



**FIRE's**
SPOTLIGHT ON
SPEECH CODES
2009

THE STATE OF FREE SPEECH ON OUR NATION'S CAMPUSES
A report of the Foundation for Individual Rights in Education

“ [C]ontroversial expression . . . is the First Amendment’s highest duty to protect. By political definition, popular views need no protection. It is *unpopular* notions that are in the greatest peril—and it was primarily to protect their expression that the First Amendment was adopted. The Framers of our Constitution believed that a democracy could remain healthy over time only if its citizens felt free both to invent new ideas and to vent thoughts and feelings that were thoroughly out of fashion. Fashion, it was understood, is an agent of repression—and repression is an agent [of] democracy’s death. ”

College Republicans at San Francisco State University v. Reed, 523 F. Supp. 2d 1005 (2007)

SPOTLIGHT ON SPEECH CODES 2009



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INTRODUCTION

Each year, the Foundation for Individual Rights in Education (FIRE) conducts a wide, detailed survey of restrictions on speech at America's colleges and universities. The survey and resulting report explore the extent to which schools are meeting their obligations to uphold students' and faculty members' rights to freedom of speech, freedom of expression, and private conscience. As in past years, FIRE found that the majority of institutions are failing to meet these obligations. There is cause for hope, however; this year, FIRE found a slight decline in the percentage of institutions that maintain policies clearly and substantially prohibiting constitutionally protected expression. While this improvement may not sound newsworthy, the state of free speech on campus has been so poor for so long that FIRE considers any improvement in the situation to be significant. The tide of speech codes may finally be turning.

This year's report—*Spotlight on Speech Codes 2009: The State of Free Speech on Our Nation's Campuses*¹—examines the restrictions on speech in force at a large sample of American colleges and universities and identifies emergent trends within the data. The report also addresses recent developments regarding free speech in the university setting, drawing from FIRE's research on university policies and from cases that FIRE has handled over the past academic year.

As always, some of the restrictions on speech that FIRE has discovered would be laughable if they were not so serious. Some highlights from this year's research include:

* Jackson State University in Mississippi prohibits speech “which degrades, insult [sic], taunt [sic], or challenges another person by any means of communication, verbal [sic], so as to provoke a violent response, communication of threat, defamation of character, use of profanity, verbal assaults, derogatory comments or remarks, sexist remarks, racists [sic] remarks or any behavior that places another member of the University community in a state of fear or anxiety.”²

* Penn State University requires its students to agree that they “will not engage in any behaviors that compromise or demean the dignity of individuals or groups,” including any “taunting,” “ridiculing,” or “insulting.”³

* Clark University prohibits “any act or attempted act by any person against another person, group, or property that has the intent of hostility towards the victim.”⁴

FIRE hopes that by exposing the magnitude of the threat to free speech on the American college campus, we will draw increased public attention to the problem and inspire solutions. After all, public scrutiny is perhaps the greatest weapon against these abuses. As Justice Louis Brandeis famously wrote, “Sunlight is said to be the best of disinfectants.”

¹ The title of last year's report was *Spotlight on Speech Codes 2007*. The two-year gap between report dates is a change in title format only; the annual reports are sequential. Since the report is released late in the year and is intended for use in the upcoming year, FIRE will title each report with the date of the upcoming year from this point onward. This change in nomenclature will ensure that prospective students, their parents, and other readers are aware of the report's ongoing relevance.

METHODOLOGY

FIRE surveyed publicly available policies at the 100 “Best National Universities” and at the 50 “Best Liberal Arts Colleges,” as rated in the August 27, 2007 “America’s Best Colleges” issue of *U.S. News & World Report*. FIRE also surveyed an additional 207 major public universities. Our research focuses in particular on public universities because, as explained in detail later in this report, public universities are *legally* bound to protect students’ right to free speech.

FIRE rates colleges and universities as “red light,” “yellow light,” or “green light” based on how much, if any, protected speech their written policies restrict. FIRE defines these terms as follows:

RED LIGHT

A “red-light” institution has at least one policy that both clearly and substantially restricts freedom of speech. A “clear” restriction is one that unambiguously infringes on protected expression. In other words, the threat to free speech at a red-light institution is obvious on the face of the policy and does not depend on how the policy is applied. A “substantial” restriction on free speech is one that is broadly applicable to important categories of campus expression. For example, a ban on “offensive speech” would be a clear violation (in that it is unambiguous) as well as a substantial violation (in that it covers a great deal of what would be protected expression in the larger society). Such a policy would earn a university a red light.

YELLOW LIGHT

A “yellow-light” institution has policies that could be interpreted to suppress protected speech or policies that, while restricting freedom of speech, restrict only narrow categories of speech. For example, a policy banning “verbal abuse” would have broad applicability and would pose a substantial threat to free speech, but would not be a clear violation because “abuse” might refer to unprotected speech, such as threats of violence or genuine harassment. Similarly, while a policy banning “posters promoting alcohol consumption” clearly restricts speech, it is limited in scope. Yellow-light policies may be unconstitutional,⁵ and a rating of yellow rather than red in no way means that FIRE condones a university’s restrictions on speech. It simply means that those restrictions do not clearly and substantially restrict speech in the manner necessary to warrant a red light.

GREEN LIGHT

If FIRE finds no policies that seriously imperil speech, a college or university receives a “green light.” A green light does not indicate that a school actively supports free expression. It simply means that FIRE has not found any publicly available written policies violating students’ free speech rights on that campus.⁶

NOT RATED

When a private⁷ university states clearly and consistently that it holds a certain set of values above a commitment to freedom of speech, FIRE does not rate that university.⁸

Of the 364 schools surveyed in this report, FIRE rates 356 schools as red, yellow, or green light, and has not rated 8 schools.⁹

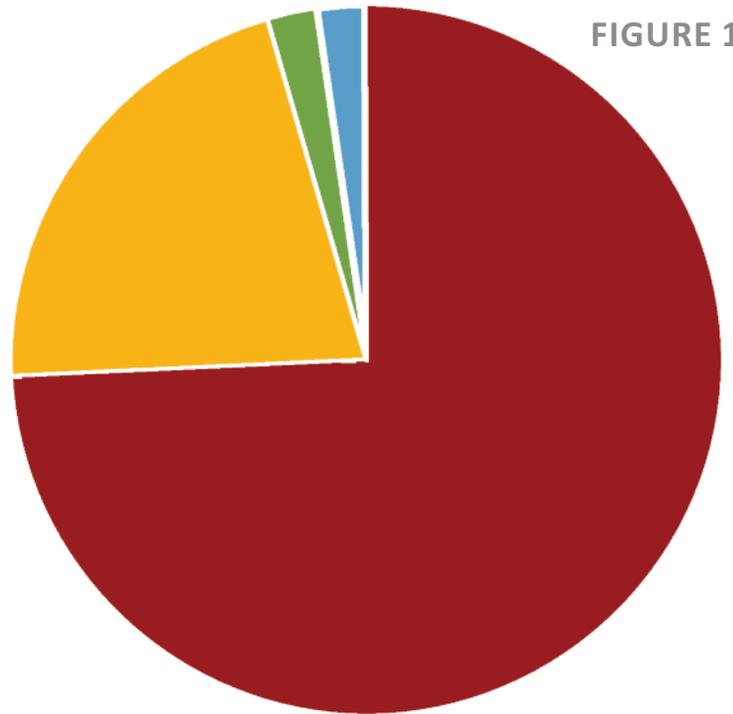


FINDINGS

ALL SCHOOLS BY RATING

Of the 364 schools reviewed by FIRE, 270 received a red-light rating (74.2%), 78 received a yellow-light rating (21.4%), and only 8 received a green-light rating (2.2%). FIRE did not rate 8 schools (2.2%).¹⁰ (See Figure 1.)

- RED LIGHT:** 270 Colleges and Universities
- YELLOW LIGHT:** 78 Colleges and Universities
- GREEN LIGHT:** 8 Colleges and Universities
- NOT RATED:** 8 Colleges and Universities



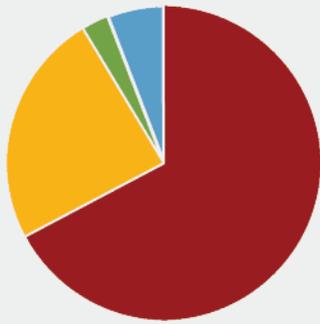


FIGURE 2

RED LIGHT: 70 Colleges and Universities
YELLOW LIGHT: 25 Colleges and Universities
GREEN LIGHT: 3 Colleges and Universities
NOT RATED: 6 Colleges and Universities

SPEECH CODES AT PRIVATE COLLEGES AND UNIVERSITIES

The data showed that in spite of their legal obligation to uphold the First Amendment rights of students and faculty, public schools were actually more restrictive of speech than their private counterparts. Of the schools reviewed by FIRE over the past year, 104 were private and 260 were public. Of the private schools reviewed, 67% received a red-light rating, 24% received a yellow-light rating, 3% received a green-light rating, and 6% were not rated. (See Figure 2.)

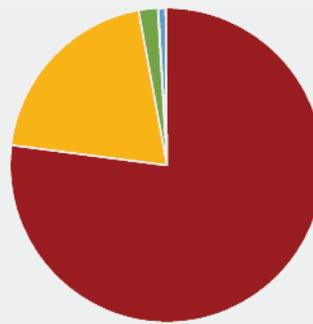


FIGURE 3

RED LIGHT: 200 Colleges and Universities
YELLOW LIGHT: 53 Colleges and Universities
GREEN LIGHT: 5 Colleges and Universities
NOT RATED: 2 Colleges and Universities

SPEECH CODES AT PUBLIC COLLEGES AND UNIVERSITIES

In contrast, a full 77% of public schools reviewed received a red-light rating, 20% received a yellow-light rating, and only 2% received a green-light rating. One percent were not rated. (See Figure 3.) While these numbers are deplorable, it is nonetheless worth noting a slight improvement: Last year, 79% percent of public schools received a red-light rating, while 19% were rated as yellow light.

² 2007–2008 Jackson State University Student Handbook, available at <http://www.jsu.edu/studentlife/06BookProof.pdf>. Because university policies—or, more frequently, just the links to those policies—change on a regular basis, copies of all policies cited in this report are also available at <http://www.thefire.org/index.php/article/9938.html>.

³ “Penn State Principles,” available at <http://www.psu.edu/ur/principles.html>.

⁴ “Code of Student Conduct,” *Clark University Synergy Handbook*, available at <http://www.clarku.edu/offices/dos/synergy/conduct.cfm>.

⁵ For example, in 2004, the U.S. Court of Appeals for the Third Circuit found that a state law banning advertisers from paying to place advertisements for alcoholic beverages in university newspapers was unconstitutional. *Pitt News v. Pappert*, 379 F.3d 96 (3d Cir. 2004).

⁶ FIRE rated the following institutions as “green light”: Alabama A&M University, Carnegie Mellon University, Cleveland State University, Dartmouth College, University of Nebraska—Lincoln, University of Pennsylvania, University of Tennessee—Knoxville, and University of Utah.

⁷ This year, the “Not Rated” list contains two public institutions: the U.S. Military Academy and the U.S. Naval Academy, both of which were named in *U.S. News & World Report*’s list of the top 50 liberal arts colleges. Although these institutions are public, the First Amendment does not apply in the military as it does in civilian society. Rather, the U.S. Supreme Court has held that “[t]he military need not encourage debate or tolerate protest to the extent that such tolerance is required of the civilian state by the First Amendment; to accomplish its mission the military must foster instinctive obedience, unity, commitment, and esprit de corps. The essence of military service ‘is the subordination of the desires and interests of the individual to the needs of the service.’” *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986) (internal citations omitted). Therefore, since these institutions do not promise their students full freedom of speech and, like private universities, are not obligated to, FIRE has designated them as “Not Rated.”

⁸ For example, Worcester Polytechnic Institute (WPI) makes clear in its policies that students entering WPI are not guaranteed robust free speech rights. For example, WPI’s student code of conduct explicitly states that “[T]he WPI community recognizes that membership in this particular academic community is freely sought and freely granted by and to its members, and that within this membership group certain specific behaviors that may be accepted by society in general cannot be accepted within an academic community without hindering the explicit goals of that academic community.” It would be clear to anyone reading WPI’s policies that they were not entitled to unfettered free speech at WPI.

⁹ FIRE has not rated the following schools: Bard College, Baylor University, Brigham Young University, Pepperdine University, the U.S. Military Academy, the U.S. Naval Academy, Worcester Polytechnic Institute, and Yeshiva University.

¹⁰ See Appendix B for a full list of schools by rating.



SPEECH CODES AROUND THE COUNTRY

This report also divides the United States into four geographic regions: the Northeast, the Midwest, the South, and the West.¹¹ Previous reports showed uniformity among the geographic regions of the United States with respect to the severity of college and university speech codes. While the high percentage of red-light schools in each region still suggests that the problem of speech codes is national in scope rather than confined to one area of the country, this year's data did show a greater disparity among regions than in years past. The percentage of institutions having red-light speech codes varied from 69% in the South to a staggering 84% in the Midwest. The South had the highest percentage of yellow-light institutions (28%). The Northeast had the highest percentage of green-light institutions (3%).

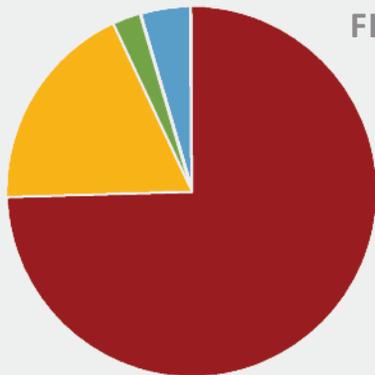


FIGURE 4

SPEECH CODES AT NORTHEASTERN COLLEGES AND UNIVERSITIES

RED LIGHT: 85 Colleges and Universities
YELLOW LIGHT: 21 Colleges and Universities
GREEN LIGHT: 3 Colleges and Universities
NOT RATED: 5 Colleges and Universities

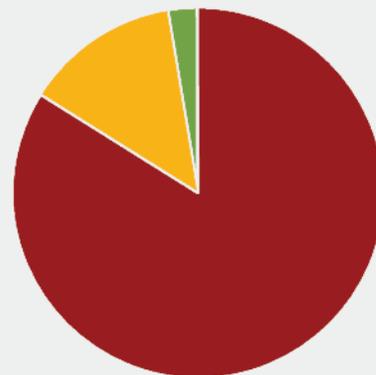


FIGURE 5

SPEECH CODES AT MIDWESTERN COLLEGES AND UNIVERSITIES

RED LIGHT: 68 Colleges and Universities
YELLOW LIGHT: 11 Colleges and Universities
GREEN LIGHT: 2 Colleges and Universities

¹¹ See Appendix A for a list of the states contained in each geographic region.

¹² Enrollment data were obtained from college profiles available at <http://www.collegeboard.com>. Enrollment figures include both undergraduate and graduate enrollment.

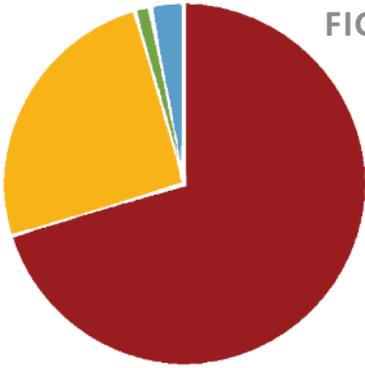


FIGURE 6

SPEECH CODES AT SOUTHERN COLLEGES AND UNIVERSITIES

RED LIGHT: 70 Colleges and Universities
YELLOW LIGHT: 29 Colleges and Universities
GREEN LIGHT: 2 Colleges and Universities
NOT RATED: 1 College or University

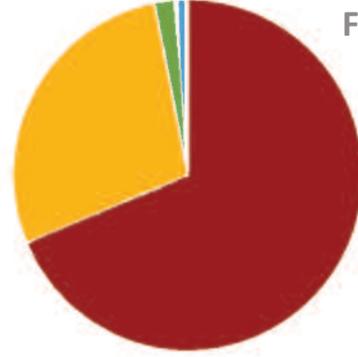


FIGURE 7

SPEECH CODES AT WESTERN COLLEGES AND UNIVERSITIES

RED LIGHT: 47 Colleges and Universities
YELLOW LIGHT: 17 Colleges and Universities
GREEN LIGHT: 1 College or University
NOT RATED: 2 Colleges and Universities

PERCENTAGE OF RED-LIGHT SCHOOLS VS. ENROLLMENT

The data also showed a relationship between enrollment levels and restrictions on speech.¹² Among schools with a total enrollment of less than 10,000 students, 70% received a red-light rating. Among schools with an enrollment of between 10,000 and 20,000 students, 76% were rated as red-light institutions, while 80% of schools with an enrollment of between 20,000 and 30,000 students received a red-light rating. Finally, 79% of schools with a total enrollment of over 30,000 students were rated as red-light institutions. (See Figure 8.) FIRE surveyed 38 universities with an enrollment of over 30,000 students, 30 of which received a red-light rating. The total enrollment at those 30 schools alone is 1,157,590 students. These figures reveal that a striking number of students are affected by unconstitutional speech codes; the total number of students enrolled at red-light institutions is 3,947,777.

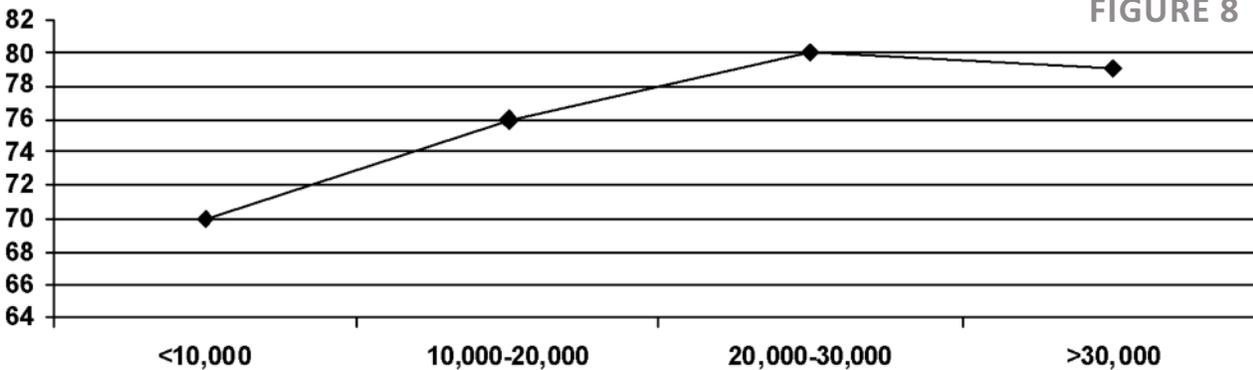


FIGURE 8



SPOTLIGHT ON:

BIAS REPORTING PROTOCOLS

In recent years, colleges and universities around the country have instituted policies and procedures specifically aimed at eliminating “bias” and “hate” on campus. These sets of policies and procedures, frequently termed “Bias Reporting Protocols” or “Bias Incident Protocols,” often include speech codes prohibiting extensive amounts of protected expression. The protocols often also infringe on students’ right to due process, allowing for anonymous reporting that denies students the right to confront their accusers. Moreover, universities are often heavily invested in these bias incident policies, having set up entire regulatory frameworks devoted solely to addressing them.

The College of William and Mary received substantial negative exposure last fall for a bias reporting program that was fraught with constitutional problems from both free speech and due process standpoints. The system initially allowed for anonymous reporting, provid-

ing that “[a] person reporting online may report anonymously by leaving the personal information fields blank.”¹ The definition of “bias” was overbroad and encompassed constitutionally protected expression: “A bias incident consists of harassment, intimidation, or *other hostile behavior* that is directed at a member of the William and Mary community because of that person’s race, sex (including pregnancy), age, color, disability, national or ethnic origin, political affiliation, religion, sexual orientation, or veteran status.”² (Emphasis added.) The homepage for the system even contained an explicit misstatement about the First Amendment, stating that the First Amendment did not protect “expressions of bias or hate aimed at individuals that violate the college’s statement of rights and responsibilities.”³ In the wake of extensive criticism, William and Mary quietly made a number of significant changes to the program, including eliminating anonymous reporting and revising

¹ <http://www.thefire.org/index.php/article/8682.html>.

² <http://www.thefire.org/index.php/article/8683.html>.

³ <http://www.thefire.org/index.php/article/8684.html>.

⁴ William and Mary’s current Bias Incident Reporting Website can be viewed at <http://web.wm.edu/diversity/reportbias>.

⁵ University of Minnesota–Morris Campus Procedures for Reporting and Responding to Bias Incidents and Hate Crimes, available at http://www.morris.umn.edu/services/hr/Bias_Incidents.htm.

⁶ University of Missouri Bias Incident Report Form, <http://equity.missouri.edu/bias-reporting/form.php>.

⁷ University of Virginia Bias Reporting Web Site, <http://www.virginia.edu/justreportit/>.

the definition of bias to be consistent with federal anti-harassment law.⁴

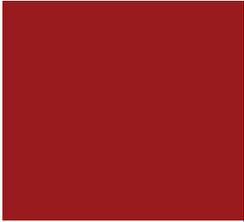
Unfortunately, examples of these unconstitutional policies—and their attendant regulatory frameworks—abound at other colleges and universities nationwide. To take just a few:

* The University of Minnesota–Morris has a Bias Incident Response Team that is explicitly authorized to take action against constitutionally protected expression: “Where the conduct underlying an incident is protected speech but still violates the University of Minnesota’s commitment to civility and diversity,” the incident will be addressed through various vague steps including “conflict mediation” and “restorative justice efforts.”⁵ Not surprisingly, the university’s definition of bias includes protected speech, encompassing any “expressions of disrespectful bias, hate, harassment or hostility against an individual, group or their property because of the individual or group’s actual or perceived race, color, creed, religion, national origin, gender, gender identification, age, marital status, disability, public assistance status, veteran status and/or sexual orientation”

* The University of Missouri makes available a “Bias Incident Report” form that students can use “to report electronically—and anonymously if you so choose—a bias incident that has occurred within the MU community.” Reportable acts include any “act committed against any person, group, or property which you believe discriminates, stereotypes, harasses, or excludes anyone based on some part of their identity.” (Emphasis added.)⁶

* The University of Virginia maintains a Bias Reporting Web Site where users can download a Bias Incident Reporting Form that they may then submit anonymously.⁷

FIRE takes no official position on hate crime regulations (regulations that impose stiffer penalties for actual crimes when the crimes were motivated by hate). However, the trend toward prohibiting so-called “bias incidents”—often including protected speech and often explicitly defined as conduct or expression that *does not* rise to the level of a crime—is disturbing.



DISCUSSION



SPEECH CODES ON CAMPUS: BACKGROUND AND LEGAL CHALLENGES

Speech codes—***university regulations prohibiting expression that would be constitutionally protected in society at large***—gained popularity with college administrators in the 1980s and 1990s. As discriminatory barriers to education declined, female and minority enrollment increased. Concerned that these changes would cause tension and that students who finally had full educational access would arrive at institutions only to be hurt and offended by other students, college administrators enacted speech codes.

In doing so, however, administrators ignored or did not consider the legal ramifications of placing such restrictions on speech, particularly at public universities. As a result, federal courts have overturned speech codes at numerous colleges and universities, including in two decisions in the past year at San Francisco State University and Temple University.

The College Republicans at San Francisco State University (SFSU) filed a federal lawsuit against the university after the group was subjected to a months-long investigation and hearing for having stepped on replicas of the Hamas and Hezbollah flags at an anti-terrorism rally that the group held

on campus in the fall of 2006. Because the flags contained the word “Allah” in Arabic, the College Republicans’ actions offended some students, who lodged a complaint with the university, which in turn initiated an investigation into accusations of incitement, creation of a hostile environment, and incivility. The College Republicans’ suit challenged not only the university’s actions, but also the speech codes under which they were charged, including one policy requiring students “to be civil to one another” and another permitting student organizations to be held collectively accountable “when the behavior is inconsistent with SF State goals, principles and policies.”

In November 2007, the district court issued an opinion enjoining SFSU from enforcing either of these policies.¹³ The court emphasized the principle that the state “cannot proscribe speech or conduct that is merely ‘offensive to good taste.’”¹⁴ It also emphasized the particular importance of the First Amendment in higher education, decisively rejecting any suggestion that court decisions allowing for greater regulation of speech in secondary schools are relevant in the university setting:



[F]or purposes of First Amendment analysis there are very important differences between primary and secondary schools, on the one hand, and colleges and universities, on the other. As the courts often have acknowledged, the state does not require higher education and has much less interest in regulating it, the students in colleges and universities are not children, but emancipated (by law) adults, and, critically, the mission of institutions of higher learning is quite different from the mission of primary and secondary schools. As courts have emphasized, “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools [of higher learning].”¹⁵

In August 2008, the U.S. Court of Appeals for the Third Circuit dealt another severe blow to campus speech codes when it upheld a lower court’s decision that one of Temple University’s speech codes was unconstitutional.¹⁶ The policy in question defined “sexual harassment” as

expressive, visual, or physical conduct of a sexual or gender-motivated nature, when . . . (c) such conduct has the purpose or effect of unreasonably interfering with an individual’s work, educational performance, or status; or (d) such conduct has the purpose or effect of creating an intimidating, hostile, or offensive environment.¹⁷

The court, noting that “on public university campuses . . . free speech is of critical importance because it is the lifeblood of academic freedom,”¹⁸ found the policy unconstitutional. First, the court found that the ban on expressive conduct of a “gender-motivated” (rather than just a sexual) nature could “encompass expression on a broad range of social issues.”¹⁹ The court also objected to the fact that the policy prohibited not only speech that actually creates a hostile environment but also speech that merely “has the purpose” of creating a hostile environment.²⁰ Finally, the court held that because the policy was devoid of any “standard akin to a severe or pervasive requirement,”²¹ it “may suppress core protected speech.”

Despite this and other clear legal precedent, however, the majority of institutions—including some of those that have been successfully sued—still maintain unconstitutional speech codes.²² It is with this in mind that we turn to a more detailed discussion of the ways in which campus speech codes violate individual rights and what can be done to challenge them.

¹³ *College Republicans at San Francisco State University v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007).

¹⁴ *College Republicans v. Reed*, 523 F. Supp. 2d at 1014.

¹⁵ *Id.* at 1015.

¹⁶ *DeJohn v. Temple University*, 537 F.3d 301 (3d Cir. 2008).



PUBLIC UNIVERSITIES VS. PRIVATE UNIVERSITIES

The First Amendment prohibits the government—including governmental entities such as state universities—from interfering with freedom of speech. A good rule of thumb is that if a state law would be declared unconstitutional for violating the First Amendment, a similar regulation at a state college or university is equally unconstitutional.

The guarantees of the First Amendment generally do not apply to students at private colleges because the First Amendment regulates only government conduct—not private conduct.²³ Moreover, although acceptance of federal funding does confer some obligations upon private colleges, compliance with the First Amendment is not one of them. This does not mean, however, that students and faculty members at private schools are not entitled to free ex-

pression. In fact, most private universities explicitly promise freedom of speech and academic freedom, presumably to lure the most talented students and faculty, since most people would not want to study or teach where they could not speak and write freely. For example, Cornell University states that “because it is a special kind of community, whose purpose is the discovery of truth through the practice of free inquiry, a university has an essential dependence on a commitment to the values of un intimidated speech.”²⁴ Princeton University proclaims that “free inquiry and free expression within the academic community are indispensable” to the goals of a university.²⁵ Yet, these universities prohibit a great deal of speech that elsewhere would be protected by the First Amendment.

¹⁷ *DeJohn*, 537 F.3d at 305.

¹⁸ *Id.* at 314.

¹⁹ *Id.* at 319.

²⁰ *Id.*

²¹ *Id.* at 320. According to the U.S. Supreme Court, for student-on-student expression to constitute unprotected harassment, it must be “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.” *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).

²² Shippensburg University was sued for a second time in May 2008 for re-instituting the very speech code that it had revised as part of a legal settlement in 2004 after a federal judge had enjoined the university from enforcing the policy. In October 2008, the university settled the second lawsuit and once again rescinded the unconstitutional policy. Other universities that have been the subject of successful speech-code lawsuits—such as the University of Michigan and the University of Wisconsin—have revised the unconstitutional policies challenged in court but still maintain other, equally unconstitutional policies.

²³ Although the First Amendment does not regulate private universities, this does not mean that all private universities are legally free to restrict their students’ free speech rights. For example, California’s “Leonard Law,” Cal. Educ. Code § 94367, prohibits secular private colleges and universities in California from restricting speech that would otherwise be constitutionally protected. The Leonard Law provides, in relevant part, that “No private postsecondary educational institution shall make or enforce any rule subjecting any student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside the campus or facility of a private postsecondary institution, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article 1 of the California Constitution.”

²⁴ Cornell University Campus Code of Conduct, available at http://www.policy.cornell.edu/CM_Images/Uploads/POL/CampusCodeOfConduct.pdf.

²⁵ “University-wide Regulations,” Rights, Rules, Responsibilities, available at <http://www.princeton.edu/pr/pub/rrrr/08/one/>.

WHAT EXACTLY IS ‘FREE SPEECH,’ AND HOW DO UNIVERSITIES CURTAIL IT?

What does FIRE mean when we say that a university restricts “free speech”? Do people have the right to say absolutely anything, or are only certain types of speech “free”?

Simply put, the overwhelming majority of speech is protected by the First Amendment. Over the years, the Supreme Court has carved out some very narrow exceptions: speech that incites reasonable people to immediate violence; fighting words (one-on-one, face-to-face confrontations that lead to physical altercations); harassment; true threats; obscenity; and libel. If the speech in question does not fall within one of these exceptions, it most likely is protected speech.

The exceptions are often misused by universities to punish constitutionally protected speech. These are instances where the written policy at issue may be constitutional—for example, a prohibition on “incitement”—but its application may not be. Therefore, it is important to understand what these narrow exceptions to

free speech actually mean in order to recognize when they are being misapplied.

THREATS

Since the 2007 Virginia Tech shootings, FIRE has noticed an increased trend among universities to use otherwise legitimate prohibitions on “threats” to punish constitutionally protected speech.

The Supreme Court has defined “true threats” as only “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). The Court also has defined “intimidation,” in the constitutionally proscribable sense, as a “type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” *Id.* at 360. Thus, neither term would encompass, for example, a vaguely worded statement that is not directed at anyone in particular.





Nevertheless, universities have misapplied policies prohibiting threats and intimidation. Earlier this year, Colorado College found two students guilty of violating the college's policy on "violence" because of a satirical flyer—mocking a publication of the college's Feminist and Gender Studies Program—that administrators deemed "implicitly threatening."

In early 2008, the college's "Feminist and Gender Studies Interns" had distributed a flyer entitled "The Monthly Rag."²⁶ The flyer contained various blurbs, including a definition of the word "packing" ("creating the appearance of a phallus under clothing"); an advertisement for an on-campus lecture by a "world-famous prostitute & porn star turned sexologist & artist"; a quotation glorifying "bitches"; and a reference to "male castration."

Two students writing under the pseudonym "The Coalition of Some

Dudes" then published a flyer entitled "The Monthly Bag," an obvious parody of "The Monthly Rag."²⁷ Like the "Rag," the "Bag" contained short "articles" that dealt with exaggerated male machismo instead of feminism. For example, one article concerned "chainsaw etiquette" (including, "when possible, show off your guns [a well-known slang term for bicep muscles] while sawing shit"); a quote from Theodore Roosevelt under the heading "Tough Guy Wisdom"; and an excerpt from batteredmen.com about abusive women.

After Colorado College President Richard Celeste e-mailed the campus community asking the authors of the parody to identify themselves, the two students came forward and shortly thereafter were tried before the college's student conduct committee. Two weeks later, Dean of Students Mike Edmonds wrote to the students to inform them that due to





the “implicitly threatening nature” of their parody, they had been found guilty of violating the college’s “policy on violence.” Edmonds wrote that “I recognize that your intent in posting your publication was not to threaten but to parody. However, in the climate in which we find ourselves today, violence—or implied violence—of any kind cannot be tolerated on a college campus.”²⁸ The guilty finding was upheld on appeal, and the college’s Board of Trustees even affirmed the administration’s actions in the case.

INCITEMENT

FIRE also has noticed an increased propensity among university administrations to restrict speech that deeply offends other students on the basis that it constitutes “incitement.” The basic concept, as administrators see it, is that offensive or provocative speech will anger those who disagree with it, perhaps so much that it moves them to violence. While preventing violence is an admirable goal, this is an impermissible misapplication of the incitement doctrine.

Incitement, in the legal sense, does not refer to speech that may lead to violence on the part of those opposed to or an-

gered by it, but rather to speech that will lead *those who agree with it* to commit immediate violence. In other words, the danger is that certain speech will convince listeners who agree with it to take immediate unlawful action. To apply the doctrine to an opposing party’s reaction to speech is to essentially convert the doctrine into an impermissible “heckler’s veto” whereby anyone who shows strong offense can shut down the expression he or she dislikes.

The precise standard for “incitement to violence” is found in the Supreme Court’s decision in *Brandenburg v. Ohio*, 395 U.S. 444 (1969). There, the Court held that the state may not “forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing *imminent* lawless action and is likely to incite or produce such action.” 395 U.S. at 447 (emphasis in original). This is an exacting standard, as evidenced by its application in subsequent cases. For instance, the Supreme Court held in *Hess v. Indiana*, 414 U.S. 105 (1973), that a man who had loudly stated, “We’ll take the fucking street later” during an anti-war demonstration did not intend to incite or produce immediate lawless action (the Court found that “at worst, it amounted to nothing more than advocacy of illegal



action at some indefinite future time”), and was therefore not guilty under a state disorderly conduct statute. 414 U.S. at 108–09. The fact that the Court ruled in favor of the speaker despite the use of such strong and unequivocal language underscores the narrow construction that has traditionally been given to the incitement doctrine and its requirements of likelihood and immediacy. Nonetheless, college administrations have been all too willing to ignore this jurisprudence.

OBSCENITY

Universities frequently misuse prohibitions on “obscenity” to punish protected speech. Like “incitement,” obscenity has a very specific meaning. The Supreme Court has held that obscene expression, to fall outside of the protection of the First Amendment, must “depict or describe sexual conduct” and must be “limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.” *Miller v. California*, 413 U.S. 15 (1973). For all intents and purposes, constitutionally unprotected obscenity means hard-core pornography. Many colleges, by contrast, prohibit



such things as “obscene language,” by which they presumably mean swear words. But the Supreme Court has explicitly held that most such language is constitutionally protected. In *Cohen v. California*, 403 U.S. 15 (1971), the defendant, Cohen, was convicted in California for wearing a jacket bearing the words “Fuck the Draft” into a courthouse. The Court overturned Cohen’s conviction, holding that the message on his jacket, however vulgar, was protected speech.

POLITICAL EXPRESSION

In this hotly contested election year, FIRE has also seen universities use a variety of different explanations—from IRS regulations prohibiting private colleges from engaging in partisan political activity to supposedly content-neutral posting policies—to suppress the kind of core

²⁶ <http://www.thefire.org/index.php/article/9086.html>

²⁷ <http://www.thefire.org/index.php/article/9085.html>

²⁸ <http://www.thefire.org/index.php/article/9087.html>

²⁹ <http://www.ethics.uillinois.edu/ethicsmatters/4-0908-ProhibPolitAct.cfm>

³⁰ <http://www.thefire.org/index.php/article/9764.html>

³¹ <http://jasonfager.com/?p=134>

political speech that is at the heart of what the First Amendment was adopted to protect.

In September 2008, faculty and staff members at the University of Illinois received a memo from the university's Ethics Office informing them that, "when on university property," they were prohibited from engaging in a wide variety of political expression, including attending a rally for a particular candidate or political party or wearing "a pin or t-shirt in support of the Democratic Party or Republican Party."²⁹ The memo even implied that faculty and staff could not drive onto campus with political bumper stickers on their cars. After news of the memo generated controversy, University President B. Joseph White responded with a vague statement that university employees needed to "use common sense" to determine what types of political activity were acceptable. Eventually, after extensive condemnation

from the public and from free speech and academic freedom organizations including FIRE, the American Civil Liberties Union, and the American Association of University Professors, White issued another statement clarifying that faculty and staff could, after all, wear pins and t-shirts, place bumper stickers on their cars, and attend rallies on campus, provided they were not on duty at the time.³⁰

A similar situation arose at the University of Oklahoma, where students, faculty, and staff received an e-mail in September 2008 informing them that—pursuant to the university's obligation not to endorse a candidate or party for office—they could not use their university e-mail accounts "to endorse or oppose a candidate, **including the forwarding of political humor / commentary.**"³¹ (Emphasis added.) After an alumnus publicized the e-mail on his blog and FIRE and members of the public expressed concern, the university officially



“rescinded” the statement in late October, clarifying that “individual free speech”—that is, speech that does not purport to be on behalf of the university—was fully protected.³²

In October 2008, the University of Texas at Austin ordered two students to remove political signs from their dormitory door and window pursuant to a posting policy that a university official said was intended to “prevent things plastered around campus willy-nilly.”³³ After public exposure, University President William Powers rescinded the ban.³⁴

While universities’ obligations not to institutionally endorse political parties or candidates are real, such obligations do not extend to the expression of individual students and faculty who could not reasonably be perceived as representing the university’s official opinion. Therefore, a university’s misuse of these regulations to suppress individual political expression is a violation of its legal and/or contractual obligation to protect the free speech rights of students and faculty members.

Having discussed the most common ways in which universities misuse legitimate regulations to prohibit free expression, we turn to the innumerable *illegitimate* university regulations that restrict free speech and expression on their face. Such restrictions are generally found in several distinct types of policies.

HARASSMENT POLICIES

Actual harassment is not protected by the First Amendment. In the educational context, the Supreme Court has defined student-on-student harassment as conduct “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.” *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999). This is conduct far beyond the dirty joke or “offensive” op-ed that is often called “harassment” on today’s college campuses. Harassment is extreme and usually repetitive behavior—behavior so serious that it would interfere with a reasonable person’s ability to get his or her education. For example, in *Davis*, the conduct found by the Court to be harassment was a months-long pattern of conduct including repeated attempts to touch the victim’s breasts and genitals and repeated sexually explicit comments directed at and about the victim.

Universities are legally obligated to maintain policies and practices aimed at preventing this type of genuine harassment from happening on their campuses. Unfortunately, they often use this obligation to punish protected speech that is absolutely not harassment. This misuse of harassment regulations became so widespread that in 2003, the federal Department of Education’s Office for Civil Rights (OCR)—which is responsi-



ble for the enforcement of federal harassment regulations in schools—issued a letter of clarification to all of America's colleges and universities.³⁵ Then—Assistant Secretary Gerald Reynolds wrote:

Some colleges and universities have interpreted OCR's prohibition of 'harassment' as encompassing all offensive speech regarding sex, disability, race or other classifications. Harassment, however, to be prohibited by the statutes within OCR's jurisdiction, must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive.

Reynolds wrote that “OCR's regulations are not intended to restrict the exercise of any expressive activities protected under the U.S. Constitution” and concluded that “[t]here is no conflict between the civil rights laws that this Office enforces and

the civil liberties guaranteed by the First Amendment.” This letter forecloses any argument that federal anti-harassment law requires colleges to adopt speech codes that violate the First Amendment.

In spite of this clarification, however, hundreds of universities persist in maintaining ludicrously broad definitions of harassment and in punishing students and faculty members for constitutionally protected speech.

Recent examples include the following:

In October 2007, Brandeis University found Professor Donald Hindley, a fifty-year veteran of teaching with no prior complaints, guilty of racial harassment (without a hearing) for explaining to his Latin American Politics class that Mexican migrants in

³² <http://jasonfager.com/?p=287>

³³ http://www.dailytexanonline.com/ut_moves_to_enforce_political-sign_ban

³⁴ <http://www.thefire.org/index.php/article/9783.html>

³⁵ <http://www.ed.gov/about/offices/list/ocr/firstamend.html>

³⁶ <http://www.thefire.org/index.php/article/8853.html>

³⁷ <http://www.thefire.org/index.php/article/8884.html>

³⁸ <http://www.thefire.org/index.php/article/9090.html>

the U.S. are sometimes referred to pejoratively as “wetbacks.” Despite the fact that he uttered the term only to critique it, some in his class were offended and complained to the Brandeis administration. On October 30, 2007, Brandeis Provost Marty Krauss informed Hindley that he had violated Brandeis’ Non-Discrimination and Harassment Policy.³⁶ She wrote that

[T]he University will not tolerate inappropriate, racial and discriminatory conduct by members of its faculty. As a result, I have decided to place a monitor in your classroom to ensure that you do not engage in further violations of the Non-Discrimination and Harassment Policy Furthermore, I have decided to require you to attend anti-discrimination training.

Hindley’s class was monitored for the remainder of the Fall 2007 semester. Hindley steadfastly refused the university’s attempts to force him to attend sensitivity training sessions. In January 2008—after widespread media criticism and vigorous condemnation from Brandeis’ faculty—the university declared the case “closed” (and dropped its efforts to force Hindley into sensitivity training), but never revised its finding of harassment against Hindley.³⁷ As a result, Brandeis remains among the most unrepentant abusers of individual rights in academia today.

In November 2007, a student-employee at Indiana University–Purdue University Indianapolis (IUPUI) was found guilty of racial harassment for reading a book entitled *Notre Dame vs. the Klan: How the Fighting Irish De-*

feated the Ku Klux Klan in the break room in front of African-American employees. IUPUI’s Affirmative Action Office informed the student, Keith John Sampson, that “your conduct constitutes racial harassment in that you demonstrated disdain and insensitivity to your co-workers”—despite the fact that the book was actually a historical account of the Klan’s defeat in a 1924 street brawl with Notre Dame students.³⁸ After public embarrassment, IUPUI ultimately revoked the finding and cleared Sampson of wrongdoing.

Other universities define harassment to include, more or less, anything that would offend anyone at any time:

* The University of the Pacific defines harassment as “conduct (intentional or unintentional) that has the effect of demeaning, ridiculing, defaming, stigmatizing, intimidating, slandering or impeding the work or movement of a person or persons or conduct that supports or parodies the oppression of others.” Examples of such conduct include “epithets, insults, jokes, teasing or derogatory comments.”³⁹

* At Tufts University, harassment includes any “attitudes or opinions that are expressed verbally or in writing, or through behavior that constitutes a threat, intimidation, psychological attack, or physical assault.” Examples of prohibited harassment include “behaviors calculated to annoy, embarrass, or distress.”⁴⁰

* California State University–Northridge’s Policy on Discrimination and Harassment provides that “Individual (s) or group (s) [sic] actions or activities that promote degrading or demeaning social stereotypes based upon age, disability, ethnicity, gender, national origin, religion or sexual orientation will not be tolerated.”⁴¹

These examples, along with many others, demonstrate that colleges and universities often fail to limit themselves to the narrow definition of harassment that is outside the realm of constitutional protection. Instead, they expand the term to prohibit broad categories of speech that do not even *approach* actual harassment, despite many such policies having been struck down by federal courts.⁴² These vague and overly broad harassment policies deprive students and faculty of their free speech rights.

POLICIES ON TOLERANCE, RESPECT, AND CIVILITY

Many schools invoke laudable goals like tolerance and civility to justify policies that violate students' free speech rights. While a university has every right to actively promote a tolerant and respectful atmosphere on campus, a university that claims to respect free speech must not limit speech to only the inoffensive and agreeable.



Here are two examples of restrictive policies on tolerance, respect, and civility from the past year:

* Northwestern State University in Louisiana prohibits “[d]isrespect or inappropriate behavior at any time when dealing with other students and/or University employees.”⁴³

* At Fort Lewis College in Colorado, “[i]t is expected that all behavior and discourse will reflect respect and civility.”⁴⁴

DISORDERLY CONDUCT POLICIES

Many universities slip burdensome restrictions on speech into their disorderly conduct policies, turning those policies from legitimate behavioral restrictions into speech codes. For example, this past year, “disorderly conduct” included conduct that causes “anger” or “resentment” in others (University of Minnesota–Twin Cities)⁴⁵ and “[A]n offensive utterance or gesture” (Delaware State University).⁴⁶



³⁹ “Harassment, Coercion, and Discrimination,” *University of the Pacific Tiger Lore 2008–2009*, available at http://web.pacific.edu/Documents/student-life/judicialaffairs/TigerLore08_09.pdf.

⁴⁰ “Harassment,” *The Pachyderm (Tufts Student Handbook)*, available at <http://uss.tufts.edu/dosa/publications/documents/Pachyderm2008-2009.pdf>.

⁴¹ “Policies on Nondiscrimination and Student Conduct,” *California State University Northridge 2006–2008 Undergraduate and Graduate Catalog*, available at <http://www.csun.edu/currentstudents/>.

⁴² See, e.g., *DeJohn v. Temple University*, 537 F.3d 301 (3d Cir. 2008); *Doe v. Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989) (holding that the University of Michigan’s discriminatory harassment policy was unconstitutionally broad); *Booher v. Board of Regents, Northern Kentucky University*, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. Jul. 21, 1998) (holding that Northern Kentucky University’s sexual harassment policy was unconstitutionally broad).

⁴³ “Student Code of Conduct,” *Northwestern State University Student Handbook*, available at <http://www.nsula.edu/studenthandbook/documents/StudentHandBook07-08.pdf>.

⁴⁴ “Student Code of Conduct,” *Fort Lewis College Student Handbook*, available at http://www.fortlewis.edu/shared/content/student_affairs/student_handbook.pdf.

⁴⁵ “Disorderly Conduct,” *University of Minnesota–Twin Cities Residence Hall Guidebook*, available at <http://www.housing.umn.edu/publications/pdfs/08-09Guidebook.pdf>.

⁴⁶ “Conduct Standards and Policies,” *Delaware State University Student Handbook*, available at <http://www.desu.edu/student/handbook/JudicialProcedures.pdf>.

⁴⁷ “Free Speech Area,” *University of Cincinnati Use of Facilities Policy Manual*, available at http://www.uc.edu/af/documents/use_of_facilities_manual_0206rev1.pdf. A campus map, available at <http://www.uc.edu/architect/documents/Logistics/logisticsbw.pdf>, reveals just how tiny this designated area is.

FREE SPEECH ZONES

Universities have a right to enact reasonable time, place, and manner restrictions that prevent demonstrations and speeches from unduly interfering with the educational process. For example, a university may prohibit students from demonstrating inside an academic building. It cannot, however, limit free speech to only small or remote areas of campus, or regulate speeches and demonstrations on the basis of viewpoint.

Many universities have regulations creating “free speech zones”—regulations that limit rallies, demonstrations, and speeches to small or out-of-the-way “zones” on campus. Many also require advanced notice of any demonstration, rally, or speech. Such “prior restraints” on speech are generally inconsistent with the First Amendment. From a practical standpoint, it is easy to understand why such regulations are burdensome. Demonstrations and rallies are often spontaneous responses to recent or still-unfolding events. Requiring people to wait 24 or even 48 hours to hold such a demonstration may interfere with the demonstrators’ message by rendering it untimely. Moreover, requiring demonstrators to obtain a permit from the university, without explicitly setting forth viewpoint-neutral criteria by which permit applications will be assessed, is an invitation to administrative abuse.

For example, the University of Cincinnati, a public university with over 20,000 students, limits free speech to

one small area of campus: “the northwest section of McMicken Commons immediately east of McMicken Hall on the West Campus.”⁴⁷ Even within that zone, speech activities must be scheduled in advance, and anyone attempting to engage in free speech activities elsewhere on campus “may be charged with trespassing.”

Free speech zones are a frequent target of opposition by students and free speech activists, with considerable success. Until recently, for example, Valdosta State University (VSU) in Georgia maintained a free speech zone restricting the expressive activities of VSU’s more than 11,000 students to just one small stage on its 168-acre campus. Making matters worse, the university restricted speech on the stage to just two hours per day (noon–1:00 p.m. and 5:00–6:00 p.m.) and limited speech on the stage to weekdays.⁴⁸ FIRE, along with former VSU student Hayden Barnes, vigorously protested against the zone’s unconstitutionality, writing several times to former VSU President Ronald Zaccari and even commissioning a short film about the egregious restrictions on expression at VSU. Shortly after Zaccari’s retirement in the summer of 2008, new VSU President Patrick Schloss announced a revised policy that effectively restored free speech to VSU’s campus. Under the new policy, expressive activities may take place anywhere on VSU’s “campus green” without prior reservation.



CONCLUSION

WHAT CAN BE DONE?

The good news is that the types of restrictions discussed in this report can be defeated. The quickest way to effect change is through public exposure—universities are usually unwilling to defend these policies in the face of public criticism. In the past year alone, public exposure has brought down a number of speech codes. For example, the University of Utah revised an unconstitutional policy after it was named FIRE's Speech Code of the Month in February 2008. Shortly after the Speech Code of the Month was announced, university administrators informed FIRE that the policy had been revised, and the University of Utah went from receiving FIRE's poorest rating as a red-light institution to its most favorable rating as a green-light institution. Florida Gulf Coast University also revised its unconstitutional "personal abuse" policy after it was named a Speech Code of the Month. FIRE praised the university for its positive step toward free speech, but also publicly criticized it for continuing to maintain other unconstitutional policies. Shortly thereafter, a university administrator told the press that those policies were under review, as well.

Unconstitutional policies can also be defeated in court, especially at public uni-

versities. Speech codes have been struck down in federal courts across the country, including in California, Michigan, Pennsylvania, Texas, and Wisconsin. Any red-light policy in force at a public university is extremely vulnerable to a constitutional challenge. Moreover, as these cases add up, administrators are losing virtually any chance of claiming that they are unaware of the law, which means that they can be held personally liable when they are responsible for their schools' violations of constitutional rights.

In the summer of 2008, when Congress passed the Higher Education Act into law, Congress included "sense of Congress" provisions stating that "an institution of higher education should facilitate the free and open exchange of ideas" and that "students should not be intimidated, harassed, discouraged from speaking out, or discriminated against." The suppression of free speech at American universities is a national scandal. But supporters of liberty should take heart: while many colleges and universities might seem at times to believe that they exist in a vacuum, the truth is that neither our nation's government nor its citizens look favorably upon speech codes or other restrictions on basic freedoms.

⁴⁸ <http://www.thefire.org/index.php/article/9694.html>.



APPENDIX A

STATES BY GEOGRAPHIC REGION

<p><u>Midwest</u></p> <p>Illinois Indiana Iowa Kansas Michigan Minnesota Missouri Nebraska North Dakota Ohio Oklahoma South Dakota Wisconsin</p>	<p><u>Northeast</u></p> <p>Connecticut Delaware District of Columbia Maine Maryland Massachusetts New Hampshire New Jersey New York Pennsylvania Rhode Island Vermont</p>
<p><u>South</u></p> <p>Alabama Arkansas Florida Georgia Kentucky Louisiana Mississippi North Carolina South Carolina Tennessee Texas Virginia West Virginia</p>	<p><u>West</u></p> <p>Alaska Arizona California Colorado Hawaii Idaho Montana Nevada New Mexico Oregon Utah Washington</p>



APPENDIX B

SCHOOLS BY RATING

RED LIGHT

Adams State College
American University
Appalachian State University
Armstrong Atlantic State University
Athens State University
Auburn University
Auburn University at Montgomery
Barnard College
Bemidji State University
Boston University
Bowdoin College
Brandeis University
Brooklyn College, City University of New York
Brown University
Bryn Mawr College
Bucknell University
California Institute of Technology
California Polytechnic State University
California State University—Bakersfield
California State University—Fullerton
California State University—Long Beach
California State University—Monterey Bay
California State University—Northridge
California State University—Sacramento
California State University—San Bernardino
California University of Pennsylvania
Carleton College
Case Western Reserve University
Central Connecticut State University
Central Michigan University
Central Washington University
Cheyney University of Pennsylvania
Clarion University of Pennsylvania
Clark University
Colby College

Colgate University
College of the Holy Cross
Colorado College
Columbia University
Connecticut College
Cornell University
Dakota State University
Davidson College
Delaware State University
Delta State University
DePauw University
Dickinson College
East Carolina University
East Stroudsburg University of Pennsylvania
Eastern Kentucky University
Eastern Michigan University
Edinboro University of Pennsylvania
Emory University
Fitchburg State College
Florida Atlantic University
Florida Gulf Coast University
Florida International University
Florida State University
Fordham University
Fort Lewis College
Franklin & Marshall College
Frostburg State University
Furman University
George Mason University
George Washington University
Georgetown University
Georgia State University
Gettysburg College
Governors State University
Grand Valley State University
Hamilton College
Harvard University

Harvey Mudd College
Haverford College
Howard University
Idaho State University
Illinois Institute of Technology
Illinois State University
Indiana State University
Indiana University–Bloomington
Indiana University, East
Indiana University of Pennsylvania
Indiana University–Purdue University Indianapolis
Indiana University South Bend
Indiana University, Southeast
Jackson State University
Jacksonville State University
Johns Hopkins University
Kansas State University
Kenyon College
Kutztown University of Pennsylvania
Lake Superior State University
Lehigh University
Lewis-Clark State College
Lincoln University
Louisiana State University–Baton Rouge
Macalester College
Mansfield University of Pennsylvania
Marquette University
Marshall University
Massachusetts College of Liberal Arts
Massachusetts Institute of Technology
McNeese State University
Mesa State College
Michigan State University
Michigan Technological University
Middle Tennessee State University
Middlebury College
Millersville University of Pennsylvania
Mississippi State University
Missouri State University
Missouri University of Science and Technology
Montana State University–Bozeman
Montana Tech of The University of Montana
Montclair State University
Morehead State University

Mount Holyoke College
Murray State University
New Jersey Institute of Technology
New York University
Nicholls State University
North Carolina Central University
North Carolina School of the Arts
North Dakota State University
Northeastern Illinois University
Northeastern University
Northern Arizona University
Northern Illinois University
Northern Kentucky University
Northwestern State University
Northwestern University
Oberlin College
Ohio University
Oklahoma State University–Stillwater
Oregon State University
Pennsylvania State University–University Park
Princeton University
Purdue University
Rensselaer Polytechnic Institute
Rhode Island College
Rhodes College
Rice University
Richard Stockton College of New Jersey
Rutgers University–New Brunswick
Saginaw Valley State University
Saint Cloud State University
Saint Louis University
San Diego State University
San Francisco State University
San Jose State University
Skidmore College
Slippery Rock University of Pennsylvania
South Dakota State University
Southeastern Louisiana University
Southern Illinois University at Carbondale
Stanford University
State University of New York–Albany
State University of New York–Brockport
State University of New York College of Environmental
Science and Forestry

State University of New York–Fredonia
 State University of New York–University at Buffalo
 Stevens Institute of Technology
 Stony Brook University
 Swarthmore College
 Syracuse University
 Tennessee State University
 Texas A&M University–College Station
 Texas Southern University
 Texas Tech University
 Texas Woman’s University
 The College of New Jersey
 The College of William and Mary
 The Ohio State University
 Troy University
 Tufts University
 Tulane University
 University of Alabama at Birmingham
 University of Alaska Anchorage
 University of Alaska Fairbanks
 University of Alaska Southeast
 University of Arizona
 University of Arkansas–Fayetteville
 University of California, Riverside
 University of California, Davis
 University of California, Los Angeles
 University of California, San Diego
 University of California, Santa Barbara
 University of California, Santa Cruz
 University of Central Arkansas
 University of Chicago
 University of Cincinnati
 University of Colorado–Boulder
 University of Florida
 University of Georgia
 University of Houston
 University of Idaho
 University of Illinois at Chicago
 University of Illinois at Springfield
 University of Illinois at Urbana-Champaign
 University of Iowa
 University of Kansas
 University of Louisville
 University of Maine
 University of Maine–Presque Isle
 University of Maryland–College Park
 University of Massachusetts Amherst
 University of Massachusetts Lowell
 University of Miami
 University of Michigan–Ann Arbor
 University of Minnesota–Morris
 University of Minnesota–Twin Cities
 University of Mississippi
 University of Missouri–Columbia
 University of Missouri at St. Louis
 University of Montana
 University of Montevallo
 University of Nevada, Las Vegas
 University of Nevada, Reno
 University of New Hampshire
 University of New Mexico
 University of North Alabama
 University of North Carolina–Charlotte
 University of North Carolina–Greensboro
 University of North Dakota
 University of Northern Colorado
 University of Northern Iowa
 University of Notre Dame
 University of Oklahoma
 University of Oregon
 University of Rhode Island
 University of Rochester
 University of South Alabama
 University of South Carolina (Columbia)
 University of South Florida
 University of Southern Indiana
 University of Southern Mississippi
 University of Texas at Arlington
 University of Texas at Austin
 University of Texas at El Paso
 University of the Pacific
 University of Tulsa
 University of Vermont
 University of Virginia
 University of West Alabama
 University of Wisconsin–Green Bay
 University of Wisconsin–La Crosse
 University of Wisconsin–Madison

University of Wisconsin–Oshkosh
Utah State University
Utah Valley State College
Valdosta State University
Vassar College
Virginia Polytechnic Institute and State University
Wake Forest University
Washington University in St. Louis
Wayne State University
Wellesley College
Wesleyan University
West Chester University of Pennsylvania
West Virginia University
Western Carolina University
Western Illinois University
Western Michigan University
Western State College of Colorado
Westfield State College
Wichita State University
William Paterson University
Winston Salem State University
Worcester State College
Youngstown State University

YELLOW LIGHT

Alabama State University
Alcorn State University
Amherst College
Angelo State University
Arizona State University
Arkansas State University
Ball State University
Bates College
Binghamton University, State University of New York
Black Hills State University
Bloomsburg University of Pennsylvania
Boston College
Bowling Green State University
Centre College
Claremont McKenna College
Clemson University
Colorado School of Mines

Colorado State University
Duke University
Elizabeth City State University
Evergreen State College
Fayetteville State University
Framingham State College
Georgia Institute of Technology
Grinnell College
Henderson State University
Iowa State University
James Madison University
Kentucky State University
Lafayette College
Lock Haven University of Pennsylvania
Metropolitan State University
Miami University of Ohio
North Carolina A&T State University
North Carolina State University–Raleigh
Northern Michigan University
Occidental College
Pitzer College
Pomona College
Scripps College
Sewanee, The University of the South
Shawnee State University
Shippensburg University of Pennsylvania
Smith College
Southern Methodist University
Temple University
Towson University
Trinity College
Union College
University of Alabama
University of Alabama in Huntsville
University of California, Berkeley
University of California, Irvine
University of Central Florida
University of Connecticut
University of Delaware
University of Denver
University of Hawaii at Hilo
University of Kentucky
University of Massachusetts at Dartmouth

University of North Carolina–Asheville
University of North Carolina–Chapel Hill
University of North Carolina–Pembroke
University of North Carolina–Wilmington
University of Pittsburgh
University of Richmond
University of South Dakota
University of Southern California
University of Southern Maine
University of Washington
University of West Georgia
University of Wisconsin–Eau Claire
Vanderbilt University
Washington & Lee University
Washington State University
Whitman College
Williams College
Yale University

GREEN LIGHT

Alabama A&M University
Carnegie Mellon University
Cleveland State University
Dartmouth College
University of Nebraska–Lincoln
University of Pennsylvania
University of Tennessee–Knoxville
University of Utah

NOT RATED

Bard College
Baylor University
Brigham Young University
Pepperdine University
United States Military Academy
United States Naval Academy
Worcester Polytechnic Institute
Yeshiva University



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