

# Political Activity at The Library

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## Disclaimer

- ▶ This is legal information provided for educational purposes.
- ▶ See your attorney for legal advice (applying the law to your specific situation).

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## Overview

Election Season is here

- ▶ Check your policies & procedures (they must be written)
- ▶ What activities are protected?
- ▶ What activities are prohibited?
- ▶ What activities can be regulated?
  - ▶ How we can regulate it?
  - ▶ What we can't regulate

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## What we can regulate?

- ▶ Limits on you and your staff
  - ▶ Check your written policies and procedures
  - ▶ Hatch Act
  - ▶ State Law and IAC (rules)
- ▶ Limits on others who want to use library resources for campaign activities
  - ▶ Check your written policies and procedures
  - ▶ Is the First Amendment implicated?
  - ▶ What type of forum is it?
  - ▶ What type of test must any restrictions meet?

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# What activities are protected?

## Source of Protections

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# The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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# The 14<sup>th</sup> Amendment

## Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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# Indiana Constitution

## ARTICLE 1.

### *Bill of Rights.*

Section 9. No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever: but for the abuse of that right, every person shall be responsible.

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# Indiana Constitution

## ARTICLE 1.

### *Bill of Rights.*

Section 31. No law shall restrain any of the inhabitants of the State from assembling together in a peaceable manner, to consult for their common good; nor from instructing their representatives; nor from applying to the General Assembly for redress of grievances.

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## What activities are restricted?

Source of Restrictions  
on you and your staff

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## The Hatch Act

“The Hatch Act, like many state and local laws that restrict a public servant’s political activity, was enacted to ensure that the influence of partisan politics in government institutions was limited and to protect public servants from perceived pressure from political parties to work on political campaigns or give political contributions.”

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## The Hatch Act

- ▶ Applies to employees of most federal agencies and to state and local government employees who perform work duties in relation to activities funded in whole or part by federal loans or grants.
- ▶ Most employees are prohibited from engaging in political activity while at work or while on duty including:
  - ▶ Can’t wear or display partisan political pins or stickers
  - ▶ Can’t solicit funds during work time or on work property or from those who do business with your agency or from work subordinates
  - ▶ Can’t use work title or affiliation in any solicitations
  - ▶ Can’t attend a rally during work hours

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## Hatch Act Modernization Act of 2012

Changed the Hatch Act to allow most state and local government employees to run for partisan political office unless the employee's position is completely financed by federal funds

- ▶ IC 36-1-8-10.5 allows most local government employees to run for elected office and provided they work for a different unit of government they can usually hold both positions.

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## What Can I Do Under Hatch Act?

Employees may do the following **on their own time** provided **not in official capacity** as a public employee:

- ▶ Register, vote, assist in voter registration drives
- ▶ Sign and circulate nominating petitions, hold office in a political party or club
- ▶ Express opinions about candidates and issues, campaign for or against candidates in partisan elections, including making campaign speeches, distributing campaign literature, volunteering on campaign
- ▶ Contribute money to political organizations, attend political fundraisers, be active at a political rally or meeting
- ▶ Campaign for or against referendum questions

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## Do NOT Use Government Property

A **government employee may not** knowingly or intentionally **use the property of the employee's government employer** to:

- ▶ Solicit a contribution
- ▶ Advocate the election or defeat of a candidate or a public question
- ▶ Distribute campaign materials

Penalty: Class A misdemeanor or Level 6 felony if the person has a prior unrelated conviction under this section. (IC 3-14-1-17)

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## A Library Used As Polling Place Is Subject to More Regulations

A person who knowingly does any **electioneering** on election day within the polls or the **chute** commits a Class A misdemeanor. (IC 3-14-3-16)

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## Polling Place Terms

- ▶ “Electioneering” includes:
  - ▶ Expressing approval or disapproval of any public question in any manner reasonably expected to convey that support or opposition to another individual.
  - ▶ Wearing or displaying an article of clothing, sign, button, or placard that:
    - ▶ States the name of any political party or
    - ▶ Includes the name, picture, photograph, or other likeness of any currently elected federal, state, county, or local official
- ▶ “Chute” means the area or pathway that extends 50 feet from the entrance to the polls. (If property line is less than 50 feet from door chute is measured as  $\frac{1}{2}$  the distance from door to property line.)

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## What 1<sup>st</sup> Amendment Cases Say About Limiting Speech

Limiting other people from using library resources for campaign activities

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## Questions to Ask

- ▶ What type of forum is the public property?
  - ▶ What is the primary purpose of the property?
  - ▶ Do the objective characteristics of the property suggest expressive content?
- ▶ What test will be applied to determine if restrictions are constitutional?

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## 3 Types of Fora

1. Traditional Public Forum
  - ▶ Examples: Streets and Parks
  - ▶ Purpose: Free Exchange of Ideas
2. Designated or Limited Public Forum
  - ▶ Examples: Public Library or College Campus
  - ▶ Purpose: Place of learning
3. Nonpublic Forum
  - ▶ Examples: Military Installation or Prison
  - ▶ Purpose: Focus on Security

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## Traditional Public Forum

- ▶ Examples: Streets & Parks
- ▶ Purpose: Free Exchange of Ideas
- ▶ Description: Open for expressive activity regardless of governments intent. Government's ability to limit is sharply circumscribed.
- ▶ Test: Restrictions are subject to strict scrutiny
  - ▶ Content based exclusion must be necessary to serve a compelling state interest and be narrowly drawn to achieve that end.
  - ▶ Content neutral restriction - time, place, and manner - is allowed provided they are narrowly tailored to serve a significant state interest and leave open ample alternative channels of communication

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## Designated or Limited Public Forum

- ▶ Examples: Public Library or College Campus
- ▶ Purpose: Place of learning
- ▶ Description: A public place that the state has actively opened for expressive activity. Main distinction: State is not required to keep it open. While open subject to same standard as traditional public forum.
- ▶ Test: Restrictions are subject to strict scrutiny
  - ▶ Content based exclusion must be necessary to serve a **compelling** state interest and be narrowly drawn to achieve that end.
  - ▶ Content neutral restriction - time, place, and manner - is allowed provided they are narrowly tailored to serve a **significant** state interest and leave open ample alternative channels of communication.

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## Nonpublic Forum

- ▶ Examples: Military Training Facility or Prison
- ▶ Purpose: Focus on Security
- ▶ Description: The property doesn't have a tradition of allowing free speech and government has not made a choice to create a designated public forum.
- ▶ Test:
  - ▶ Time, place, and manner restrictions allowed.
  - ▶ State may reserve the forum for its intended purposes provided regulation is reasonable and viewpoint neutral.
  - ▶ May not suppress expression merely because public officials oppose the speaker's view.

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## Applying to sample situations

- ▶ What does your library policy say?
- ▶ Answers may vary some depending upon the location, size, layout, and facilities available at your library.
- ▶ Meeting rooms
  - ▶ Can a candidate use your meeting room for a meet and greet? Yes, if confined to meeting room and made available to other candidates on the same terms. It should be clear that the library is not sponsoring this activity unless it is a forum with all candidates invited.
  - ▶ Can the library sponsor a candidate forum? Yes, if all candidates are invited.

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## More examples

- ▶ Can a person leaflet in the following places:
  - ▶ the library
  - ▶ the lobby
  - ▶ on the sidewalk in front of the library
  - ▶ in the parking lot?
- ▶ Can a candidate put signs on library property?

U.S. Constitution, Amend. I

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## Questions

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For questions about specific regulations at your library,  
contact your library's attorney.

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