

FIRE QUARTERLY

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REPORT: CAMPUS SPEECH CODES DECLINE FOR 10TH STRAIGHT YEAR

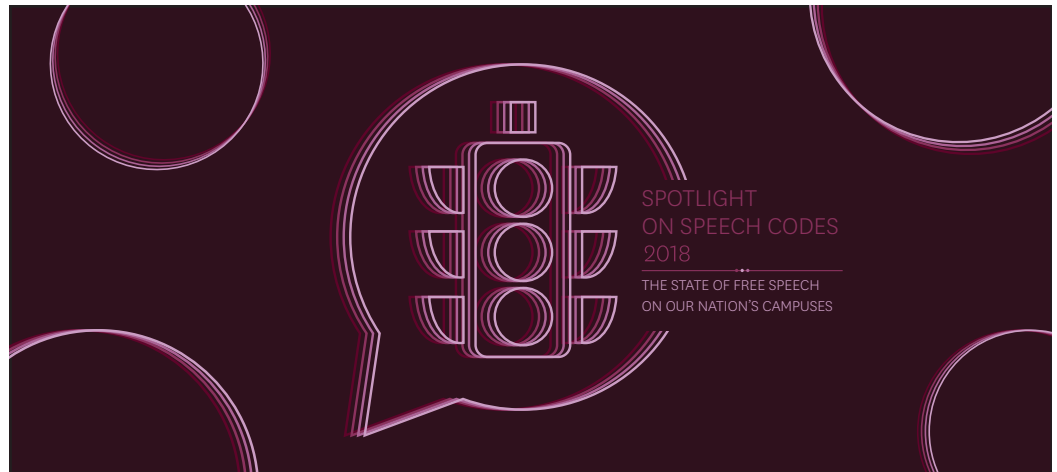
• PHILADELPHIA, PENNSYLVANIA •

For the 10th year in a row, the percentage of universities maintaining written policies that severely restrict students' free speech rights has decreased. Nonetheless, more than 90 percent of universities still maintain at least one policy that either restricts protected speech or can too easily be interpreted to do so, according to a new report from FIRE.

Released in December, "Spotlight on Speech Codes 2018: The State of Free Speech on Our Nation's Campuses" reports on written policies at 461 of America's largest and most prestigious colleges and universities. All of the ratings are accessible in FIRE's searchable Spotlight database at thefire.org/spotlight. FIRE rates schools as "red light," "yellow light," or "green light" institutions based on how much, if any, protected speech their policies restrict.

Major findings from the report include:

- Just under one third (32.3 percent) of surveyed institutions received FIRE's poorest, red light rating for maintaining speech codes that both clearly and substantially restrict freedom of speech. This year's figure is seven percentage points lower than last year, and almost 42 percentage points lower than in FIRE's 2009 report.
- Most institutions (58.6 percent) received a yellow light rating. While less restrictive than red light policies, yellow light policies still prohibit or have an impermissible chilling effect on constitutionally protected speech.
- Thirty-five institutions earned FIRE's highest, green light rating for free speech in this year's report. Since the report was written, three more universities — the University of North Dakota, Emory



University, and Auburn University — have earned green light status, bringing the total to 38. Only eight institutions earned this rating in the 2009 report.

"More institutions than ever before understand the importance of free speech and are taking concrete steps to protect it," said FIRE Vice President of Policy Research Samantha Harris. "There is still a lot of work to be done, though — and we look forward to working with more colleges and universities in the years to come."

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SAMANTHA HARRIS, FIRE VICE PRESIDENT OF POLICY RESEARCH

Other findings:

- Roughly one in nine institutions maintains a "free speech zone" policy restricting student demonstrations and other expressive activities to small or out-of-the-way areas of campus.
- Twenty-seven schools or faculty bodies (seven more than last year) have adopted

statements in support of free speech modeled after the one adopted by the University of Chicago in January 2015. Since the report was written, that number has increased to 33.

- Thirty percent of institutions maintain some form of bias response team tasked with identifying "bias" or "hate speech" on campus. These teams rely on students anonymously reporting other students for speech that, though subjectively "offensive," is often fully protected by the First Amendment or institutional promises of free expression.

As Congress considers adding speech code reporting requirements to the reauthorization of the Higher Education Act, FIRE's report informs the policy discussion with data and analysis on the prevalence and nature of speech codes.

"Spotlight on Speech Codes 2018: The State of Free Speech on Our Nation's Campuses" can be read in full on FIRE's website at thefire.org.

For the tenth year in a row,
the percentage of red light schools
has declined.





FIRE SUES COLLEGE FOR IGNORING OPEN RECORDS REQUESTS ABOUT ITS FIRING OF BLACK LIVES MATTER ADVOCATE

• NEWARK, NEW JERSEY •

On Jan. 3, FIRE filed a lawsuit in the Superior Court of New Jersey against Essex County College for ignoring its open records requests in violation of state law. FIRE requested information after Essex fired an adjunct professor following her appearance on a Fox News segment in which she defended Black Lives Matter.

“This lawsuit is not just about a public institution ignoring its obligation, under state law, to release certain information to the public,” said FIRE Staff Attorney Brynne S. Madway. “This suit is also about Essex County College’s responsibility to be transparent about its termination of an adjunct professor who simply voiced her opinions publicly.”

On July 13, FIRE requested information under the New Jersey Open Public Records Act about the questionable termination of Lisa Durden, an adjunct professor at Essex, two days after her June 6 appearance on Fox News’ “Tucker Carlson Tonight.” On the program, Durden debated Carlson on whether it was appropriate for a Black Lives Matter group to hold an event and request that white people not attend.

On June 23, Essex President Anthony Munroe issued a statement about the matter, saying the college was “immediately inundated with feedback ... expressing frustration, concern and even fear” about Durden’s views — even though Durden’s connection to Essex was not mentioned during the appearance. Munroe



TUCKER CARLSON AND LISA DURDEN, CREDIT: FOX NEWS



acknowledged that Durden “was in no way claiming to represent the views and beliefs of the College,” but nevertheless asserted a “right to select employees who represent the institution appropriately,” and terminated her employment.

“This suit is also about Essex County College’s responsibility to be transparent about its termination of an adjunct professor who simply voiced her opinions publicly.”

BRYNNE S. MADWAY, FIRE STAFF ATTORNEY

For more than a month, Essex ignored FIRE’s initial request for information about the feedback the college allegedly received, as well as a subsequent request. After receiving a letter from FIRE Director of Litigation Marieke Tuthill Beck-Coon, Essex finally responded, asking for the first of five eventual requests for extensions of time to respond to FIRE’s records requests. In November, Essex said it “anticipated” being able to provide a response by Nov. 20.

Ari Cohn, director of FIRE’s Individual Rights Defense Program, analyzed the First Amendment issues involved in Durden’s firing and said that even if Essex

was “inundated” with complaints, its administrators violated her constitutional rights by firing her.

“The law under the First Amendment is clear: A public college cannot terminate a professor simply because she engaged, in a personal capacity, in a debate about matters of public concern and some were offended by her perspective,” he said.

In January, after six months of stonewalling and a lawsuit, Essex finally turned over the documents — revealing that for the first 13 days after Durden’s appearance, only one person contacted the college to complain. The documents undermine administrators’ claims that they were “immediately inundated” with responses of outrage and even fear.

Bruce S. Rosen of McCusker, Anselmi, Rosen & Carvelli, P.C. in Florham Park, N.J. is serving as co-counsel in the suit. 



LISA DURDEN AND FIRE’S ALEX MOREY AT FIRE’S PHILADELPHIA OFFICE



**“If we can’t have political
discussions on a college
campus, then where can
we have them?”**

IVETTE SALAZAR, JOLIET JUNIOR COLLEGE STUDENT



COVER STORY

FIRE FILES LAWSUIT ON BEHALF OF ILLINOIS STUDENT DETAINED BY POLICE FOR ‘SHUT DOWN CAPITALISM’ FLYERS

• JOLIET, ILLINOIS •

Joliet Junior College student Ivette Salazar only wanted to do what Americans do every day: exercise her First Amendment right to respond to an opposing viewpoint. For that, campus police detained her, confiscated her political flyers, and told her she has freedom of speech only if JJC gives its approval.

That’s not how the First Amendment works, and that’s why Salazar filed a lawsuit in January against JJC. The lawsuit is the latest in FIRE’s Million Voices Campaign, which aims to free the voices of one million students by defeating unconstitutional speech codes nationwide.

On Nov. 28, after seeing members of a conservative student group distributing anti-socialism materials on campus, Salazar decided to provide an alternative viewpoint by distributing flyers from the Party for Socialism and Liberation that read “Shut Down Capitalism.” After being reported by campus staff, she was detained by JJC police for approximately 40 minutes, interrogated at the campus police station, and told she could not distribute her flyers because of the “political climate of the country.”

When Salazar asked the officers detaining her about her free speech rights, she said one JJC police officer told her, “If you want to go ahead and post your flyers and burn your crosses, you have to get it approved” by the school. Her flyers were confiscated to ensure that she did not distribute them on campus.

“Debating the merits of economic and governmental systems is core political speech,” said FIRE Director of

Litigation Marieke Tuthill Beck-Coon. “Campus police got it backward: The current ‘political climate’ is a reason for more speech, not censorship. If tense political times justified restricting political speech, the First Amendment would be pointless.”

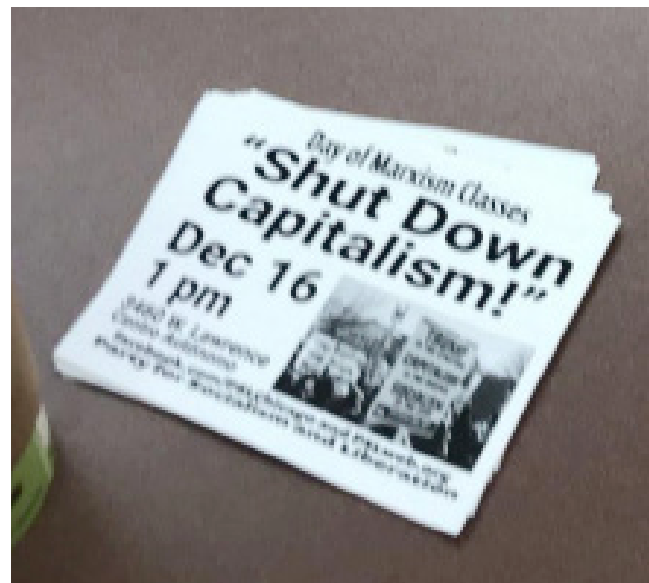
“I should be able to express my political beliefs on campus without being detained,” said Salazar. “JJC didn’t just threaten my freedom of speech, but the freedom of speech of every student on that campus. If we can’t have political discussions on a college campus, then where can we have them?”

As part of her lawsuit, Salazar challenges the constitutionality of several JJC policies governing where, when, and how students can engage in expressive activity or post materials on campus. Salazar’s lawsuit also alleges that JJC violated her Fourth Amendment rights by unlawfully detaining her.

“I should be able to express my political beliefs on campus without being detained.”

IVETTE SALAZAR, JOLIET JUNIOR COLLEGE STUDENT

The lawsuit was filed in partnership with FIRE Legal Network member and former president of the First Amendment Lawyers Association Wayne Giampietro of Poltrock & Giampietro in Chicago. Giampietro serves as co-counsel with FIRE in the case. 



IVETTE SALAZAR’S FLYERS



ALBION COLLEGE STUDENT UNDER INVESTIGATION FOR 'ANTIFA AND ISIS HUNTING PERMITS' JOKE

• ALBION, MICHIGAN •

A student at Albion College in Michigan has been left in limbo for months while administrators decide whether he will be punished for sending an obviously hyperbolic joke about “ANTIFA and ISIS hunting permits.”

Alexander Tokie’s troubles started in September, when he sent an email to his fellow College Republicans with a number of suggestions, some in jest, on countering arguments about “white privilege.” As a joke, Tokie concluded his email by suggesting to his peers: “Take the liberal tears from the idiot you just destroyed in your debate, disassemble your American made Springfield M1911 .45 caliber handgun and apply the tears in order to clean the mechanism, reassemble and proceed to purchase ANTIFA and ISIS hunting permits and max out on tags.” The email was eventually shared with the broader campus community.

On Nov. 8, Albion administrators informed Tokie that he was being charged with violating the college’s policy against the “[u]se of, or threatened use of, physical force or violence.”

FIRE wrote to Albion President Mauri Ditzler on Nov. 16 to demand that the college end its investigation.

“If the hyperbolic nature of Tokie’s email is not immediately apparent to Albion’s administration, FIRE suggests that the college conduct further research on whether hunting permits can be purchased for ISIS or Antifa in the state of Michigan,” said Sarah McLaughlin, a senior program officer in FIRE’s Individual Rights Defense Program. “Hyperbolic statements are a core component of political speech in the United States, and courts have long recognized that they cannot be treated as true threats.”

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SARAH MCLAUGHLIN, FIRE SENIOR PROGRAM OFFICER

Administrators warned Tokie that no Albion student “could say anything he or she wanted, without being subject to the College’s oversight,” and refused to drop the investigation. Although Albion is a private college not bound by the First Amendment, it promises its students free speech rights in its student handbook. Albion’s accreditation from the Higher Learning Commission also requires it to be “committed to freedom of expression.”

Albion insists its commitments to free speech are meaningless. According to the college, “No reasonable interpretation of the Albion College Student Handbook would find a contract had been created between the college and an individual student.” But the college wants to have its cake and eat it, too: While Albion claims it need not respect the rights it promises students in its handbook, it nevertheless dictates that students will be “held responsible for the policies and procedures” in that very same handbook.

Despite launching their investigation in September, administrators waited until the beginning of winter break to demand that Tokie return to campus over the holidays to defend his right to free speech. After subsequent pressure from FIRE, administrators agreed to postpone the hearing to the upcoming semester instead. Tokie’s hearing—which lasted nearly four hours—was held on Jan. 26. As of press time, administrators had not yet told Tokie whether he’s been cleared of charges, or if he will face punishment. 🔗



ALBION COLLEGE OBSERVATORY, CREDIT: KENNETHAW88 WIKIMEDIA COMMONS

RECENT HEADLINES FROM ‘NEWSDESK’

- Drexel professor resigns after months-long investigation, exile from campus
- Texas State University, asked to protect student newspaper’s First Amendment rights, offers muted response
- FIRE article in The Chronicle of Higher Education proposes fixes for FERPA
- Court rejects Pierce College’s attempt to dismiss lawsuit against its tiny ‘free speech zone’



VICTORY: STUDENTS CAN HAND OUT CONSTITUTIONS AT BUNKER HILL COMMUNITY COLLEGE

• BOSTON, MASSACHUSETTS •

Students at Bunker Hill Community College in Massachusetts can freely hand out copies of the Constitution in public areas of campus under the college's new policy on student expression and demonstration. The new policy comes after FIRE and the Alliance Defending Freedom wrote the college to contest unconstitutional policies in May of last year. After further correspondence with FIRE and ADF in December, the Massachusetts Community College System (of which Bunker Hill is a part) agreed to review policies at several other system colleges that would prevent students from handing out Constitutions on other campuses.

In early May 2017, members of the Bunker Hill chapter of Young Americans for Liberty were ordered to stop handing out free copies of the Constitution in an open, outdoor area of campus. FIRE and ADF wrote the college to demand that it cease enforcing policies violating student free speech rights. As a Dec. 18 press release from ADF explains:

In response, the college acknowledged that it “should not have directed members of Young Americans for Liberty

to stop distributing copies of the U.S. Constitution in an open, outdoor area on campus” The college also agreed to ensure that “there is no blanket ban on student rights to distribute materials on campus or to engage in spontaneous speech absent pre-approval.”

“Students at a public college shouldn’t have to ask for a government permission slip to exercise their First Amendment rights.”

MARIEKE TUTHILL BECK-COON, FIRE DIRECTOR OF LITIGATION

FIRE and ADF attorneys worked with Bunker Hill and MCCS officials over the summer to revise Bunker Hill’s policies. In addition, FIRE undertook a review of policies at MCCS institutions that would similarly prevent peaceful demonstration and distribution of literature on campus.

In early December, FIRE and ADF sent a letter to MCCS praising the significant and meaningful changes made to Bunker Hill’s policies on student expression. FIRE also notified MCCS of the policies we reviewed at other system colleges that unconstitutionally restrict student speech. FIRE and ADF received a prompt response that these policies would be reviewed.

“Students at a public college shouldn’t have to ask for a government permission slip to exercise their First Amendment rights,” said FIRE Director of Litigation Marieke Tuthill Beck-Coon. “That’s why we’re pleased that Bunker Hill acted to respect the First Amendment by changing the speech policy and allowing students to hand out copies of the Constitution freely. We’re also pleased that the Massachusetts Community College System is willing to review policies at some of its other schools that could lead to the same problems we saw at Bunker Hill.”

As always, FIRE stands ready to assist the Massachusetts Community College System with its ongoing policy reform efforts, and we will keep FIRE supporters up to date on further developments in the state. 🔥



SAMUEL FOER, UNIVERSITY OF RHODE ISLAND STUDENT

FIRE STUDENT NETWORK SPOTLIGHT: SAMUEL FOER

The FIRE Student Network challenged students to educate their campus communities about how free speech protects everyone’s right to speak truth to power, collaborate with diverse groups, and work toward improving policies that are detrimental to students’ fundamental and promised rights. University of Rhode Island junior Samuel Foer won first place for founding a chapter of BridgeUSA on his campus, educating students about the importance of free speech rights, and working to improve URI’s speech policies. Joseph Wolf and Katie Raymond from the University at Buffalo won second place and Rachna Shah of Dartmouth College won third place.



RENSSELAER POLYTECHNIC INSTITUTE DROPS CHARGES AGAINST 'SAVE THE UNION' PROTESTERS

• TROY, NEW YORK •

Last fall, Rensselaer Polytechnic Institute erected a fence around wide swaths of campus to deter students from protesting during administrators' black-tie fundraiser. Now, administrators have finally dropped the bogus charges levied against several students — but FIRE remains skeptical of the school's newfound commitments to free speech.

In November, the 7,500-student private research university brought disciplinary charges against students who participated in a peaceful demonstration the previous month, even accusing one student of "operating a business" because he distributed a flyer criticizing Rensselaer's administration. The action prompted FIRE to send a letter to Rensselaer — the third that fall — to condemn the charges and demand the school respect student expression.

The most serious charges were brought against students who participated in a peaceful protest against the administration's interference with the 127-year-old student-run Rensselaer Union. Students and alumni said that the administration was asserting more control over the union, which advocates for students, controls the student activity fee, and provides resources to more than 200 student organizations. RPI President Shirley Ann Jackson faced further

criticism for erecting a fence across large areas of the campus to prohibit students from even approaching a building where Jackson hosted an October black-tie event for alumni and donors.

The charges were quietly dismissed by Travis Apgar, RPI's dean of students, with Apgar stating "the preponderance of the evidence does not support a finding of responsibility." These charges, along with others that were levied upon students who supposedly distributed dissenting materials, were widely seen as retaliation against protests that have embarrassed RPI's embattled president.

FIRE expressed concern that RPI's policies were so vague that administrators could apply their own subjective views and values in lieu of written, objective policies. In response, RPI claimed that student speech would not be suppressed, so long as it was "civil discourse" and "not hate speech." Not only are "hate speech" and "civil discourse" hopelessly subjective terms, but these "hate speech" and "civil discourse" regulations do not appear in RPI's student handbook. Even if these policies were written, prohibitions on "hate speech" are fundamentally at odds with freedom of expression — a position held even by a unanimous Supreme Court.

It's welcome news that students critical of the RPI administration will not be formally punished this time, but the damage to freedom of expression at RPI was done by bringing the charges at all. As Bryan Johns, one of the charged students, put it: "By bringing these charges against students, RPI has clearly demonstrated its contempt for student free speech and constructive criticism."

The message is clear: If you criticize RPI's administration, be prepared to face charges and hearings. Even if you are ultimately exonerated, it will be difficult to convince other students to join your cause in the future. 🔥



CREDIT: UPSTATENYER WIKIMEDIA COMMONS