

FAQ on Candidates and Ballot Measures

Because charter schools typically receive funding from both public and private sources, and may be operated by nonprofit organizations, they are often subject to certain prohibitions and limitations relating to the use of their funds and resources for political advocacy. Charter schools, for example, may not use *public funds or resources* for ballot measure or candidate campaigning. (See California Gov't. Code sections 8314 and 59464; *Stanson v. Mott* (1976) 17 Cal. 3d 206; see also Ed. Code § 7050, *et seq.*) Charter schools operated by nonprofits must also be mindful of certain laws that govern and limit the types and amounts of their political activity. (See [Charter Schools and Advocacy Activities](#) for more information regarding this topic)

These laws and regulations, however, certainly do not foreclose *all* politically-related activity by charter schools. Nor do charter school officials and employees surrender their constitutional rights simply because their school accepts public funds or resources or because they work for a nonprofit entity. To the contrary, there are many ways that charter schools and their employees—all the while being mindful to steer clear of certain prohibited activity—may lawfully participate in the political process. CCSA has therefore developed this guide as a companion document to the [Charter Schools and Advocacy Activities](#), in an effort to highlight and address some of the most frequently asked questions in this area.

Please note that this guide is not intended to be exhaustive or definitive, nor is it intended to constitute legal advice.

Personal Political Activity by Charter School Directors and Employees

Q1: Is it permissible for a charter school director or employee to work on a political campaign if they do so only on their own time and do not use any school resources?

A1: Yes. Charter school directors and employees do not lose their individual rights of political expression simply because their school receives public funding and/or is operated by a nonprofit entity. Individuals may, for example:

- Work on political campaigns *during their personal time*, including lunch hours, coffee breaks, after-hours, vacations, etc., and without using any school resources.
- Make public appearances advocating the election, passage or defeat of a ballot measure or a candidate *during their personal time* and without using any school resources. It is good practice to inform the audience that while they may know you from your school position, you are there in your personal capacity.
- Wear a campaign button on school premises (if otherwise permitted by district and/or school policies).
- Make a campaign contribution using their *personal funds* and/or attend a campaign fundraiser *during their personal time*.

- During their *personal time and without using any school resources* (e.g. copy machines, telephones, computers, vehicles, etc.), take an active role in a political campaign.

It is essential that the above-described campaign activity be conducted on the employee's own time and with his/her own resources. We therefore recommend that employees track their time carefully and document their use of *private* equipment and resources so they are able to demonstrate that no public funds were used. We also recommend that any school official or employee who makes a public appearance advocating in favor of or against a candidate or ballot measure during their personal time make it well known that they are appearing as a private citizen, not as an official or employee of the school. In addition, school officials and employees must be mindful not to use school resources (e.g. copy machines, telephones, computers, vehicles, etc.), when engaging in these personal political activities.

Non-Partisan, Impartial Activities by Charter Schools and their Directors and Employees

Q2: May a charter school use its resources, including its parent contact lists, for the purpose of non-partisan voter registration drives?

A2: Yes, as long as the school acts in compliance with any and all applicable privacy policies, including education related privacy requirements, which may prevent the use of certain information in school contact lists. (See [Family Educational Rights and Privacy Act](#).) The school must also at all times adhere to state and federal laws regulating voter registration activities. A voter registration guide, as well as other helpful information, is available from the [California Secretary of State](#). Charter schools interested in these activities should make sure they are familiar with the various legal requirements to ensure compliance with the law.

Q3: Can a charter school that is engaged in a voter registration drive ask voters if they wish to be added to the school's contact list or other mailing list?

A3: Yes. Although the information on a *voter registration card* is confidential and protected by state law, nothing prevents an organization from separately asking and obtaining written permission from individuals to be placed on the organization's mailing or other contact list. Please note that it is unlawful for a person or an organization in charge of a voter registration drive to disclose a driver's license number, identification card number and/or social security number *from a voter registration card* to someone other than an elections official or the person/organization in charge of the voter registration drive. (See, e.g., Elec. Code §§ 2138.5, 2194 & 18111.) The school should therefore not retain this information, and retain only the individual's name, address, phone number and email after receiving separate, written permission from that individual to do so. In addition, California law provides that voter contact information (name, address, telephone, email) obtained *from election officials* for a fee may only be used for election, scholarly, journalistic, political, or governmental purposes. It is expressly prohibited to use this information for commercial purposes. (See Elec. Code § 2194.) Care should therefore be taken to ensure that clear, written consent from each individual is obtained before their information is used.

Q4: May a charter school use its resources, including its parent/teacher contact lists, for the purpose of non-partisan and impartial efforts to educate its community and/or the public about education-related election issues?

A4: Yes, as long as the information provided is wholly impartial and in no way advocates in favor of or against any candidate for elective office or any state or local ballot measure. Charter schools operated by nonprofit organizations should also check to confirm that this activity is not inconsistent with their articles of incorporation and bylaws.

Q5: Can a charter school include in its parent newsletter a “report card” on local elected officials, stating how they voted on, or whether they support, particular issues that may be of interest to the charter school community?

A5: Yes, as long as the newsletter provides only *impartial and neutral* information and does not advocate in favor of or against a candidate for elective office. Careful attention must be paid to communications that refer to a “clearly identified” candidate or state or local ballot measure and are made in proximity to elections. These communications, which are sometimes referred to as “electioneering communications,” do not directly advocate in favor of or against a candidate or measure, and yet may still trigger certain reports and/or may even be prohibited because they refer to candidates or measures close to an election. Examples of jurisdictions with these reporting requirements include the State of California (with respect to candidates for state elective office) and the City of San Francisco; please note that there may be similar restrictions in your jurisdiction. Finally, as discussed in more detail below, it is important for charter schools to avoid any communication that *advocates* in favor of or against a candidate or measure, as this type of “express advocacy” may violate the prohibition against the use of public funds for political purposes and, with respect to *candidate* advocacy, may jeopardize the charter school’s 501(c)(3) nonprofit status.

Q6: May a charter school, operated by a 501(c)(3) nonprofit, but funded in whole or in part with public money, participate in *non-partisan, impartial* activities involving state or local ballot measures?

A6: Yes. Charter schools, like public schools, may provide impartial informational material on ballot measures to the public. The information disseminated must be truly “informational” and not “promotional” in any way, as communications paid for in part or in whole with public funds are prohibited if they advocate for the passage or defeat of a state or local ballot measure, including school bond measures. Some specific examples of permissible activity by charter schools, their directors, employees and other staff include:

- Provide facts about the measure (e.g., a newsletter article that provides parents with a fair presentation of both sides of the measure to aid them in making an informed decision about the measure);
- Study state and local ballot measures and report the data, as long as the study and reporting remains impartial and information at all times;
- Make their public school site available as a public forum for a debate, as long as it is made equally available to all sides of the ballot measure campaign; and
- Take an official position on the ballot measure at a public meeting where *both sides* have equal opportunity to present their views. The school’s board may then freely respond to inquiries from members of the public about the school’s position on the ballot measure (as long as, *during school hours or using school resources*, the school officials and employees do not in any way urge a particular vote on the measure).

Q7: Can a charter school provide state or local ballot measure campaigns with access to its public school facilities pursuant to a neutral policy (e.g., provide equal access to a school meeting or assembly room to both sides on a campaign)?

A7: The California Supreme Court has indicated in a unanimous opinion that this is permissible, as long as the forum is “made available to all sides on an equitable basis.” (See *San Leandro Teachers Assn. v. Gov. Bd. of the San Leandro Unified School Dist.* (2009) 46 Cal.4th 822.) In the *San Leandro Teachers* case, the Court upheld a particular school district policy that prohibited teachers and others from using school resources—including internal school mailboxes—to distribute political endorsements. The Court, however, expressly stated that its holding was narrow, and noted that school boards are not prohibited from “opening up mailboxes to political endorsement literature, as long as this is done ‘on an equitable basis.’” (*Id.* at 837 [quoting Educ. Code § 7058, which provides, “Nothing in this article shall prohibit the use of a forum under the control of the governing board of a school district or community college district if the forum is made available to *all sides on an equitable basis*” (emphasis added)].) Moreover, as discussed below, a charter school’s private support organization may also be permitted to use its independent and private facilities/resources—which are wholly separate from any public facilities or resources—for this purpose. (See 88 Ops. Cal. Atty. Gen 46 (2005).)

Q8: May a charter school permit third party organizations (i.e., groups unaffiliated with the school) to use public school facilities such as meeting and assembly rooms where the *third party organizations* intend to advocate in favor of or against candidates for elective office?

A8: Yes, as long as the school makes the facilities available to *all* organizations *regardless of political viewpoint and on an equitable basis.* (See Q7, above.) To ensure compliance with applicable laws, including but not limited to the prohibition against candidate advocacy by 501(c)(3) organizations, charter schools should adopt a policy clarifying that access to its facilities is provided to all sides on an equal basis *at their fair market value* (i.e., a good faith estimate of what it would cost to rent a similar facility) and that any views expressed by the unaffiliated groups are their own and should not be construed as support for the group or its positions. Additionally, schools occupying district facilities may need to follow additional policies and procedures referenced in their use agreements regarding third party access, including compliance with the Civic Center Act.

Ballot Measure Activity by Charter Schools Using Segregated, Private Funds and Resources

Q9: May a charter school operated by a 501(c)(3) organization use its private funds to support or oppose a state or local ballot measure if those private funds are wholly segregated from public funds and can be fully accounted for as private?

A9: Yes. The California Attorney General has opined that “auxiliary organizations” that support public school districts (including non-profit fundraising foundations/organizations) may act to promote or oppose ballot measures *as long as they are truly independent and do not use any public funds to do so.* (88 Ops. Cal. Atty. Gen 46 (2005).) These independent, private support organizations must therefore segregate and retain proper accounting records for their private funds so they can demonstrate that no public funds or resources were used for any activities that advocate for the passage or defeat of a state or local ballot measure. Charter school officials and employees who may be associated with the private support organization must limit their activities to their *own personal time* or time compensated with segregated with private funds and not be involved in any ballot measure advocacy during their compensated time as public officials/employees. In addition, 501(c)(3) organizations considering using their funds to advocate for the passage or defeat of a ballot measure should be familiar with certain tax-related limitations, as well as state and local laws requiring the timely filing of campaign finance reports,

for such activities. (See [Charter Schools and Advocacy Activities](#).) Charter schools should also be familiar with the terms of any grants they receive, which may include lobbying and political restrictions. Also, note that 501(c)(3) organizations are prohibited from engaging in activities related to the support or opposition of *candidates* for elective office. (See Q11, below.)

Q10: May a charter school operated by a 501(c)(3) organization use its *private* charter school campus to hold an event relating to the support or opposition to a state or local ballot measure?

A10: Yes. As long as the charter school campus property is 100% *privately* owned (i.e., no part of the campus is publicly owned or operated) and no public funds or resources are used for the event, the school may use its *private* facilities for ballot measure related activities. Again, please note that if the school is operated by a 501(c)(3) organization, *candidate* related activities are not permitted. Also, with respect to permissible ballot measure-related spending, campaign finance filings may be required and certain tax-related limitations will apply. (See [Charter Schools and Advocacy Activities](#).)

Prohibited Political Activity by Charter Schools and their Directors and Employees (Using School Resources and/or on School Time)

Q11: May a charter school operated by a 501(c)(3) contribute directly to, or otherwise use its funds, resources or facilities to support or oppose a candidate for elective office?

A11: No. Federal tax law prohibits 501(c)(3) tax-exempt organization from engaging in or funding activities that support or oppose any candidate for elective public office. In addition, as discussed above, California law prohibits the use of public funds or resources to advocate for or against a candidate or ballot measure. For more information, please refer to the (See [Charter Schools and Advocacy Activities](#)).

Q12: May a charter school operated by a 501(c)(3) but funded in whole or in part with public money, contribute directly to or otherwise use its *public* resources to support or oppose a state or local ballot measure?

A12: No. Although federal tax laws prohibiting 501(c)(3) organizations from engaging in candidate-related advocacy do not apply to state or local ballot measures (which are considered a form of grassroots lobbying), public funds or resources may not be used to support or oppose ballot measures (or candidates for elective office). (See Q1 – Q10, above for permissible activities). This means that no public school facilities or equipment (phones, computers, email accounts, vehicles, copy machines or any other equipment) may be used to plan or promote ballot measure or candidate campaign activities, including fundraising. Examples of prohibited activity include:

- The *school's* distribution of campaign literature through the school's internal mail system;
- The *school's* posting of campaign literature on school bulletin boards or on the school's web page;
- School officials or employees making public appearances regarding the ballot measure during compensated work hours (versus personal time, breaks or unpaid leave) *unless* their comments are limited to providing "balanced" information regarding the measure (rather than advocating that people vote for the measure);

- School officials or employees making telephone calls regarding a ballot measure or candidate campaign during compensated work hours;
- School officials or employees walking precincts, drafting campaign ads, or performing other campaign-related tasks during compensated work hours;
- Adding a link from the school's website to a campaign website;
- Allowing only one side of a ballot measure campaign to use public school offices or conference rooms for campaign meetings;
- School officials or employees sending or receiving campaign-related e-mails on public school computers (these individuals should set up and use separate "Gmail," "Hotmail," "Yahoo," etc. e-mail accounts); and
- Using school copy machines, telephones, fax machines, computers, etc. for campaign purposes.

Quick Reference Matrix – Advocacy by Charter Schools*

* This chart is not a substitute for the more detailed information referenced herein and does not constitute legal advice.

	Ballot Measure Support or Opposition	Candidate Support or Opposition	<i>Impartial, Non-partisan</i> Activities
<i>Personal</i> Political Activity by Charter School Directors and Employees:	Yes , as long as on own time and not using school resources. (See Q1.)	Yes , as long as on own time and not using school resources. (See Q1.)	Yes.
Use of School's <i>Public</i> Funds for:	No. (See Q12.)	No. (See Q12.)	Yes , as long as the information provided is wholly impartial and in no way advocates in favor of or against any candidate for elective office or any state or local ballot measure. (See Q1 thru Q6.)
Use of 501(c)(3) Private Funds for:	Yes , as long as the funds are properly segregated, tax-related limitations are followed, and funds are timely reported as required by campaign finance laws. (See Q9.)	No. (See Q11.)	Yes . (See Q1 thru Q6.)
School's <i>Own</i> Use of <i>Public</i> Campus/Facilities for:	No. (See Q12.)	No. (See Q12.)	Yes . (See Q1 thru Q6.)

	Ballot Measure Support or Opposition	Candidate Support or Opposition	Impartial, Non-partisan Activities
School's <i>Own Use</i> of its 501(c)(3) <i>Private</i> Campus/Facilities for:	Yes , as long as the charter school property is <i>privately</i> owned (i.e., no part of the campus is publicly owned or operated), no public funds or resources are used, and tax-related and campaign finance requirements are followed. (See Q10.)	No. (See Q11.)	Yes . (See Q1 thru Q6.)
Third Party Access to <i>Public</i> Charter School Facilities for:	Yes , as long as the school makes the facilities available to all organizations <i>regardless of political viewpoint and on an equitable basis</i> . (See Q7.)	Yes , as long as the school makes the facilities available to all organizations <i>regardless of political viewpoint and on an equitable basis</i> . (See Q8.)	Yes , as long as the school makes the facilities available to all organizations <i>regardless of political viewpoint and on an equitable basis</i> . (See Q7.)
Third Party Access to 501(c)(3) <i>Private</i> Charter School Facilities for:	Yes , as long as the charter school property is <i>privately</i> owned (i.e., no part is publicly owned or operated), no public funds or resources are used, and tax-related and campaign finance requirements are followed. (See Q9 and Q10.)	No. (See Q10 and Q11.)	Yes , as long as the school makes the facilities available to all organizations <i>regardless of political viewpoint and on an equitable basis</i> .