



Foundation for Individual Rights in Education

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September 13, 2011

President John D. Haeger
Northern Arizona University
Office of the President
P.O. Box 4092
Flagstaff, Arizona 86011

Sent via U.S. Mail and Facsimile (928-523-1848)

Dear President Haeger:

As you can see from our list of Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience 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 danger to free speech posed by Northern Arizona University's (NAU's) threat of disciplinary charges against two students for distributing miniature flags inside NAU's University Union and its insistence that the students move to a different area and submit a registration form before engaging in expressive activity.

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

On September 9, 2011, NAU students Beth Baumann, Robert Rose, and Stephanie Freer had permission to set up a small table in a designated area outside NAU's University Union for the purpose of distributing miniature American flags, pins, and bumper stickers commemorating the anniversary of the September 11, 2001, attacks. When it began to rain, the students moved inside.

According to video of the subsequent events, while the students were distributing flags in the Union, multiple NAU administrators, including Student Life Coordinator Amanda Loveless and Associate Dean of Students Deborah Harris, told them that they were not authorized to distribute materials and exercise their First Amendment rights in the space they had chosen. Harris asked the students to move to a different space nearby and to fill out a registration form. They declined.

An NAU police officer was summoned, and she recorded the students' names and identification numbers at the request of the Office of Student Life.

Later on September 9, Baumann and Rose both received notices that they were charged with violations of NAU's Student Code of Conduct for "[f]ailure to comply with the directions of university officials or agents" and "interfering with or disrupting university-sponsored activities." Baumann's hearing was scheduled to take place this morning, but yesterday evening, she received an email from Associate Dean of Students Art Farmer informing her that she may "disregard the letter that was sent to you referencing any student conduct issue associated with Friday's incident as I am officially closing that aspect of the case."

NAU has correctly chosen not to pursue discipline against students simply for handing out American flags to commemorate the September 11, 2001, terrorist attacks. Such discipline would have been indefensible. However, NAU's choice to use its policy to shut down this minimal and non-disruptive form of expression was and is unacceptable.

That the First Amendment protects students at public institutions is settled law. The Supreme Court has repeatedly emphasized the primacy of the First Amendment on public college campuses, noting that "the precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'" *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted).

While a college may establish 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 at all "reasonable" about demanding a permit every time two or three individuals wish to gather to express an idea. 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 a significant governmental interest, leaving open ample alternative channels for communication. NAU's significant interest in stopping two students from handing out small American flags in the student union is very difficult to discern.

Indeed, it is difficult to fathom how this activity could have caused a substantial enough disruption for no fewer than four NAU administrators to feel compelled to relocate it. NAU actually sent more administrators to stop the group's commemoration of 9/11 than there were students participating in the event.

NAU's policies governing distribution on campus are themselves problematic, granting administrators unchecked discretion in subjecting students' First Amendment rights to prior review. NAU's policy on Solicitations is particularly susceptible to abuse, stating that "any student and/or student organization planning ... the distribution of materials on campus must obtain permission from the Office of Student Life." This violates the Supreme Court's instruction that "subjecting the exercise of First Amendment freedoms to the prior restraint of a

license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional.” *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150–51 (1969).

NAU must make clear that it fully recognizes the right of students to engage in protected expression on campus in compliance with the First Amendment. Northern Arizona University is obligated not only to ensure that Baumann and Rose are not improperly disciplined for the peaceful exercise of their First Amendment rights, but also to pledge that it will not again use its policies to shut down similar expressive events in the future. FIRE also asks that NAU revise its policies to comply with the First Amendment.

Given the urgent nature of our concerns, we request a response to this letter as soon as possible.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Bonilla', written over a light blue horizontal line.

Peter Bonilla

Assistant Director, Individual Rights Defense Program

cc:

David Bousquet, Senior Vice President for Enrollment Management and Student Affairs,
Northern Arizona University

Rick Brandel, Dean of Students, Northern Arizona University

Art Farmer, Director of Student Life, Northern Arizona University

Deborah Harris, Associate Dean of Students, Northern Arizona University

Kristine Koehler, Student Life Coordinator, Northern Arizona University

Amanda Loveless, Student Life Coordinator, Northern Arizona University