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Judge issues injunction in free speech case

By [Tatiana Zarnowski](#), September 6, 2003

A federal judge ruled Thursday that the president of Shippensburg University cannot enforce certain portions of the school's student code of conduct while lawsuit proceedings continue in court.

A federal judge ruled Thursday that the president of Shippensburg University cannot enforce certain portions of the school's student code of conduct while lawsuit proceedings continue in court.

U.S. Middle District Judge John E. Jones III granted plaintiffs' preliminary injunction against Anthony Ceddia, the university president. Jones also denied Ceddia's request to dismiss the suit brought in April by students Walter Bair and Ellen Wray.

In a 32-page opinion, Jones says the code of conduct was "unquestionably enacted with the noble purpose of making that institution a better place to live and learn," but some portions of the code are vague and overbroad, making it likely that they are unconstitutional.

Constitutionality questioned

Jones agreed with the plaintiffs that the following portions of the code may be unconstitutional:

- "Acts of intolerance directed toward other community members will not be condoned. This is especially true, but not limited to, acts of intolerance directed at others for ethnic, racial, gender, sexual orientation, physical, lifestyle, religious, age and/or political characteristics."
- "The expression of one's beliefs should be communicated in a manner that does not provoke, harass, intimidate, or harm another."
- "No person shall participate in acts of intolerance that demonstrate malicious intentions toward others."
- "Racism shall be defined as the subordination of any person or group based upon race, color, creed or national origin. It shall be a violation of this policy for any person or group to maliciously intend to engage in any activity, (covert or overt that attempts to injure, harm, malign or harass), that causes the subordination, intimidation and/or harassment of a person or group based upon race, color, creed, national origin, sex, disability or age."
- "Shippensburg University's commitment to racial tolerance, cultural diversity and social justice will require every member of this community to ensure that the principles of these ideals be mirrored in their attitudes and behaviors."

Exceptions made

The judge did not grant a preliminary injunction on two other statements in the student code of conduct that suggest, rather than require certain behavior of students, the opinion states.

"The important thing is that every provision of the speech code that can actually be enforced against the students has been enjoined," says David French, attorney for the Foundation for Individual Rights in Education, which is representing Walter A. Bair, a junior at Shippensburg University, and Ellen Wray, a May 2003 graduate who now lives in Washington, DC.

French says his clients are "extremely pleased by" the preliminary ruling. "Essentially, what the court has done is reaffirm constitutional principles," he says.

The next step is a telephonic status conference, where the university has a right to appeal. No date has been set for this conference.

In a statement issued Wednesday, Ceddia noted the decision focused only on seven sentences in the code of conduct.

University spokesman Pete Gigliotti says students handbooks will not have to be reprinted to accommodate the judge's order. "The rest of the code is still in effect. It's not like we have to change the entire code," he says.

Ceddia pointed out that "much of the disputed wording was in the preamble of the code and not in the operative sections of the code, which specifically ensure that no person interfere with the free speech rights of others. Also, at no time has action been taken against any student for violation of these phrases or sentences in the code."

"We respect the rule of law and will comply with the ruling while at the same time maintaining the university's core values - community, character and citizenship - which are critical for the success and development of our students," Ceddia says.

In a hearing August 25, Jones dismissed Shippensburg University as a defendant in the case because the public university has immunity from suit as a state entity.

Wray and Bair stated in the lawsuit that they were involved in political organizations on campus and got into class discussions where they expressed conservative views they feared other students would consider racist, sexist or homophobic.

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