



Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

Greg Lukianoff
PRESIDENT

September 29, 2008

Robert L. Shibley
VICE PRESIDENT

President B. Joseph White
Office of the President
University of Illinois
108 Henry Administration Building
506 S. Wright St., MC-370
Urbana, Illinois 61801

William Creeley
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

Alan Charles Kors
CO-FOUNDER AND
CHAIRMAN EMERITUS

Sent via U.S. Mail and Facsimile (217) 333-5733

Dear President White:

BOARD OF DIRECTORS

Harvey A. Silverglate
CO-FOUNDER AND
CHAIRMAN

Barbara Bishop
William J. Hume
Richard Losick
Joseph M. Maline
Marlene Mieske
Daphne Patai
Virginia Postrel
Daniel Shuchman
James E. Wiggins

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of expression posed by the University of Illinois' prohibition against certain political or partisan expression by faculty. This is our understanding of the facts. Please inform us if you believe we are in error.

BOARD OF ADVISORS

Lloyd Buchanan
T. Kenneth Cribb, Jr.
Candace de Russy
William A. Dunn
Benjamin F. Hammond
Nat Hentoff
Roy Innis
Wendy Kaminer
Woody Kaplan
Leonard Liggio
Herbert London
Peter L. Malkin
Muriel Morisey
Steven Pinker
Milton Rosenberg
John R. Searle
Ricky Silberman
Christina Hoff Sommers

The September 2008 issue of *Ethics Matters*, an internal University of Illinois (UI) publication authored by the UI Ethics Office and distributed to all UI employees, including faculty, contained an article entitled "Prohibited Political Activity: Upcoming elections and how this impacts you as an employee." The article detailed activity that supposedly is prohibited by the State Officials and Employees Ethics Act, 5 ILCS 430. Specifically, "prohibited political activity" includes, as described by the article, "things employees can not [sic] do while working, when on University property, while using University resources (e.g., phone, fax, paper, email, etc.), or when acting as a representative of the University."

Noting that the law "isn't always as clear as we'd like," the article lists examples of prohibited and permitted political activity. Examples of prohibited political activity include "[w]earing a pin or t-shirt in support of the Democratic Party or Republican Party, or a Democratic/Republican candidate" and "[d]istributing, producing, or posting flyers or other campaign literature on campus during lunch

or break time.” While the *Ethics Matters* article does note that “[t]he University Ethics Office can not [sic] and does not intend to police each of the campuses for political buttons, t-shirts, bumper stickers, etc.,” this qualification in no way changes the underlying fact that the University Ethics Office seeks to ban “political buttons, t-shirts, bumper stickers” and other expressions of political support by faculty members on campus.

This prohibition is unacceptable and directly violates the constitutional rights of UI faculty. If Illinois intended simply to prevent faculty, as state university employees, from creating the appearance that the university endorses a particular political candidate, it has wildly overshot. While it is true that colleges are required because of their tax-exempt status or status as government agencies not to, for example, endorse a candidate, it is absurd to argue that faculty partisan political speech as obviously and transparently *personal* as buttons and bumper stickers may be banned outright.

By placing such a blanket restriction on political speech, the University of Illinois is in clear violation of its legal obligation to uphold the First Amendment on campus. As a public university, UI is legally bound by the United States Constitution’s guarantee of freedom of speech. Faculty at UI enjoy this right in full. As the Supreme Court famously stated, “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 506 (1969). Indeed, the Court has declared that “[t]he college classroom with its surrounding environs is peculiarly the ‘marketplace of ideas.’” *Healy v. James*, 408 U.S. 169, 180 (1972).

A great swath of political speech that UI seeks to regulate falls under the First Amendment’s guarantee of freedom of speech; indeed, the protection of such political speech was arguably the core motivation for the First Amendment. In particular, the Supreme Court has indicated that “speech concerning public affairs is more than self-expression; it is the essence of self-government,” reflecting “our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964) (internal quotations omitted). Elsewhere, the Court has declared, “Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

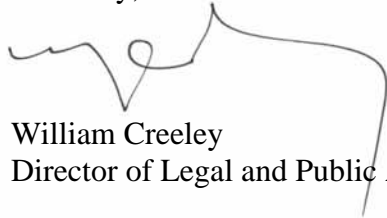
Given these declarations, it is untenable for a public university such as Illinois to deny its faculty the right to engage in simple political speech like wearing campaign buttons or affixing political bumper stickers to cars. When a faculty member wears a political button on campus, there is little chance that any reasonable person would assume that the faculty member is speaking on behalf of the university. The content of the button, whether or not it is political in nature, reflects the personal opinions and views of that individual, not the university as an institution. The university cannot credibly argue that allowing faculty to wear political buttons or affix bumper stickers to cars as a means of expressing themselves on political issues in any way endangers the university’s obligation of political neutrality or its tax-exempt status.

Because the guidelines from the University Ethics Office so clearly overreach, the university must make clear to its faculty, in no uncertain terms, that they are free to engage in the political

and partisan speech that the First Amendment protects. FIRE hopes to resolve this situation amicably and swiftly. We will continue to pursue this matter, however, until the University of Illinois reaffirms the First Amendment rights of its faculty.

We request a response to this letter no later than 5:00 p.m. EDT on October 13, 2008.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Creeley', with a long, thin vertical line extending downwards from the end of the signature.

William Creeley
Director of Legal and Public Advocacy

cc:

Richard Herman, Chancellor, University of Illinois at Urbana-Champaign

Eric Gislason, Interim Chancellor, University of Illinois at Chicago

Richard Ringeisen, Chancellor, University of Illinois at Springfield

Thomas Hardy, Executive Director, Office for University Relations, University of Illinois

Doon McNeely, Ethics Officer, University of Illinois

Cary Nelson, President, American Association of University Professors; Professor, Department
of English, University of Illinois at Urbana-Champaign

Steven Helle, Professor, Department of Journalism, University of Illinois at Urbana-Champaign

Roger Smither, Executive Director, National Communication Association

Jonathan Bean, President, Illinois Association of Scholars