



**Foundation for Individual Rights in Education**

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October 1, 2010

President Frank G. Pogue  
Grambling State University  
Office of the President  
403 Main Street  
Grambling, Louisiana 71245

*Sent via U.S. Mail and Facsimile (318-274-6172)*

Dear President Pogue:

The Foundation for Individual Rights in Education is in receipt of your response of September 23, 2010.

Disappointingly, your reply fails to adequately address or even acknowledge the significant concerns about the constitutionality of Grambling State University's (GSU's) e-mail policy first raised by FIRE in our September 1 letter. Nor does your reply correct the further First Amendment problems presented by GSU's September 22 "clarification" of the policy, as identified by FIRE and the American Civil Liberties Union of Louisiana (LA ACLU) in our joint statement of that same day.

In your September 23 letter, you write that "the e-mail dated July 13, 2010 does not reflect our current policy on e-mail use" and insist that "Grambling State University does not have an e-mail policy restricting campaign solicitation." If this correction is to be taken seriously, it must be issued immediately to all Grambling State University students and faculty, none of whom can be faulted for believing that the July 13 e-mail (the subject heading of which read "IMPORTANT CAMPUS INFORMATION") represents official university policy. Any delay in issuing this clarification further harms First Amendment rights, which GSU, as a public institution, is both legally and morally bound to protect.

Your letter also notes that GSU is "in the process of ensuring that all of our approved policies are effectively communicated with the university community." FIRE hopes this review is swift and results in substantive changes in GSU protocol. Obviously, the current means of communicating university policy—which permit the Office of Media Relations to issue erroneous policy statements to the entire GSU student body—is deeply flawed. While a review of the communication of university policy is desperately needed, it is of even

greater importance that the policies themselves be constitutionally sound. At present, GSU's e-mail policy is not.

The statement issued by GSU Director of Public Relations Vanessa Littleton on September 22 in response to FIRE contends that "Grambling State University does not prohibit students or employees from political expression." Yet, a plain reading of the "Grambling State University Email Use Policy" included with the statement belies this claim and reveals obvious First Amendment violations. The policy states, in relevant part:

### **Grambling State University Email Use Policy**

1. Grambling State University email system shall not to be used for the creation or distribution of any disruptive or offensive messages, including offensive comments about race, gender, hair color, disabilities, age, sexual orientation, pornography, religious beliefs and practice, political beliefs, or national origin. Employees who receive any offensive emails with this content from any Grambling State University employee should report the matter to their supervisor immediately
2. Using a reasonable amount of Grambling State University resources for personal emails is acceptable, but non-work related email shall be saved in a separate folder from work related email. Sending chain letters or joke emails from a Grambling State University email account is prohibited. Warnings of virus or malicious email from Grambling State University shall be approved by the Associate Vice President for Information Technology before sending, also all mass emails must be approved by Media Relations or the Provost & Vice President for Academic Affairs. These restrictions also apply to the forwarding of mail received by Grambling State University employees.

For several reasons, this policy violates the First Amendment protections to which GSU students and faculty are legally entitled.

First, GSU's policy relies on impermissibly vague formulations—namely, prohibiting "disruptive" or "offensive" speech—that could, in application, mean 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). Exactly what "offensive" speech violates this policy can only be determined, in this context, by an entirely subjective judgment. Thus, no student or faculty member seeking to ascertain precisely what speech is or is not forbidden could possibly determine what is actually prohibited by the terms of the policy.

Moreover, the policy is impermissibly overbroad. A statute or law regulating speech is unconstitutionally overbroad "if it sweeps within its ambit a substantial amount of protected speech along with that which it may legitimately regulate." *Doe v. University of Michigan*, 721 F. Supp. 852, 864 (E.D. Mich. 1989), citing *Broadrick v. Oklahoma*, 413 U.S. 601, 612

(1973). Even assuming that a student could determine what speech is or is not “disruptive” or “offensive,” the fact that a student may be sanctioned under the policy for such expression means that engaging in wide swaths of constitutionally protected expression may serve as grounds for punishment. Most speech that a listener would find offensive is nonetheless constitutionally protected. Thus, the Supreme Court has declared that freedom of expression “may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.” *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

This policy also broadly prohibits “joke emails.” Yet, many types of jokes—including parody and satire—exist precisely to challenge, to amuse, and even to offend, and these kinds of speech are unambiguously protected under the First Amendment. In *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988), the Supreme Court ruled that the First Amendment protects even the most outlandishly offensive parody—in that case, a cartoon suggesting that the Reverend Jerry Falwell lost his virginity in a drunken encounter with his mother in an outhouse. Such blatantly ridiculing speech is protected under the First Amendment. Given this clear, binding precedent, it should be readily apparent that GSU’s overbroad and vague restriction on “joke[s]” cannot stand.

Finally, GSU’s policy suppresses speech that has been explicitly protected by the courts, including the core political speech that Littleton claims GSU does not restrict. For example, the policy bans “offensive comments” about a student’s political beliefs. The policy thus effectively prohibits much debate regarding politics, as students will be forced to self-censor rather than voice a political belief another student may find offensive. Yet, it is unconstitutional to suppress free speech on the grounds that it is subjectively offensive to some listeners. Indeed, there is “no question that the free speech clause protects a wide variety of speech that listeners may consider deeply offensive.” *Saxe v. State College Area School District*, 240 F.3d 200, 206 (3d Cir. 2001).

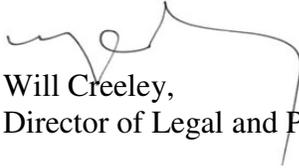
GSU must recognize the dangers of the continued enforcement of its current e-mail policy. Not only does the policy threaten punishment for protected forms of expression, in violation of the First Amendment, but as formulated, this policy cannot help but have the effect of eliminating the discussion of controversial topics. When students cannot be sure that their speech on controversial topics will be protected, they will most likely keep their beliefs to themselves in order to avoid punishment. The resulting chilling effect runs counter to the Supreme Court’s pronouncement 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).

Again, please know that FIRE is committed to using all of its resources to uphold freedom of expression at GSU. We ask that GSU’s e-mail policy be revised immediately in accordance with the requirements of the First Amendment and that the new policy be communicated to all GSU students and faculty. Please spare GSU the embarrassment of fighting against the Bill of Rights.

FIRE hopes to resolve this situation amicably and swiftly. We will continue to pursue this matter, however, until GSU reaffirms the First Amendment rights it is morally and legally obligated to uphold.

We request a response to this letter by October 15, 2010.

Sincerely,

A handwritten signature in black ink, appearing to read 'Will Creeley', is written over a thin horizontal line. The signature is fluid and cursive, with a large initial 'W' and a long, sweeping tail that extends to the right.

Will Creeley,  
Director of Legal and Public Advocacy

cc:

Stacey Duhon, Vice President for Student Affairs

Vanessa Littleton, Director of Public Relations

Matthew Ware, President, Faculty Senate

Lamar Hughes, President, Student Government Association

Marjorie Esman, Executive Director, ACLU and ACLU Foundation of Louisiana

Encl.

Joint Statement of FIRE and LA ACLU