



## Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106  
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

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March 5, 2008

Robert M. Vercruyse  
Vercruyse Murray & Calzone  
31780 Telegraph Road, Suite 200  
Bingham Farms, MI 48025-3469

Sent via U.S. Mail and Facsimile (248-540-8059)

Dear Mr. Vercruyse:

My organization, the Foundation for Individual Rights in Education (FIRE), first wrote to Lake Superior State University (LSSU) in July of 2007 regarding the threat to free expression posed by the university's demand that Professor Richard Crandall remove various political postings from his office door. FIRE continues to firmly believe that LSSU is violating Professor Crandall's First Amendment rights by preventing him from posting his materials and asks that the university immediately acknowledge his right to make such postings. In that this is not a legal action, FIRE does not waive its right to communicate directly with university officials regarding this matter. Nonetheless, I write to respond to several points in your letter of August 13, 2007.

In your letter, you argue that Professor Crandall's situation is best analyzed under *Connick v. Myers*, 461 U.S. 138 (1982). In reality, however, *Connick* is inapposite in this case because Professor Crandall's postings implicate matters of public concern. The Court held in *Connick* that "government officials should enjoy wide latitude in managing their offices...**when employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community.**" *Connick*, 461 U.S. at 146 (emphasis added). Unlike Professor Crandall's postings, in *Connick*, the employee's speech—even the small portion that the Court deemed to be of any public concern—arose not "out of purely academic interest" but rather "from an employment dispute." *Id.* at 153. Thus, the Court held that despite the small amount of material that was of public concern, the employee's speech was "most accurately characterized as an employee grievance concerning internal office policy."

You state in your letter that Professor Crandall's postings "simply do[ ] not implicate a matter of public concern." This argument is both incorrect and inexplicable. The materials Professor Crandall posted in the area surrounding his office relate to such topics as gun control, Islamic extremism, affirmative action, abortion, social security, oil prices, American presidential politics, and the war in

Iraq. Many of the postings were copies of political cartoons that originally appeared in various newspapers from around the country. One need only listen to the nightly news or any of the presidential debates to know that these are not only matters of public concern, but some of the most pressing issues facing the nation today. Any argument to the contrary is simply disingenuous.

Moreover, your letter completely fails to address the fact that LSSU has allowed other professors on Crandall's floor to post political materials outside of their offices without repercussion. Postings permitted by LSSU include:

- A bumper sticker reading "Exxpose Exxon."
- A bumper sticker reading "Frodo Failed! Bush Got The Ring."
- A bumper sticker reading "Honor Veterans; No More War."
- A document entitled "A view from the developing world," suggesting that George W. Bush was not democratically elected but was the "self-declared winner" of an illegitimate presidential election, supported by "organized religious fanatics and clerical fascists."

These materials relate to many of the same matters of public concern as the materials posted by Crandall: oil companies, the war in Iraq, and presidential politics. LSSU's decision to allow postings supporting one side of these controversial issues while prohibiting postings supporting the other side is blatantly unconstitutional viewpoint discrimination.

Your letter also argues that Professor Crandall's postings may have constituted "hostile environment" harassment and thus are "more properly analyzed as discriminatory conduct than as speech." However, this argument is simply not supported by the case law regarding hostile environment harassment, under which the mere fact that speech or expression causes offense—even serious offense—does not render it constitutionally unprotected harassment. To constitute harassment, conduct must be "severe or pervasive enough to create an objectively hostile or abusive work environment," *Harris v. Forklift Systems*, 510 U.S. 17, 21 (1993). The speech in question here—a form of political commentary comprising the very heart of the expression the First Amendment exists to protect—simply does not meet the exacting demands of this precise and well-established legal standard.

As an employee of a public university, Professor Crandall has the right to speak out on matters of public concern, and the materials he seeks to post on his office door unquestionably meet that definition. As such, FIRE asks that LSSU immediately abandon its requirement that Professor Crandall refrain from posting political paraphernalia and other items on his office door.

We request a response to this letter by March 19, 2008.

Sincerely,

*Samantha Harris*

Samantha Harris  
Director of Legal and Public Advocacy

cc:

Rodney L. Lowman, President, LSSU  
Steven E. Merrill, Provost, LSSU  
Richard Crandall