

## Magistrate bars Cal State from enforcing "civility" provision in conduct code

© 2007 Student Press Law Center

November 15, 2007

**CALIFORNIA** — A federal magistrate said he will temporarily bar San Francisco State University and the 22 other California State University system campuses from enforcing certain provisions of the student conduct code that he ruled could be used to punish students for Constitutionally protected speech.

The policies were challenged in a lawsuit by the College Republicans of San Francisco State. Members of the group were investigated for inciting violence, creating a hostile environment and engaging in "actions of incivility" stemming from an incident in which members stepped on Hamas and Hezbollah flags during an anti-terrorism rally. The allegations against the group were found to have no merit and the group members allege that the six-month investigation, which was prompted by a student complaint, chilled their speech.

"The school essentially knew from the beginning that they couldn't actually punish us for what we did," said Leigh Wolf, the current president of the organization. "What they did instead is make this investigation as long and as inconveniencing as possible."

In an Oct. 31 hearing, Magistrate Judge Wayne Brazil of the U.S. District Court for the Northern District of California said he would issue a preliminary injunction that would bar San Francisco State from enforcing a policy that requires that students act consistently with the university's "goals, principles and policies." The injunction, which had not yet been officially issued as of Thursday afternoon, will also bar the California State University system from enforcing a policy that requires students "to be civil to one another" and will limit the enforcement of the system's intimidation and harassment policies to behavior that threatens the health or safety of another person.

Samantha Harris of the Foundation for Individual Rights in Education, which assisted the College Republicans in their suit, said the challenged provisions could have threatened publications.

"The students were charged with harassment for engaging in expression that offended other students," she said. "If that was the university's standard for enforcement, then that certainly could be used against publications."

Harris added that harassment provisions in student conduct codes at universities elsewhere have been used to censor publications.

Ellen Griffin, a spokeswoman for San Francisco State University, said she could not comment on the length of the investigation or on other issues related to the lawsuit. But she said the preliminary injunction would not change the way the university enforced its policies.

"The judge ordered the university to refrain from enforcing the word 'civil' in a way that would interfere with a student's First Amendment rights and that interpretation is consistent with the university's," she said. "We view the preliminary injunction as consistent with our normal practices."

Griffin emphasized that the university did not punish or charge the members of the College Republicans and that it merely responded to a complaint lodged by another student against the organization.

"That complaint was investigated and found to have no merit," she said. "Students were not disciplined for civility or lack of civility."

But Wolf said though he and other College Republican members were not formally punished, the lengthy investigation was "a nice little slap on the wrist."

"Even though they didn't actually throw us off campus, the investigation took six months and took hours and hours out of our school time," he said. "We lost three-quarters of our members ... nobody wanted to deal with it."

*By Moriah Balingit, SPLC staff writer*

[< Return to Previous Page](#)