



February 2011

# FactSheet

## Legal guidelines: Use of public resources for ballot measures and candidates

The following document outlines the legal issues surrounding the use of district resources when advocating on behalf of a ballot measure or candidate. For information regarding the use of district resources for lobbying activities, see <http://www.csba.org/LegislationAndLegal/Legal/ELAUpdates.aspx>

For the purposes of this document “public resources” includes money, but also includes items paid for with public funds like staff time, materials, equipment, facilities and the use of district communications channels, such as the district’s website, e-mail system and newsletter. The legal requirements in this document are applicable to any item on the ballot; thus any reference to a ballot measure is also applicable to a candidate. In addition, any reference to a school district is also applicable to county offices of education.

District legal counsel should be consulted if it is unclear whether a particular course of action is authorized by law.

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### **In general, what are the legal guidelines regarding the use of public resources for ballot measures?**

In 2009, the California Supreme Court expanded existing law and created a new framework for analyzing the use of public resources for election purposes. The court created three categories of activities: (1) permissible informational activities, (2) impermissible campaign activities and (3) unclear activities which require further analysis based on the “style, tenor and timing” of the activity.

- Permissible informational activities include taking a position on a ballot measure in an open and public meeting where all sides can present their views, preparing staff reports and analysis to help determine the impact of the measure and the district’s position, providing objective analysis to the public about the impact of a ballot measure and accepting invitations to present the district’s view before community/organizations.

- Impermissible campaign activities include producing or distributing of literature that “expressly advocates” or urges a voter to act in a certain way, such as developing campaign materials (i.e., bumper stickers or posters), buying television and radio spots or distributing campaign literature prepared by others.
- Unclear activities don’t fall into either group and must be analyzed looking at the “style, tenor and timing” of the activity. Examples of things a court might look for include how the material was distributed (i.e., special edition or regular newsletter), the language used in the material (i.e., inflammatory rhetoric or informational in tone) and whether the distribution was consistent with regular district practice (i.e., regular circulation or special mailing). Also key is whether the material advocates or urges a particular position or asks a voter to vote a certain way. ((*Vargas v. City of Salinas*) (2009) 46 Cal. 4th 1, (*Stanson v. Mott*) (1976) 17 Cal.3d 206, Education Code § 7054, 35172, County of Sacramento, FPPC Enforcement Decision SI-93/345 (1996))

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### **Are there additional requirements under the Political Reform Act?**

Yes. Different from the prohibitions regarding the use of public funds in statute and case law, the Fair Political Practices Commission regulates campaign expenditures and imposes reporting/transparency requirements regarding the use of any (public or nonpublic) funds for campaigns. For these reasons, it is best that the district consult with legal counsel regarding ballot measure activities if any question arises regarding the legality of any activity.

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## Resolutions

### **May a board adopt a resolution opposing or supporting a ballot measure?**

Yes, a board may adopt a resolution opposing or supporting a legislative proposal at a regularly scheduled, open meeting at which the public is permitted to express its views. ((*Vargas v. City of Salinas*) (2009) 46 Cal. 4th 1; (*Choice-in-Education League v. Los Angeles Unified School District*) (1993) 17 Cal.App.4th 415)

### **Are there restrictions on the language that can be used in a board's resolution?**

Yes. According to the *Vargas* decision, when adopting resolutions, the language should be “simple, measured, and informative,” not use inflammatory language or rhetoric, and not “urge” members of the public to take any action in support or opposition to the measure. (*Vargas v. City of Salinas*) (2009) 46 Cal. 4th 1)

### **How can the district communicate the adoption of the resolution?**

A district may publicize its adoption of a resolution consistent with established practice and regularly-incurred expenditures for reporting board action. Any publicity must be informational in nature and not undertaken for the purpose of influencing constituents or voters.

Beyond regularly-incurred expenses, a district may not otherwise use public funds to publicize its adoption of a resolution. According to the Legislative Counsel, this means that public funds may not be used to hold a press conference regarding the district position, issue a special press release or include a copy of the board's resolution in a mailer to district residents. ((*Vargas v. City of Salinas*) (2009) 46 Cal. 4th 1; (*Choice-in Education League v. Los Angeles Unified School District*) (1993) 17 Cal.App.4th 415; see also March 18, 1996, Education Code §7054; Office of Legislative Counsel Advice Letter # 7837)

### **Can the district's e-mail system be used to communicate the adoption of the resolution?**

Because the district's e-mail system is a public resource, it can only be used to communicate the adoption of the resolution if that is the district's regular practice. Thus, if the district does not regularly communicate the adoption of resolutions via e-mail, then the system should not be used to communicate the adoption of a resolution regarding a position on a ballot measure.

Note that there are separate laws regarding a union's use of district systems (i.e., e-mail, mailboxes, intranet) to communicate with its members.

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## Informational materials

### **Can the district provide informational materials to the public about ballot measures?**

Yes, but a district must be extremely cautious and ensure that any materials are “informational” or neutral in tone, emphasize objective facts, and are consistent with the normal style and communication channels and patterns for the district. Like the language used in a board resolution, these informational materials may not use inflammatory language or rhetoric or encourage the public to adopt the district's views or take any action in support or opposition to the measure. Normal communication channels might include the district's regular newsletter, information on the district website, or regular press releases. ((*Vargas v. City of Salinas*) (2009) 46 Cal. 4th 1; (*Choice-in Education League v. Los Angeles Unified School District*) (1993) 17 Cal.App.4th 415; see also March 18, 1996, Office of Legislative Counsel Advice Letter # 7837; Education Code § 35172)

Note that there are special rules regarding “mass mailings.” Newsletters or other mass mailings featuring elected officials or their position on a bond measure may not be sent at public expense. (Government Code § 89001)

### **May the district provide links on its website to another organization's campaign materials?**

Probably not. The safest practice would be to not provide links to any campaign websites from the district's website. If the district chose to present just the links to one side of the debate, then that clearly would be an impermissible campaign activity. Even providing links to both sides might be risky since then the district would be opening up its website to outside organizations. Under constitutional law, once the district has allowed content on its website from outsiders, it may be difficult to exclude content in the future.

However the district could provide links to nonpartisan analysis of ballot measures, such as the League of Women Voters, the Attorney General, County Registrar, or Legislative Analyst.

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## **Actions of individual employees or board members**

### **Can a board member or district employee encourage family or friends to vote a certain way on a particular measure?**

Yes, board members and district employees may engage in political activity as private citizens, as long as the activity does not involve the use of public funds. When doing so, board members and employees should make it clear they are acting on their own behalf and on their own time. (Education Code § 7052)

### **What are the restrictions for district employees engaging in political activities on school grounds?**

During working hours, school district employees may not engage in political activities. During non-working hours, district employees may engage in political activities, including soliciting and receiving political contributions on school property. (Education Code § 7056)

### **Can a board member or administrator attend a forum regarding a ballot measure?**

A district board member or administrator may attend a meeting of a citizens' group at the request of the group to explain the factual basis for the district's position on a bond measure at any time. During working hours, a board member or administrator invited to attend a citizens' group meeting to explain the district's position on a bond measure may not urge the group to vote for or against the measure. (Education Code § 7054.1; *Choice-in Education League v. Los Angeles Unified School District*(1993) 17 Cal.App.4th 415)

### **Can a board member use district letterhead when communicating support for a ballot measure?**

In most circumstances, district letterhead was paid for using district funds so it should not be used for ballot measure campaign activities. Sometimes campaigns will ask to use a copy or facsimile letterhead that resembles official district letterhead but which is paid for with private funds. District legal counsel should be consulted when the district receives such a request. At a minimum, such use must be consistent with district policy and the campaign must indicate that the letterhead was not paid for with public funds.

### **Can a board member use his/her title when communicating support for a ballot measure?**

Yes. However, the campaign should indicate that the titles are for identification purposes only so it is clear that the individual board member is not speaking on behalf of the board as a whole.

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## **Use of district facilities**

### **May district facilities be used for a political forum?**

Yes. A school district may make a school forum available to the public as long as the forum is made available to all sides on an equitable basis. The key is even-handedness. When the district makes a facility available to one group, then all opposing groups must also be allowed to use the facilities. If the district sponsors a forum, then all groups and sides must be given an opportunity to appear. (Education Code § 7058)