



Foundation for Individual Rights in Education

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November 30, 2011

Chancellor W. Randolph Woodson
North Carolina State University
Office of the Chancellor
Box 7001
Raleigh, North Carolina 27695

Sent via U.S. Mail and Facsimile (919-831-3545)

Dear Chancellor Woodson:

As you can see from our list of Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, voluntary association, religious liberty, and freedom of speech on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to free speech posed by North Carolina State University's (NC State's) recent adoption of a "Civility Statement" for students living in the university's residence halls. In its present form, the Civility Statement chills speech in NC State's residence halls and on the campus as a whole, and pressures NC State Resident Assistants (RAs) to violate the rights of the students under their supervision. The mere existence of such a policy not only betrays First Amendment freedoms that NC State, as a public university, is legally bound to protect, but also undermines the mission of an institution presumptively committed to intellectual rigor, robust debate, and a free and vibrant community. We write you today to urge you to cure the defects in this policy.

This is our understanding of the facts. Please inform us if you believe we are in error.

NC State's Civility Statement states that "[t]he privilege of living on campus comes with responsibilities for personal behaviors regarding others in the community" and requires that "campus residents must be civil with each other." The statement mandates that residents "change any behavior that does not support our community expectations," and further dictates:

As a member of our residential community, students will:

- Speak to each other in a civil manner.
- Recognize how their actions and language impact the community.
- Treat community members with consideration and respect.
- Refrain from displaying items that are disrespectful and hurtful to others.
- Refrain from utilizing technology in a way that is disrespectful and hurtful to others.
- Create a community in which actions of bigotry, oppression and hatred will not be tolerated.
- Confront behavior or report to staff incidents of incivility and intolerance.

Additionally, RAs in NC State's residence halls were allegedly required to place magnetized copies of the Civility Statement on all mini-refrigerators in NC State's dorm rooms, and encouraged to promote the statement in other ways among their residents, including at floor meetings.

No matter how well-intentioned or seemingly innocuous, NC State's Civility Statement violates the rights to free expression and freedom of conscience guaranteed to NC State students under the First Amendment.

First, NC State's Civility Statement prohibits students from engaging in a wide swath of constitutionally protected expression, including expression that lacks "civil[ity]" or "consideration"; demonstrates "bigotry," "oppression," or "hatred"; or is seen as "disrespectful," "intoleran[t]," or "hurtful." Put together, these restrictions encompass many different forms of protected expression and stifle much student discourse on campus. As odious as some instances of this expression may be, the vast majority of speech is protected under the First Amendment. The Supreme Court's pronouncement in *Texas v. Johnson*, 491 U.S. 397, 414 (1989), is particularly apt here: "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." With regard specifically to the university setting, moreover, the Court has explicitly stated that "the mere dissemination of ideas—*no matter how offensive to good taste*—on a state university campus may not be shut off in the name alone of 'conventions of decency.'" *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) (internal citations omitted) (emphasis added).

Consider also the Court's famous decision in *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988), in which it held that the First Amendment protected the publication of an outlandish satirical advertisement suggesting that the Reverend Jerry Falwell lost his virginity in a drunken encounter with his mother in an outhouse—an advertisement that he and many others no doubt found to be lacking in "respect[]," "consideration," and "civil[ity]," among other things. Indeed, the speech found by the Court in *Hustler* to be constitutionally protected would fail NC State's Civility Statement, as it is currently formulated, in a number of respects. Under this and other precedents, therefore, it is obvious that NC State's policy regulates student expression in an overly broad manner.

NC State has lost sight of the fact that there are occasions in which nearly everyone would consider it justified to engage in expression that someone might find "hurtful," "disrespectful,"

or “uncivil.” For instance, under NC State’s current policy, a student who found out that his or her roommate or hall mate was the person who painted the Free Expression Tunnel with racial slurs about President Obama would be violating NC State policy and subject to punishment if he or she was “disrespectful” to that person or said something “hurtful” or “uncivil” to him or her about the incident. Is NC State really prepared to punish a student for registering his or her vehement disagreement about the use of the “n-word” to describe the President of the United States, and to defend such a punishment in public? The Civility Statement makes such a possibility all too real.

The Civility Statement is also void for vagueness. Its prohibition—namely, that students not engage in any expression that may be “hurtful” or “disrespectful” to others or that fails to be appropriately “civil”—could, in practice, outlaw virtually anything. A regulation is said to be unconstitutionally vague when it does not “give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). Indeed, what may be “disrespectful” or “hurtful” to one person may be perfectly respectful to another—meaning that these amorphous terms, standing alone, do not adequately apprise NC State students of their speech rights. Consequently, the policy’s lack of specificity and concrete guidance is likely to only confuse students attempting to discern its proscriptions, and students at NC State will be forced to guess what their peers and/or the administration might deem to be punishable. As the Supreme Court has observed, “[W]here a vague statute ‘abut[s] upon sensitive areas of basic First Amendment freedoms,’ it ‘operates to inhibit the exercise of [those] freedoms.’ Uncertain meanings inevitably lead citizens to ‘steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked.’” *Grayned*, 408 U.S. at 109 (internal citations and quotation marks omitted). Even if students are somehow able to determine what the policy prohibits, they will likely self-censor to such a degree that expression on campus will be impermissibly chilled.

The chilling effect of NC State’s Civility Statement may very well have been the university’s purpose in enacting the policy. But while there may be well-intentioned reasons to prefer the calm of politically correct speech to potential conflict and dispute, such a preference runs contrary to the very principles behind our Bill of Rights. As the Supreme Court declared in the landmark case of *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943): “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” The Court concluded that “the purpose of the First Amendment to our Constitution” was precisely to protect “from all official control” the domain that was “the sphere of intellect and spirit.” Nowhere are these statements more applicable than on the campus of a modern American university, where young adults should have the freedom to define their own beliefs by exposure to an open marketplace of ideas.

In an instructive case, a federal district court struck down a policy at San Francisco State University that, much like NC State’s requirements of “civil” and “respect[ful]” speech (among other problematic provisions in the policy), mandated that students “be civil to one another.” *College Republicans at San Francisco State University v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007). In invalidating this provision, the court recognized that there is “an emotional dimension to the effectiveness of communication,” and that for many speakers, “having their audience

perceive and understand their passion, their intensity of feeling, can be the single most important aspect of an expressive act.” *Reed*, 523 F. Supp. 2d 1005, 1018–19. NC State would be wise to heed the lesson of *Reed*, as that decision is squarely on point for analyzing this policy—much expression that lacks “respect” or “civil[ity],” after all, can be singularly effective in disseminating a particular message. Moreover, while NC State may desire that its students behave with respect in all interactions on campus, it cannot *require* that students do so under pain of punishment. If it wishes to instill and encourage such values in its student body, NC State should state clearly in the policy that the values stated therein are purely *aspirational*, and that no student will face unconstitutional investigation or sanction for failing to abide by them.

For an example of how a university may encourage students to share its values without infringing on their fundamental rights, I urge you to review the introduction to Pennsylvania State University’s “Penn State Principles.” That introduction reads:

The Penn State Principles were developed to embody the values that we hope our students, faculty, staff, administration, and alumni possess. At the same time, the University is strongly committed to freedom of expression. Consequently, **these Principles do not constitute University policy** and are not intended to interfere in any way with an individual’s academic or personal freedoms. **We hope, however, that individuals will voluntarily endorse these common principles**, thereby contributing to the traditions and scholarly heritage left by those who preceded them, and will thus leave Penn State a better place for those who follow. [Emphases added.]

Conversely, NC State’s policy as currently formulated does not carry such a statement of clarification, and a reasonable student reading the policy would conclude that he or she is subject to punishment under its terms.

FIRE asks that North Carolina State University revise its Civility Statement to make it consistent with the requirements of the First Amendment and, to prevent speech at NC State from being impermissibly chilled, that you clarify to students and administrators that protected expression may never and will never be investigated or punished at NC State. We ask for a response by December 21, 2011.

Thank you for your attention and sensitivity to these important concerns. Of course, we stand ready to assist as needed. I look forward to hearing from you.

Sincerely,



Robert Shibley
Senior Vice President

cc:

Thomas H. Stafford, Jr., Vice Chancellor for Student Affairs, North Carolina State University

Timothy R. Luckadoo, Associate Vice Chancellor for Student Affairs, North Carolina State University

Susan Grant, Director, University Housing, North Carolina State University