

Political Broadcasting: WTJU's Guidelines to Programming during an Election Period

The FCC attorney under the auspices of the National Federation of Community Broadcasters (NFCB) has compiled a 15 page document covering nearly all legal concerns with Political Broadcasting. I will email that document to anyone who would like to see a more comprehensive overview. This document concentrates on the issues that affect WTJU and was compiled using the above mentioned document and a NFCB conference call on the subject.

This document flows from one essential policy: **"No noncommercial educational broadcasting station may support or oppose any candidate for political office"**

The content below is derived from three governing organizations: The Federal Communications Commission (FCC), the Internal Revenue Service (IRS) and the Federal Election Commission (FEC). All of these organizations have enforcement wings and have enforcement power over WTJU/U.Va. The FCC enforces "broadcast" policies, the IRS enforces 501(3)(c), i.e. "nonprofit organization" policies and the FEC enforces violations of campaign finance laws. Please see these important **caveats**:

- These rules apply to the 90-day period preceding the Presidential election and to various other national and local election timetables.
- There are different rules for commercial and noncommercial broadcasters. The rules below are included because they are applicable to **noncommercial** broadcasters, i.e. WTJU.
- These rules apply to on-air announcements or comments, underwriting, station websites, emails (if "representing" the station) and blogs (if "linked" to the website). You may have political endorsements/advocacy on their personal websites or blogs but these cannot be linked to the WTJU website.
- WTJU News Department news reports of candidate visits; statements, etc. **are allowable** in a regularly scheduled newscast. The WTJU News Department may also post news stories on the website.

Endorsements/Advocacy

1. There may be **NO political endorsements** (sanction, support, or approval) of any political issue or candidate for office (this applies to local as well as national elections). The current FCC fine for this is \$20,000 per mention. In addition to on-air announcements there may be no web posting in support of a candidate, issue, etc.
2. Advocacy (i.e. an attempt to persuade) of an issue or candidate is forbidden. An "issue" is legally defined in this usage as "any matter of public importance or interest". Some "Issue" advocacy may be construed as specific to a candidate and should be avoided.

General Advocacy

1. General advocacy is permitted within the context of public affairs programs: Many community and university radio stations have advocacy-type programs. General advocacy programs may:

- a. Influence and express opinions on issues and be controversial
- b. Influence non-legislative bodies
- c. Or have generic messages: "GET OUT THE VOTE!" (no recommendation of a candidate)

"Use" and Equal Opportunity

1. Noncommercial stations (i.e. WTJU) are now **EXEMPT** from previous rules allowing ALL candidates for election or public officials advocating an issue to have the "right" to appear on the station's air (this is called a "use"). This was changed because:
 - a. Small stations have difficulty navigating the complicated requirements of providing equal opportunity to all candidates;
 - b. The consequent paperwork is a burden; and
 - c. The misuse/abuse by some candidates that request access "too late" (i.e. within the last days before the election) for other candidates to posit their request.
 - d. Note: *this rule was changed after the many complaints about the committee for Presidential candidate, Lyndon LaRouche, contacting most small noncommercial radio stations (including WTJU) in the 2004 national election demanding that the stations play his promotional announcement. If you weren't here at the time or don't remember the way WTJU handled it chat with Tyler Magill who hosted the show where the message was played.*
2. You may not utilize any use of candidate's **voice** within the restricted period leading up to the election (90 days) as this is construed as a "use". This includes recordings of a candidate speaking at events unrelated to his/her political aspirations. Prior to the 90 day lead-in period it is acceptable to use their voice **for non-advocacy issues**.
3. Non-discriminatory debates **are acceptable** (i.e. all candidates participate in a debate hosted by broadcast entity).

Volunteer Announcers

WTJU and the Office of Public Affairs are currently modifying our "disclaimer" for the website. The disclaimer includes copyright information. This is not the final version but it will likely include: *WTJU is owned and operated by the Board of Visitors of the University of Virginia. All website content is copyrighted by the University of Virginia <http://www.virginia.edu/copyright.html>. The opinions expressed by announcers or guests on WTJU are not necessarily the opinions of WTJU or the University of Virginia.*

It is acceptable for an announcer to state: "I like John McCain" (or Barack Obama). A simple statement such as the above is not advocacy. However, it is a finable offense for an announcer to state this throughout his/her program: a onetime mention in passing is acceptable. Multiple mentions morphs into advocacy.

“Accidental” Usage

1. All guests on your program MUST be informed in advance that he/she should not advocate an issue/candidate or endorse a candidate for election. If a guest on your show blurts out a statement in the heat of the moment this is treated by the FCC as a “use”.
2. In the event of an accidental usage the show host MUST contact the General Manager as soon as possible with the exact time and language of the usage.
3. The information is then placed in the station’s Public File. All other candidates then have the legal right to appear on the show (or one with similar audience of their choice) and rebut plus the FCC may administer a fine to the broadcaster. (see also IRS fines below)

Songs, Satirical Songs & other Audio

1. The song, “Yes We Can”, is a collage of Obama statements and has been performed by will.i.am (singer for Black Eyed Peas) and others. This song is NOT allowed because it **advocates** Obama.
2. Satirical political recordings “may” be okay but no mention of a current candidate or issue related to a candidate may occur.
3. Playing a concert recording today such as Bruce Springsteen’s concert that includes advocacy for John Kerry during his 2004 candidacy **is acceptable** (because it is not current).
4. Playing outtakes from the pro-Obama concert by RatDog on the Sunshine Daydream show this Spring was acceptable because announcers did not feature the “advocacy” portions of the concert.

Public Service Announcements (PSAs)

1. PSAs announcing candidate appearances or political party events are acceptable. BUT the systematic usage of an announcement to the exclusion of opposing party announcements is not.
2. PSAs for the political groups such as the “Green Party” <http://www.gp.org/elections.shtml> are allowed but not if they are supporting a specific candidate but only if WTJU allows PSAs from organizations representing opposing views.

The IRS & the FEC

1. “501(3)(c) nonprofit organizations may NOT intervene or participate in any political campaign on behalf of any candidate.”
2. Punishment: The IRS has the right to strip an organization of its 501(3)(c) legal status in this situation. What does that mean to the continuation of WTJU?
 - a. The organization loses its tax exempt classification and is no longer “legally” allowed to raise funds;
 - b. Assets in hand, (i.e. donations made to WTJU!) must be returned to the donors.
3. Lobbying using the station’s assets is forbidden: This includes any appeal to contact to legislators or take specific actions with respect to legislation. Following 2004 elections the IRS conducted 400 audits of nonprofit organizations (including many community radio stations) looking for “egregious” usages during the political “season”.