University of Oklahoma®
STUDENT GOVERNMENT ASSOCIATION

General Counsel Opinion
GC 2025–007
November 7, 2025

Question Presented

Is the proposed language extending Title VI, Chapter 4, Section 5(a)(ii) of the SGACA in compliance with the SGA Constitution, and is it in compliance with University policy with regard to the First Amendment?

Brief Answer

As written, the language of the proposed amendment complies with neither the SGA Constitution nor University policy with regard to the First Amendment. However, the proposed amendment could be modified to make it comply with both the SGA Constitution and University policy.

Background

SGACA Title VI, Chapter 4, Section 5(a)(ii) currently provides that "[e]mployees of the University shall not campaign for candidates while on duty as an employee[;] however, they may campaign while off duty." The proposed amendment would follow that existing sentence and provide that "[s]peech opposing a candidate while on duty shall be considered a misrepresentation of the University's stance towards any given election[] and therefore a violation of this rule."

Analysis

First Amendment

The University does not have an official First Amendment policy. But in other policies of the University, such as its Non-Discrimination policy, the University mentions that "[m]embers of the University community enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution" This suggests that the University's policy with regard to the First Amendment is the same as the First Amendment itself. In other words, the University does not expand First Amendment rights beyond what the US Constitution requires.

The First Amendment allows public employers to regulate their employees' speech, including political speech, while on duty. *See CSC v. Letter Carriers,* 413 U.S. 548 (1973) (holding that the

Hatch Act, which prevented some federal employees from campaigning while on duty, was constitutional); *Broadrick v. Oklahoma*, 413 U.S. 601 (1973) (affirming *CSC* in the context of a similar Oklahoma Statute). *But see Pickering v. Board of Education,* 391 U.S. 563 (1968) (holding that a local school board was not allowed to fire an employee for engaging in off-duty political speech). Since OU is a public employer, OU is allowed to regulate its employees' speech while on duty.

However, the proposed amendment cannot be unconstitutionally vague. People need to be able to tell what is and is not allowed just by reading the statute and applicable cases interpreting that statute. Vagueness is especially problematic in the First Amendment context because it could make people stop talking about things that they are allowed to talk about.

In the existing statute and proposed amendment, there are three terms that could be clarified:

(1) "Campaigning" is defined in Title VI, Chapter 1, Section 1(d) as "[w]orking in an organized and active way to promote a candidate as a representative of or at the directive of that candidate. Campaigning *shall not be constructed* to include any public campaign materials disseminated during the signature collection period, statements made about one's platform, or any solicitation for votes in the election *shall always be considered* campaigning" (emphasis added). This definition is ambiguous because it is unclear about whether campaigning includes or excludes "public campaign materials disseminated during the signature collection period, statements made about one's platform, or any solicitation for votes in the election[.]" This ambiguity matters because the existing statute uses the word "campaign" to describe the activities that are prohibited while a student-employee is on duty.

(2) "Speech opposing a candidate" might be imprecise because on its own, it might include negative speech about candidates in their personal capacity, in contexts outside of the election. However, this term doesn't rise to the level of constitutional vagueness because it would likely be interpreted to mean campaigning against candidates, so as long as the definition of campaigning is more specific, this should be okay.

(3) "On duty" is vague given the modern work context of some student-employees. For example, a resident advisor ("RA") who is on duty can engage in personal work if they are available to answer phone calls. And many employees work from home during irregular hours without a clear delineation of being on duty versus off duty. So, the statute would need to define "on duty" or "off duty" to allow people to know when they are allowed to make speech opposing a candidate.

SGA Constitution

Even if the First Amendment allows the University to regulate its employees' speech in this way, the SGA Constitution can grant greater free speech protections to students. The relevant provisions in the SGA Constitution are in the Student Bill of Rights, Article XI, Sections 10 and 12. Although

these rights apply only to students and not all employees, they are still relevant because some employees are also students, and SGA statutes cannot infringe the rights granted to those student-employees.

Section 10 grants students the right to distribute publications without censorship. This right could be implicated if student-employees wanted to distribute published campaign materials for or against candidates while on duty. However, while censorship is not defined, the proposed amendment does not constitute censorship. The amendment regulates only on-duty speech and leaves students with reasonable alternative opportunities to distribute campaign materials while off duty.

Section 12 grants students the right to demonstrate, inform, or protest. This right could be implicated if student-employees wanted to provide information supporting or opposing candidates. However, Section 12 limits this right to situations where "the normal workings of the University are not disputed." Based on the context, the writers of the Constitution likely intended to use the word "disrupted" instead of "disputed." If this is true, then employees using the time they spend on duty campaigning for or against candidates could be considered a disruption of the normal workings of the University.

However, this leaves open the question of speech that does not constitute a disruption. Although disruption is not defined, it would be hard to say that "disruption" would include a quiet conversation between coworkers while the employees are on duty but not actively engaged in work. These types of conversations do not affect the University's services, especially given that the general public may even be unaware of these conversations. Furthermore, if these conversations are already common, then they may be considered part of the "normal" workings of the University. Therefore, the proposed amendment's prohibition of "all speech opposing a candidate while on duty" is too broad since it includes non-disruptive speech.

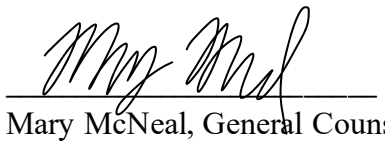
Recommended Modifications

One additional consideration is that the proposed amendment as written prohibits speech both for and against candidates but only considers speech opposing candidates to be a misrepresentation of the University's stance. While the language about misrepresentation would likely not have any legal effect, keeping this language in the statute makes it seem as though the University has an official stance toward each election, which Congress may not actually intend.

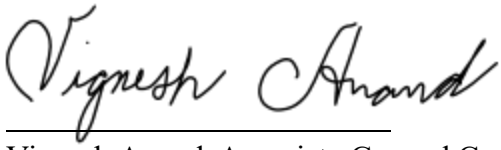
To fix these issues, the following amendment, along with a definition of on-duty, would be more appropriate: "Employees of the University shall not campaign for <u>or against</u> candidates while on duty as an employee <u>if doing so disrupts the normal workings of the University</u>; however, they

may campaign while off-duty." Along with this amendment, the legislature should adopt a clearer definition of "on-duty/off-duty" and "campaigning."

This is the opinion of the General Counsel.



Mary McNeal, General Counsel



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