



FIRE

Foundation for Individual
Rights and Expression

July 18, 2022

Evan M. Lowry
Associate General Counsel
Southern New Hampshire University
2500 North River Road
Manchester, New Hampshire 03106

Sent via U.S. Mail and Electronic Mail (e.lowry@snhu.edu)

Dear Mr. Lowry:

FIRE¹ appreciates your response to our May 18 letter² concerning Southern New Hampshire University's practice of predicating approval of student groups' invited speakers on their potential for provoking controversy on campus. We also appreciate your commitment to "promote and facilitate the exchange of innovative and diverse ideas."³ However, FIRE does not share your confidence that this practice allows for the free flow of information and ideas, nor that it complies with the law.⁴

As we said in our first letter, SNHU betrays its promises that students enjoy "freedom of inquiry, freedom of thought, [and] freedom of expression"⁵ when it mandates prior review of speakers to ensure they "are not so controversial that they would draw unwanted demonstrators" to campus.⁶ We are sure you would agree that institutions must keep the promises they make to students. It is not the speaker's responsibility to cabin protected yet controversial expression to prevent protests. Instead, it is up to the university to ensure a safe

¹ As you may recall, the Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit dedicated to defending freedom of speech, expression, and conscience, and other individual rights on campus.

² Encl.

³ Letter from Evan M. Lowry, Esq., Assoc. Gen. Couns., S. N.H. Univ., to Lindsie Rank, Student Press Couns., FIRE (May 24, 2022) (on file with author).

⁴ *Id.*

⁵ S. N.H. UNIV., STUDENT HANDBOOK 2021-22, http://pages.snhu.edu/students/handbooks/Student_Handbook_2020-2021.pdf [<https://perma.cc/FQH7-ARSN>].

⁶ Email from Denise Morin, Conf. & Event Serv. Dir., S. N.H. Univ., to Kyle Urban (Mar. 30, 2022, 6:52 PM) (on file with author).

environment on campus when demonstrators object to speakers' views. Expression is not free when authorities must approve of the speakers and viewpoints expressed.

This practice effectuates a heckler's veto—encouraging campus violence and disruption against speakers with opposing views, as detractors know the institution is willing to shut down controversial viewpoints.⁷ If authorities can determine which views are worth sharing on campus, then students and faculty will invite fewer speakers to campus, few non-controversial speakers will come, and fewer viewpoints will be shared, all to the detriment of the campus community.

FIRE again calls on SNHU to live up to its promises and ensure students' expressive rights are protected by allowing students to invite speakers to campus, regardless of the speaker's viewpoint or the potential reaction of detractors.

We request a response to this letter no later than the close of business on Monday, August 1, 2022.

Sincerely,



Sabrina Conza
Program Officer, Campus Rights Advocacy

Encl.

⁷ See Zach Greenberg, *Rejecting the 'heckler's veto'*, FIRE, June 14, 2017, <https://www.thefire.org/rejecting-the-hecklers-veto>.



May 18, 2022

Paul LeBlanc
Office of the President
Southern New Hampshire University
2500 North River Road
Manchester, New Hampshire 03106

Sent via U.S. Mail and Electronic Mail (p.leblanc@snhu.edu)

Dear President LeBlanc:

The Foundation for Individual Rights in Education (FIRE), a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America’s college campuses, is concerned by Southern New Hampshire University’s practice of reviewing for perceived potential controversy the speakers that student groups intend to invite. As a college that promises its students freedom of expression, SNHU may not predicate approval or disapproval of student groups’ invited speakers upon the anticipated reactions of others, including how much controversy the speaker might spur on campus.

Based on our understanding of the pertinent facts—though we appreciate you may have additional information, and if so invite you to share it—Kyle Urban, chair of SNHU’s chapter of College Republicans, wrote SNHU Conferences & Event Services Senior Director Denise Morin about inviting speakers to campus to “present the conservative perspective on a variety of issues.”¹ In response, Morin informed Urban it is SNHU’s practice to review all proposed invited speakers on an individual basis to ensure they “are not so controversial that they would draw unwanted demonstrators” to campus.² Morin also explained that, in reviewing proposed speakers, she consults SNHU’s corporate marketing team, and that the university “invite[s] discussion as long as it is friendly.”³

This kind of prior review of speakers based on the level of potential controversy and whether the discussion they will spur is “friendly” betrays SNHU’s laudable promises of free expression. Specifically, SNHU identifies itself as “a community of scholars in which the

¹ Email from Kyle Urban to Denise Morin, Mar. 29, 2022, 12:07 PM (on file with author).

² Email from Morin to Urban, Mar. 30, 2022, 6:52 PM (on file with author).

³ *Id.*

ideals of freedom of inquiry, freedom of thought, freedom of expression, and freedom of the individual are sustained.”⁴ While the First Amendment is not binding on private institutions like SNHU, these commitments to students’ freedom of speech are morally and legally binding.⁵

Consistent with the right to free speech, SNHU may place reasonable, viewpoint-neutral restrictions on speaker appearances. However, its commitment to free expression precludes vetoing invitations due to fears of negative reactions by others, such as protesting on campus. The principle of freedom of speech does not exist to protect only non-controversial expression; it exists precisely to protect speech that some or even most members of a community may find controversial or offensive.

As the Supreme Court explained in *Terminiello v. Chicago*:

[Speech] may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.⁶

Speech is not free when authorities can restrict it because it might cause offense or even protests by others. In fact, protests that nonetheless allow the protected speech to proceed are an example of counter speech, the response expressive freedom prefers to censorship. If SNHU is truly to live out its commitment to be “a community of scholars in which the ideal[] of freedom of inquiry . . . [is] sustained,” it must welcome not only controversial speakers, but the protests they might provoke.

The university’s current practice of disapproving speakers who might elicit protest ratifies an impermissible “heckler’s veto.” The Supreme Court has rejected this form of censorship for good reason: It enables individuals who dislike a speaker’s message to suppress it simply by creating or threatening a disturbance.⁷ When authorities capitulate to the heckler’s veto, they incentivize future disruptive conduct or threats of disruption, and viewpoints across the political spectrum become vulnerable to censorship. While SNHU may punish those who react to speech with violence or misconduct, it may not endorse the heckler’s veto by refusing

⁴ SOUTHERN N.H. UNIV., STUDENT HANDBOOK 2021-22, http://pages.snhu.edu/students/handbooks/Student_Handbook_2020-2021.pdf. Given this language, the meaning of SNHU’s commitment to free speech—and how a reasonable student would interpret that promise—is informed by the decades of jurisprudence defining the scope of what the First Amendment’s guarantee of freedom of speech entails.

⁵ *Gamble v. Univ. Sys. of N.H.*, 610 A.2d 357 (N.H. 1992) (holding that the relationship between colleges and students is contractual in nature).

⁶ 337 U.S. 1, 4 (1949).

⁷ *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 135 (1992) (speech cannot “be punished or banned, simply because it might offend a hostile mob”); see also *Bible Believers v. Wayne Cnty.*, 805 F. 3d 228 (6th Cir. 2015); *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 773 F. Supp. 792, 795 (E.D. Va. 1991) (“One of the most persistent and insidious threats to first amendment rights has been . . . the ‘heckler’s veto,’ imposed by the successful importuning of government to curtail ‘offensive’ speech at the peril of suffering disruptions of public order.”) (cleaned up), *aff’d* 993 F.2d 386, 389–90, 392 (4th Cir. 1993).

to host controversial speakers, as such a policy violates its commitment to freedom of expression.

FIRE calls on SNHU to recommit to its laudable principles of free expression and affirm that future speaker requests will be considered in a viewpoint-neutral manner. We request receipt of a response to this letter no later than May 27, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsay Rank". The signature is written in a cursive, flowing style.

Lindsay Rank
Student Press Counsel