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To: NIU Faculty and Staff

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Re: Guidelines for Policy Advocacy by University Employees

## **I. Introduction**

The purpose of this memorandum is to address issues that can arise when Northern Illinois University (NIU) employees want to participate in government policy advocacy and political activities, sometimes while at work and using work resources. There are various Constitutional provisions, statutes, and regulations that govern state employees in these circumstances. These legal provisions, and their requirements, are analyzed below. Whereas this memorandum sets forth general parameters, it is not tailored for every potential specific situation. That said, the document contains useful guidance, including a workable three-part test that could apply to the use of University email for University employee advocacy.

## **II. University Employee Advocating For or Against Government Policy or Action**

### **A. Employee Using Own Time and Resources**

State University employees have a First Amendment right to advocate for or against local, state, or federal government action (e.g., legislation, executive orders, proposed agency regulations, actions of elected officials). However, unless a University employee has specific permission to represent otherwise, he or she cannot represent that they are advocating on behalf of the University. In fact, in cases where NIU employees identify themselves as such, they should make clear that they are advocating on their own behalf, and not on behalf of the University.

The NIU Law (110 ILCS 685/30-160) contains a provision titled, "Faculty and Staff Contact with Public Official," which reads as follows:

All faculty and staff members of the University are free to communicate their views on any matter of private or public concern to any member of the legislative, executive, or judicial branch of government, State or federal, without notice to or

prior approval of the University, so long as they do not represent that they are speaking for or on behalf of the University.

Likewise, the Regulations of the Board of Trustees, Section VII., "Other Operational Affairs," Subsection A., "Legislative Affairs (Governmental Relations)" states:

1. Policy

In furtherance of its role as the governance body for NIU, the Board of Trustees is desirous of participating in those legislative matters affecting the university and Illinois higher education.

*a. Review*

Proposed or pending legislation shall be reviewed by the president and the president's staff.

*b. Representation*

No person shall take any position on behalf of the Board of Trustees in any legislation proposed or pending in the General Assembly without prior authorization of the Board of Trustees or the president.

In short, NIU employees are free to contact government officials and government entities regarding government policy and action. However, they cannot represent that they are acting on behalf of the University unless they are otherwise authorized to do so. If they hold themselves out as NIU employees, they should make clear that they are speaking on their own behalf, and not the University's.

**III. Employee Use of University Resources to Advocate For or Against Government Policy or Action**

An issue can sometimes arise as to whether University faculty and staff are allowed to use University resources -- email, time, departmental or University letterhead, computer, copy machines, ink – in advocating for or against government policy or action.

Article VIII of the Illinois Constitution (Finance), Section 1. (a) states:

Public funds, property or credit shall be used only for public purposes.

A) The University as an Entity

The Board of Trustees, and by delegation, the University Administration, clearly have a right to commit public University resources to advocate for governmental actions and policies that the Board and Administration believe to be in furtherance of the University's mission and goals. In such cases, the University can encourage University employees to join with the University's

advocacy, and to use University resources in doing so. For instance, if the Board and the Administration are advocating for or against proposed legislation, they can encourage employees to write or call lawmakers using University time and resources (computers, phones, email, etc.) to advocate for or against that legislation as well.

#### B) Individual Employees

Despite what appears to be strict language of the Illinois Constitution, Article 8, Section 1, state agencies have a practice of allowing de minimis use of public resources for personal use with agency permission (for example, our Acceptable Use Policy at NIU allows such de minimis use). Recently, questions have been raised about whether or not it would be appropriate for faculty members to sign an advocacy statement with their university email in order to demonstrate employment in higher education. In fact, this use of university email would be acceptable so long as it's part of de minimis use of resources, and it is clear that these faculty members are stating their personal position on an executive, legislative or other government policy or action, and not an official position of the University.

Thus, in the context of employee speech, it is up to the University Administration to determine whether it is acceptable for University employees to use de minimis University resources to express their opinions on current or proposed laws, regulations, or government actions. The NIU Administration has determined that such communication is acceptable when the use of resources such as email and time is minimal, and the following conditions are met:

1. The communication should somehow be related to the employee's University work or the mission of the University.
2. University employees should indicate that they are advocating on their own behalf and not on behalf of the University.
3. Government advocacy activities using University resources should remain de minimis – that is, kept to a minimum level and not otherwise have a detrimental effect on the employees work duties.

#### **IV. University Employee "Political Activity" is Prohibited Using University (State) Time and Resources**

The State Officials and Employees Ethics Act ("Ethics Act") sets forth conduct that is considered to be Prohibited Political Activity for state employees. Under the Act:

"Political" means any activity in support of or in connection with any campaign for elective office or any political organization, but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action (as those terms are defined in Section 2 of the Lobbyist Registration Act), (ii)

relating to collective bargaining, or (iii) that are otherwise in furtherance of the person's official State duties or governmental and public service functions.

Political parties are considered to be "political organizations" under the Ethics Act. Typical examples of Prohibited Political Activity would be:

- Using University work time to hand out flyers on behalf of a candidate for political office (either a local, state, or federal office);
- Using University email or University letterhead to encourage others to vote for a candidate for political office.
- Using University work phone to secure volunteers to work at Republican, Democrat, or any other political party headquarters.

University employees do not forfeit their First Amendment rights while not on worktime. For instance, an employee can politic on campus as long as he or she is off the clock, and is not using University resources (paper, letterhead, email, copy machines, etc.). For example, during uncompensated lunch time, or after a work shift, an employee would be allowed to hand out flyers on campus on behalf of a candidate for public office.

Finally, employees are obviously free to spend as much time and their own personal resources as they'd like, working on behalf of a political candidate or a political party, as long as they're not using state time or state resources.