

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PATRICIA SIMPSON AND ROBERT
WOJICK,

Plaintiffs,

v.

PAUL YU, IN HIS INDIVIDUAL CAPACITY AND AS
PRESIDENT OF THE STATE UNIVERSITY OF NEW
YORK COLLEGE AT BROCKPORT, ADRIENNE
COLLIER, IN HER INDIVIDUAL CAPACITY AND AS
AFFIRMATIVE ACTION OFFICER OF STATE
UNIVERSITY OF NEW YORK COLLEGE AT
BROCKPORT, RAY M. DI PASQUALE, IN HIS
INDIVIDUAL CAPACITY AND AS VICE-PRESIDENT
OF ENROLLMENT MANAGEMENT AND STUDENT
AFFAIRS OF THE STATE UNIVERSITY OF NEW YORK
COLLEGE AT BROCKPORT, JOSEPH FRANEK, IN
HIS INDIVIDUAL CAPACITY AND AS INTERIM DEAN
OF STUDENTS OF THE STATE UNIVERSITY OF NEW
YORK COLLEGE AT BROCKPORT, THOMAS
ROSIA, IN HIS INDIVIDUAL CAPACITY AND AS
OFFICER OF THE COLLEGE-WIDE JUDICIAL SYSTEM
OF THE STATE UNIVERSITY OF NEW YORK
COLLEGE AT BROCKPORT, AND JOSEPH
JOHNSTON, IN HIS INDIVIDUAL CAPACITY AND
AS JUDICIAL COORDINATOR OF THE STATE
UNIVERSITY OF NEW YORK COLLEGE AT
BROCKPORT,

Defendants.

JURY TRIAL
DEMANDED

COMPLAINT

Plaintiffs Patricia Simpson and Robert Wojick (the “Plaintiffs”), by their
undersigned attorneys, allege as follows:

Introduction

1. This case arises from systematic and systemic efforts by a public college, the State University of New York College at Brockport (“SUNY Brockport” or “the College”) through its officials, to restrict and abridge the free speech rights of its students.

2. SUNY Brockport, as a public institution of higher learning, is bound by our Federal and State Constitutions to refrain from infringing on the free speech rights of those it educates. Indeed, when those rights are imperiled or curtailed, the College’s educational mission is placed in jeopardy.

3. Although students and faculty benefit from, and the educational process at the university level depends upon, free, robust, and uninhibited debate, the defendants in this case, administrators at a public college, have chosen instead the path of unlawful censorship.

4. Through a series of unconstitutional rules and regulations, they have attempted to chill and suppress their students’ views on controversial topics, to quash the exchange of information and ideas that may offend the “sensitivities” of some on campus, and to compel students, against their will, to pledge their loyalty to, and to mouth the views of, the administration on a host of issues.

5. Defendants’ web of unconstitutional rules and regulations, on their face, subject students to punishment for a wide range of protected speech – from speech that “challeng[es] authority,” to speech concerning sexual matters, to speech critical of religious figures, to speech expressed without “careful regard for the sensitivities of others.”

6. At the same time defendants' regulations would penalize protected student speech, they also seek to unlawfully compel students to mouth the views of the college's administration on a variety of broad issues – issues on which students should be free to form and express their own opinions.

7. These rules and regulations are referred to herein collectively as the “SUNY Brockport Speech Code.”

8. Plaintiffs Patricia Simpson (“Ms. Simpson”) and Robert Wojick (“Mr. Wojick”) are undergraduate students at the State University of New York College at Brockport (“SUNY Brockport” or the “College”). They are two of approximately 9,000 young students who study there.

9. Ms. Simpson leads the SUNY Brockport chapter of the College Republicans, which conducts debates and engages in on-campus discussions concerning politics, current events, and various controversies of the day. She also is a member of the SUNY Brockport Political Science Club, a campus organization dedicated to promoting debate and the free exchange of ideas on campus. Mr. Wojick is a member of the College Republicans and is the Vice President of the SUNY Brockport Political Science Club.

10. Plaintiffs hold their own opinions about controversial issues involving race, gender, religion, and other controversial topics. Plaintiffs' views on many of these issues are conservative and traditional, and conflict with those of SUNY Brockport, as expressed and embodied in the College's rules and regulations.

11. Plaintiffs understand and value the importance of free and open debate, and cherish their right to express their views in an unfettered and uncensored manner.

12. Plaintiffs expected - and had every reason to expect - that their right to engage in free and unfettered speech, and to draw on, learn from, the free speech of her fellow students, would not be abridged by SUNY Brockport or its agents.

13. The defendants, rather than uphold their obligation to safeguard the free speech rights of Ms. Simpson, Mr. Wojick, and other students, have attempted through the SUNY Brockport Speech Code to abridge and curtail those rights. They have done so in order to advance their preferred political viewpoint and ideology, to quash student discussion of controversial or upsetting topics, such as race and gender issues, and to chill those who hold contrary views.

14. In enacting and implementing the SUNY Brockport speech code, the defendants herein have abridged the constitutional rights of Plaintiffs and thousands of other SUNY Brockport students.

15. Although Plaintiffs have not yet been subjected to formal prosecution under the SUNY Brockport Speech Code, they realistically fear that such prosecution may occur at any time. As a direct result of the SUNY Brockport Speech Code, Plaintiffs' right to free speech has been chilled. Plaintiffs fear that, if they were to express their views on any number of controversial topics that may fall afoul of the SUNY Brockport Speech Code, they may be prosecuted and subject to sanctions.

16. Plaintiffs are aware that their conservative political views, their involvement in the College Republicans and the SUNY Brockport Political Science Club greatly increase the risk of prosecution, as they seek to engage in discussions of controversial matters, which may implicate views others may find offensive or objectionable.

17. Plaintiffs have refrained from speaking out on a variety of topics so as to avoid possible punitive action by the defendants. And, as described below, they have been directly threatened by agents of SUNY Brockport on several occasions where they have attempted to assert controversial views – views protected by our Federal and State Constitutions

18. In accordance with decades of well-established precedent under First Amendment law, Plaintiffs have brought this facial challenge to the SUNY Brockport Speech Code in order to end the chilling effect of the SUNY Brockport Speech Code on their own speech and the free speech rights of others.

19. The SUNY Brockport speech code is a flagrant case of administrative abuse of the free speech rights of students. It is, on its face, an hopelessly vague and overly broad censorship regime. It also imposes impermissible restrictions based on the content of the speech and the viewpoint of the speaker. Thus, it not only leaves students to wonder what speech may subject them to punishment by the College, but also singles out for punishment those whose views on matters of race and sex (and other topics likely to upset certain “protected groups”) conflict with those of the College’s administration.

20. To remedy these clear constitutional violations and to bring to an end the ongoing harm defendants are causing, Plaintiffs seek injunctive relief, invalidating and prohibiting the enforcement of each of the policies comprising the SUNY Brockport speech code. Plaintiffs also seek compensatory damages for the harm they have incurred.

The Parties

21. Plaintiff Patricia Simpson is a resident of Brockport, New York. She is a registered, tuition-paying, undergraduate student at Defendant SUNY Brockport. As

such, she is subject to the rules and regulations of SUNY Brockport applicable to students.

22. Plaintiff Robert Wojick is a resident of Brockport, New York. He is a registered, tuition-paying, undergraduate student at Defendant SUNY Brockport. As such, he is subject to the rules and regulations of SUNY Brockport applicable to students.

23. Defendant Paul Yu is the President of SUNY Brockport. As President, he is charged with the enforcement of University rules and regulations, including those rules and regulations comprising the SUNY Brockport Speech Code. As President, Defendant Yu has the ultimate authority in student disciplinary matters.

24. Defendant Adrienne Collier is Assistant Director of Human Resources and Affirmative Action Officer at SUNY Brockport. She is responsible for enacting, administering and enforcing the SUNY Brockport Speech Code.

25. Defendant Ray Di Pasquale is the Vice President of Enrollment Management and Student Affairs. He is responsible for administering and enforcing the SUNY Brockport Speech Code.

26. Defendant Joseph Franek is the interim Dean of Students. He is responsible for administering and enforcing the SUNY Brockport Speech Code.

27. Defendant Joseph Johnston is the Judicial Coordinator at SUNY Brockport. He is responsible for administering, disseminating, and enforcing the SUNY Brockport Speech Code.

28. The defendants herein are referred to herein collectively as “Defendants.”

29. At all relevant times, Defendants were acting within the scope of their authority and under the color of state law.

30. At all relevant times, Defendants have acted pursuant to the official policies, practices and customs of SUNY Brockport, as set forth herein.

31. Defendants are being sued in their official capacities for prospective injunctive relief only. They are being sued for damages in their individual capacities only.

Jurisdiction and Venue

32. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1367, and 2201 and 42 U.S.C. §§ 1983 and 1988.

33. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b).

STATEMENT OF FACTS

A. SUNY Brockport Is a Public Institution Bound by the Federal And State Constitutions.

34. SUNY Brockport is an educational institution established under the laws of New York. As a public institution, SUNY Brockport is a part of the government of the State of New York. It is therefore bound to obey and abide by the Constitution of the State of New York and the United States Constitution.

35. Specifically, SUNY Brockport and its agents, including Defendants, are bound by the Free Speech Clause of the First and Fourteenth Amendments to the United States Constitution and Article I, Section 8 the New York State Constitution. These

provisions prohibit agents of the State from abridging the right of the citizens of New York - including students at SUNY Brockport - to the free expression of their views.

36. These rights afforded to the citizens of the United States and the State of New York are fundamental. They are not, and cannot be, diluted or restricted because they hinder the plans of college administrators to establish an “atmosphere” free of discomfort or controversy. Nor can these rights be diluted or restricted under the guise of prohibiting unlawful conduct that is distinct from speech, such as violence or true harassment.

37. Indeed, it is critical to the educational experience that students be allowed to exercise fully their rights of free speech and expression, including speech and expression with respect to controversial and “uncomfortable” topics of the day.

B. The SUNY Brockport Speech Code

38. In disregard of their legal obligations to their students and faculty, Defendants have implemented and enforced certain rules and regulations which constitute severe, unlawful restrictions on students’ freedom of speech.

39. SUNY Brockport regularly promulgates numerous rules and regulations governing and regulating most aspects of student conduct. These rules and regulations cover academics, residential life, and extra-curricular activities.

40. The rules and regulations governing SUNY Brockport students are set forth in several College publications:

- The compendium of rules and regulations entitled “*Your Right to Know & Academic Policies Handbook*”;

- SUNY Brockport Student Code of Social Conduct;
- The SUNY Brockport Undergraduate Catalog;
- The SUNY Brockport Graduate Catalog;
- The Office of Affirmative Action Policies and Laws;
- The SUNY Brockport Faculty/Staff Handbook, and;
- Other written policies issued by the College.

41. Throughout these governing instruments are included rules and regulations that unlawfully restrict and abridge the fundamental right of SUNY Brockport students to free speech and expression. First, these rules and regulations include broad, undefined prohibitions on free expression. Second, the rules and regulations contain content- and viewpoint-based prohibitions on speech dealing with controversial topics, such as race or gender. Third, the rules and regulations compel students to espouse and articulate the views of the College on certain issues, regardless of whether they agree with those views. Each of the foregoing is a violation of students' fundamental rights.

42. Defendants threaten students with a wide range of disciplinary actions for violations of the SUNY Brockport Speech Code. Students may suffer punishment ranging from placement on "probationary status," to suspension from the College residence halls, to suspension or expulsion from the College.

43. Any of these punishments would deleteriously affect a student's academic record, including her prospects for admission to graduate schools and her prospects for future employment. Thus, Defendants effectively coerce students, including Plaintiffs, to limit or restrict the expression of their views.

i. General Limits On the Exercise of Free Speech

44. Throughout the rules and regulations governing the conduct of SUNY Brockport students and faculty are provisions providing for broad, ill-defined, or undefined restrictions on student's fundamental right of free speech and affirming the College's power to restrict or punish speech that is not deemed "responsible."

45. One egregious restriction appears in the College's so-called "Better Community Statement," (the "BCS").

46. The BCS was adopted by SUNY Brockport Faculty Senate in 1994. According to the SUNY Brockport Faculty/Staff Handbook, the Faculty Senate is charged with proposing to the Chief Administrative Officer of the College policies relating to academic and professional activities at the SUNY Brockport. According to the Faculty Bylaws, the Faculty Senate "shares, with other units of the College, responsibility to formulate, review, revise, and adopt for recommendation to the Chief Administrative Officer, policies" having to do with a wide range of issues concerning the governance of SUNY Brockport.

47. Following passage by the Faculty Senate, SUNY Brockport adopted the BCS and incorporated it into many of the instruments that bind and govern the conduct of SUNY Brockport students, including: *Your Right To Know & Academic Policies Handbook*, the SUNY Brockport Undergraduate Student Catalog, the SUNY Brockport Graduate Student Catalog, the SUNY Brockport Student Services Guide, and the SUNY Brockport Affirmative Action Policies and Laws. The College has thus adopted, and represents the BCS to be, College policy governing students and others on campus.

48. By incorporating the BCS into the documents setting forth the rules and regulations governing student conduct, the College ensures that all students are put on notice that they are bound by the BCS.

49. Plaintiffs recognize that educational institutions, including SUNY Brockport, have the right to articulate and promote their own values and beliefs. However, rather than simply articulate its own views, SUNY Brockport chose to adopt and incorporate the BCS into the rules and regulations that bind and govern SUNY Brockport students.

50. The BCS purports to speak on behalf of all members of the “College community.” It purports to dictate to SUNY Brockport students their beliefs, values, priorities, and the limits they must accept on their fundamental constitutional rights.

51. The BCS expressly establishes that students’ right to free speech is to be severely curtailed. The BCS states: “As individuals who work, study or live in the College community, we affirm our rights to freedom of expression and association, *and the belief that they must be exercised responsibly.*” (Emphasis provided). The BCS does not define what constitutes “responsible exercise” of the right of free expression. This is left to the discretion of college administrators and faculty.

52. The BCS acknowledges that “the essence of academic freedom is the free and open expression and exchange of ideas, even when controversial or unconventional.” However, after purporting to concede this point, the BCS again affirms the notion that the right of free speech is subject to an undefined limitation: “We affirm that the dignity of our Brockport community is protected when free speech, academic freedom and

individual rights are expressed only with responsible and careful regard for the feelings and sensitivities of others.” (emphasis provided).

53. Neither in the BCS nor elsewhere do Defendants explain how students are to assess the “feelings and sensitivities of others” prior to speaking, which other persons constitute the “others” whose sensitivities must be safeguarded, or what constitutes “responsible and careful regard” for those sensitivities.

54. Plaintiffs desire to speak on controversial issues of the day and to express what they believe are compelling arguments on those issues. They do not want to - and should not have to - curtail their expression out of fear that a staff person or faculty member may decide that it is not “responsible” or that it does not adequately cater to the “feelings and sensitivities” of others.

55. Having limited students’ speech to that which is deemed “responsible” and expressed with “careful regard” to others’ “sensitivities,” the BCS further sets forth a host of values and beliefs that students must hold. These presumably constitute “responsible” beliefs - approved of and mandated by SUNY Brockport - the expression of which would not violate the BCS.

56. The BCS affirms that students must “challenge and reject all forms of bigotry.” Bigotry is not defined. Nor does the BCS set forth what students must do in order to adequately demonstrate their rejection of bigotry. Nor does the BCS detail what students must do in order to adequately “challenge” bigotry.

57. The BCS requires SUNY Brockport students to “assume the best” about “all persons.”

58. The BCS affirms that students must “celebrate our differences.”

59. The BCS affirms that Brockport students must “value an inclusive environment that is accepting of each other’s cultural, physical, cognitive, social and professional differences.”

60. The BCS requires that students “as members of smaller groups on campus, respect and affirm the transcendent values and principles of the overall College community.” Those values and principles, to which students are required to express their loyalty, are not defined.

61. In mandating the values that students must “celebrate” “affirm” uphold” “respect,” the BCS inherently censors speech critical of these values. For example, by mandating that students “celebrate” differences, the BCS inherently and inevitably precludes speech that would derogate such differences. By mandating that students “respect and affirm the transcendent values” of the “overall College community,” the policy inherently and inevitably proscribes speech that would disrespect or deride any of these undefined “transcendent values.”

62. Similar to the sweeping restrictions of the BCS, SUNY Brockport’s Faculty/Staff Handbook also affirms that student’s free speech rights are subject to institutionally imposed limits.

63. Although the Faculty/Staff Handbook primarily concerns policies governing faculty and staff, it also governs student life in two ways. First, it contains specific provisions that are expressly directed to students. Second, it requires faculty and staff to take punitive or other action against students in certain instances, thus affecting

the rights and interests of those students. The Faculty/Staff Handbook contains, among other provisions, sections governing the “Student Bill of Rights” and a policy on “Discriminatory Harassment,” each of which is discussed below.

64. The Handbook contains a chapter entitled “Student Bill of Rights,” which states:

523.06
FREEDOM OF EXPRESSION
ARTICLE V

1. Each student shall be free to speak on any subject, and to publish and distribute any material at any time and place, subject to legal and institutional limitations.” (emphasis added).

65. Significantly, the so-called “Student Bill of Rights” expressly acknowledges that SUNY Brockport intends to and does impose limits on free speech separate and in addition to those limitations allowed by law.

66. Plaintiffs do not challenge the right of Defendants to impose reasonable time, place, and manner restrictions on student expression, and those restrictions are set forth separately and independently in the College’s rules and regulations.

67. However, Defendants have no right to impose vague and indefinite requirements that free speech only be exercised “responsibly” or in such limited fashion as to comply with “institutional limits.” Nor may Defendants limit speech to that which does not offend the sensitivities of others, or which conceals or minimizes, rather than exposes or maximizes, the differences between and among individuals and groups.

ii. Content-Based and Viewpoint Based Restrictions on Free Speech

68. In addition to imposing sweeping, undefined restrictions on free speech, SUNY Brockport policies also target for punishment speech on specific subjects that are likely to cause controversy or “discomfort,” issues such as gender and race. On these topics, student are permitted to speak freely only to the extent that their views coincide with those of the College. Such content-based and viewpoint-based restrictions are clearly unconstitutional.

a. **Protected Speech Banned As “Harassment”**

69. SUNY Brockport prohibits discrimination and so-called “discriminatory harassment” based on race, color, religion, sex, sexual orientation, age, disability, marital status, national origin, Vietnam-era veteran status or any other characteristic protected by law.

70. Plaintiffs do not challenge, and indeed support, efforts to prohibit discriminatory conduct, including true harassment. However, rather than narrowly draft policies directed at that unlawful conduct, Defendants have implemented overly broad and indefinite policies that ban or restrict all manner of protected speech and even belief.

71. The University’s policies on “discriminatory harassment” are set forth in the Faculty/Staff Handbook, a College brochure entitled *Sexual Harassment*, the Affirmative Action Policies and Laws, and in a document dated May 2000 entitled “SUNY Brockport Policy Regarding Non-Discrimination and Harassment.” These policies are also referenced in the Code of Student Social Conduct.

72. Defendants’ various iterations of their policy differ in the aforementioned documents. Prohibited conduct is defined differently in different documents, and different illustrative examples of prohibited conduct are provided.

73. In each iteration, however, “verbal conduct,” *i.e.*, speech, is included within the scope of the definition of illegal harassment.

74. Because SUNY Brockport is a public institution, and because its proscription against harassment extends to speech and not merely conduct, it is critical for its anti-harassment policies to make clear that speech protected by the Federal and State Constitutions are not restricted, and that the prohibition on harassing conduct is in accord with existing law.

75. SUNY Brockport’s policies provide no such assurances and have no such limits. On the contrary, the policies, on their face, purport to restrict protected speech.

76. While federal and state law prohibiting sexual harassment may extend to spoken or written words, there are numerous substantial and important statutory and regulatory safeguards that preclude liability for “harassment” for purely protected speech. First, the speech must be unwelcome. Second, the speech must be both objectively and subjectively offensive, *i.e.*, it must be offensive not only the complainant, but also to a reasonable person. Third, the speech must be part of a pattern of conduct that is so “pervasive and severe” as to alter the terms and conditions of the complainant’s education and as to create a discriminatory environment. The law is clear that occasional offensive utterances do not constitute harassment. Fourth, it must alter the terms and conditions of the complainant’s education on the basis of a protected characteristic, *i.e.*, the “hostile environment” must be discriminatory, not merely offensive.

77. SUNY Brockport’s policies, by contrast, broadly prohibit whole categories of speech, such as speech of a sexual nature, or speech pertaining to topics that may give offense to racial, ethnic, or religious groups.

78. For example, Chapter 285 of the Faculty/Staff Handbook, entitled “Discriminatory Harassment” defines “Racial harassment” as follows:

a statement, action, or series of statements or actions designed to designed to [sic] derogate a person or class of persons because of their ethnic heritage. Examples of racial or national origin harassment can include ethnic jokes, racial or ethnic slurs, or even physical assaults.

79. Nowhere in the Faculty/Staff Handbook’s definition is there any requirement that the harassing conduct be unwelcome, that it be both objectively and subjectively offensive, or that it be sufficiently “pervasive or severe” as to affect the terms and conditions of a complainant’s education. Indeed, on its face, the policy would ban a solitary joke or comment, a comment critical of a foreign country’s culture or custom, or a critical analysis of the history of a particular ethnic group. It would also ban virtually all parody, and a substantial amount of sharp argument.

80. Having defined “racial harassment” so broadly, the policy also makes clear that such conduct “will not be tolerated” and that “students found in violation of this policy shall be subject to the campus judicial system.”

81. Similarly, the College’s definition of sexual harassment diverges expressly from that established by law, and is intended to sweep in all manner of protected speech that causes “discomfort” to the listener. Although the definition of “sexual harassment” set forth in the Faculty/Staff Handbook more closely approximates that found in federal and state law, it nevertheless is deliberately drafted there and elsewhere more broadly and more vaguely, so as to encompass protected speech.

82. The College’s sexual harassment policies also set forth “Examples of Inappropriate Behavior in an Anti-Discrimination and Anti-Harassment Environment.”

These examples clearly include constitutionally protected speech. The examples include:

- “[C]alling someone an ‘old bag’”
- “[C]artoons that depict religious figures in compromising situations.”
- “Jokes . . . making fun of any protected group.”
- “Nicknames that relate to a person’s membership in any protected group”
- “Discussing sexual activities.”

83. The sexual harassment policy set forth in the Affirmative Action Policies and Laws also include as examples of prohibited “verbal conduct,” “verbal kidding,” and “dehumanizing gender references.”

84. The policy thus expressly bans pure speech protected by the Federal and State Constitutions, as well as speech not encompassed by the bans contained in federal civil rights statutes and regulations, even if such statutes and regulations are deemed constitutional. Indeed, the College takes pains to extend its policies to isolated utterances, such as an off-hand reference or joke.

85. On their face, the “anti-harassment” policies could punish everything from the display of an editorial cartoon criticizing the Pope (cartoons showing religious figures in compromising positions), to a performance of “The Taming of the Shrew” (jokes at the expense of protected groups; verbal kidding) to an isolated reference to “housewife” (degrading gender references), to an academic discussion of sexual subcultures (discussion of sexual activities).

86. The policies make no effort to distinguish between a barrage of discriminatory epithets directed at an individual, an academic discussion of sexual matters, or the performance of a sexually suggestive play or dance routine. They simply ban whole categories of speech under the guise of prohibiting harassment.

87. Moreover, because SUNY Brockport's harassment policies cover numerous categories, their broad application would inhibit speech on a wide variety of topics. For example, the proscription on harassment based on Vietnam-era veteran status may proscribe critical evaluations of the conduct and performance of Vietnam veterans during the war, or their current physical and mental condition, much like the sexual harassment policy expressly bans discussion of sexual activities. Thus, at a time when the era of Vietnam War service has become a major national issue in the Presidential electoral contest, students at SUNY Brockport are prohibited from having similar discussions on campus.

88. Similarly, the proscription on "harassment" based on marital status may punish students who dare debate the difficulties of single life, the negative aspects of married life, or the need to elevate traditional marriage over other relationships.

89. The SUNY Brockport policies are broadly and vaguely drafted, so as to apply to all manner of protected speech. Indeed, in describing in absurdly narrow terms what is not harassment, *i.e.*, what speech may be considered safely harbored from prosecution, SUNY Brockport demonstrates how broad its anti-harassment policies actually apply. The SUNY Brockport Policy Regarding Harassment states:

Normal, courteous, mutually respectful, comfortable,
appropriate, pleasant, non-coercive interactions between

employees and students, employees and employees, and students and students, that are acceptable to both parties are not considered to be sexual harassment.

90. Defendants can and should prohibit true harassment on campus. But, as agents of the State bound by the limits of the Federal and State Constitutions, they may not, in their zeal to thwart true harassment, rob their students of their right to engage in free and robust speech, even if such speech is not “comfortable” or “pleasant” to all involved.

b. Protected Speech Banned As “Violence”

91. In addition to SUNY Brockport’s policies covering “discriminatory harassment,” the College also has implemented a “Zero Tolerance for Violence In The Workplace.” The policy is written to broadly apply to “[a]ny and all forms of violence, threatening behavior and/or harassment which involve or affect SUNY College at Brockport . . . or which occur on SUNY Brockport’s campus or its satellites”

92. Plaintiffs do not challenge, and indeed support, policies preventing true violence on campus. However, as with Defendants’ policies on discriminatory harassment, the SUNY Brockport “zero tolerance for violence” policy is deliberately drafted to prohibit and regulate far more than violent conduct. Nor does it limit itself to prohibiting limited forms of speech that have been deemed outside the protection of the First Amendment, such as fighting words or incitement to imminent violence.

93. Rather, the SUNY Brockport policy purports to regulate in an impermissibly broad manner pure speech protected by the Federal and State Constitutions.

94. For example, the policy sets forth a list of “Specific Examples of Prohibited Conduct.”

95. The policy forbids: “Making a suggestion or otherwise intimating that an act to injure persons or property is ‘appropriate.’” The policy does not require that the “suggestion” or “other intimation” be made with the intent to incite. Nor does it take into account the context in which such a suggestion might be made. On its face, the policy would prohibit and subject to punishment a wide range of protected speech.

96. Such suggestions or intimations might include, for example: (i) an academic debate of the morality of war; (ii) the need for violent revolution to overthrow the government; (iii) the appropriateness of assassinating terrorists or foreign leaders, or; (iv) the appropriateness of the death penalty in specific cases.

97. The policy also prohibits “verbal abuse” of any individual. “Verbal abuse” is not defined. Nor is there any requirement that the abuse be directly targeted at, or even articulated in the presence of, the “victim” of the “abuse.” Thus, the policy would, on its face, apply to an argument between students in which one or both sides employs arguments *ad hominem*, a speech harshly critical of President Yu, or any other speech that subjects an individual or individuals to unwelcome criticism. In the absence of any definition of, or limit on, “verbal abuse” no student can be assured that critical speech concerning an individual is compliant with the policy.

98. The policy also contains a list of “warning signs of violence” that would encompass much constitutionally protected expressive conduct. These “warning signs” include:

- challenging rules or authority;
- using an angry tone;
- shouting;
- making unreasonable demands;
- angry looks or staring.

99. These so-called “warning signs” include purely expressive speech, which may be entirely unrelated to any violent conduct.

100. Such “warning signs” may expose a student or other person to immediate punitive action, even absent further speech or conduct, because the “zero tolerance” policy emphasizes the importance of rapid and immediate response to potential violations of the policy.

101. Nor does the policy provide any comfort to students or other covered parties that it is intended to be read narrowly. Indeed, that the policy is cast as one of “zero tolerance” indicates that it will be broadly enforced.

102. SUNY Brockport has every right to ban violence from campus. But it has no right under the Federal or State Constitutions to subject students and others to punishment for “using an angry tone” or “challenging authority.” Indeed, the College belittles and undermines the seriousness of real violence on campus by attempting to do so.

iii Compelled Speech and Belief

103. In addition to prohibiting a variety of protected speech, Defendants also purport to *compel* students to make statements and express views concerning “harassment” and other issues which mirror the administration’s views on these subjects.

104. SUNY Brockport’s policies on “discriminatory harassment” compel student speech.

105. Although different people of intelligence and goodwill may have different views as to the appropriateness of words and conduct said to constitute “harassment,” as well as the liability of the speaker, SUNY Brockport does not permit its students or faculty a divergence of views on these issues.

106. Chapter 285 of the Faculty/Staff Handbook expressly requires members of the “College community” to: (i) affirmatively raise and discuss the issue of sexual harassment; (ii) express “strong disapproval” of the harassment, and; (iii) develop appropriate sanctions to punish the as-yet unconvicted perpetrator.

107. Finally, the Faculty/Staff Handbook requires all members of the College community to “develop[] methods to sensitize all concerned.”

108. The Handbook provides that any student found in violation of the policy, including the compelled speech requirements set forth above, “shall be subject to the campus judicial system.”

109. SUNY Brockport’s policies thus mandate a particular view of, and reaction to, alleged harassment. They compel students, including Plaintiffs, to engage in speech in which they would not otherwise choose to engage.

110. Students or other members of the “college community” may have different views of what constitutes “harassment.” For example, some members of the community may disapprove of sexual harassment, but may believe that a specific allegation of harassment may be false or exaggerated. Others may disagree with the very concept of “hostile environment” harassment as developed in the law in recent years. Still others may agree with the law in this area, but view the College’s policies as an overly broad application of that law.

111. The College, on the face of its own policies, would subject to punishment students who dare hold and express these views, and who fail to mouth the requisite “strong disapproval” of unproven cases of harassment.

112. Whatever Defendants’ rights to curtail harassing behavior, they have no right to coerce Plaintiffs or any other students to mouth “disapproval” of sexual harassment. They have no right to mandate oral denunciations, or to conscript Plaintiffs or other students against their will into a crusade for “sensitization.” They have no right to compel beliefs of any kind or point-of-view.

113. SUNY Brockport’s Better Community Statement, described above, similarly compels student speech and belief in violation of the Federal and New York State Constitutions. As noted above, the BCS requires that students pledge their loyalty to host of values and ideas imposed by the College.

114. The BCS mandates speech and belief in support of officially-approved values. For example, the BCS demands that students “challenge and reject” all forms of bigotry. On its face, a student or other covered individual could satisfy this requirement only through speech or other expressive conduct. Similarly, the BCS requires that

students “celebrate” differences of all kinds. This criterion of the policy cannot be satisfied absent some form of speech or expressive conduct.

115. The College does not allow that students may differ in their opinion as to what constitutes “bigotry.” and their reaction thereto. Students, including Plaintiffs, may wish to engage in critical inquiry of new and different viewpoints, rather than dismiss them with a label, followed by College-mandated “rejection.”

116. Nor does the policy allow that students may not wish to “celebrate” all of their differences. Students may believe that some differences are worthy of celebration, while holding that other differences are destructive or divisive and should be overcome. Still other students may view differences as marginal, unworthy of condemnation or celebration or, for that matter, attention.

117. The BCS deprives students of the right to hold and express these alternative viewpoints. In lieu of free and open debate, it substitutes mandatory “rejection” of certain values and mandatory “celebration” of others.

C. The Chilling of Plaintiffs’ Free Speech Rights.

118. Plaintiffs hold conservative views on many issues, which conflict with the prevailing ideology of the administration of SUNY Brockport, as reflected and embodied in the SUNY Brockport Speech Code. As noted above, both Plaintiffs are active members of campus organizations which regularly conduct on-campus debates and engage in discussions of controversial and potentially offensive matters. Plaintiffs wish to express their views on various topics; some of those views, and the expression thereof, may and would likely be deemed by Defendants to be “insensitive” or “offensive” or likely to cause discomfort in others.

119. Plaintiffs fear that, unless they curtail the expression of their views, they would be subject to prosecution under the SUNY Brockport Speech Code. As a direct result of the SUNY Brockport Speech Code, Plaintiffs have censored themselves while on campus.

120. For example, Plaintiff Patricia Simpson has consciously refrained from expressing her views on matters concerning race and gender in various political science and communications classes in which she is enrolled. In one instance, Ms. Simpson censored her views on the proposed Equal Rights Amendment (ERA), in a discussion that occurred in her Political Rhetoric class, which is part of her course of study in communications.

121. Ms. Simpson, who opposes the enactment of the ERA, was aware of the broad applicability of SUNY Brockport rules against “bigotry” and prejudice. Out of concern that her position could be misconstrued as “bigotry” or otherwise supportive of discrimination, she refrained from expressing her views on this important subject.

122. Plaintiff Robert Wojick also has refrained from expressing his views or has mouthed opinions in which he does not believe out of fear of punitive action by the College or its agents. In one instance, Mr. Wojick refrained from speaking his views in a class on Comparative Development, a political science class that explores the differences in economic and social development in different societies. Mr. Wojick was aware of the broad proscription imposed by SUNY Brockport on “discriminatory” language and “bigotry.” Fearful that comments critical of foreign cultures or societies could be construed as a manifestation of prejudice or “bigotry,” Mr. Wojick censored himself and expressed views that were less likely to result in punitive action.

123. The chilling effect caused by the SUNY Brockport Speech Code has been intensified by direct threats of punitive action made against the Plaintiffs by agents of the College.

124. For example, in 2003, Plaintiffs' organization, the SUNY Brockport chapter of the College Republicans, staffed an information table on the SUNY Brockport campus. The table displayed literature which promoted the views of the SUNY Brockport College Republicans, and which sought to draw the attention of potentially interested community members. The table was set up at the Student Union building, a location where many SUNY Brockport students congregate throughout the day. Plaintiff Patricia Simpson was one of several students staffing the table.

125. The literature displayed on the table included a brochure that criticized the liberal bias in the media, and among celebrities in the field of entertainment. In the sometimes brash, humorous and parodic style of the group, the brochure displayed the photographs of several outspoken liberal celebrities and demanded, in jocular fashion, "Bring Back the Blacklist!"

126. The students staffing the table, including Ms. Simpson, were quickly confronted by an aggressive and angry member of the SUNY Brockport faculty

127. The faculty member demanded that one of the students staffing the table step away from the table and speak with her.

128. The faculty member asserted that the brochure referring to the blacklist was "horrible" and "offensive." The faculty member asked, in words or substance,

whether the students staffing the table wanted to “ruin” their group by distributing this type of literature.

129. The faculty member then demanded that the brochure be removed immediately. The faculty member’s tone was angry and threatening.

130. The student reported the conversation to the other students staffing the table, including Plaintiff Patricia Simpson. Plaintiff feared that if she did not comply with the faculty member’s demands, she and the other students at the table would be reported by the faculty member and subjected to further punitive action. Accordingly, Ms. Simpson removed the brochure from the table. As a result of the fear of prosecution, she and the other members of the SUNY Brockport College Republicans have refrained from displaying or disseminating this brochure, although they would like to do so. This could happen only because of the unconstitutional speech restrictions, which are the basis of such a fear of prosecution.

131. Later in 2003, Plaintiffs participated in the distribution of flyers for the College Republicans. The flyers informed members of the SUNY Brockport community of the existence of the group and provided interested members with pertinent information about meeting times and locations.

132. The flyers exhorted interested members of the community to help “End Liberal Indoctrination on Campus.”

133. These flyers were distributed to students and to faculty. If a faculty member were absent from his or her office, a flyer was distributed under the door of the absent faculty member.

134. On information and belief, shortly after the distribution, a member of the faculty who disagreed with the message of the flyer contacted an officer in the SUNY Brockport Student Government, the organization which funds the College Republicans

135. Upon information and belief, the faculty member angrily asserted that the distribution of the flyers constituted unlawful “harassment” and an “invasion of privacy.” The faculty member demanded that the College Republicans be denied further funding and/or that the group be shut down.

136. As head of the College Republicans, Plaintiff Patricia Simpson quickly learned of the assertions and threats of the faculty member. Other members of the group, including Plaintiff Robert Wojick, learned of the faculty member’s assertions and threats shortly thereafter.

137. The foregoing incidents further emphasized for Plaintiffs that they face potential punitive action from the College if they should pursue speech or expressive conduct that should fall afoul of the College or its agents.

**COUNT ONE: ABRIDGEMENT OF PLAINTIFFS’ RIGHT TO FREEDOM OF
EXPRESSION AND DUE PROCESS OF LAW
(First and Fourteenth Amendments to the United States Constitution;
42 U.S.C. § 1983)**

138. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

139. As set forth above, Defendants, acting under color of state law, have enacted and implemented the various rules and regulations comprising the SUNY Brockport Speech Code.

140. These rules and regulations are unconstitutionally overbroad, vague and indefinite. The SUNY Brockport Speech Code vests unfettered discretion in the Defendants and their agents to restrict protected speech.

141. The rules and regulations further constitute an impermissible viewpoint-based and content-based restriction on constitutionally protected expression.

142. The rules and regulations further unconstitutionally compel Plaintiffs to speak and believe views that are not their own and with which they may disagree.

143. The regulations thus deprive Plaintiffs of their rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and their right to free speech and expression under that same amendment and under the First Amendment to the United States Constitution.

144. As a result of Defendants' unlawful acts, Plaintiffs have suffered, do suffer, and will continue to suffer, irreparable harm, which cannot be fully compensated by an award of money damages.

145. Plaintiffs are entitled to preliminary and permanent injunctions invalidating and restraining enforcement of the SUNY Brockport Speech Code.

146. Plaintiffs are entitled to compensatory damages in an amount to be determined at trial. Plaintiffs are entitled to the reasonable attorneys' fees and costs incurred in bringing this lawsuit.

**COUNT TWO:
ABRIDGEMENT OF PLAINTIFFS' RIGHT TO FREEDOM OF EXPRESSION
AND DUE PROCESS OF LAW**

(New York State Constitution, Article I, Sections 6 and 8)

147. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

148. As set forth above, Defendants, acting under color of state law, have enacted and implemented the various rules and regulations comprising the SUNY Brockport Speech Code.

149. These rules and regulations are unconstitutionally overbroad, vague and indefinite. The SUNY Brockport Speech Code vests unfettered discretion in the Defendants and their agents to restrict protected speech.

150. The rules and regulations further constitute an impermissible viewpoint-based and content-based restriction on constitutionally protected expression.

151. The rules and regulations further unconstitutionally compel Plaintiffs to speak and believe views that are not their own and with which they may disagree.

152. The regulations thus deprive Plaintiffs and other students of their due process rights under Article I, Section 6 of the New York State Constitution, as well as their right to free speech and expression under Article I, Section 8 of the New York State Constitution.

153. As a result of Defendants' unlawful acts, Plaintiffs have suffered, do suffer, and will continue to suffer, irreparable harm which cannot be fully compensated by an award of money damages.

154. Plaintiffs are entitled to preliminary and permanent injunctions invalidating and restraining enforcement of the SUNY Brockport Speech Code.

155. Plaintiffs are entitled to compensatory damages in an amount to be determined at trial. Plaintiffs are entitled to the reasonable attorneys' fees and costs incurred in bringing this lawsuit.

**COUNT THREE:
UNCONSTITUTIONAL CONDITIONS (42 U.S.C. § 1983)**

156. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

157. Defendants have enacted and threatened to enforce the unconstitutional SUNY Brockport Speech Code against SUNY Brockport students, including Plaintiffs.

158. Defendants, under color of state law, have conditioned receipt of the educational, social, and recreational benefits of matriculation at SUNY Brockport on Plaintiffs' surrendering their fundamental rights to freedom of speech under the First and Fourteenth Amendments to the Constitution of the United States and the corresponding provisions of the New York State Constitution.

159. Because of Defendants' actions, Plaintiffs have suffered and will continue to suffer, irreparable injury which cannot be fully compensated by an award of money damages.

160. Plaintiffs are entitled to preliminary and permanent injunctions invalidating and restraining enforcement of the SUNY Brockport speech code.

161. Plaintiffs also are entitled to compensatory damages in an amount to be determined at trial. Plaintiffs also are entitled to the reasonable attorneys' fees and costs incurred in bringing this lawsuit.

**COUNT FOUR:
DECLARATORY RELIEF**

162. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

163. An actual controversy has arisen and now exists between Plaintiffs and the Defendants concerning Plaintiffs' rights and Defendants' obligations under the United States Constitution and the New York State Constitution.

164. Plaintiffs contend, and Defendants dispute, that the provisions of the SUNY Brockport Speech Code, as set forth above, violate the United States Constitution and the New York State Constitution and that such code is and should be unenforceable as to them or any other SUNY Brockport student.

165. A judicial determination of the parties' respective rights and obligations with respect to the SUNY Brockport Speech Code is necessary and appropriate so that the parties can and will conduct themselves in a lawful manner.

WHEREFORE, Plaintiffs demand judgment:

- A. An order declaring the speech code, as described herein, unconstitutional, void and without effect;
- B. Preliminary and permanent injunctions restraining enforcement of the speech code, as defined herein;
- C. Compensatory and/or nominal damages in an amount to be proved at trial;
- D. Plaintiffs' reasonable attorneys fees, costs and other disbursements and expenses incurred in prosecuting this action, pursuant to 42 U.S.C. § 1988, and;
- E. Such other relief as the Court deems just and proper.

Jury Demand

Plaintiffs demand a trial by jury on all issues so triable.

Dated: New York, New York
June ____, 2004

Respectfully submitted,

ARNOLD & PORTER LLP

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