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THE FIRE QUARTERLY

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Victory at Northern Arizona University: Charges Dropped for Students Passing Out American Flags for 9/11

In the immediate aftermath of the attacks of September 11, 2001, one of the few places it was controversial to display the American flag—a symbol of unity in that terrifying time—was on America's college campuses.

Ten years later, it still is.

On Friday, September 9, three college conservatives at Northern Arizona University (NAU) gathered in the student union to pass out small American flags in remembrance of 9/11. They were indoors, against the wall of a large room, because it was raining outside. Wisely, they also video recorded the event.

It wasn't long before an administrator approached them and told them to go outside, in the rain, because they weren't in an "approved vendor space." (They weren't selling anything.) The students refused.

The first administrator was followed by another administrator, who told the students that the university could use "time, place, and manner" rules to determine that they were not allowed to pass out flags there without a permit. This administrator was followed by yet *another* one who claimed that the First Amendment meant "free speech in a designated time, place, and manner."

That's a reading of the First Amendment that only a bureaucrat could love. The Supreme Court has indeed determined that the government may enforce time, place, and manner restrictions on expression, but these restrictions must be reasonable, content-neutral, narrowly tailored to serve a significant government interest, and must leave open ample alternative means of communication. So when the expression consists



of a couple of people handing out flags while standing against the wall of a large room, one wonders what "governmental interest" is involved in telling students they can't do so.

The fourth administrator to come out to challenge the students repeated "time, place, and manner" four times straight when they asked her how the university could stop its own students from standing around and passing out flags. After that, NAU called the cops. A police officer (who looked like she'd rather be somewhere else) came and took the names of the two remaining participants, saying that it wasn't a legal matter but a university code of conduct matter.

Until the evening of September 12, when NAU most likely realized how bad punishing people for this was going to look, the students faced charges of "failure to comply with a university official" and "interfering with university activities." The first charge only made sense if "Hey, you two, stop passing out flags to commemorate 9/11" is the sort of order you think university officials should be giving, while the second only made sense if "not observing the anniversary of 9/11" counts as a university activity.

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From the Individual Rights Defense Program

Peter Bonilla, Assistant Director

The environs of the American college are among our most idealized, evoking thoughts of spirited discussions and debates throughout lecture halls, dining halls, and residence halls. Universities are all too happy to project that ideal in their glossy promotional publications and fundraising appeals.

Yet universities often fall short of this ideal—far short. Having helped run FIRE's Individual Rights Defense Program—our main program for defending students whose rights have been violated at their schools—since 2009, I've interacted with thousands of students. Many are concerned about their rights on campus and unsure of how they can best protect themselves from unjust censorship or discipline.

Here are some of the most important tips I give to students:

Read FIRE's *Guides to Student Rights on Campus* as well as your school's policies, procedures, and commitments. Reading FIRE's *Guides* provides a healthy framework for evaluating school policies and makes it easier to spot inequities. Students can start with our *Guide to Free Speech on Campus*, where they'll learn that the First Amendment's protections are bolstered by decades of legal precedent in favor of student rights. Students also would do well to take a good look at their handbook and all university policies affecting their rights. No one wants to find themselves accused of a serious infraction of their school's policies without knowing what they did to be in that position, or what rights they have to defend themselves. Students at private universities, which are not bound by the First Amendment, should also take a close look at their policies and see what rights and protections they are owed. Most private universities announce very strong commitments to free speech in their various statements—and students can hold them to those promises. You can read or download FIRE's *Guides* at thefire.org/guides.

Know what the rules are—and when you might be justified in breaking them. A look at our *Guides*, our Spotlight database of campus speech codes, and our numerous writings on our blog, *The Torch* (all at thefire.org), will show that there are innumerable campus policies that violate students' right to free speech, and which universities cannot legitimately punish students for violating. Nonetheless, I always advise students to be very mindful of the rules, and to be prepared to follow them to the letter—making it harder for administrators to find a rationale for censorship if they wish to shut you down.

Document and record everything, especially if you have to defend yourself to campus authorities. Today, the vast majority of communications are transmitted over the Internet, creating an instant record. But often there will be no written documentation of a particular incident—for example, of a conversation between you and another student or administrator. When key facts are in dispute, we often suggest writing the other party to the conversation, providing your recollection of the incident while avoiding editorializing about it, and asking the other party to offer any corrections to your account and to what each person said.

Before disciplinary hearings, learn the process. When discipline becomes a real possibility, it will be especially important for you to have read up on your due process rights. Colleges are morally and often legally obligated to follow their own stated procedures and honor their promises. What do they promise you? Are you allowed to have an attorney, advisor, or other witness present, and are they allowed to participate in the hearing? What documentation must the university provide you beforehand and afterward? How much time are you given to prepare? Make sure that you can make and keep a record of the meeting, either with an audio recording or at least your own notes. Ask if you can bring an observer for everyone's protection, and be wary of "informal" processes that might put you under pressure to accept harsh sanctions without a hearing.

Finally, don't wait—contact FIRE. It's usually far better to get FIRE involved sooner rather than later, starting with submitting a case to us through our website. FIRE has more than a decade of experience protecting students, having won or helped to resolve hundreds of cases. If your school isn't taking your rights seriously, it will start doing so when it sees a letter from FIRE.

Peter Bonilla joined FIRE as a Program Associate in 2008 and became Assistant Director of FIRE's Individual Rights Defense Program in 2011. He is a graduate of the University of Pennsylvania.

Victory: University of Illinois Shelves Proposed Email Policy Due to Free Speech Problems

Proving that positive change can come even at the last minute, FIRE took on a proposed policy with only two days to spare (across a weekend, at that) and is proud to announce that our efforts have been successful.

On September 8, we obtained a copy of a proposed electronic communications policy at the University of Illinois at Urbana-Champaign (UIUC), set for discussion and a vote on Monday, September 12. After finding several First Amendment flaws in the proposed policy, we teamed up with Cary Nelson, President of the American Association of University Professors (AAUP) and a UIUC professor, and wrote a letter to UIUC on Friday afternoon. We asked the university and its Academic Senate to reject the policy until its constitutional infirmities were addressed. FIRE's involvement drew quick media attention: Later that same day, our involvement was the feature story on a Central Illinois news broadcast; and on Monday, both *The Daily Illini* and *Inside Higher Ed* ran articles on the controversy and our involvement.

September 14 brought welcome news. *The Daily Illini* reported that hours before UIUC's Academic Senate was set to meet, both Interim Chancellor Robert Easter and the Senate Executive Committee withdrew their recommendation that the policy be approved. Senate Executive Committee Vice Chair Joyce Tolliver referred to the joint FIRE-AAUP letter, saying:

"We determined that we still need more information about the proposed policy ... Some questions have been raised. Conversation with the chancellor led us to agree that it would be better to wait until some of the questions are worked out and bring it back for more informed discussion."

The News-Gazette also reported that our letter is directly responsible for the shelving of this policy. Interim Chancellor Easter made clear that "[t]he last thing we want to do is violate anyone's right to free speech," and Senate Executive Committee Chairman Matthew Wheeler said (referring to our letter):

"We believe this warrants more serious consideration by senate committees, the Senate Executive Committee and the chancellor's office."

The good news doesn't end there. On September 13, FIRE received a direct response from UIUC Deputy University Counsel Steven Veazie, which made clear to us that UIUC wants to make sure that the First Amendment rights of its campus community members are protected. The letter stated, in part:

"First Amendment considerations need to be front and center in any articulation of University policies on computer use, to ensure that constitutionally protected speech is fully protected. I think your letter raises a number of important points, and we will take those into account in making appropriate revisions."

This is a promising statement in support of the UIUC community's First Amendment rights, and we are pleased that Interim Chancellor Easter, the Senate Executive Committee, and Deputy University Counsel Veazie had the courage and integrity to postpone a policy that was likely to pass, on very short notice and in order to fully address the policy's effect on free speech at UIUC. Given their apparent commitment, we are hopeful that the issues we raised will be adequately addressed. And as always, FIRE stands ready to help in whatever way we can.

Philadelphia Magazine Exposes Major Government Threat to Rights on Campus—And the Lawyers Who Profit

A must-read article in *Philadelphia* magazine's September issue exposes the new federal threat to due process rights on campus regarding sexual misconduct and harassment—and the lawyers and organizations that profit from the mandate. One group even grossed $425,000 from a single seminar about complying with the new regulations. The article also features FIRE's work to protect the rights of all students and the integrity of campus judiciaries by ensuring fair standards of justice. It reveals the flippant attitude towards fair procedures displayed by the lawyers who are profiting most from the government mandate. The article is essential reading for parents, college students, and administrators nationwide. To read the article, please visit thefire.org or email your article request to Alisha@thefire.org.

FIRE Congratulates James Madison University for Abolishing Speech Codes

James Madison University (JMU) has eliminated the last of its speech codes, earning the highest, "green light" rating for free speech from FIRE. While two-thirds of the nation's colleges maintain policies that clearly and substantially restrict freedom of speech, JMU is now a proud exception, having fully reformed four speech codes. JMU is the 15th school nationwide to earn a "green light," the fourth to do so in the last two years, and the third in Virginia. In each case, students took up the cause of speech-code reform with FIRE's help.

"FIRE commends the students and administrators who have been working hard over the past two years to ensure the First Amendment rights of JMU students," FIRE President Greg Lukianoff said. "We hope that more universities will follow JMU's lead and take the steps necessary to protect their students' rights."

FIRE began working on speech-code reform with JMU students in October 2009, shortly after The College of William & Mary earned national acclaim for eliminating its speech codes and earning a "green light."

Among the policies reformed by JMU was a policy prohibiting any speech that might "provoke" a violent reaction—language that had given an impermissible "heckler's veto" to any angry protester who could shut down others' speech simply by threatening violence. JMU rewrote the policy to clarify that only speech intended to incite violence by its supporters was prohibited.

JMU also eliminated a requirement that peaceful assemblies be registered 48 hours ahead of time, which, if enforced, would have prevented impromptu vigils like those that took place on many campuses in the wake of the terrorist attacks of September 11, 2001. And FIRE learned that JMU has revised its final speech code, a policy that made postings subject to administrators' interpretation of "good taste" and prohibited any "mention or representation of drugs or alcoholic beverages" in postings on campus. Under this policy, a flyer advertising a debate on the drinking age or marijuana legalization, or even one advocating an anti-drug message, would have been against the rules.

JMU joins its fellow Virginia public institutions The College of William & Mary and the University of Virginia in an elite group of 15 "green light" schools. FIRE is now turning its attention to Virginia's other public universities, including George Mason University, which has a "red light" rating, and Virginia Tech, which has a "yellow light" rating.

"Virginia now leads the country in 'green light' public universities, thanks in no small part to the hard work of students who have dedicated themselves to making these changes happen," said Samantha Harris, FIRE's Director of Speech Code Research. "We hope that students across the country will be inspired by these efforts and will advocate for speech-code reform on their own campuses."

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NAU requires that any group wishing to engage in expressive activity get a permit from the Office of Student Life before doing so. This is justifiable when a group is planning a giant march on campus. But can the government really justify demanding a permit in order to stand around handing out flags? If there were to be another terrorist attack on America, would NAU use this policy to make sure any impromptu vigils or demonstrations were swiftly broken up?

At NAU, hanging around the student union for no reason requires no permit. Yet handing out American flags while doing so results in having no fewer than five different government employees tell you to stop. And while it's nice that NAU has now dropped its charges against the students, the fact remains that the anniversary of 9/11 has passed, and if NAU's goal was to stop this commemoration, it certainly succeeded.

It would be nice to rule out political motives on the part of NAU, but it wouldn't be very reasonable. After September 11, 2001, campuses racked up a terrible record of censorship. At Lehigh University, Central Michigan University, and College of the Holy Cross, American flag displays were taken down. Students and faculty members at San Diego State University, Penn State University, and Johns Hopkins University were all chastised or punished for strongly denouncing the terrorist attacks or supporting a military response to them.

Either NAU decided it wanted to continue this shameful tradition, or it is so over-regulated and hyper-bureaucratized that it couldn't see that making "handing out flags without a permit" a campus crime goes against everything a university stands for. Colleges are supposed to be the ultimate "free speech zones" in our free society. It's sad to see that ten years after we were attacked at least partly because we are a free society, Northern Arizona University has failed to understand what such a society is all about.

Victory at UW-Stout: Chancellor Folds after Censorship of *Firefly* and Anti-Fascism Posters

Under pressure from FIRE, national media, and actors Nathan Fillion and Adam Baldwin, the University of Wisconsin–Stout (Stout) has reversed its censorship of theater professor James Miller's poster featuring a line from Fillion's character in Joss Whedon's television series *Firefly*. Campus police had threatened Miller with criminal disorderly conduct charges, and he was reported to the "threat assessment team." After Stout censored his second poster, which stated, "Warning: Fascism," Miller came to FIRE for help.

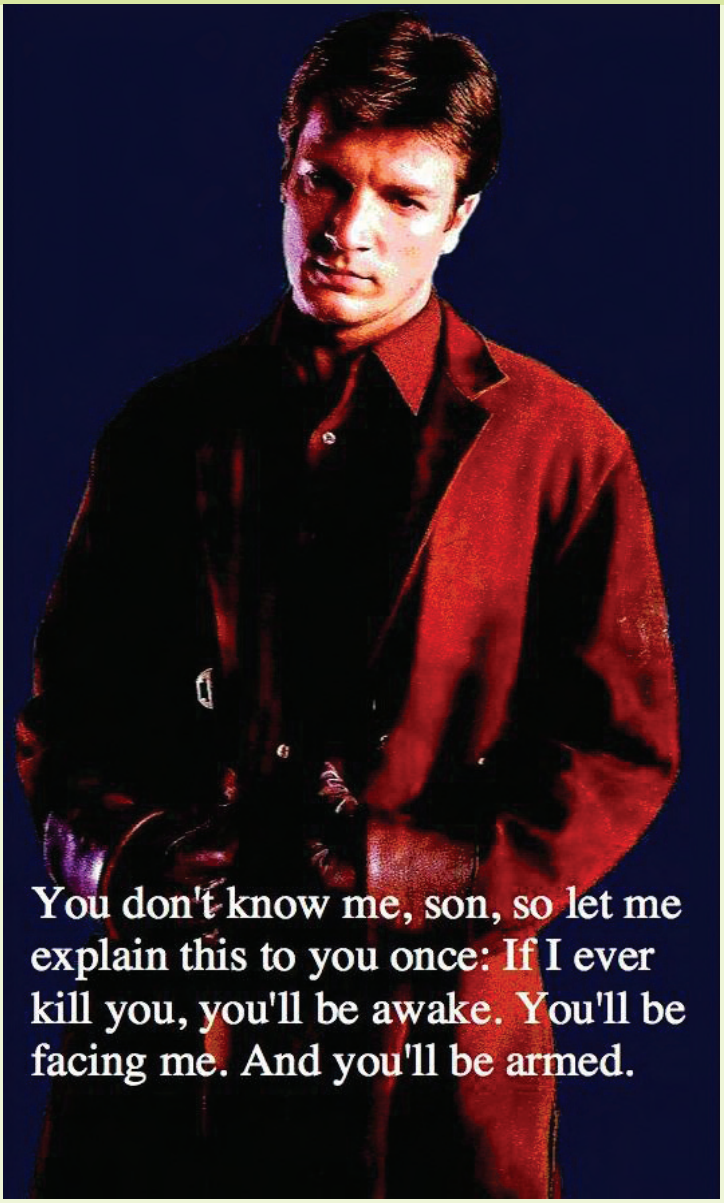
On September 12, 2011, Professor Miller posted outside his office door an image of Fillion in Joss Whedon's sci-fi series *Firefly* and a line from an episode: "You don't know me, son, so let me explain this to you once: If I ever kill you, you'll be awake. You'll be facing me. And you'll be armed." On September 16, Stout Chief of Police Lisa A. Walter notified Miller that she had removed the poster because it "refer[s] to killing." After Miller replied, "respect my first amendment rights," Walter wrote that "the poster can be interpreted as a threat." Walter also threatened Miller with criminal charges of "disorderly conduct" if he posted any similar poster.

In response to Walter's censorship, Miller placed a new poster on his office door on the 16th. The poster read, "Warning: Fascism" and mocked, "Fascism can cause blunt head trauma and/or violent death. Keep fascism away from children and pets."

Astoundingly, Walter escalated the absurdity. On September 20, she wrote that this poster, too, had been censored as a "threat" because it "depicts violence and mentions violence and death." She added that Stout's "threat assessment team" had made the decision. College of Arts, Humanities and Social Sciences Interim Dean Raymond Hayes then scheduled a meeting with Miller about "the concerns raised by the campus threat assessment team."

Miller then came to FIRE for help. On September 21, FIRE wrote Stout Chancellor Charles W. Sorensen, citing Supreme Court precedent to explain that the posters were not a true threat, nor would a reasonable person expect them to cause a substantial disruption. Sorensen did not respond to FIRE, and FIRE launched a national campaign on September 26 to restore fundamental rights to Stout's campus. Later that day, Hayes canceled his meeting with Miller.

Sorensen, however, dug a deeper hole. Together with Provost Julie Furst-Bowe and Vice Chancellor Ed Nieskes, Sorensen defended



Censored image

Stout's censorship in an email to all faculty and staff on September 27.

At least 1,000 people wrote Sorensen in defense of First Amendment rights at Stout, and dozens of articles about the case appeared in the national media. Baldwin (co-star of *Firefly*) also wrote about Stout's apparent double standard in censorship. Baldwin noted that earlier this year, Stout apparently had no problem with "Kill the Bill" posters based on the film *Kill Bill*, which depicted Uma Thurman with a sword and advocated against Wisconsin Governor Scott Walker's budget bill.

Finally, in a letter to all faculty, staff, and students, the three senior administrators announced that Stout had reversed its decision, is developing a new protocol for handling such cases, and "will schedule workshops and/or forums during this academic year on First Amendment rights and responsibilities in higher education."

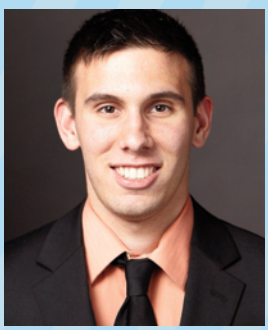
From the CFN
CAMPUS FREEDOM NETWORK

CFN Announces 2010–11 Prometheus Society Inductees

FIRE is pleased to announce the induction of Campus Freedom Network members **Kenny Tan**, **Nico Perrino**, and **Brandon Wasicsko** into the prestigious Prometheus Society for their hard work in defending freedom on campus during the 2010–11 academic year. These three students received the most points in the CFN's incentive program, which rewards those who are active for liberty on their campuses through hosting speakers, writing op-eds, wearing their FIRE T-shirts, and recruiting friends to join the Campus Freedom Network.



Our **first place** winner is former FIRE intern **Kenny Tan**, a sophomore at Vanderbilt University and president/founder of Vanderbilt's chapter of Young Americans for Liberty. Last fall semester, after attending the 2010 CFN Conference, Kenny hit the ground running, writing multiple articles and letters to the editor of the campus newspaper about freshman orientation and Vanderbilt's policies that inhibit student freedoms. Kenny also facilitated a speech on the state of student rights by FIRE's Adam Kissel, met with the dean of students to discuss problematic policies, and participated in a student panel discussion regarding the implementation of a bias incident reporting system at Vanderbilt.



In **second place** is Indiana University at Bloomington senior **Nico Perrino**. A former FIRE intern and president of IU's chapter of Young Americans for Liberty, Nico spent the last year creating and chairing a committee with the purpose of reforming speech codes at Indiana. Using assistance from both FIRE's publications and staff, Nico has organized and attended countless meetings with administrators and university committees with the hope of revising university policy to abolish existing speech codes. In addition, Nico has written articles about free speech in campus publications, recruited members for the CFN, advertised FIRE online, and brought FIRE President Greg Lukianoff to campus to speak.



This year's **third place** winner is **Brandon Wasicsko**, a recent graduate of Florida Gulf Coast University. As a member of Students For Liberty's Executive Board, Brandon brought FIRE's Adam Kissel to SFL's Southeast Regional Conference in 2010. After positive reviews from students, Brandon arranged for Adam to speak at other schools in Florida, resulting in a week-long tour of six universities to discuss previous FIRE cases, the value of creating an environment for free expression on campuses, and how FIRE can help students succeed in doing so.



Professor Uses Box Cutter to Remove Insult to Obama on Students' 'Free Speech Wall'; Police Threaten Students with Misdemeanor

To protest a controversial new social media policy, on September 22, four Sam Houston State University (SHSU) student groups organized a "free speech wall," a large field of paper with a wooden frame, upon which students could write the message of their choice. Someone wrote "F--K OBAMA" on one section of the wall, and other students replied in kind: "F--K BUSH" followed, as well as other comments.

What happened next is outrageous. An SHSU faculty member offended by the insult to President Obama reportedly used a box cutter to cut the expletive out of the wall after students refused to accede to his demand to censor that particular speech. The shocked students were advised by an SHSU dean to contact the campus police, and they did so. But after the students called the police to report the vandalism, they were threatened by an officer with charges of disturbing the peace and required to remove all profanity from the wall, or else take it down! Under this pressure, the students dismantled their "free speech wall"—and then contacted FIRE.

Here's what happened: The four groups—SHSU Lovers of Liberty, Bearkat Democrats, Sam Houston Democratic Socialists, and College Republicans—had stated on the Facebook page for the event, "Come exercise your freedom of speech by writing whatever you want on the wall and sign the petition to let the university know we never want this policy to go into effect!!" The students had received permission from SHSU to erect the wall.

According to a statement to police filed by SHSU Lovers of Liberty President Morgan Freeman, at about 1:30 p.m., SHSU Professor of Mathematics Joe E. Kirk demanded that the student organizers cover up the part of the wall that read "F--K OBAMA." Then, per Freeman's statement to police, Kirk took action when the students refused to accede to his demand for censorship.

Photos of the wall show that Kirk did not cut out any of the other words from the wall, including any other instances of "f--k" or other profanity.

According to Freeman's statement to police, the students then notified SHSU Lovers of Liberty faculty adviser Kenneth E. Hendrickson III about Kirk's vandalism, who notified one of the SHSU deans, who in turn advised the students to call the police because Kirk had used a box cutter to vandalize the wall. The students did so. An SHSU Police Department officer interviewed the students and then Kirk. Following his interview with Kirk, the officer returned to the students and informed them that they must either cover up all of the profanity on the wall or take down the wall altogether. According to Freeman's statement, the students refused to engage in censorship and therefore felt forced to take down the entire wall.

Later that day, as reported by SHSU student newspaper *The Houstonian*, University Police Department Deputy Chief James Fitch stated that because Kirk was "offended by the use of the profanity," its use "qualified it as disorderly conduct, a misdemeanor."

On September 23, FIRE wrote SHSU President Dana L. Gibson with the story, explaining why these events violated the students' First Amendment rights. We asked President Gibson to respond immediately.

Late in the day on September 23, President Gibson sent a brief response to FIRE's letter. Here it is in full:

> Sam Houston State University respects the principles of freedom of speech. In addition, the university supports the rights of individuals and organizations to exercise freedom of speech. The incident that occurred on Thursday, September 22nd between a member of the faculty and the student organizations that sponsored the 'Free Speech Wall,' is currently under investigation.

The police and vandals must not be permitted to thwart the exercise of free speech by SHSU's students. We hope SHSU will remember its clear-cut obligations under the First Amendment.



In Unprecedented, Ill-Considered Move, Harvard Pressures Freshmen to Sign Civility Pledge

Administrators at Harvard College have pressured the Class of 2015 to do something no other student class has been asked to do in 375 years: sign a civility pledge.

As the Harvard University student newspaper, the *Harvard Crimson*, detailed in a story on September 1, the "Class of 2015 Freshman Pledge" was presented to students before an opening convocation. Harry Lewis, former Dean of Harvard College and current Gordon McKay Professor of Computer Science, has published the full text of the pledge:

> At Commencement, the Dean of Harvard College announces to the President, Fellows, and Overseers that "each degree candidate stands ready to advance knowledge, to promote understanding, and to serve society." That message serves as a kind of moral compass for the education Harvard College imparts. In the classroom, in extracurricular endeavors, and in the Yard and Houses, students are expected to act with integrity, respect, and industry, and to sustain a community characterized by inclusiveness and civility.
>
> As we begin at Harvard, we commit to upholding the values of the College and to making the entryway and Yard a place where all can thrive and where the exercise of kindness holds a place on a par with intellectual attainment.

Although signing the pledge is technically voluntary, the *Crimson* reported that many proctors (Harvard's version of resident advisors, typically graduate students) were posting signed pledges publicly within residence area entryways. A freshman's name either would have a signature next to it or would not. Thus everyone, including the proctors—who possess a certain measure of disciplinary power—would know who has pledged fidelity to Harvard College's official morality and who has not. Indeed, the signed pledges were to be framed—apparently so that they last all year. What would happen if a student were to change her mind?

The *Crimson* quotes Dean of Freshmen Thomas A. Dingman's explanation why the College is pressuring students to commit to what is essentially a civility oath:

> "The most important thing was to get our values out. Things like respect, integrity, kindness," Dean of Freshmen Thomas A. Dingman '67 said. "We want to have an environment in which people can flourish academically."

Dingman said that the introduction of the pledge was motivated not by a specific incident, but by growing concerns that some Harvard students are not "thoughtful or considerate in their actions with their peers."

Dingman's explanation is entirely unsatisfactory and raises more questions than it answers. If Harvard seeks to create "an environment in which people can flourish academically," why is it instituting a civility oath that will surely chill academic debate and discourage students from asking tough questions that some might find "disrespectful"?

And while administrators tell the *Crimson* that the "2015 pledge is not an early attempt at an informal honor code," how can students freshly arrived at Harvard perceive it as anything but precisely such a code?

Under growing pressure, Harvard decided not to post the signed pledges, but the unsigned ones are still being posted. We urge Harvard to reconsider its ill-advised imposition upon the Class of 2015's freedoms of expression and conscience. It is not too late to abandon this regrettable effort and to take down the pledges. Doing so would avoid setting a dangerous precedent and would ensure that students may pursue intellectual stimulation wherever their studies take them, free from the worry that they might suffer as a result of their disagreement with the dean's official interpretation of Harvard College's values.

East Georgia College Settles Lawsuit for $50,000 after Firing Professor Who Criticized Sexual Harassment Policy

East Georgia College (EGC) has paid $50,000 to Professor Thomas Thibeault and his attorneys after firing Thibeault and having him escorted away by police for criticizing the school's sexual harassment policy. Thibeault was reinstated due to lack of evidence, but EGC President John Bryant Black refused to renew Thibeault's faculty appointment. Thibeault sued, leading the college to settle in August.

Thibeault's ordeal started shortly after an August 5, 2009, faculty training session on the college's sexual harassment policy, during which he related a story about another professor and asked, "What provision is there in the sexual harassment policy to protect the accused against complaints which are malicious or, in this case, ridiculous?" Vice President for Legal Affairs Mary Smith, who was conducting the session, replied that there was no such provision to protect the accused, so Thibeault responded that "the policy itself is flawed."

The next day, according to Thibeault's complaint, "Smith began a retaliatory crusade against Thibeault. Smith summoned numerous EGC faculty and staff members to her office and demanded that they provide information about their interactions with Thibeault during his tenure with EGC." The day after that, Thibeault was summoned to President Black's office. According to Thibeault's written account of the meeting, which Black received and to our knowledge never disputed, Black told Thibeault that he "was a divisive force in the college" and that he must resign by 11:30 a.m. that day or be fired and have his supposed "long history of sexual harassment ... made public."

Black added that Police Chief Drew Durden would escort Thibeault from campus and that Black had notified the local police that Thibeault should be arrested for trespassing if he returned. Thibeault was never presented with any charges against him or given a chance to present a defense. Refusing to resign, Thibeault understood that he was fired, and Durden escorted him from campus.

Black also notified Thibeault that his contract would not be renewed for the 2010–2011 academic year. Most likely realizing that he had violated college policy, Black soon began attempting to rewrite history, changing the story of what he had done to Thibeault. In a new letter, he wrote that Thibeault had actually been suspended, not terminated. Despite the lack of evidence, Black also wrote that a reviewing committee found "sufficient evidence to support your suspension." Black added that Thibeault was about to be terminated for sexual harassment, that the charges finally would be sent upon request, and that Thibeault finally could request a hearing.

FIRE outlined many of these shocking violations of due process and freedom of speech in a letter to then-University System of Georgia Chancellor Erroll B. Davis Jr., but Davis did not respond.

FIRE took Thibeault's case public, launching a national media campaign. Under significant scrutiny, Black finally reversed course, informing Thibeault he had "made the decision that the evidence does not warrant the charge of sexual harassment."

Even then, Black added to the violations of Thibeault's rights, stating that the latest letter was a "reprimand to you for the use of offensive language and angry outbursts in your past interactions with your colleagues." Once again, the reprimand failed to provide Thibeault with any evidence, notice, hearing, or witnesses.

Furthermore, Black never withdrew his punishment of Thibeault, and EGC did not renew Thibeault's contract. On August 5, 2010, Thibeault filed a lawsuit against Black, Smith, and the Board of Regents of the University System of Georgia.

Per the settlement reached in August 2011, Thibeault and his attorneys have received $50,000, Black has provided Thibeault with a letter of reference, and the Board of Regents will purge all documents "relating to Thibeault's termination" from his personnel file and all work history records. The defendants also agreed not to discuss those documents with others.

FIRE's THE TORCH Want more FIRE news and views? Check out *The Torch*, FIRE's blog, for daily updates at thefire.org/torch.

Nassau Community College Affirms Free Speech Rights for Faculty in Response to FIRE



After twice confining faculty members protesting budget cuts behind metal barricades, Nassau Community College (NCC) on Long Island reversed itself and allowed its instructors to freely distribute literature and carry protest signs across campus. Faculty members subjected to these unconstitutional "free speech zones" came to FIRE for help.

"NCC was treating faculty members like potential rioters," FIRE Senior Vice President Robert Shibley said. "This was a classic case of unconstitutional restraint on free speech."

A week before a rally on NCC's main plaza by members of the Nassau Community College Federation of Teachers (NCCFT), faculty member Ralph Nazareth informed NCC's Public Safety Office of the group's intent to protest against campus budget cuts. When Nazareth and other protesters arrived at the site for the protest on July 20, 2011, they found metal barricades awaiting them.

Director of Public Safety Martin J. Roddini handed Nazareth a notice ordering the faculty members to stay behind the barricades. The notice stated that "Any person leaving the designated area with the intent to protest will be warned that he/she must return to the enclosed area" and that "If that person persists, his/her right to remain on the campus may be forfeited." Bizarrely, the faculty members reported that they also were prohibited from distributing flyers at the rally because the flyers had not been pre-approved by NCC's student government.

When NCCFT members held a second protest on August 3, NCC again forced the protesters behind barricades. This time, Roddini gave them a different notice, which cited a county ordinance regarding obstruction of entrances and exits (which nobody had accused the faculty members of doing). Roddini reportedly permitted faculty members to distribute flyers outside of the barricades, but arbitrarily decided that they had to leave their hand-held posters behind.

The messages on the posters at the protests included "Students are not sardines—class size matters," "NCC is not fast food—No drive-through education," "Stop the corporate takeover of NCC," and "Restore full-time faculty lines now."

On August 16, the day before a third planned protest, FIRE wrote NCC President Donald P. Astrab an urgent letter regarding the violations of the protesters' rights. FIRE noted that the barricades and movement restrictions did not meet the Supreme Court's requirement that reasonable time, place, and manner restrictions on protests be narrowly tailored to serve a significant governmental interest. FIRE also informed NCC of its success defeating "free speech zone" policies across the country, including at the University of North Carolina at Greensboro, West Virginia University, Seminole Community College in Florida, Citrus College in California, Texas Tech University, and Tarrant County College in Texas. FIRE pointed out that NCC's restrictions violated the college's own statement that it "will make every effort to encourage free speech as protected by the U.S. Constitution."

On August 17, the day of the protest, NCCFT leaders received a faxed statement acknowledging their freedom to demonstrate, carry posters, and distribute flyers on campus–even outside building entrances and exits (without obstructing them). No barricades were erected.

"NCC should be commended for finally meeting its constitutional responsibilities," FIRE Vice President of Programs Adam Kissel said. "Free speech zones have no place on a college campus."

About This Publication

The FIRE Quarterly is published four times per year by the Foundation for Individual Rights in Education.

The mission of FIRE is to defend and sustain individual rights at America's increasingly repressive and partisan colleges and universities. These rights include freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity. FIRE's core mission is to protect the unprotected and to educate the public and communities of concerned Americans about the threats to these rights on our campuses and about the means to preserve them.

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Fanning the Flames: FIRE Scores Big with the Better Business Bureau

The Better Business Bureau (BBB), a nationally recognized independent business and charity evaluator, just released its evaluation of FIRE, reporting that in 2010, FIRE met 19 of the 20 Standards for Charitable Accountability.

Our nearly perfect evaluation demonstrates that FIRE is very accountable to donors, spends money wisely, has reputable governance, and is truthful in our representations. In these current economic times when people must make difficult choices deciding which charities they can continue to support, FIRE's BBB rating provides confidence to you, our donors, that an investment in FIRE is a strong one. FIRE is on track to meet all 20 standards in 2011, which will be reflected in the BBB report issued next fall.

Also be sure to check out FIRE's Charity Navigator review, where for the third consecutive year we've earned the highest evaluation—4 stars—something only 14 percent of the rated charities have accomplished. Like the BBB report, this evaluation indicates that FIRE consistently executes its mission in a fiscally responsible way, outperforming most other charities in America.

To read the full BBB and Charity Navigator evaluations of FIRE, visit www.bbb.org and www.charitynavigator.org respectively and search for "Foundation for Individual Rights in Education." You can also request copies by calling or emailing FIRE's Director of Development, Alisha Glennon, at 215-717-3473 or Alisha@thefire.org.

We are very proud of these distinctions, and we hope they bring comfort and pride to our current supporters and to those thinking of donating to FIRE in 2011, which you can do using the envelope provided in this newsletter or by visiting thefire.org/donate.

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FIRE has always been at the forefront of social networking and Internet technology, so it's no surprise that one of the most popular ways to get FIRE news and updates is by accessing our Twitter, Facebook, and YouTube accounts. To "follow" FIRE, go to twitter.com/theFIREorg, facebook.com/thefireorg, and youtube.com/TheFIREorg.

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Whistleblowing UCLA Professor Wins One More Year

University of California, Los Angeles (UCLA) Professor James Enstrom, whose department had tried to get rid of him for not fitting the department's "mission," has been granted an additional year of employment at UCLA. Dr. Enstrom had engaged in successful whistleblowing against a prominent member of his department, and there had been many years of debate between Enstrom and some of his colleagues over research on air pollution (a debate which continues today).

Enstrom's story is far from over. Giving a professor a final year is a positive step, but it does not resolve the free speech, academic freedom, and accounting concerns that FIRE has raised from the beginning. Visit thefire.org to read the full story.



Professor James Enstrom