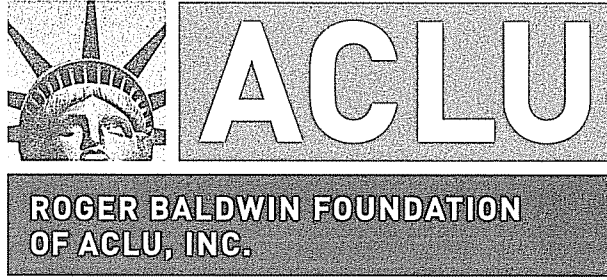


THE
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October 2, 2008

Via facsimile and e-mail

B. Joseph White, President
University of Illinois
108 Henry Administration Building
506 S. Wright Street
Urbana, Illinois 61801

Re: Speech restrictions on University of Illinois employees

Dear President White:

I write on behalf of several employees of the University who wish to engage in constitutionally protected expressive activities without fear of penalty under the statement in "Ethics Matters No. 4 – Prohibited Political Activity," which directs University employees that they may not participate in particular types of political activity while they are on University property. (See Att. A ("Ethics Matters").) For example, employees are prohibited from "[a]ttending a rally on University property specific to a political candidate or party – regardless of whether or not you are on University time." Employees are also prohibited from "wearing a pin or t-shirt in support of the Democratic Party or Republican Party, or a Democratic/Republican candidate," without explanation of where or when these items may not be worn.

Banning these activities on all "University property" unduly infringes University employees' right to free speech and assembly. Furthermore, these restrictions are beyond the bounds of the "State Officials and Employees Ethics Act," which more narrowly prohibits employees from engaging in political activity during work hours, or misappropriating state property or resources for a political campaign. 5 I.L.C.S. 430/5-15.

It is noteworthy that the federal Hatch Act limits similar expressive political activity, but only "in any room or building occupied in the discharge of official duties." 5 U.S.C.A. § 7324. The federal act does not seek to prohibit employee's attendance at political rallies held in expressive forums. Thus, once a federal employee has left her office at the end of a workday, she may join a partisan rally on federal property. A different state's ethics board has considered the distinction between the workplace and all property owned by the state and allowed state employees to use state facilities on the same basis as they

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are available to the public. *See In re Hawai'i Gov't Employees Ass'n*, 170 P.3d 324, 330 (Hawai'i 2007).

University employees should not be prevented from engaging in partisan political activities held at public forums on campus. These public forums are for expression, not for performing official duties. This area is not the government's "workplace" and does not implicate the government's interests as an employer. The University has opened the campus as a forum for political rallies in the past, for example by allowing Ralph Nader to have a political rally in the UIC Pavilion in 2000. According to "Ethics Matters," a secretary in the mathematics department would not be allowed to attend this rally after work even though it was open to the general public. Attending such a rally would not trigger the prohibitions of the "State Officials and Employees Ethics Act": her activity would not occur "during any compensated time" and would not "misappropriate any State property or resources." 5 I.L.C.S. 430/5-15.

The prohibition on partisan buttons and bumper stickers is also impermissibly overbroad. University of Illinois employees do not want to remove bumper stickers because they need to park in University lots. These lots are not the workplace. They are not sites where off-duty employees are "occupied in the discharge of official duties." Moreover, an employee wearing a partisan political button or carrying a sign at a partisan rally is not acting in an official capacity, but participating in a general public forum.

The University is a unique space, similar to a self-contained community or town square. Within the University, there are various species of expressive forums, outdoor public spaces, meeting rooms, libraries, restaurants, gyms, and classrooms, all of which different employees with many different job responsibilities may pass through during the course of one day. Many of these employees, like graduate students or undergraduate part-time work-study students, pass through the roles of employee and student of the University throughout the day as well. Some of these student employees also live on campus, meaning they rarely leave "University property" during the day. The overbroad "Ethics Matters" fails to consider these differences, or the difference between a workplace and public space, when both are owned by the University.

In short, we request that you immediately advise all University employees that they may engage in the following activities while on campus property:

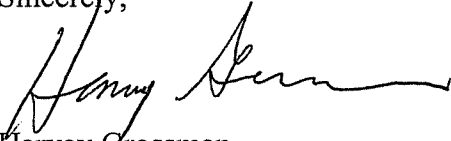
- 1) attend a partisan political rally, provided that the employee at that time is not on duty;
- 2) wear a partisan political button on their person, provided that the employee at that time is neither on duty nor in the workplace of the University; and

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3) display a partisan bumper sticker on their car.

Please advise me of your position on this matter by the close of business on Monday October 6, 2008. My telephone number is (312) 201-9740 x 321.

Sincerely,

A handwritten signature in black ink, appearing to read "Harvey Grossman", written in a cursive style.

Harvey Grossman

cc: Thomas Bearrows, General Counsel, via facsimile and e-mail