



December 17, 2024

Althea Broomfield-Michel
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Montclair State University
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1 Normal Avenue
Montclair, New Jersey 07043

Sent via U.S. Mail and Electronic Mail (broomfieldma@montclair.edu)

Dear Ms. Broomfield-Michel:

FIRE appreciates your response to our November 7 letter expressing concern that the university's Expressive Activity Policy and Posting Policy violate students' and faculty members' free speech rights. In addition, we are pleased that Montclair has committed to revising its Posting Policy.

However, your response misconstrues several of our arguments and mischaracterizes First Amendment case law. Consistent with our previous letter, FIRE urges Montclair to revise the latest (October 29) version of its Expressive Activity Policy to safeguard the free speech rights of students and faculty members.

I. Despite Its Claims, Montclair's "Designated Location" Rules Proscribe Virtually All Outdoor Expressive Activities

In your response to FIRE's letter, you claim it is "incorrect" that "the Policy's requirement that expressive activity not take place within 100 feet of any building entrance or within 100 feet of any academic building 'ban[s] most outdoor expressive activity.'" You assert "[t]here are ample alternative locations for expressive activity located outside of the 100-foot buffer zone surrounding building entrances and/or academic buildings," but fail to identify locations on campus that would satisfy this criterion. The policy does contain a list of "Designated Locations" available for student and faculty expression, but these locations are explicitly said to be "subject to the conditions" contained elsewhere in the policy—including the "100 feet" rule.¹

¹ *Expressive Activity*, Rules and Regulations Governing Expressive Activities, MONTCLAIR STATE UNIV. (updated Oct. 29, 2024), <https://www.montclair.edu/policies/all-policies/expressive-activity/> [<https://perma.cc/3TJA-8FS4>].

As seen in the map data in Appendix A, the policy leaves preciously little outdoor space on campus for expressive activities.² Further “Designated Locations” include the “Area behind Student Center Annex,” “Area surrounding Cole Hall,” and “Areas surrounding Blanton, Webster, and Bohn Halls.”³ These location descriptions likewise run afoul of the “100 feet” policy.⁴ Students and faculty members reading the policy cannot possibly understand how they are to comply with this contradictory language.

In response to FIRE suggesting that Montclair replace its “100 feet” rule with more tailored language prohibiting individuals from blocking or preventing others from entering and exiting University buildings, you state: “FIRE’s preferences ... do not render the Policy’s restrictions unconstitutional. ... There is no need to determine if the restrictions are the least intrusive [way of advancing a substantial government interest].” You cite the following line from the 1989 Supreme Court case *Ward v. Rock Against Racism*: “restrictions on the time, place, or manner of protected speech are not invalid ‘simply because there is some imaginable alternative that might be less burdensome on speech.’”⁵

However, you ignore the fact that, just two pages later in the very same decision, the Court states that its narrow tailoring standard “**does not mean that a time, place, or manner regulation may burden substantially more speech than is necessary to further the government’s legitimate interests.**”⁶ The present prohibition on expression within 100 feet of any building unquestionably burdens substantially more speech than is necessary to achieve Montclair’s stated aim of safeguarding the “ingress or egress” of buildings. As we noted in our November 7 letter, expressive activities conducted 100 feet away from a building—a third of the length of a football field, or two feet further than the Cristo Redentor statue in Rio de Janeiro (see Appendix B) is tall—do not affect ingress or egress. This is especially true of small or silent demonstrations. FIRE’s suggested revisions in our November 7 letter would help Montclair avoid “burden[ing] substantially more speech than is necessary” to facilitate ingress and egress of campus buildings.

II. Montclair Fails to Adequately Address its Broad Definition of “the Public”

In our letter, we expressed concern with Montclair’s broad definition of the term “the Public,” which extends even to students who “collaborate” on or “co-sponsor” an event in any way with external individuals or organizations who are also considered “the Public.”⁷ As we noted, this broad wording would extend to a student who asks a parent for help designing a flyer or practices a speech in front of a non-student friend. This sweeping definition is especially problematic given that expression by “the Public” is confined to the Amphitheater.⁸

² The referenced Google Maps searches are on file with author and shown for reference in Appendix A of the letter.

³ *Expressive Activity*, *supra* note 1 at Designated Locations.

⁴ *Expressive Activity*, *supra* note 1 at Definitions.

⁵ 491 U.S. 781 at 797.

⁶ *Id.* at 799 (emphasis added).

⁷ *Expressive Activity*, *supra* note 1 at Definitions.

⁸ *Expressive Activity*, *supra* note 1 at Definitions.

You allege that FIRE’s “conclusions regarding the facts described are wrong,” without explanation. You claim “these are not the types of situations that are meant to be captured by the Policy’s provisions.” If that is true, Montclair should have no problem altering the policy language to accurately capture its intended meaning.

Your citation of Montclair’s definition of “[c]ollaboration or co-sponsorship”—which entails “any coordination (financial or otherwise) between Students, Registered Student Organizations (RSOs), Employees and/or other groups recognized by the University and the Public in Expressive Activity”⁹—only demonstrates FIRE’s concern. By the policy’s plain language, *any* degree or type of coordination between students and external individuals or organizations is grounds for confining expressive activity to the Amphitheater. As FIRE noted in its November 7 letter, Montclair could resolve this issue by clarifying that collaborating or coordinating with outside parties does not make students or faculty members “the Public,” provided that campus community members retain primary control over events.

III. Montclair Fails to Establish That Time Limitations on Expression are Reasonable or Narrowly Tailored

Writing on November 7, FIRE criticized Montclair’s 8:30 A.M. to 6:00 P.M. time window for expressive activity as neither reasonable nor narrowly tailored. Noting that “expressive activity is permitted on campus ... 9.5 hours a day,” you contend “the University is not constitutionally mandated to implement FIRE’s preference for an extension of the hours during which expressive activity is permitted on campus simply because doing so may be less restrictive on speech.”

However, as discussed previously, the Supreme Court has held, “a time, place, or manner regulation may [not] burden substantially more speech than is necessary to further the government’s legitimate interests.”¹⁰ While you cite an interest in “ensuring the effective operation of the University’s educational, clinical, research, business, student life, and related functions,” you fail to articulate how preventing even small or silent protests in the early evening or morning advances that interest. As FIRE noted in its November 7 letter, Montclair could resolve this issue by prohibiting non-silent expressive activities immediately adjacent to academic and residential buildings during class and evening hours, respectively.

IV. Montclair Misunderstands the Implications of its Advanced Notice Requirement

You plainly deny FIRE’s claim that the Expressive Activity Policy’s reservation requirement constitutes a prior restraint on spontaneous expression. You write, “the reservation requirement applies only to expressive activity that is planned in advance and gathers individuals together. It does not apply to spontaneous expressive activity, which, by definition, is not planned in advance.”

⁹ *Expressive Activity*, *supra* note 1 at Definitions.

¹⁰ *Ward*, 491 U.S. 781 at 799.

But Montclair’s expansive definition of advanced planning renders this distinction inconsequential. As FIRE noted in our November 7 letter, “Because the university considers [in its Expressive Activity Policy]¹¹ any event-related social media or listserv post to constitute advanced planning and organizing, a large majority of impromptu demonstrations pertaining to current events are also likely subject to the pre-approval requirement.” Even a single social media post alerting community members to an otherwise unplanned demonstration five minutes later technically triggers the university’s advanced notice requirement.

Courts have made clear that broad restrictions on spontaneous expression—like requiring students to obtain permits for outdoor protests—violate the First Amendment due to “the significant burden that [advance notice and permitting requirements] place on free speech.”¹² Montclair’s broad “planning” language and sweeping pre-approval requirement cannot survive constitutional scrutiny and must be revised.

V. Conclusion

Montclair’s 2024 Expressive Activity Policy, as currently promulgated, violates students’ and faculty members’ rights by imposing unconstitutional restrictions on speech and requiring pre-approval for virtually all expressive activities. It is not as though these problems are unavoidable. For example, Rutgers uses the following, tailored policy language to ensure its students can enter and exit campus buildings: “Individuals may not block or prevent others from entering and exiting university buildings.”¹³ Yet Montclair has repeatedly rejected careful, constitutionally-sound policy language and failed to substantively address FIRE’s concerns.

Again, FIRE would be pleased to assist Montclair in revising its policies to address both its legitimate concerns and its constitutional responsibilities, as we have assisted many other institutions, free of charge in accordance with our charitable mission. We respectfully request a substantive response to this letter no later than close of business on January 10, 2024.

Sincerely,



Ross Marchand
Program Officer, Policy Reform and Campus Rights Advocacy

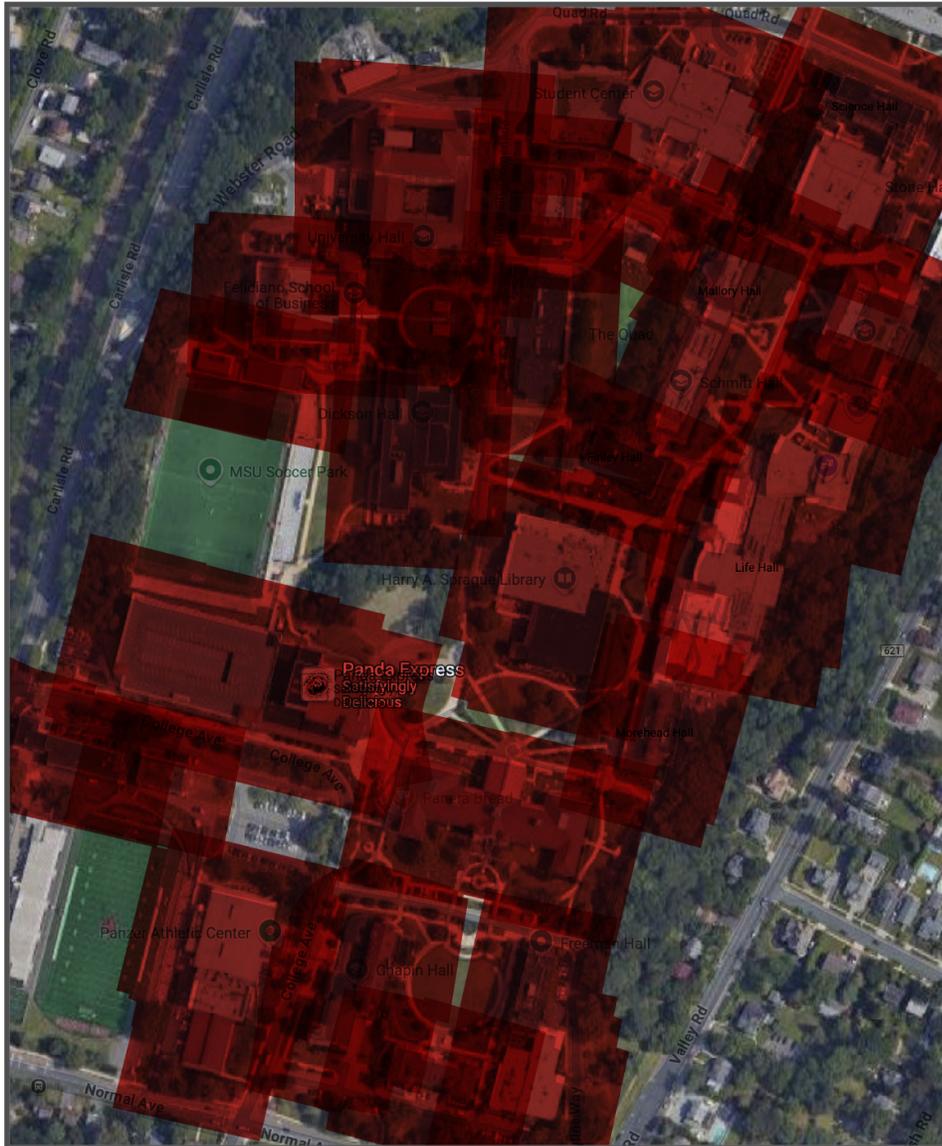
¹¹ *Expressive Activity*, *supra* note 1 at Definitions.

¹² *Berger v. City of Seattle*, 569 F.3d 1029, 1037 (9th Cir. 2009) (advance notice and permitting requirements are presumptively invalid) (citing *Watchtower Bible & Tract Soc’y of NY, Inc. v. Vill. of Stratton*, 536 U.S. 150, 166); *see also Roberts v. Haragan*, 346 F. Supp.2d 853, 870 (N.D. Tex. 2004) (invalidating two-day advance notice requirement for students to speak in designated campus areas as “sweep[ing] too broadly in imposing a burden on a substantial amount of expression that does not interfere with any significant interests of the University”).

¹³ *Rutgers University Guidelines for Free Expression on Campus*, Operating Procedures for All Demonstrations, RUTGERS UNIV., <https://free-expression.rutgers.edu/sites/default/files/2024-08/Rutgers-University-Free-Expression-Guidelines.pdf> [<https://perma.cc/3JRK-PPEU>].

APPENDIX A

The red squares in the satellite image below of Montclair's campus demonstrate the approximate range of the policy-mandated 100-foot buffer zone around buildings. As can be seen by this image, the rule leaves little-to-no space for students to express themselves on campus.



APPENDIX B

Cristo Redentor, Rio de Janeiro, Brazil. Tourists pictured allow a size comparison. The height of the statue (sans pedestal) is 98 feet—two feet shorter than the exclusion zone required by Montclair’s “100 feet” rule.¹⁴



Image Source: Wikimedia Commons.

¹⁴ Calculations on file with author.