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Tech officials hit with free-speech lawsuit

By [SEBASTIAN KITCHEN](#)
AVALANCHE-JOURNAL

A Texas Tech law student filed a federal lawsuit against university officials Thursday, claiming they violated his and other students' First Amend ment right to free speech.

The suit states that the university's policies inhibit free speech and the ability to speak out and distribute literature.

The lawsuit comes after Tech officials already have begun addressing free-speech issues and after unsuccessful communication with The Foundation for Individual Rights in Education, which has spurred a nationwide movement about the issue.

FIRE is attempting "to bring down every unconstitutional speech code in the country," said its chief executive officer, Thor Halvorsen.

Tech is the third university FIRE has filed suit against in an attempt to halt what the group believes to be policies that inhibit constitutionally protected free speech, said Greg Lukianoff, FIRE's director of legal and public advocacy.

"It is not burdensome to allow people to protest and demonstrate on a public college campus," he said. "They are turning more than 99 percent of a public campus into a censorship zone."

Tech's current free-speech policy has been changed in the Student Affairs Handbook for the upcoming 2003-04 school year, said General Counsel Pat Campbell. The change will include the wording of the policy and adds four to five more free-speech areas.

"It's not like we were doing nothing," Campbell said.

The changes have been approved, and the handbooks are being printed now and can be viewed online Aug. 1.

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One complaint in the lawsuit concerns the limitation of free speech to a gazebo near the Student Union.

The gazebo, which is about 20 feet in diameter, could hold only about 40 of the school's 28,000 students, the lawsuit states. To protest on any other portion of the campus, a registered student organization must file a request six business days in advance.

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"The policies and conduct of the defendants constitute a violation of the First and 14th Amendments of the United States Constitution, by among other things, restricting all 'unapproved' speech to a single 'free-speech gazebo,' requiring a six-day advance reservation before allowing expressive activities on the campus grounds, and prohibiting any non-registered student organization from reserving space to engage in expressive activities," the lawsuit states.

Law student Jason Roberts, who is the plaintiff in the suit, wanted to speak outside of a designated free-speech area to express his views on homosexuality, the lawsuit states.

The lawsuit contends the university's policies regarding use of university space, designation of a free-speech area, distribution of materials and its sexual harassment policy are all unconstitutional, overboard, vague, promote prior restraint and grant "university officials unfettered discretion in the restriction of expression."

University spokeswoman Cindy Rugeley said the majority of the complaints about the school's policies were from anti-war protesters during the war in Iraq and some during the conflict in Afghanistan. She said people against the death penalty also want an expanded area to protest.

Tech Interim President Donald Haragan received a letter Feb. 6 from Lukianoff regarding Tech's free-speech policies.

Campbell said the university was addressing the issue before receiving FIRE's letter. He said the grounds use committee met Feb. 10 to discuss the issue, and the letter could not have prompted the meeting in four days.

Michael Shonrock, vice president of student affairs, responded in letters March 5 and April 29, but FIRE officials did not reply.

"We realized (the response) was so inadequate that litigation was the only solution," Lukianoff said.

Although the change will be an improvement, he said, the policy is "absurd" and would have to be completely rewritten to be acceptable.

Students should have the right to protest at the law school or outside the administration building without waiting six days, Lukianoff said. He said there should be exceptions for disrupting class.

Tech's policies originally were brought to FIRE's attention by Trevor Smith of the Tech student organization Students for Social Justice, which planned a protest against the Bush administration's policies toward Iraq.

Smith was told his group would be allowed to protest only in the free-speech area; however, it held its February protest outside the gazebo without interference from the administration.

The lawsuit wants the free-speech zone to be declared unconstitutional.

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The first lawsuit involving FIRE was at Shippensburg (Pa.) University. The second, which was settled last week, was against Citrus College in Glendora, Calif. Other universities, including the University of Texas and the University of Houston, have agreed to alter their policies.

Tech is not named in the lawsuit. Defendants include Haragan, Chancellor David Smith, all nine university regents, Shonrock and Mary Donahue, assistant director of the Center for Campus Life.

Rugeley said the university takes the issue very seriously when students want increased venues for free speech.

The free-speech areas originated during the Vietnam War, when strife and protest were common on university campuses across the country, she said.

Free-speech activists believe limiting speech to specified areas is unconstitutional because it effectively bans speech everywhere on campus.

The two civil liberties groups representing Roberts are Alliance Defense Fund Law Center in Scottsdale, Ariz., and the Liberty Legal Institute of Plano.

The suit was filed in cooperation with Philadelphia-based FIRE.

"The Tech speech codes are some of the most restrictive in the nation," said Kelly Shackelford, chief counsel for the Liberty Legal Institute.

Roberts wanted to speak at a location other than the gazebo to express his religious and political view that "homosexuality is a sinful, immoral and unhealthy lifestyle" and desired to pass out a leaflet citing the scriptural basis for his beliefs.

He applied to use the corner of 15th Street and Akron Avenue for the date of June 4. His request was denied in a letter e-mailed by the assistant director of the Center for Campus Life.

Roberts appealed and was granted permission to speak at a nearby site, but not at his originally requested location.

Roberts has censored himself from speaking and passing out literature because he has not obtained permission from university officials and wants "to avoid being disciplined for intimidating or humiliating another person," the suit states.

Tech policy does not permit speech that intimidates or humiliates other people, the suit states.

Lukianoff said the provision is among several that are "clearly unconstitutional regulations."

"We go after schools whose codes best represent unconstitutional codes we want to see eliminated," he said.

Tech's is one of the most extreme policies Lukianoff said he has seen, but "there are easily codes much worse."

skitchen@lubbockonline.com 766-8753

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