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TO: MTA President, Vice-President, Executive Director
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FROM: Ira Fader, General Counsel 
Saurabh Gupta, Deputy General Counsel 

DATE: September 22, 2016

RE: **Public Employees and Political Advocacy During the Charter Campaign**

As you know, MTA has joined with our public school allies in the campaign to “Save Our Public Schools” (SOPS) and to defeat the ballot petition that would lift the current caps on Commonwealth charter schools in Massachusetts.

Since a key part of the campaign involves helping MTA members engage local school communities, parents, community activists, and other educators, we wanted to address legal questions that are likely to come up for you as more and more MTA members engage in the ballot campaign.

There are three central areas of law implicated by the political activities of public employees: (1) the First Amendment to the U.S. Constitution, (2) state campaign laws, and (3) G.L. c. 150E. In addition, members must be aware of local school district rules and regulations (and collective bargaining agreements) that may apply to their political activities.

The following basic principles can be drawn from this amalgam of legal rights and limitations:

1. **CITIZEN RIGHTS:** Our members have not relinquished their First Amendment “free speech” rights simply because they are public employees. They can engage in free speech activities *as citizens* when they speak to “matters of public concern.”

2. **MATTERS OF PUBLIC CONCERN:** The “charter cap” ballot issue is a “matter of public concern” under the First Amendment.
3. **POLITICAL BELIEFS:** All educational employees are free to support and join the work of the SOPS coalition in opposing the ballot initiative. Even though a school employer can lawfully stop or prohibit an employee from free speech activities which disrupt school operations, we cannot envision circumstances where a member *acting as a citizen* on the charter school ballot question will pose an actual or potential disruption.
4. **OFF SCHOOL PREMISES:** A member’s expression of support for SOPS or opposition to the ballot initiative while the member is away from school premises and on one’s own time is constitutionally protected. Phone banking, door-to-door canvassing, letters to the editor, donating money, yard signs, buttons, bumpers stickers, and of course VOTING are all lawful political activities that a public employer cannot interfere with.
5. **CONTACT WITH SCHOOL COMMITTEE MEMBERS:** Political contact with school committee members *where the MTA member resides* is clearly an activity undertaken as a citizen rather than as an employee and is protected by the First Amendment.

Political contact with school committee members *where the member works* is protected by the state collective bargaining law if undertaken in concert with the local association or other employees. (It may also be protected by the First Amendment.)

6. **USE OF GOVERNMENTAL RESOURCES:** Members should *never* use school *materials or machines*, such as copying machines, paper, or envelopes, to advance the SOPS campaign or oppose the ballot law.

If a member wants to use school *premises* for more formal campaigning (like setting up a table for literature distribution or having a meeting), the law gets a little trickier.

- **LOCAL RULES:** The school district may have rules or practices prohibiting political activity on school premises. Know what they are. Review your CBA: it may grant rights that may apply. An employer cannot single out certain political expressions for censure if it allows other political expressions.

A school employer can enforce *clearly-established local rules* prohibiting personal political expression. If there are no existing rules, a school employer can issue *warnings* to stop political expression if it believes the expression or activity is, or could be, to be disruptive to school operations.

- EXTERNAL LAW: The school building itself, the rooms inside it, and its furnishings are all “public resources.” So is the school email and internet system (including wifi). The use of these “resources” for campaigning or communication is generally prohibited. There are 2 important exceptions:
 - Equal Access: The Office of Campaign and Political Finance recognizes an “equal access” rule: the government can allow public employees to use its space for campaign purposes as long as each side of an issue is given equal representation and access. If there is a room where you want to hold an “anti-ballot law” meeting, this is permitted as long as the government would allow “pro-ballot law” individuals to have a meeting there too. Ideally, the school district will have an existing policy in writing. A local affiliate can negotiate for such a policy.
 - Collective Bargaining Agreement: OCPF also allows (within limits) the use of public resources pursuant to the express terms of a collective bargaining agreement. The school district may have negotiated in writing to give or rent office space to the local association. Or it may have agreed to allow the association to use its email system to communicate with members. If the CBA is silent, you can negotiate for this kind of use or access.

7. CAMPAIGNING ON SCHOOL PREMISES:

Member-to-member:

- Members can informally engage in member-to-member advocacy as long as they are not doing so at a time they are “on duty.” When members are “off duty,” they can engage in informal conversation and sharing of materials during the school day and on school premises. (But see # 6, above.) Release-time presidents are free to engage in political dialogue with off-duty members, consistent with other rules discussed in this memorandum.
- The use of the school mailbox or the intra-school email system for literature distribution may be allowed if the school administration allows other non-school materials to be distributed in that way OR if the bargaining agreement provides for the use of the email system or school mailboxes for union business.

Member-to-student OR member-to-parent:

- At times and in places where a member is clearly present as a “teacher” or “educational employee,” he or she should *not* engage in political campaign activity.

- Members should not use class time to address the ballot issue with students or distribute campaign materials in the classroom.
- Members should not use parent-teacher conferences to oppose Q2.
- Members who are assigned/appointed to after-school sports, clubs, or other extracurricular activities are still within the work day and should not engage in campaign activities. On the other hand, members who are *not* assigned to extra-curricular duties and are “off duty” may be permitted to engage in campaign activities. The more “public” the event, the easier it is to maintain that campaigning there is not using a governmental resource.
- Members can wear political buttons on their clothing and place stickers on personal property that they carry into school or to parent meetings. (If directed to remove these political items, a member should comply and contact the union so that we can take steps, as appropriate, to address and enforce the member’s legal rights.)
- Members can talk with parents as long as they are not speaking to the parents in an official “teacher” capacity. The distinction between “teacher” and “citizen” is not always clear. A member who attends a school committee meeting or a neighborhood event and speaks to parents at these events is present as a citizen and is *not* acting in an official capacity. Speaking to parents whose children attend a different school district from the member’s own district is similarly permissible.

8. **POLITICAL FUNDRAISING:** One word: “no.” Public employees cannot engage in political fundraising for any campaign, including a ballot campaign. Not even off-duty, and not even off-premises.