

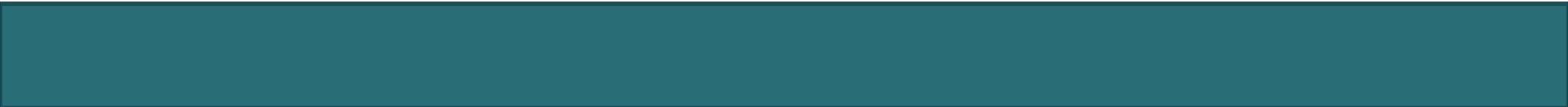


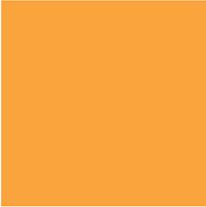
# School Resources and Elections: Do's and Don'ts

Chris Thomas, ASBA General  
Counsel/Associate Executive Director



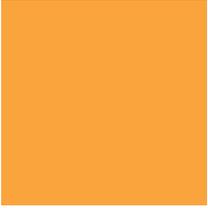
**A.R.S. 15-511**





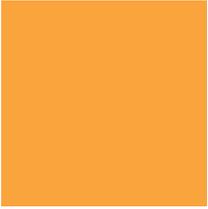
# 15-511 in a Nutshell

- Affects all elections:
  - school board elections;
  - legislative, congressional, city candidate elections;
  - initiatives and referenda at state level;
  - school district bonds and override campaigns
- Prohibits a person acting on behalf of a school district from using a school resource to attempting to influence the outcome of an election



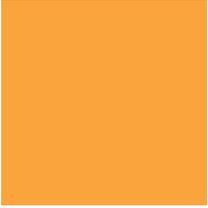
# The Elements of 15-511

1. A person acting on behalf of a school district or a person who aids another person acting on behalf of a school district  
SHALL NOT SPEND OR USE
2. School district or charter school resources, including the use or expenditure of monies, accounts, credit, facilities, vehicles, postage, telecommunications, computer hardware and software, web pages, personnel, equipment, materials, buildings or any other thing of value of the school district or charter school,  
FOR THE PURPOSE OF
3. Influencing the outcomes of elections
  - You need all three elements to violate 15-511!

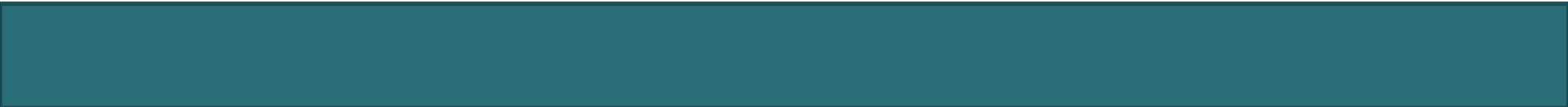


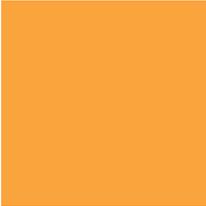
# 15-511 in a nutshell (continued)

- Definition of “influence”:
    - “supporting or opposing a candidate for nomination or election to public office or the recall of a public officer or supporting or opposing a ballot measure, question or proposition including any bond, budget or override election and supporting or opposing the circulation of a petition for the recall of a public officer or a petition for a ballot measure, question or proposition **in a manner that is not impartial or neutral.**
    - Question about constitutionality of this provision and part of the controversy a number of districts have found themselves in; different than Kromko standard which has been the law
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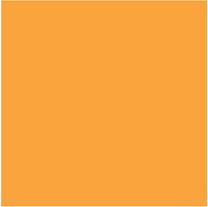
## Kromko v. City of Tucson (2002)

- Express advocacy may be based on communication that, "taken as a whole[,] unambiguously urge[s]" a person to vote in a particular manner..."
  - "The communication "must clearly and unmistakably present a plea for action, and identify the advocated action; it is not express advocacy if reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action."
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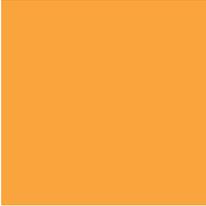
# So which standard applies?

- AGOI15-002: The new definition of “influencing the outcome of election” which requires impartiality replaces the Kromko “unambiguously urges” standard
  - Standard is objective not subjective using reasonable person standard
    - If a reasonable person believes the use of school resources 1) supports or opposes a ballot measure OR that it is 2) not impartial or neutral
  - Great deal of deference to elected officials, less so to public employees



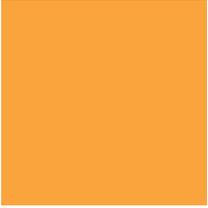
## Laws 2013, Chapter 88

- Rental and use of a public facility by a private person or entity that may lawfully attempt to influence the outcome of an election is permitted if it does not occur at the same time and place as a government-sponsored forum or debate.
- Fines increased to \$5000 per violation + any amount of misused funds subtracted from district budget
  - Personal to the violator – no insurance or indemnification

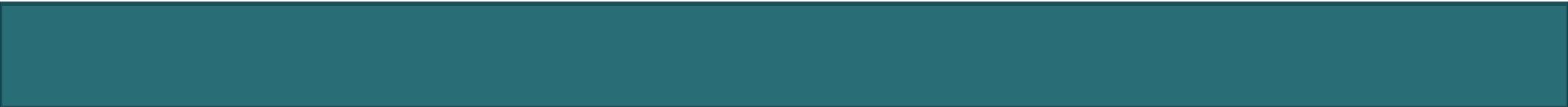


# What does 15-511 prohibit?

- Prohibits school boards from making statements or submitting arguments in favor of, or in opposition to, a ballot measure
    - (This does not include the pro-statement required to be submitted and signed by the governing board in an override election pursuant to 15-481 B. 9)
  - Prohibits school employees, when on duty, from activities that attempt to influence an election
  - Prohibits the use of school property including equipment, paper, copiers, buildings, computers, etc., from being used to attempt to influence an election
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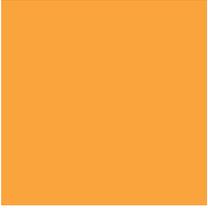


# What Does 15-511 prohibit?

- Prohibits school districts from expending funds for membership in an organization that attempts to influence the outcome of an election
  - Prohibits students being given campaign material intended to influence an election or material intended to influence the outcome of legislation.
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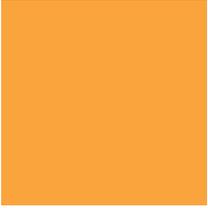
# What does 15-511 NOT prohibit?

- Individual board members or school employees, not on “duty time” may exercise their free speech rights and be involved in campaigns
- School district employees may receive campaign information in school district e-mail accounts and mailboxes from an outside (non-school) sender
  - Information from these accounts cannot be forwarded to outside recipients or to home accounts of employees



## What does 15-511 NOT prohibit?

- Outside groups, including PTOs, MAY organize and use school buildings to have meetings in support of a campaign providing those groups lease the facilities in the manner any other group would be allowed to lease.
  - Individuals MAY exercise their free speech rights (politicking, including flyer distribution) at an event in which the public at-large is welcome, providing that all groups are welcome to engage in such activity and it is consistent with district policy for such activity
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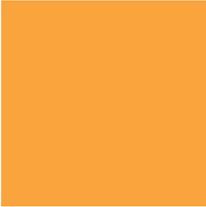


# What does 15-511 NOT prohibit?

- School districts MAY remind their patrons that there is an election in November, giving the date and suggesting that they vote (without any suggestion of HOW to vote)
- Board members and school employees on school time MAY answer questions from a factual perspective on the impact to the school district depending on the election's outcome.
  - (However, be careful here! If facts can be viewed as being overly speculative, skewed or selectively used to further a particular viewpoint, the law may be triggered.)

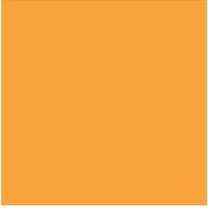
# Threshold Question: When Does 15-511 Apply

- It applies all the time – but special attention will be given for the period between when the election is called and election day.
  - Activity conducted prior to the board calling an election could still be a problem
- What would be a violation after the call, is a violation before the call

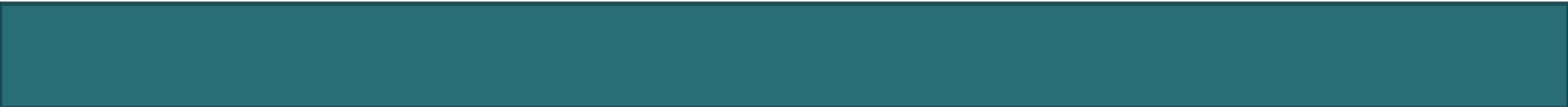


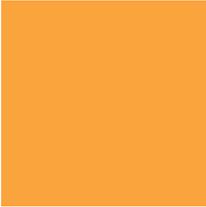
# Frequently Asked Questions

- **Q1: Can a person use their title in support of an issue – say a letter to the editor signed by the superintendent?**
  - **A1:** Yes, though if it is a school employee, the best practice is to state that the letter is not being written on behalf of the district. The letter should obviously not be written during duty time and no school resources should be used – computers, paper, e- mails, etc. – in its production.
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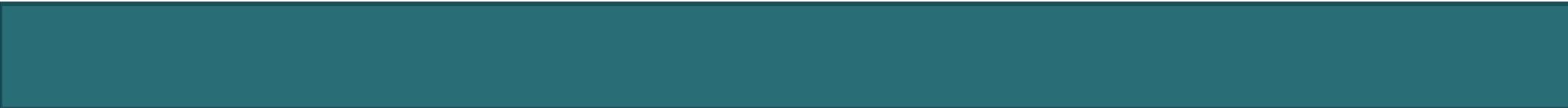


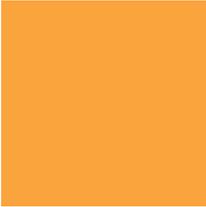
## FAQ's (cont.)

- **Q2: Can you post election info on school marquees?**
  - **A2:** Yes, you can put the election date and ask people to vote on a school marquee. You cannot tell them or suggest to them HOW to vote. It would also be best NOT to refer to a particular ballot measure on the marquee (like “remember to vote on the override”)
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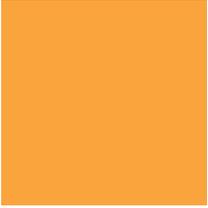
## FAQ's (cont.)

- **Q3: Can school employees receive election-related material in school mailboxes or on school computers or in school-provided e-mail accounts?**
  - **A3: Yes, the law allows for the receipt of such material so long as the district has a policy allowing for receipt of outside, non-school related messages.**
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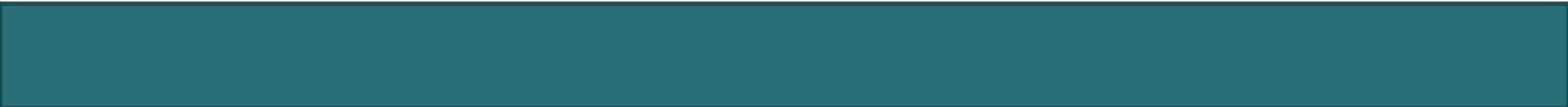


## Q. 3 Continued...

- However, school employees cannot forward such messages to anyone or print out such messages on district printers or district paper.
- A good practice for any messages going to school district accounts is to contain a tag that informs the receiver of the message of the law.
  - Here is some suggested language: “Please note: If you are receiving this message on a school district computer or using a school district provided e-mail account you may not forward this message from your computer to another’s computer or copy the flyer and distribute under A.R.S. §15-511, which prohibits the use of school resources in influencing the outcome of an election.”



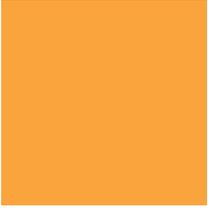
## FAQ's (cont.)

- **Q4: Can a parent or employee have a political or election-related bumper sticker on a car in a school parking lot?**
  - **A4: Yes, this is specifically allowed under the Attorney General guidelines.**
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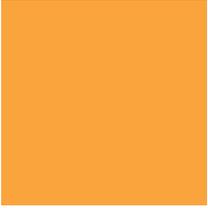
## FAQ's (cont.)

- **Q5: Can teachers wear t-shirts or buttons to school in support of/opposition to a ballot measure? Can board members wear t-shirts or buttons in support of a ballot measure to a board meeting?**
- **A5: No and No.**
  - Must be tied to a particular campaign
  - Associative campaigns intended to promote specific ballot measures or candidates through wearing of coordinated clothing also will be a problem

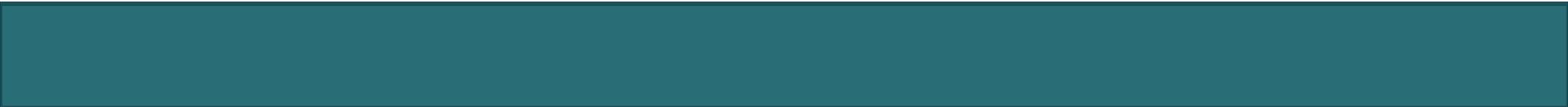


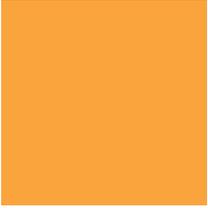
## FAQ's (cont.)

- **Q6: Can community members, parents or school employees pass out material in support or opposition to a candidate or ballot measure at school or at school-sponsored events?**
  - A6: If it is an event where the public is not generally invited – like during the school day – parents or community members would have to stay off school premises to hand things out. (School employees could also participate if they were off duty.)
  - If it is an extracurricular event where the public is invited, then the parents (and school employees that are off duty and do not have supervisory responsibilities) can come on campus and pass things out – so long as all sides are treated fairly.
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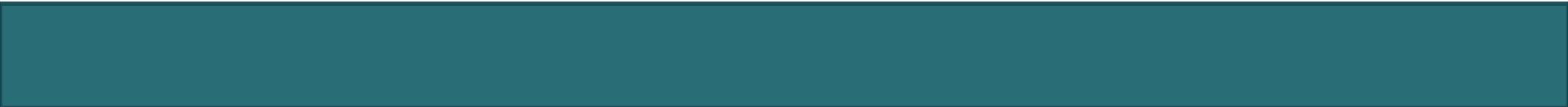


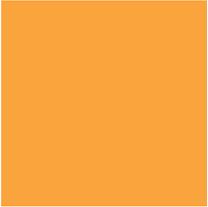
## FAQ's (cont.)

- **Q7: Can the district distribute factual information about the impact of a ballot measure to the public?**
  - **A7: Yes, but facts should be presented fairly, completely and without bias. If at all possible, such materials should stick to the financial numbers closely and avoid editorial comment.**
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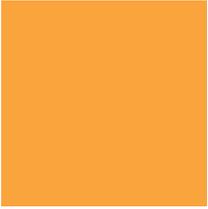
## FAQ's (cont.)

- **Q8: Can schools send home factual information with students for their parents to read?**
  - **A8:** The law is very clear that students should never be used in an attempt to influence the outcome of an election. The law also prohibits students from bringing home material that attempts to influence legislation (no lobbying, the only place in the law where lobbying is invoked). For this reason, best practice is not to give any material to students related to the election – even a “just the facts” flyer.
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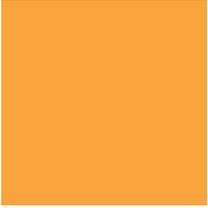
## FAQ's (cont.)

- **Q9: Can teachers, school staff and administrators discuss their support for/opposition to a candidate or issue-based ballot measure during the course of the school day or at official events?**
  - A9: Teachers and other school employees do have the right of free speech but these rights are fewer in a work environment. During non-duty time, school employees should feel free to express their point of view and to gather with other like-minded school employees who are also off-duty. School employees should always refrain from expressing their views about the election to students during the school day. If discussing ballot measures before community groups, superintendents and principals should take time off from work if discussing those ballot measures in anything but a factual manner. All school employees can take part in election related activities if off duty and school resources are not utilized.
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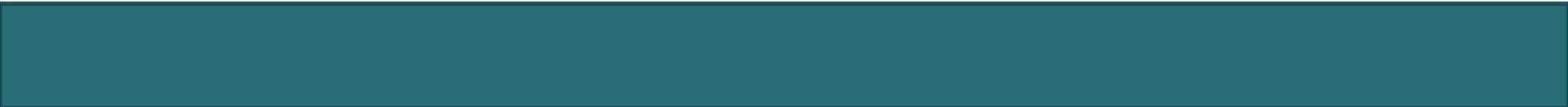


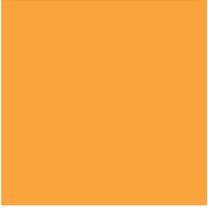
## FAQ's (cont.)

- **Q10: Can school buildings be used by outside groups for campaign-related events?**
  - **A10:** Yes, as long as the facility is rented at the going rate under the district's community use of facilities policy. This includes parent teacher organizations that normally get free use for their meetings; if the meeting is to discuss pro- ballot measure campaigns (or anti ballot measure as well), rental fees must apply for that meeting. Any employees attending should be "off the clock" for duty purposes.
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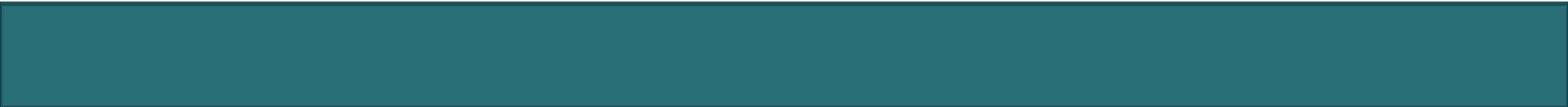


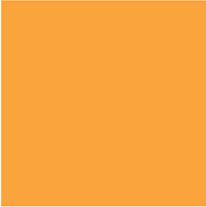
## FAQ's (cont.)

- **Q11: Can the district/school have a campaign forum on ballot measures or candidates where all sides are represented?**
  - **A11: Yes, and if such a forum is held no rental charges would apply.**
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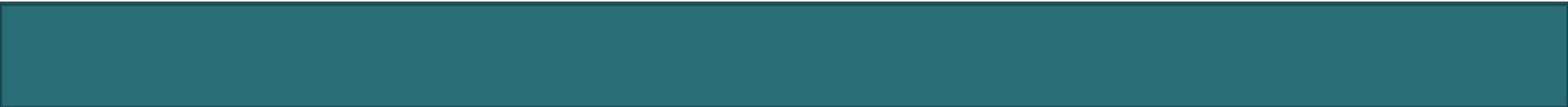


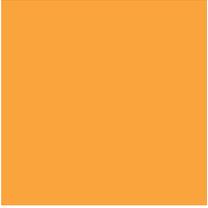
## FAQ's (cont.)

- **Q12: Can the band and cheerleaders perform at a ballot measure rally?**
  - **A12: Yes, but such a performance must be truly voluntary on behalf of the students and no district provided uniforms, instruments or transportation should be used.**
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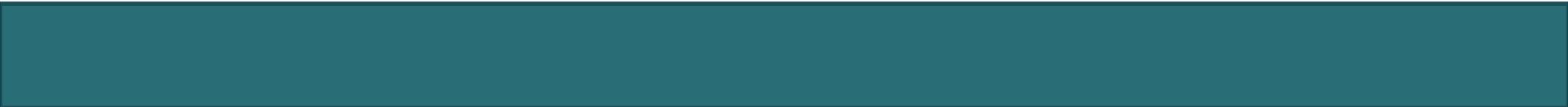


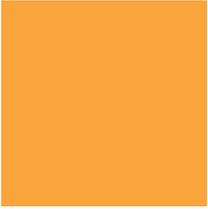
## FAQ's (cont.)

- **Q13: Can teachers take parent e-mails and send a pro- or anti- ballot measure message to them from their own computers at home, when not on school duty?**
  - **A13: Yes, if such e-mail addresses are obtained under a public records request.**
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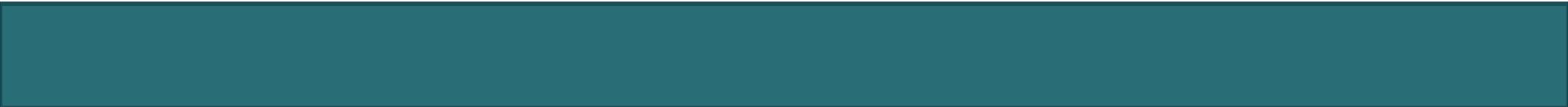


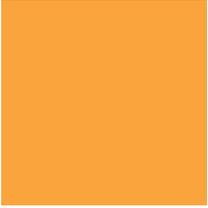
## FAQ's (cont.)

- **Q14: Can a school board adopt a resolution in favor or opposed to a ballot measure?**
  - A14: No, however, the Board may provide a written argument of not more than 200 words in support of an election called by the Board (override or bond) to be included in the informational report pursuant to A.R.S. § 15-481(B)(9)
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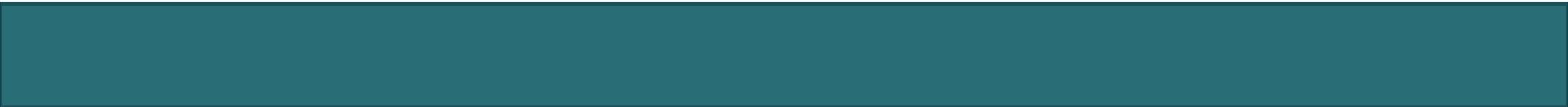


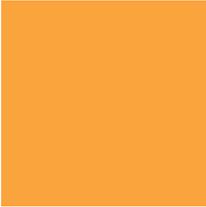
## FAQ's (cont.)

- **Q15: Can civics educators discuss ballot measures as part of a Kids Voting program or other type program to teach students about the political process?**
  - **A15: Yes, so long as the instructor follows a curriculum that is neutral in its approach. While students are free to voice their positions about ballot measures during such a program, school employees should refrain from doing so.**
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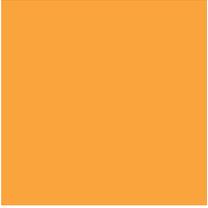
## FAQ's (cont.)

- **Q16: Can voter registration material be given out by schools?**
  - **A16: Yes, but only if such material is available all the time and not just part of an advocacy effort.**
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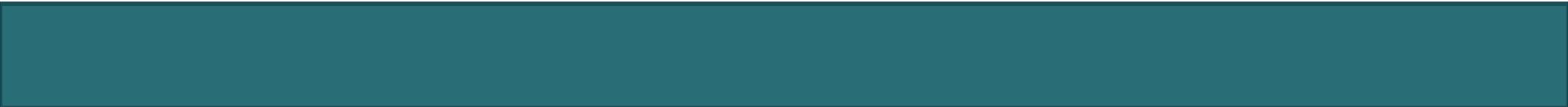


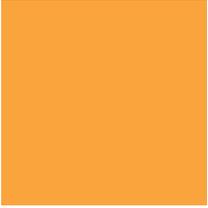
## FAQ's (cont.)

- **Q17: If a school gives out space to an outside group for free – under the community use policy where the activity supports the school's educational mission – can that outside group allow campaigning by a ballot measure group?**
  - **A17: No.** If the school facility is being used without compensation being paid – because the activity is deemed to further the school's educational mission – no campaign activity can occur since that is, by law, **NOT** part of the school's educational mission.
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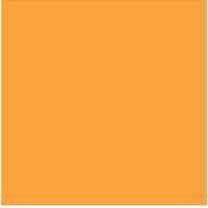
## FAQ's (cont.)

- **Q18: Do the §15-511 restrictions apply to charter schools?**
  - **A18: Yes.** Although charters are exempt from most of the laws pertaining to school districts, they must follow 15-511 and all of the answers here would equally apply to charters.
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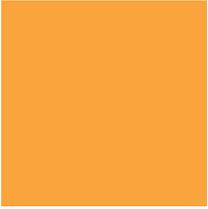
## FAQ's (cont.)

- **Q19: Can pro ballot measure signs be placed on school campuses on election day, if the campus is being used as a polling place?**
- **A19: Yes.** There the First Amendment would apply and signs could be placed on school grounds by proponents of ballot measures, as long as they are outside of the prescribed boundary limits of a polling place.

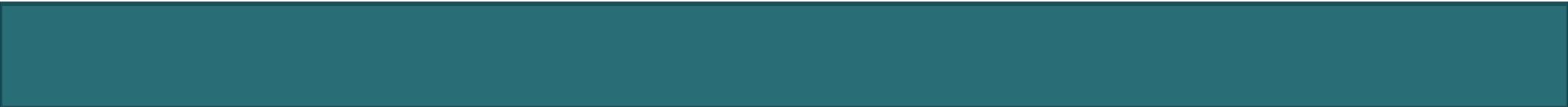


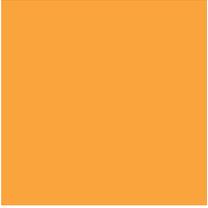
## FAQ's (cont.)

- **Q20: Can students attend ballot measure rallies held on school campuses?**
- **A20: Yes, but only voluntarily and information about the rally cannot be distributed during the school day or using school resources. (Also, don't forget that the facility for the rally must be rented under the school's community use policy.)**



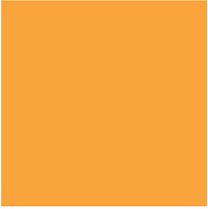
## FAQ's (cont.)

- **Q21: Can districts have a forum where only facts and local impact will be discussed regarding ballot measures?**
  - A21: Yes, but extra care should be taken to ensure that it is purely a "just the facts" presentation and discussion; neutral facts that favor both a pro and con side should be brought out in such a discussion. The safest thing to do is to have an issues forum and have the other side represented -- then those involved (not school employees on school time) need not worry if a discussion of the facts leads to an advocacy message.
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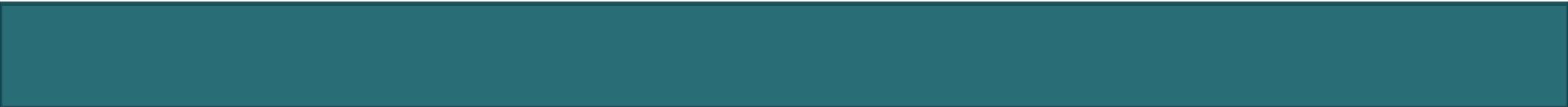


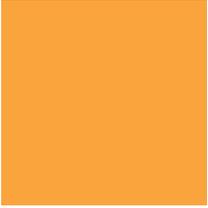
## FAQ's (cont.)

- **Q22: Can education organizations endorse and support ballot measures?**
  - **A22:** Not if they have school districts as dues paying members or if school districts pay membership dues to the organization on behalf of an individual member. Education organizations – and other organizations -- which are not funded by school districts **CAN** endorse and support ballot measures.
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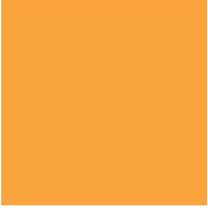
## FAQ's (cont.)

- Q23: Can school employees be expected to support a ballot measure in their free time?
  - A23: NO! Employees cannot be required to support a ballot measure through either expressed or implied directive and no reward or punishment can follow to employees for being involved or not being involved in a ballot measure campaign
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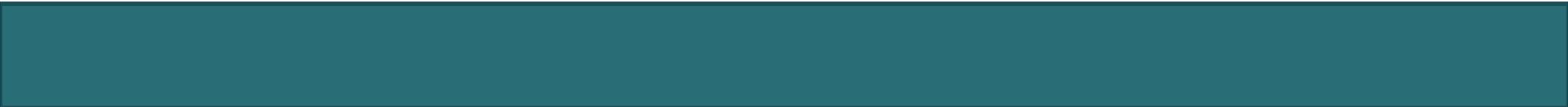


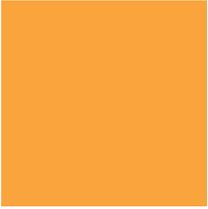
## FAQ's (cont.)

- Q24: Can school employees give out information – such as directory information of students or lists of school vendors – to an outside group for campaign purposes?
- A24: Yes, so long as that information must be disclosed as a public record should a request for information be made
  - The request for information should follow all normal channels and go through standard legal review

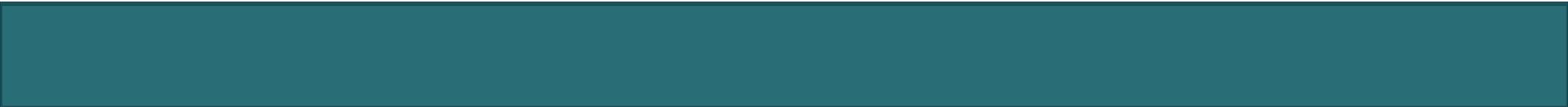


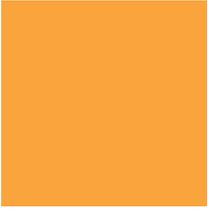
## FAQ's (cont.)

- Q.25: Can a campaign or school district poll to determine message and targeting?
  - A.25: It depends on the type of poll. A school district can poll to find out what kinds of projects/expenditures/needs the public supports; the school district cannot conduct a “push poll” designed to move voters to support a ballot measure.
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## FAQ's (cont.)

- Q. 26: Can districts pass two budgets – one if the override passes and one if it doesn't?
  - A. 26: Yes, but it should be a realistic assessment.
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## FAQ's (cont.)

- Q. 27: Can districts distribute voter education material from a group that has been known to take education positions (though such a position is not apparent in the materials)?
  - A. 27: Yes. It is the content of the message itself that determines whether the communication is an attempt to influence – not who the messenger is, unless the messenger's name itself is a message. But be careful about giving information to websites or events where impartiality will not be observed.
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ADDITIONAL QUESTIONS?

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