



Foundation for Individual Rights in Education

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February 22, 2007

President Lou Anna K. Simon
Office of the President
Michigan State University
450 Administration Building
East Lansing, MI 48824-1046

Sent via U.S. Mail and Facsimile (517-355-4670)

Dear President Simon:

As you know, FIRE wrote to you on November 20, 2006 to express our grave concern about the Student Accountability in Community (SAC) seminars operated by Michigan State University (MSU). In reply, Vice President for Student Affairs and Services Lee N. June stated that our concerns “call[ed] for a review of the SAC program” and promised that “[s]uch a review will be undertaken.” Further, in comments made to *The State News* for an article examining the SAC program (“Is an MSU program manipulating your thoughts? Student accountability seminar currently under review,” 2/12/2007), June intimated that his office would conclude its review of the program in approximately two weeks. In light of the review’s pending conclusion, FIRE writes again to remind you of your constitutional obligations as a state actor—and the numerous ways in which such obligations would be further compromised by continued operation of the SAC program.

As I explained at length in our previous letter, the SAC program violates the constitutional rights of MSU students and exposes the university to substantial legal liability. Students referred to the SAC program are required to pay a mandatory fee; failure to do so results in a hold being placed on their accounts. This hold operates as an effective expulsion and is unquestionably a punishment. By punishing students for engaging in constitutionally protected speech, the SAC program operates as an unconstitutional speech code, as defined under *Doe v. Michigan*, 721 F.Supp. 852 (E.D. Mich. 1989). By forcing students within the program to provide “correct” answers regarding their feelings about their behavior—which may be as trivial as a young woman slamming a door in an argument with her boyfriend (an example actually used in the 2002 Association for Student Judicial Affairs’ International Conference session on the program I attended)—the SAC program violates students’ right of private conscience, the parameters of

which were eloquently articulated by the United States Supreme Court in *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943). Further, by conducting a disciplinary program and punishing students without providing basic protections like a hearing or a chance to answer or appeal the SAC referral, the SAC program violates MSU students' right to due process as guaranteed by the Fifth and Fourteenth Amendments.

While we remain hopeful that MSU will dismantle the SAC program without further action by FIRE, recent comments made to *The State News* by both you and Vice President June are distinctly unpromising and seem to demonstrate a misconception of both the SAC program and MSU's constitutional responsibilities as an arm of the state. Specifically, you told *The State News* that FIRE's concerns about the program's constitutionality were without merit because:

"You don't get into the program because you choose to; you've gotten there because you've been found guilty of something," she said. "It's sort of like when you go to an alcohol diversion program. You don't have a First Amendment right to control the content of your alcohol diversion program."

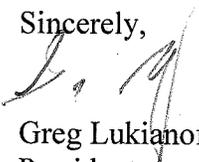
"You don't have a set of rights to control what kinds of community service you do necessarily."

These remarks are problematic for two reasons. First, it is unnerving to see you classify engaging in protected speech as an offense of which an MSU student could fairly "be found guilty." Again, as a public university, MSU is legally and morally bound by the Constitution. Next, it is misleading to liken the SAC program to an "alcohol diversion program." Alcohol consumption may be regulated and punished by MSU, but protected speech may not be. Further, even within the context of an alcohol diversion program, participants retain a right of private conscience; they could not be forced, for example, to declare that they believed in Prohibition. The SAC program is unconstitutional in part because it compels speech by punished students.

FIRE sincerely hopes Michigan State University will abide by its constitutional obligations and fully dismantle the SAC program. Please spare Michigan State the embarrassment of fighting against the Bill of Rights, by which it is legally and morally bound. We remain committed to using all of our resources to see this situation through to a just and moral conclusion.

Attached please find our previous letter and materials as well as a copy of my recent article in *The Detroit News*. We request a response on this matter by March 7, 2007.

Sincerely,



Greg Lukianoff
President

cc:

Kim A. Wilcox, Provost, Michigan State University

Robert A. Noto, General Counsel and Vice President for Legal Affairs, Michigan State University

Lee N. June, Vice President for Student Affairs and Services, Michigan State University

Fred L. Poston, Vice President for Finance and Operations, and Treasurer, Michigan State University

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Richard Burr, *The Detroit News*

Encl.