



Foundation for Individual Rights in Education

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October 12, 2012

President Eric R. Gilbertson
Office of the President
Saginaw Valley State University
Wickes Hall 349
7400 Bay Road
University Center, Michigan 48710

Sent via U.S. Mail and Facsimile (989-790-1314)

Dear President Gilbertson:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals 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 threat to freedom of speech posed by Saginaw Valley State University's (SVSU's) "General Posting Policies," which place numerous unconstitutional restrictions on the content of student organization flyers and threaten students with disciplinary action for posting content that, while prohibited by the policies, is fully protected by the First Amendment.

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

Over the summer, SVSU issued an updated version of its General Posting Policies. The policy requires that all flyers be pre-approved by SVSU Student Life. The policies also contain, in relevant part, the following restrictions on the content of student and student organization flyers:

- Must be in good taste, free from profanity, nudity, or sexually suggestive graphics/phrasing.
- Cannot include discriminatory or derogatory statements or graphics.

According to the policies, not only may the university remove posters in violation of the policies, but "[d]isciplinary action through the Code of Student Conduct

may be pursued if a student or student organization violates any part of the posting policy.”

On August 29, SVSU student Daniel Chapman submitted ten posters reading “Fuck Censorship” to Student Life for approval, along with one poster reading “Stand Up for Free Speech.” On September 5, Chapman followed up with Associate Director of Student Life Jason Schoenmeyer, who informed him that the university had consulted with its legal counsel about his posters. On October 2, Assistant Dean of Student Life Tony Thomson informed Chapman that the university had denied permission to post the flyers containing profanity but had approved the single “Stand Up for Free Speech” flyer.

Both as written and as applied in this instance against Chapman, SVSU’s General Posting Policies violate students’ right to free expression—a right that SVSU, as a public university, is legally obliged to uphold.

Indeed, it has long been settled law that the First Amendment is binding on public universities such as SVSU. See *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities”); *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted) (“[T]he 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’”).

Turning first to the written terms of the policies, SVSU students are threatened with disciplinary action for engaging in a wide range of protected expression. First, the Supreme Court of the United States has made clear that a public university cannot constitutionally require student speech and expression to be in “good taste.” In *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973), the Court held 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,’” upholding the First Amendment right of a college student to distribute a student newspaper containing an article with the headline “Motherfucker Acquitted.”

The requirement that flyers be “free from profanity” is similarly unconstitutional. The Supreme Court has explicitly held that language cannot be prohibited simply because it is profane. In *Cohen v. California*, 403 U.S. 15 (1971), the Supreme Court overturned the conviction of a man who wore a jacket bearing the words “Fuck the Draft” into a county courthouse. In holding that his expression was entitled to constitutional protection, the Court wrote that “one man’s vulgarity is another’s lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.” *Id.* at 25.

The university also cannot prohibit flyers purely because they contain “sexually suggestive” expression. While the university may prohibit the display of obscene material, such a restriction must be limited to the narrow legal definition of obscenity. There is much valuable artistic and

political expression that contains sexual content. For example, the policies prohibit the display of an advertisement for a student art exhibit featuring nude paintings, despite the fact that the university—like most—offers art courses in which students draw nude models. The policies would also prohibit any advertising of Eve Ensler’s play *The Vagina Monologues*, which is commonly performed—and advertised—on college campuses despite its strong sexual content.

SVSU’s ban on postings containing “derogatory statements or graphics” is also a violation of students’ First Amendment rights. Speech cannot be prohibited simply because others might find it offensive or derogatory. As the Supreme Court wrote in *Texas v. Johnson*, 491 U.S. 397, 414 (1989), “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.” Taken literally, this policy language would ban a large amount of political and social expression simply because its opponents might find it derogatory. To take just one example, the prohibition would apply equally to a pro-choice poster stating “Keep Your Rosaries Off My Ovaries,” or a pro-life poster referring to abortion providers as killers.

SVSU’s application of the posting policies to Daniel Chapman’s “Fuck Censorship” flyers is a perfect example of how the policies prohibit protected speech. Chapman’s flyers—drafted in protest of the new policies—are an obvious example of political expression, much like the “Fuck the Draft” jacket at the heart of the Supreme Court’s decision in *Cohen v. California*, discussed earlier. Put simply, the university cannot ban a student’s expression of opinion on an important political topic simply because the message is delivered in a way that the administration finds coarse or offensive. Chapman must be permitted to post his flyers.

While FIRE understands the university’s desire to maintain a hospitable campus environment for all faculty, students, and staff, this goal simply may not be achieved at the expense of students’ free speech rights. The First Amendment prohibits SVSU from censoring flyers like Daniel Chapman’s and from punishing Chapman or any other student for producing them. FIRE requests that SVSU revise its posting policies to be consistent with its First Amendment obligations and to notify Daniel Chapman that he may post his flyers on campus so long as he complies with the policies’ other requirements.

Please spare Saginaw Valley State University the embarrassment of fighting against the Bill of Rights—a statement of both law and principle by which the university is morally and legally bound. We request a response on this matter by October 26, 2012.

Sincerely,



Samantha Harris
Director of Speech Code Research

cc:

Jason Schoenmeyer, Associate Director of Student Life
Tony Thomson, Assistant Dean of Student Life