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**HEADLINE: Free speech dilemmas;  
Free speech 'zones' and 'codes' go from campus to court.**

**BYLINE:** By Gary Young  
Staff reporter

**BODY:**

The free speech wars continue to be waged on university campuses, producing their fair share of First Amendment litigation.

While campus "speech codes" that discipline students for offensive or so-called "politically incorrect" speech have been roundly condemned by the courts, they are still generating controversy.

But still to be tested are "free speech zones," which confine free speech activities to a specific area of a campus. Such zones are vulnerable to challenge if used as a kind of banishment that isolates speakers from their intended audience.

Greg C. Lukianoff, director of legal and public advocacy for the Foundation for Individual Rights in Education, a group that tracks and publicizes such incidents, said that disciplinary actions against students for "politically incorrect" speech are growing in number.

Not everyone agrees.

"I think the political correctness revolution is pretty much dead," Utah State University President Kermit Hall said. "What's interesting is that we're seeing the rise of a mostly conservative reaction to something I'm not even sure exists anymore."

The participants in a controversy at Southwest Missouri State University display a similarly divergent range of opinions about whether the school's free speech zone and other speech regulations infringe on the rights of students.

Last November, Ryan Cooper, a junior, sued the school in a Springfield, Mo., federal court alleging that it discriminated against student organizations based on their political and religious viewpoints. *Cooper v. Keiser*, No. 03-cv-03421.

Groups open to all

He pointed to the denial of official recognition to the group he heads, a campus chapter of the right-of-center Young Americans for Freedom [YAF], on the ground that its members would not assent to a campus policy requiring student groups to accept all members regardless of their political or religious views.

That policy meant that a "student group called the Young Democrats could not require all of its leaders to be affiliated with the National Democratic Party or even believe in democracy," his complaint charges.

Cooper also alleged that the university violated the rights of all of its 18,000 students by confining

debates, protests and other public-forum activities to a 60- by-50 foot area of the Springfield campus called the "Bear Paw."

Chris Lawson, chairman of the campus chapter of the College Republicans, dismissed the idea that the school is hostile to political viewpoints and suggested that Cooper's lawsuit, and the controversy that preceded it, were "just one person wanting to get recognition."

Lawson said that the Bear Paw was designated for large assemblies that might disrupt classes and that individual students could engage in political expression on other areas of campus.

According to Lawson, the school's policy forbidding groups from excluding members on the basis of political or religious viewpoints is not a problem in practice.

He said that if a student joins a group with a view to disrupting its activities, the group can exclude him on the basis of his conduct.

Lawson questions Cooper's motives in part because of an incident that many members of the Southwest Missouri community refer to as the starting point of the campus controversy.

According to Cooper's complaint, on Aug. 24, the date of the Southwest Missouri's New Student Festival, he and other members of YAF had permission from a recognized student group to use its table in the Bear Paw. There they passed out YAF literature. Tables were allotted to recognized groups and YAF's application for recognition had not yet been ruled on.

By Lawson's telling, however, Cooper was wearing a College Republican button, had strung a College Republican banner across the table and was passing out College Republican literature. Lawson said he notified a school official, and Cooper's group was asked to leave the Bear Paw.

Southwest Missouri student Raphael Warfield, president of the Student Government Association, said that Cooper's behavior on that day, together with other displays of disrespect for school rules and for the student government, led him to deny official recognition to YAF.

Dr. Earle F. Doman, Southwest Missouri dean of students, who said Cooper was reported to have told an officer of the student government that he had "a corn cob up his ass," summed up Cooper's impact by saying, "Ryan makes some good points, but then he ticks people off."

Cooper's attorney, Kevin Theriot of the Kansas City, Mo., office of the Alliance Defense Fund, a national religious freedom and family values advocacy group, said that Cooper would probably dispute some of the allegations against him, but that they were essentially beside the point, since the rules he is accused of breaking infringe on the First Amendment.

Theriot said that Southwest Missouri showed a willingness to negotiate as soon as Cooper filed suit. The university has agreed to abolish its free speech zone and the rule requiring student organizations to take all comers, he said.

Talks are continuing on extending recognition to YAF, but he expects that will be resolved through negotiation as well.

Lukianoff is skeptical of claims that the flouting of school rules by conservative groups explains disciplinary actions against them.

Conservative groups at a number of schools have conducted "affirmative action bake sales," at which they sell baked goods at higher prices to whites and Asians than to blacks and other minorities.

Lukianoff conceded that some groups may have violated school rules by obtaining a permit for a fund-

raising event when in fact they were conducting a protest. Northwestern University shut down a bake sale on that ground in October.

But he suggested that that was a pretext for suppressing viewpoints the schools found offensive. He said that schools did not intercede when feminist groups held similar "wage gap" bake sales, charging men more than women.

Lukianoff asserted that while his group focuses attention on all campus censorship, whether aimed at the left or at the right, the vast majority of cases it sees are on the right because of the continuing presence of the political correctness movement.

'Drop in the bucket'

Professor Jon B. Gould, assistant director of the administration of justice program at George Mason University, countered, "Academic freedom is greater than it has been in the past." He said that among the 3,600 U.S. colleges and universities, the schools highlighted by the Foundation for Individual Rights in Education are "a drop in the bucket."

Gould noted that many private institutions speak the language of the First Amendment when they talk about their mission, despite the fact that it does not bind them.

Gould also argued that the political correctness movement may never have been what it was cracked up to be. In a 2001 article in *Law and Society Review*, Gould published his survey of campus speech codes, covering the years 1992 to 1997.

Based on a sample of 100 schools, he estimated that 65% of schools had no speech policy, 1% outlawed "fighting words," 15% verbal harassment, 14% verbal harassment against minorities, and 4% offensive speech.

Surprisingly, Gould found that the number of colleges with speech codes had actually increased in the wake of the U.S. Supreme Court's 1992 decision in *R.A.V. v. City of St. Paul*, 505 U.S. 377. Although that decision struck down a municipal ordinance used to prosecute a teenager who burned a cross on an African-American family's lawn, it was widely seen as sounding the death knell of campus speech codes.

The high court held that the ordinance was unconstitutional because it prohibited expressions that are offensive on the basis of race, religion and gender, but left alone expressions offensive on other grounds.

Gould said that he has made a preliminary update in his survey to mid-2003, and found that the growth of speech codes leveled off after 1997, but that there hasn't been a significant decline in their number.

Given the Supreme Court's decision in *R.A.V.*, explicitly extended to speech codes by lower courts after 1992, how does Gould explain his view that speech codes are not having a terribly pernicious effect?

He said that speech codes were not adopted at the demand of left-wing students and faculty, as critics of political correctness sometimes imply. Instead, they were the result of a top-down-and perhaps cynical-effort by school administrators at prestigious schools to project an image of inclusiveness; their lead was soon followed by less prestigious institutions.

Gould found that the codes were rarely enforced, but were kept on the books for their symbolic value.

Symbolism

Robert M. O'Neil, director of the University of Virginia's Thomas Jefferson Center for the Protection of Free Expression, said that he generally opposes speech codes but that he was troubled by a recent decision applying *R.A.V.* precisely because it seems to call into question a university's right to make statements

endorsing values like openness, civility and racial tolerance.

In [September's \*Bair v. Shippensburg Univ.\*, 280 F. Supp. 2d 357](#), the U.S. District Court for the Middle District of Pennsylvania struck down a collection of scattered policies that it interpreted as a coercive speech code, despite the lack of any evidence that the university intended to enforce its expressed values, O'Neil suggested.

"The court may be chilling the capacity of school administrators to encourage civility," he said.

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