But states may limit certain activities.

Legislatures have an interest in ensuring that nonpartisan staff refrain from overt political activities that may diminish their credibility and effectiveness. But staff also have an “inviolate” right to express themselves politically.

This conflict has led to a robust body of case law. Several courts have found that prohibiting public employees from engaging in certain political activities does not violate the First Amendment if the state can show there is a “sufficiently compelling interest” in doing so. Compelling interests include protecting institutional integrity; maintaining efficient operations, discipline and employee morale; and discouraging improper influences, abuses of position and the appearance of bias.

States, however, do not have limitless authority to penalize employees for expressing partisan sentiment. Courts have rejected restrictions they consider overbroad or too vague. Limits on political activity also must not infringe on a staff member’s state constitutional rights, which may extend beyond those established under federal law.

The First Amendment, state constitutions, statutes, chamber rules, administrative regulations, policies, employee manuals and employment contracts all dictate rules of conduct, some of which may limit partisan political activities by staff.

Agency policies may prohibit nonpartisan staff from signing a petition involving a matter before the legislature, for example, unless an applicable statute or state constitutional provision protects the employee’s right to do so.

Eighteen states have laws protecting the right of staff to participate in political activities, such as signing petitions, voting or running for office. And three states allow employees to hold an elective position if their supervising authority approves.

But staff in eight states who run for office must take a leave of absence or quit, and staff in three states cannot serve on a party committee or in a leadership position. Two states go even further, prohibiting any state employee from attending political meetings or participating in politics beyond voting.

In 26 states, laws prohibit employees from using state resources for partisan political purposes while at work. In another 23 states, chamber rules, rather than state laws, prohibit staff from attempting to influence an issue before the legislature or from using state resources for campaign purposes.

No state restricts the right to vote or register with a party, though four states forbid employees from belonging to groups that advocate for the violent overthrow of the government.

Legislative staff policy manuals should include a description of prohibited political activity. Read those closely when in doubt.

This article is based on the report “Limiting Political Activity for Nonpartisan Staff,” by Nicholas Birdsong, a policy specialist with NCSL’s Center for Ethics in Government.

LIMITS ON POLITICAL ACTIVITY MUST NOT INFRINGE ON STATE CONSTITUTIONAL RIGHTS.

FREE SPEECH

Staff Have a Right to Political Expression

Displaying political messages in one’s yard is not an option for many nonpartisan staffers.