



## General Counsel

### MEMORANDUM

TO: Faculty and Staff

FROM: Paul Meggett, General Counsel

DATE: October 5, 2023

SUBJECT: Political Activities of Employees, Candidacy for Elective Office; Office Holding (Elective and Appointive Public Office) and Free Speech and Free Expression

*Please print and post this memorandum for individuals in your unit who do not have regular access to e-mail.*

#### **Political Activities of Employees**

The last several election cycles have exposed an ever-widening divide in our country concerning issues of race, ethnicity, culture, class, and socioeconomic position. Over the past few years in particular, there has been no shortage of headline issues including the war in Ukraine, U.S. relations with China, Russia, Iran and Pakistan, inflation, health costs, police violence. People have argued various aspects of the issues very passionately, but sometimes, unfortunately, without much civility or respect for one another. These issues (and many others) will remain front and center over the next year.

As we move towards the 2024 campaign and election cycle, I want to remind our campus community of the laws and policies that apply to political activities of public employees (all faculty and staff). Being a state employee does not mean you lose your constitutional rights to participate (or not participate) as you desire in the political process as long as such participation is not on work time and does not involve the use of university property and resources. In fact, when engaging in political activities, what each employee may do on the job, with state resources, using or implicating the name of the university, or otherwise affecting your job responsibilities, is highly regulated by law (*See*, North Carolina General Statutes Chapter 126, Article 5) and UNC System policy (*See*, *The UNC Policy Manual* 300.5.1). In addition, Appalachian State University Policy 604.7, Section 1.1, which incorporates by reference UNC Policy 300.5.1, sets forth the full policy governing political activities of employees. This memorandum provides a high-level summary of applicable laws and policies that is intended to serve as a helpful resource to address questions you may have.

1. No employee may take an active part in managing a campaign, or campaign for political office or otherwise engage in political activity during working hours. *See*, UNC Policy 300.5.1 (applicable to EHRA employees); *see*, N.C. Gen. Stat. §126-13 (applicable to SHRA employees); *see*, State Human Resources Manual (Section 3, page 26, *see*: [https://files.nc.gov/ncoshr/documents/files/Limitation\\_of\\_Political\\_Activity.pdf](https://files.nc.gov/ncoshr/documents/files/Limitation_of_Political_Activity.pdf)).
2. No employee may use his or her position, state or university funds, services (including mail or email service), supplies (including letterhead), equipment (including telephones and computers), vehicles or other university property to support or oppose a candidate, party or issue in an election involving candidates for office. *See*, N.C. Gen. Stat. §126-13 (applicable to SHRA employees); *see*, UNC Policy 300.5.1 (applicable to EHRA employees).

3. Community service leave related to election activities may ONLY be used for working inside a polling facility in a non-partisan role, such as assisting voters with the voting process. However, if an employee is receiving any payment for such activities, then vacation leave (or available comp time balances) must be used. Please note that standing outside the polling facility and distributing candidate information is considered partisan activity and vacation leave (or available comp time) must be used. *See*, State Human Resources Manual (Section 5, page 13); *see*: <http://oshr.nc.gov/policies-forms/leave/community-service-leave>.
4. No employee may coerce another employee to support or contribute to a political candidate or party or to change voter registration. *See*, N.C. Gen. Stat. §126-14 (applicable to SHRA employees); *see*, UNC Policy 300.5.1 (applicable to EHRA employees).
5. No EHRA employee (including Faculty and EHRA Non-Faculty) may promise preferential treatment (or actually confer such preference) or threaten detrimental treatment (or actually impose such detriment) to an employee to induce support of or opposition to a candidate. *See*, UNC Policy 300.5.1. No SHRA employee may use any promise of reward or threat of loss to encourage or coerce any employee subject to the State Human Resources Act to support or contribute to any political issue, candidate, or party. State Human Resources Manual (Section 3, page 26); *see*: <http://oshr.nc.gov/policies-forms/employment-records/limitation-of-political-activities>.

#### **Candidacy for Elective Office; Office Holding (Elective and Appointive Public Office)**

In addition to complying with the laws and policies described above, all EHRA employees (Faculty and EHRA Non-Faculty) who are candidates for or who hold public office (elective and appointive) must comply with Appalachian State Policy 604.7, Section 1.2, which incorporates by reference UNC Policy 300.5.2.

Policy 300.5.2 distinguishes between “major public offices” and “minor public offices.” This distinction is important, among other reasons, because of certain reporting and petition requirements that must be met before an individual may announce candidacy for or assume major or minor public office. Differing conflict of interest and conflict of commitment provisions also apply, depending on the type of public office sought or held. The two types of office are defined as follows:

“Major public office” means (a) any public office requiring full-time service, regardless of the amount of compensation; (b) any public office requiring part-time service with “compensation which is more than nominal” (generally speaking, compensation in excess of \$10,000); and (c) membership in the North Carolina General Assembly.

“Minor public office” means any public office that is not a major public office.

Prospective candidates or office holders for some public offices must petition the Board of Trustees or the Board of Governors (through, respectively, the Chancellor or the President) for approval months in advance; failure to do so may result in loss of university employment. In general, an employee who intends to announce as a candidate in a race with a May primary must petition the appropriate governing board no later than November 1<sup>st</sup> of the preceding year, and an employee who intends to stand for election in November should petition no later than July 1<sup>st</sup> of that year. Policy 300.5.2 also addresses leaves of absence, deemed resignations, and other matters related to candidacy for or holding public office.

## **Compelled Speech**

Not everyone on a college campus thinks alike, nor should they if a campus hopes to engage in a full and free exchange of ideas. When ideologies or personal positions get pushed by university employees using university property or resources, it can lead to the independent speech of current or potential employees and students being chilled. Accordingly, Policy 300.5.1 includes language that states

the University shall neither solicit nor require an employee or applicant for academic admission or employment to affirmatively ascribe to or opine about beliefs, affiliations, ideals, or principles, regarding matters of contemporary political debate or social action as a condition of admission, employment, or professional advancement. Nor shall any employee or applicant be solicited or required to describe his or her actions in support of or in opposition to, such beliefs, affiliations, ideals, or principles. Practices prohibited here include but are not limited to solicitations or requirements for statements of commitment to particular views on matters of contemporary political debate or social action contained on application or qualifications for admission or employment or included as criteria for analysis of an employee's career progression.

To ensure compliance with the policy, App State will cease the solicitation or requirement of any statements of commitment to particular views on matters of contemporary political debate or social action in both the employment and admissions processes. With respect to the employment and admissions application process this means the University will do the following:

### **For Employment Search Committees**

- Neither the search committee, nor the hiring supervisor, shall consider any statements of commitment to particular views on matters of contemporary political debate or social action in making recommendations for hire.
- For any search that is active and still accepting applicants, but is not in compliance with System policy, the posting will be immediately updated by the Office of Human Resources, and reposted. Neither the search committee, nor the hiring supervisor, shall consider any statements of commitment to particular views on matters of contemporary political debate or social action when making recommendations for hire.
- The search committee shall refrain from asking any questions pertaining to an applicant's particular views on matters of contemporary political debate or social action. Search committees shall update all applicant evaluation rubrics to remove consideration of an applicant's particular views on matters of contemporary political debate or social action. Neither the search committee, nor the hiring supervisor, shall consider any statements of commitment to particular views on matters of contemporary political debate or social action when making recommendations for hire.
- New postings will continue to be reviewed by the Office of Human Resources and the hiring units to ensure they are following all applicable policies and laws.

### **Admissions Applications**

- Any pending application for admission that includes a statement regarding commitment to particular views on matters of contemporary political debate or social action shall be considered without review of the statement provided.

- The admissions application regularly will be reviewed to ensure that there is no solicitation or requirement to provide any statements of commitment to particular views on matters of contemporary political debate or social action.
- The Academic Deans, in conjunction with the Office of the Provost, shall ensure that no one considers any statements of commitment to particular views on matters of contemporary political debate or social action when making recommendations for admission.

Policy 300.5.2 further clarifies that nothing in the policy shall “infringe upon the ability of an employee or applicant for academic admission or employment to voluntarily opine or speak regarding any matters, including those of contemporary political debate or social action.” In addition, nothing in the policy prohibits “discussion with, or questioning of, an employee or applicant regarding the content of the employee’s or applicant’s resume, curriculum vitae, body of scholarship, or other written work or oral remarks presented by the employee or applicant in his or her own support.” Search committee members are not limited in their ability to ask questions or seek information about an individual’s experiences, backgrounds, areas or expertise or scholarship where it is germane to an applicant’s job duties.

### **Free Speech and Free Expression at Appalachian**

Appalachian is committed to ensuring both free speech and free expression rights, including advocacy for/against candidates for public office, for all members of the Appalachian community. In addition, UNC Policy 1300.8, provides:

To fulfill this function, each constituent institution must strive to ensure the fullest degree of intellectual freedom and free expression. It is not the proper role of any constituent institution to shield individuals from speech protected by the First Amendment, including, without limitation, ideas, and opinions they find unwelcome, disagreeable, or even deeply offensive.

Appalachian is open to any speaker who operates within the reasonable time, place, and manner restrictions adopted by Appalachian. *See*, N.C. Gen. Stat. § 116-300(4). Political campaign activities are permitted on Appalachian’s campus as long as they are sponsored or hosted by recognized student clubs or organizations or University-affiliated organizations and all expenses related to the activity, if any, are borne by the candidate, political organizations or student clubs or organizations or University-affiliated organization. University facilities may be rented for political events per campus policy on use of university premises and facilities. *See*, Policy [104, Facility Use, Solicitation, Distribution of Printed Materials, Unscheduled Public Speaking Areas, and Peaceful Assembly](#). Such sponsored events may not be subsidized or supported by Appalachian.

In accordance with UNC System policy, Appalachian affords faculty, staff, and students the freedom to assemble and engage in spontaneous expressive activity, including political activity, as long as such activity is lawful and does not materially and substantially disrupt the functioning of Appalachian. Policy 1300.8 defines a “material and substantial disruption” as any or all of the following:

- A. Any action that qualifies as disorderly conduct under N.C. Gen. Stat. § 14-288.4;
- B. Any action that qualifies as a disruption under N.C. Gen. Stat. § 143-318.17 (Disruption of official meetings);
- C. Any action in violation of a chancellor’s designation of a curfew period pursuant to N.C. Gen. Stat. § 116- 212; or
- D. Any action that results in the individual receiving a trespass notice from law enforcement.

In summary, engagement in political campaign activities by Appalachian employees should be conducted independent of their university employment and at times when such activity does not interfere with employment obligations to Appalachian. All members of our community are encouraged to engage one another with civility and respect when exercising your rights as citizens.

Questions concerning the interpretation and application of the laws and policies may be addressed to me at [ogc@appstate.edu](mailto:ogc@appstate.edu) or at 828-262-2751. If you have questions about leave policies, please contact the Office of Human Resources at 828-262-3186. Thank you.