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Today's News

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Campaign Against Campus Speech Codes Begins With a Lawsuit Against Shippensburg U.

By [BETH MCMURTRIE](#)

The Foundation for Individual Rights in Education filed a lawsuit on Tuesday against Shippensburg University of Pennsylvania, kicking off what its leaders say is a new national effort to rid public colleges and universities of policies that restrict student speech.

"This is the opening salvo," said Thor L. Halvorssen, executive director of FIRE, as the campus free-speech advocacy group is known. "We are going to bring them all down. We are hereby declaring war on speech codes at public universities."

The complaint, filed in U.S. District Court in Harrisburg, Pa., on behalf of two students listed as John and Jane Doe, charges that Shippensburg's policies governing student conduct threaten constitutionally protected speech and, as such, violate the students' First Amendment rights. The lawsuit alleges that the policies are vague, are overbroad, and discriminate on the basis of religious and political viewpoint. Among other examples, it cites the university's Code of Conduct, which states that the university does not consider words or actions that are "inflammatory, demeaning, or harmful to others" as deserving of protection.

The complaint further alleges that those broad restrictions have had a "chilling effect on the plaintiffs' rights to freely and openly engage in appropriate discussions of their theories, ideas, and religious and/or political beliefs." The plaintiffs seek an injunction

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restraining the university from enforcing all speech-restrictive policies, plus unspecified monetary damages.

The university, which received word of the lawsuit on Wednesday, issued a statement saying that it "strongly and vigorously defends the right of free speech." But, it added, "We do have expectations that our students will conduct themselves in a civil manner that allows them to express their opinions without interfering with the rights of others." It did not comment directly on the lawsuit's claims. Peter M. Gigliotti, Shippensburg's director of communications, said the university had no further comment.

Mr. Halvorssen said FIRE plans to help file lawsuits "in every district, in every circuit in the country." More than 50 lawyers, he said, have already signed on to work on the cases pro bono, along with a dozen public-interest legal foundations. "We are hoping to have eight lawsuits filed in the next six months."

FIRE also plans to create an online database of speech policies at both public and private universities. The Web site, which the group expects to be operating by May, will allow users to review speech policies at various universities and will give the policies one of three ratings. A green light will indicate that speech is nominally protected. A yellow light will indicate that the university's policies may be used to restrict speech. Red will indicate clear restrictions on speech.

Mr. Halvorssen said that more than two-thirds of all public colleges and universities have speech codes that are unconstitutional. He said he could not offer a simple definition of what is unconstitutional because colleges restrict speech in many ways, through pluralism statements, tolerance statements, e-mail policies, and the like. "They do not have the guts to call them what they are: speech codes," he said.

The lawsuit marks a new approach for FIRE, which typically works on individual cases where it believes a person's civil liberties are being threatened. Alan Charles Kors, president of FIRE, says multiple lawsuits will be more effective in dismantling restrictive speech policies: "It is not efficient to proceed case by case, outrage by outrage, for the next hundred years. ... We want to bring down unconstitutional speech codes

nationally. We want the law to pronounce on this, and we want American society to impose its protections on the public universities and colleges it subsidizes."

Mr. Kors said that Shippensburg was chosen as the first case in part because its policies are representative of a large number of universities.

One longtime opponent of speech codes said he supports FIRE's goal but questions its strategy. Robert M. O'Neil, director of the Thomas Jefferson Center for the Protection of Free Expression and a law professor at the University of Virginia, said that even at the height of the speech-code "frenzy," in the late 1980s and early 1990s, only about 200 institutions adopted the kinds of speech codes that were ultimately struck down by federal courts for being overly broad and unconstitutional. Most colleges, he said, simply have policies designed to prevent harassment that could potentially be applied to student speech.

"I just can't believe there are anything like that number of genuine speech codes," Mr. O'Neil said of FIRE's assertion that more than two-thirds of universities have such policies. "If all they're talking about are policies focused on harassment which could conceivably be applied to student speech but never have been, that really is rolling out the cannon to shoot a mouse."

Background article from *The Chronicle*:

- [Free-Speech Group Publishes Guides to Student Rights](#) (3/21/2003)



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