

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into on December 21, 2009 (“the Effective Date”) by and between Keith Fangman, David Feiman, and Paul Graves, plaintiffs in *Fangman et al v. City of Cincinnati, et al*, USDC, SD OH, 1:08cv702 and the City of Cincinnati, its, successors, agents, insurers, attorneys, officers, officials, (hereafter referred to as “Defendant”).

WHEREAS, Plaintiffs are employees of the City of Cincinnati subject to certain restrictions on political contributions and other political activity;

WHEREAS, Plaintiffs have filed a lawsuit alleging that the political restrictions imposed by the City violate their rights under the First Amendment to The United States Constitution *Fangman et al v. City of Cincinnati, et al*, USDC, SD OH, 1:08cv702 (hereafter referred to as “lawsuit”);

WHEREAS, an order has been entered in the lawsuit enjoining portions of the political activity restrictions;

THEREFORE, in consideration of the mutual promises of the parties set forth below, the parties agree as follows:

A. PLAINTIFF OBLIGATIONS

1. Plaintiff agrees to file an entry dismissing the lawsuit with prejudice (Attached as A-1) upon completion by Defendants of all the obligations under this agreement.

B. CITY OF CINCINNATI OBLIGATIONS

2. Defendant Agrees to adopt revised Rule 2.2 (attached as A-2) no later than December 31, 2009.

3. Defendant agrees to provide the Notice of Settlement (attached as A-3) to each of the City workers before January 31, 2010 and to post the notice on its website by December 31, 2009.
4. Defendants agree to pay, no later that Dec. 31, 2009, \$80,900.00 to plaintiffs in complete settlement of all monetary claims, including but not limited to all claims for damages, attorney fees and litigation expenses.

C. RELEASE


5. In consideration of the payment set forth herein and other promises forth herein, Plaintiffs hereby release and forever discharge Defendant, its successors, agents, insurers, attorneys, officers, officials, from any and all past, present or future claims , including, but not limited to, any and all actions which Plaintiffs have or claim to have for any and all damages or equitable relief known and unknown and in any manner arising out of the alleged restrictions on their political activity as described in the lawsuit.

D. ENTIRE AGREEMENT

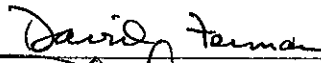
6. Plaintiffs acknowledge that this Settlement Agreement is the entire agreement and encompasses all terms and agreements negotiated by them in settlement of any and all claims relating to the lawsuit and that there is no other writing whatsoever.

Agreed:

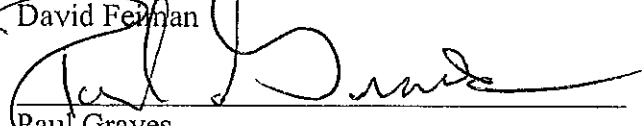
City of Cincinnati



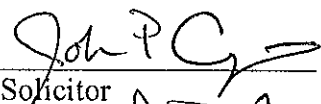
Keith Fangman



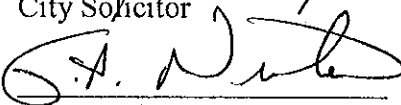
David Feinman



Paul Graves

by: 

City Solicitor



Approved as to form

Assistant City Solicitor

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

KEITH FANGMAN, et al,	::	Case No. 1:08-CV-702
	:	
Plaintiffs,	:	Judge Michael R. Barrett
	:	
vs.	:	
	:	STIPULATED DISMISSAL
CITY OF CINCINNATI,	:	
	:	
Defendant	:	
	:	

The parties have resolved their differences in this matter. The preliminary injunction (Doc. 11) was never made permanent and the settlement makes the injunction unenforceable as moot. The preliminary injunction is hereby vacated. The matter is now dismissed with prejudice.

SO ORDERED:

Michael R. Barrett, Judge
United States District Court

Agreed

s/Alphonse A. Gerhardstein
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REVISED RULE 2.2 (12/21/09)
Political Activity Policy

I. Political Activity Policy

These rules apply to all City of Cincinnati employees in the administrative service, both classified and unclassified. This rule does not apply to employees in the Legislative Service.

The purpose of these rules is to protect employees from political interference and pressure to contribute to a particular political party or candidate while honoring the First Amendment Rights of employees.

The City's interests include promoting efficiency and integrity in the discharge of government operations including maintaining proper discipline, impartial execution of the law, merit-based advancement, and attracting qualified workers by ensuring job security and protecting employees from political extortion.

II. Financial Contributions.

A. Permitted Contributions. An employee may make voluntary financial contributions to political candidates or organizations for the following partisan offices:

1. All federal offices
2. All offices out of the state of Ohio

B. Prohibited Contributions. An employee may not make campaign contributions to any political party, elected official, candidate, or the candidate or elected official's campaign committee, agents or representatives if the elected official or candidate is or will be any of the following:

- (a) The mayor or a City councilmember;
- (b) An elected official of the State of Ohio or its political subdivisions

III. Political Activities.

A. General Rule. Employees are not permitted to solicit funds or otherwise participate in political activities involving any City office or City official running as a candidate for any office. Employees are permitted to solicit funds and otherwise participate in political activity on behalf of any issue or federal candidate or candidate outside of Ohio as long as it occurs while the employee is not on duty, not at a City workplace, and not in uniform or otherwise using city resources or official title. Except as set out in Section B below, employees are not permitted to solicit funds or participate in political activity on behalf of a partisan candidate or political party in any campaign for an elected office in the State of Ohio or any of its political subdivisions.

B. Classified and unclassified employees may:

1. Be candidates for public office in nonpartisan elections held without a primary election and without a partisan ballot or other party identification
2. Register and vote as they choose
3. Assist in non-partisan voter registration drives
4. Express private opinions about candidates and issues, such as private letters and emails from a non-public address, not using official title or job description.
5. Contribute money to political organizations, such as unions or political action committees (PACs)
6. Attend political rallies and meetings, not using official title or job description
7. Sign nominating petitions
8. Campaign for or against non-partisan issues.
9. Wear buttons or badges but not while on duty, in uniform, or in areas where city business is transacted by that employee
10. Display political stickers on private vehicles not used for city business
11. March in a parade for a candidate for federal office as long as the candidate is not a City official.
12. Display political materials or signs at home, provided no fee is received for the display
13. Serve as a precinct election official under section 3501.22 of the Revised Code.
14. Indicate on federal income tax return that portion of taxes that may be used to finance presidential elections
15. Indicate political views in private, non-employment related settings where the primary purpose is social and not political.

C. Classified and unclassified employees may not:

1. Use official authority or influence to interfere with an election
2. Use official title while participating in political activity
3. Solicit, accept or receive political contributions from a city employee
4. Be candidates for public office in partisan elections

5. Circulate nominating petitions for candidates seeking partisan elective office
6. Serve as an elected or appointed officer of a partisan organization
7. Be appointed to an office normally filled by partisan election without resigning City employment.
8. Engage in political activity while:
 - a. on duty
 - b. in a government office
 - c. wearing an official uniform
 - d. using a government vehicle
9. Wear partisan political buttons on duty
10. March in a parade for a candidate for State, County or a City office.
11. Participate in partisan political activity where employee is identified by title or employment position
12. Commercially disseminate an expression, endorsement, or opposition to a candidate for elective office, including (but not limited to) advertisements, flyers, billboards or bulk mailings.
13. Appear in an advertisement for a candidate for a partisan candidate or partisan political organization.

IV. Lobbying Prohibitions

No City employee may use City time, equipment, and/or City funds to organize, facilitate, or support efforts to lobby City Council for additional funding. No money appropriated to a City department, board, or commission by City Council may be used directly or indirectly to pay for any personal service, printed or written matter, emails, telephone calls, or any other device intended to influence in any manner a member of City Council to favor, adopt, or oppose any ordinance, resolution, or policy that may impact the funding that department, board, or commission receives from City Council.

V. Political Activity Interpretations

A. Classified Employees. Classified employees may submit a description of contemplated activity to the Civil Service Commission (CSC). The CSC will review the contemplated activity and advise the employee whether or not the activity is permitted under Section 2.2. A record will be kept (without identifying the requesting employee) of all opinions of the CSC under this section and posted to the city website for the guidance of all employees. The CSC will strive to make a decision within two weeks of receipt of a request.

B. Unclassified Employees. Unclassified employees may submit a description of contemplated activity to the City Solicitor's Office. The Solicitor's Office will review the contemplated activity and advise the employee whether or not the activity is permitted under Section 2.2. A record will be kept (without identifying the requesting employee) of all opinions of the City Solicitor under this section and posted to the city website for the guidance of all employees. The City Solicitor will strive to make a decision within two weeks of receipt of a request.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

KEITH FANGMAN, et al,	::	Case No. 1:08-CV-702
	:	
Plaintiffs,	:	Judge Michael R. Barrett
	:	
vs.	:	
	:	NOTICE OF SETTLEMENT
CITY OF CINCINNATI,	:	AGREEMENT
	:	
Defendant	:	

NOTICE OF SETTLEMENT AGREEMENT

This lawsuit was filed by City employees challenging restrictions by the City on political contributions and political activity. Plaintiffs are City employees Keith Fangman, Paul Graves and David Feiman. The plaintiffs filed the lawsuit as a class action. A Motion to Certify the Class was filed but the case was settled without a class being certified. This means that the settlement in this case does not formally apply to other City workers. The settlement, however, includes new rules on donations and political activity that the City will include in a new policy so as a practical matter other workers are impacted by this agreement since they will be covered by the rule. This Notice is required by the Court.

The parties have reached a settlement that the Court has approved. The date of the settlement agreement is December 21, 2009. The City has adopted a revision of its Rule 2.2, which governs participation of city employees in political activity. The rule applies to classified and unclassified employees. The revised rule is posted on the City website. In summary, the revised rule provides as follows:

Contributions. City employees are permitted to give money to candidates for all federal offices and all offices out of the state of Ohio. Employees are not permitted to donate money to Ohio State, County, or local candidates for partisan office.

Political Activity. Employees are permitted to participate in political activity on behalf of any issue or federal candidate as long as the activity occurs while the employee is not on duty, not on city property, and not in uniform or otherwise using city resources or official title. Participation in elections for Ohio state and local offices remains more restricted. The revised rule allows employees to distribute campaign literature in federal elections and in other specific private political activity. The permitted activities are set forth in detail in the revised rule. Employees are not permitted to participate in political activity on behalf of any City candidate.

Opinions. If classified employees are denied permission to participate in political activities or need guidance on whether a proposed activity is permitted, the employees may submit a description of contemplated activity to the Civil Service Commission (CSC). The CSC will advise the employee whether or not the activity is permitted. The CSC will keep records of its opinions and post them to the city website for the guidance of all employees. Unclassified employees may submit a description of contemplated activity to the City Solicitor's Office, which will advise unclassified employees and keep records of its opinions and post those to the city website.

The lawsuit will be dismissed after the City adopts the revised rule. City employees with questions about the settlement agreement and lawsuit may contact:

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