



Foundation for Individual Rights in Education

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Dear Interim Chancellor Goldman:

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We write to you today because we are deeply concerned about the unconstitutionally restrictive speech policies at Southern Illinois University—Carbondale (SIUC). The university’s Protest Policy—which designates only one small area of campus for protests, rallies, demonstrations, and speeches—chills expression on SIUC’s campus and ignores constitutional guarantees of freedom of speech that SIUC, as a state-supported institution, is legally obligated to protect. SIUC’s implementation of a “free speech zone” is a perversion of constitutional and statutory law and has no place at an institution committed to intellectual rigor, robust debate, and a free and vibrant community.

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This is our understanding of the facts. Please inform us if you believe we are in error. The Protest Policy in SIUC’s Registered Student Organization Handbook designates just one area as an “Open Forum Area”: the area “located south of Anthony Hall, north of McAndrew Stadium, between Parking Lot 10b on the east and the Parking Garage Lot 118 on the west.” In addition to setting aside this small area for expressive activities, the policy also provides that “Other campus areas will not be used as open forums.”

As a public institution, SIUC is legally obligated to uphold the First Amendment rights of its students and faculty. It has failed to do so. SIUC’s establishment of free speech zones that restrict and corral free expression is legally insupportable. The only possible defense of SIUC’s policy would be that it is a “reasonable time, place and manner” restriction as allowed by cases like *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). There is nothing “reasonable,” however, about transforming the vast majority of the university’s property—indeed, *public* property—into a “censorship area,” and in maintaining a system of onerous requirements by which students must abide in order to exercise their fundamental rights. Federal case law regarding freedom of expression simply does not support the transformation of public institutions of higher education into places where constitutional protections are the exception rather than the rule. Time and again,

courts have determined that to be considered legal, “time, place and manner” restrictions must be “narrowly tailored” to serve substantial governmental interests. The generalized concern for order that underlies the establishment of free speech zone policies is neither specific enough nor substantial enough to justify such restrictions.

We have challenged the establishment of free speech zones at universities across the nation, including at Citrus College in California, Colorado State University, Seminole Community College in Florida, Texas Tech University, the University of Nevada–Reno, the University of North Carolina–Greensboro, Valdosta State University, West Virginia University, and Winston Salem State University. In all of these cases the institutions challenged have either decided on their own to open up their campuses to expressive activities or have been forced by a court to do so. For instance, at Texas Tech, a federal court determined that Texas Tech’s policy must be interpreted to allow free speech for students on “park areas, sidewalks, streets, or other similar common areas...irrespective of whether the University has so designated them or not.” See *Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex. 2004). SIUC would be well advised to take this into account in considering its own policies.

Moreover, SIUC’s strict regulations on speech are tragic in light of the fact that the special function of the university as a whole, in any free society, is to serve as the ultimate “free speech area.” SIUC affirms this sentiment in its Student Conduct Code, which states that “Students shall be free to examine all questions of interest to them and to express opinions. They shall be guaranteed all constitutional rights including free inquiry, expression, assembly, and disciplinary due process.” SIUC’s Protest Policy runs afoul of both the First Amendment and SIUC’s own commitments to free speech by restricting speech and assembly to just one small area of its large campus.

It is imperative that SIUC immediately revise its illegal and immoral “free speech zone” policy. We offer you the following guidelines to help you revise your speech policies:

1. The default position of any policy should be that free speech is the norm all over the campus. In general, policies should state what a university *cannot* do in specific language and, to a lesser extent, what restrictions are permissible and when. A truly progressive policy would mirror the Bill of Rights.
2. Schools cannot restrict speech to a small portion of campus, nor to inaccessible or sparsely used/populated areas of the campus only. The speech must be generally accessible to the population at large—and especially to the target audience.
3. Speech may not be unduly restricted by pre-registration regulations, onerous monetary deposit requirements, or expensive insurance requirements. No rule that allows the school substantial discretion to impose conditions on speech for groups or individuals is allowable. Discretionary decisions need to be “content and viewpoint neutral,” meaning they implicate factors like noise or interference with traffic flow, and nothing relating to the substance of the speech.
4. Speech activities should not be unduly restricted by “neatness” and “cleanliness” considerations. A school may require that students clean up after a rally or a leafleting. A school may not stop leafleting because of a general fear that students might not clean up

afterwards. Of course, if a particular group has a demonstrated history of not cleaning up its own mess, then modest restrictions might be in order—such as a monetary bond to cover the cost of a cleaning service. Only in light of past failures should a group be saddled with such preconditions.

5. Demonstrative activities should not be restricted in the name of aesthetics. It is reasonable to ask students to restore the campus area to its original condition after a large demonstration or leafleting (beyond normal wear and tear, which is a normal cost of operation for a university), but it is unreasonable to prohibit an expressive activity in advance for fear that it will make a mess or be unaesthetic. (This is related to No. 4 above.)
6. Virtually all universities already have the power, through existing rules, to prevent the type of disruptive conduct they might fear would take place. They can stop demonstrations that substantially impede the function of the university, block traffic flow, or prevent students from sleeping or studying. They can punish students who engage in vandalism or violence. The university also has increased power to regulate the presence of those speakers who have not been invited to campus and who are otherwise unaffiliated with the university. The university should not simply assume before the fact that student or faculty expression will be impermissibly disruptive. Rather, the university should accept its role as the ultimate free speech zone.

Please spare SIUC the embarrassment of fighting against the Bill of Rights—a statement of both law and principle by which the university is legally and morally bound. We urge SIUC to undo these unjust policies and to tell the world that free speech at SIUC is to be celebrated, honored, and broadened—not feared, restrained, and hidden. Let your students exercise their basic legal, moral, and human rights; let them speak, assemble, and protest as their consciences dictate.

We are committed to using all of our resources to abolish the unconstitutional limits on freedom of expression at SIUC. We request a response on this matter by January 12, 2009.

Sincerely,



Samantha K. Harris
Director, Speech Code Research, Foundation for Individual Rights in Education (FIRE)



Jonathan Bean
President, Illinois Association of Scholars, an Affiliate of the National Association of Scholars



Leonard Gross
Chair, Southern Illinois Chapter of the American Civil Liberties Union (ACLU)

cc:

Larry H. Dietz, Vice Chancellor for Student Affairs, Southern Illinois University–Carbondale

Don S. Rice, Interim Provost and Vice Chancellor, Southern Illinois University–Carbondale

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