

From: [DeRionne Pollard, Montgomery College President](#)
To: [DeRionne Pollard, Montgomery College President](#)
Subject: Political Activity and Events at the College
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MONTGOMERY COLLEGE
Office of the President

February 28, 2018

MEMORANDUM

To: Montgomery College Colleagues
From: Dr. DeRionne P. Pollard, President
Subject: Political Activity and Events at the College

With several local and statewide elections on the horizon, election activity will undoubtedly be increasing. During this time, it is important to remind ourselves of our rights and responsibilities.

As members of the Maryland community, each individual employee and student enjoys freedom of speech and has a right to express himself or herself with regard to candidates and issues. We are fortunate to live in a country where these rights are cherished and protected.

When exercising our expression, individuals also have a responsibility not to imply that Montgomery College supports or opposes any candidate or issue. In addition, public resources (employee time, computers, printed material, and rooms, among other resources) cannot be used by an individual to advance a candidate or issue with the College's explicit or implied support. College-sponsored events should generally be structured so that all candidates or representatives on all sides of an issue have an opportunity to be heard. Please note that our student organizations are not bound by the same obligations and can organize information events according to their interests.

The classroom is and always has been a special place for the exploration of ideas, which include political issues. The academic freedom accorded to faculty provides for freedom of discussion and research; College Policy 58003 expresses our commitment to this value. As a faculty member myself, I value academic freedom dearly, and will always protect its tenets on behalf of my faculty colleagues.

Attached please find a more detailed memorandum from the Office of General Counsel summarizing existing College policies applicable to politically-related activities of College employees and including some specific, common scenarios developed by the American Council on Education in its memorandum, "Political Campaign-Related Activities of and at Colleges and Universities."

Your attention to these matters is appreciated. Questions regarding any legal matter related to political activity should be directed to the College's General Counsel, Tim Dietz, in the Office of General Counsel. Senior Vice President for Academic Affairs Sanjay Rai can address

questions regarding academic freedom.

I thank you for your civic engagement and your help in maintaining our institutional role as a steward of public resources that provides a fair environment for discussion, discourse, and debate.

MONTGOMERY COLLEGE
Office of the General Counsel

February 28, 2018

MEMORANDUM

To: Dr. DeRionne P. Pollard, President

From: Timothy Dietz, General Counsel

Subject: Political Activity and Events at the College

With campaign activities by candidates for elected offices underway, it is appropriate to remind the College community, consistent with communications of years past, about rules that apply to political activities of employees of the College. These rules reflect that the College is a publicly funded, tax exempt institution, subject to certain federal and state laws and regulations and decisions of the Internal Revenue Service prohibiting use of public facilities and use of public position for private purposes, and personal-bias political endorsements and support unless clearly made apart from the College. However, these rules are careful to preserve individual rights of expression so long as these rights are not exercised in a context in which the individual is perceived to represent the College or is utilizing the College's public facilities or assets.

College policies and procedures address many of these issues. *See*, for instance, Policy 11002 Board of Trustees -- Political Activity; Policy and Procedure 31003 Conflict of Interest; Policy and Procedure 31004 Political Activity; Policy and Procedure 31101 Employee Privileges; Policy 31104 Political Activity -- President; Designated College Officials; and Policy and Procedure 75004 Freedom of Expression. A distilled summary of the applicable rules with respect to employee conduct and political activity follows.

1. All College employees have the right to free political expression and to participate (or not), as individuals, in politics or political campaigns.¹ *Policy 31004* (emphasis added).
2. However, College employees engaged in political activity must make it clear that such participation is an expression of their own individual feelings and do not represent the College's position as an institution; further, these individual activities may not take place during times they are expected to be performing College responsibilities.²

¹ See, however, Policy 31104 that limits the political activities of the president as an individual because of the inherent difficulty in separating individual versus representative of the College roles.

² See also Policy 75004 that recognizes the employee's right of freedom of speech, freedom of expression, and the right to peaceful assembly, but recognizes certain reasonable restrictions, and states that such engagement in expression and advocacy shall not be done in the name of the College or any of its organizations unless there has been specific authorization to do so.

Policy 31004.

3. Further, employees shall not threaten or coerce, directly or indirectly, any other employee with respect to engaging or not engaging in political activities, including contribution, making statements, or rendering service to, or with respect to, a candidate, party or political question. *Procedure 31004.*
4. The Board of Trustees has the sole authority to determine authorized political actions on behalf of the College as an institution, and will act directly or through the President to engage in appropriate political activities and take political positions on behalf of the institution in order to support the best interests of the College.³ These actions are limited by many requirements beyond the scope of this memorandum, but must address political issues that affect the College as an institution and the ability of the College to perform its mission in the community while meeting all other applicable legal limitations given the public status of the institution. *See, e.g., Policy 11002.*
5. Employees may utilize facilities and other property of the College only for purposes related to the authorized business of the College.⁴ Use of College property or College funded resources in support and/or furtherance of the personal activities of any person is considered misuse of public funds and is prohibited. *Procedure 31003.*

A few Do's and Don'ts borrowed from the American Council on Education (ACE) in its guidelines for political activities for public, not-for-profit colleges and universities are helpful in providing additional guidance. (The full ACE memorandum, "Political Campaign-Related Activities of and at Colleges and Universities," is available [here](#)).

Do's are permitted political activities of a college as an institution that must be authorized by the College and include:

- 1. Conducting training programs** designed to increase public understanding of the electoral process or to encourage citizens to become involved in the process, provided that such training is nonpartisan in the recruitment of instructors, the selection of students, and the curriculum. The program should be widely publicized, although groups under-represented in the electoral process may be targeted.

³ Collateral political actions by other employees such as communicated support for a particular political position, in a manner that reflects or implies College institutional support (as opposed to an individual's support) for a particular position, is prohibited unless specifically authorized by the Board of Trustees or the president acting on the board's behalf. Action by an identified sub-unit of the College, such as a department, a functional unit, or an employee committee, implies action by the College as an institution and is subject to the same limitations with respect to political engagements that imply institutional actions or positions.

⁴ The authorized business includes "rental" of certain facilities through the Office of Facilities by outside groups, in accordance with the Policies and Procedures Manual; it also includes use for certain educational purposes. Examples of educational purposes are contained in the "Do's and Don'ts" that follow, and include use by bona fide student organizations.

2. **Participating in non-partisan voter registration activities**, even when aimed at groups (such as 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.
3. **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. An explicit statement should be made as part of the introduction of the speaker and in communications concerning the speaker's attendance that the institution does not support or oppose the candidate.
4. **Conducting institutionsponsored 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.
5. **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. This is a complex topic that warrants fuller analysis and advice. Special caution is indicated with respect to heightened, different, or targeted lobbying and public policy education activities conducted during a campaign season.
6. **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 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.
7. **Providing financial and administrative support to a student newspaper** even though the newspaper publishes editorial opinions on political and legislative matters.
8. **Allowing institutionally recognized or sanctioned student groups to use institutional facilities** for partisan political purposes, 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. 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 memorandum 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.

9. 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 memorandum; provided further that they are not acting at the direction of an institutional official; and provided further that if the institution is identified, even implicitly, it should be communicated that the opinions that are expressed are not the opinions of the college or university.

Don'ts are prohibited or highly questionable activities of a college or of an individual if actions are attributed to the institution, and include:

- 1. Conducting "voter education" activities,** such as those involving questionnaires, if confined to a narrow range of issues or skewed in favor of certain candidates, sides of a political question 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."
- 2. Endorsing, expressly or implicitly, a candidate for public office.** Examples of express endorsement include the placing of signs on university property that show support for a particular candidate, and contributing to political campaign funds. Examples of implied endorsement are public statements at a college or 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 the prohibitions discussed in this memorandum, such a prohibition applies even if the candidate is an administrator or faculty member of the institution.
- 3. Coordinating institutional fundraising** with fundraising of a candidate for public office, political party, political action committee (PAC), or the like.
- 4. 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.
- 5. Sponsoring events** to advance the candidacy of particular candidates.

6. **Using message boards and forums** affiliated with the institution's website to support particular candidates, if the statements of the provider of the information can be reasonably attributed to the institution. 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.

7. **Public statements, oral or written, by institutional officials** (such as the president and administrators) 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.

8. **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 regular meeting of the Board of Trustees.

As indicated in the ACE guidelines, this list is not exhaustive. Considerable judgment in the application of these principles is likely to be required. When activities that are separately identified in this memorandum are combined, an institution or individual must analyze the interaction between the activities, as the interaction may affect whether the institution or individual is engaged in improper political activities.