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Tribune Editorials

NAU's restrictive speech code is an unconstitutional disgrace

Tribune Editorial
October 30, 2005

Northern Arizona University has received some dubious recognition for its clumsy efforts to stamp out incivility and bias among students with a speech code that clearly violates the First Amendment.

The Foundation for Individual Rights in Education (www.thefire.org) has singled out NAU's "Safe Working and Learning Environment Policy" for its Speech Code of the Month award for October.

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FIRE has been challenging campus speech codes around the country in recent years, as student activists and compliant administrators have tried to prohibit actions and speech that some find offensive.

The NAU policy states that "[p]rohibited harassment includes, but is not limited to, stereotyping, negative comments or jokes, explicit threats, segregation, and verbal or physical assault when any of these are based upon a person's race, sex, color, national origin, religion, age, disability, veteran status, or sexual orientation. When these harassing behaviors become severe, pervasive or persistent, they may also violate federal and state law."

While certain of these actions, including segregation, assault and serious threats, are against the law, other actions, such as stereotyping and making negative comments or jokes, are not. And trying to ban them by force at a public institution violates the U.S. Constitution. Furthermore, there's enough court precedent protecting students' free-speech rights that NAU administrators ought to know better than to allow such a sweeping speech code.

Says FIRE: "Not only does this policy explicitly prohibit constitutionally protected speech, but it also contains a gross misstatement of the law. . . . (NAU) can prohibit only unprotected harassment as it has been defined by federal law — when it comes to student-on-student harassment, that means behavior 'so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit,'" according to a 1999 federal court ruling.

This is not to say anyone offended by someone else's derogatory comments should just hold their peace. As the ACLU points out, the proper response to offense speech is speech of your own. In other words, speak up yourself rather than trying to forcibly shut the other person up.

Our public universities ought to be bastions of free speech that includes frank dialogue on all the issues of the day. Debate, rather than suppression, must be the guiding principle of campus speech.

Given NAU's misguided attempt at speech suppression and the continuing march of political correctness within Arizona's other public universities, a clear statement by the Board of Regents embracing free speech and shunning restrictive speech codes would be most welcome.

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