true threat—which means communication of serious expression of intent to commit an act of unlawful violence against a person/group of persons
 - An unjustifiable invasion of privacy or confidentiality that does not involve a matter of public concern
 - An action that unlawfully disrupts the function of the college.



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Free speech v. dangerous conduct

Speech does not merit constitutional protection when it targets a particular individual for harm, such as a true threat of physical violence. And the college/district must take action to remedy behavior that interferes with a particular student's ability to exercise their right to participate fully in the life of the college or district, such as targeted harassment.



The First Amendment does not protect the use of nonverbal symbols **to directly threaten an individual, such as by hanging a noose over their dorm room or office door.**

Employees do not have the right to speak for the organization or to speak freely when you speak as an employee of the organization.



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ANY
QUESTIONS
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Phoenix | Rio Salado | Scottsdale | South Mountain



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