



April 21, 2014

Reverend Michael J. Garanzini, S.J.
Office of the President
Loyola University Chicago
820 N. Michigan Avenue
Chicago, Illinois 60611

URGENT

Sent via U.S. Mail and Facsimile (312-915-6414)

Dear Reverend Garanzini:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned by the threat to freedom of expression posed by Loyola University Chicago's (LUC's) requirement that students holding a "free speech wall" event censor any messages that are "indecent," "grossly offensive," or contrary to LUC's "Catholic, Jesuit mission and heritage." These requirements contradict LUC's promises of free expression and unacceptably chill student speech in the LUC community, ultimately damaging the free flow of information and the robust, open debate that LUC claims to value. We call on LUC to affirm its commitment to freedom of expression and to uphold the fundamental tenets of higher education.

The following is our understanding of the facts; please inform us if you believe we are in error.

On March 24, 2014, LUC student Clairemarie LoCicero, acting as president of registered student organization Loyola Students For Liberty (SFL), submitted a "Demonstration & Fixed Exhibit Proposal Form" for a "free speech wall" event to be held on April 7-11 at the Damen Student Center. The SFL proposal described the event as providing

an opportunity [for students] to be reminded of and exercise their right to free speech by placing a mobile whiteboard in the Damen Student Center. The

whiteboard will have paper taped to the surface so that students can write on the wall as an exercise of free speech.

Pursuant to LUC's Fixed Exhibit & Demonstration Approval Process, LoCicero attended a meeting with Associate Dean of Students Kenekwue Mmeje to discuss "expectations, rights, responsibilities, and logistical considerations." Due to scheduling errors, this meeting did not take place until April 10, resulting in postponement of the event until April 22–25. During the course of this meeting, Mmeje informed LoCicero that SFL would be required to remove any "grossly offensive" messages written on the free speech wall. When LoCicero requested a definition of "grossly offensive," Mmeje informed her that he could not provide a specific definition.

On April 12, LoCicero followed up with Mmeje via email, again seeking clarification of the term "grossly offensive." She wrote that "[i]t would be helpful if you could please give me a definition of what Loyola considers 'grossly offensive' or expects us to censor so that I can inform our wall monitors and have it for reference if necessary." Mmeje replied on April 15, inviting LoCicero to meet with him again to discuss the matter further. LoCicero replied later that day, again requesting written guidelines of Loyola's "censorship expectations" to provide to SFL members monitoring the free speech wall.

In an April 16 email, Mmeje informed LoCicero:

As it relates to our expectations surrounding the content of the board, the University's Free Expression and Demonstration Policy and Approval Process (Community Standards, section 506, pg. 43) applies. Any language written on the board that threatens the safety or well-being of the University community, or otherwise run [sic] contrary to the University's Catholic, Jesuit mission and heritage will be subject to removal. Every effort should be made to ensure that the language written does not violate the University's Non-Discrimination Policy (Community Standards, section 511, pg. 48).

LUC's Free Expression and Demonstration Policy and Approval Process states, in relevant part:

Any fixed exhibit that is indecent, grossly obscene, or grossly offensive on matters such as race, age, ethnicity, religion, gender, or sexual orientation is inconsistent with the mission and values of the University and will not be permitted.

The policy does not attempt to define the terms "indecent, grossly obscene, or grossly offensive," nor does it contain guidelines with respect to LUC's religious mission and heritage.

While LUC is a private university and thus not legally bound by the First Amendment, it makes explicit promises of free speech to its students. For instance, the Free Expression and Demonstration Policy recognizes "the importance of its role as a 'marketplace of ideas'

where freedom of inquiry and open exchange of conflicting viewpoints is generally supported and encouraged.” The LUC Dissent Policy further endorses the position that

[t]he existence of the free exchange of ideas and the expression of dissent within the University community are considered indications of intellectual vitality and social awareness, which are important elements in the pursuit of knowledge. It is the responsibility of all members of the University community to maintain channels of communication which will foster a climate favorable to the freedom of expression.

In addition, the preamble to LUC’s Speaker Policy states:

Rational debate and controversy, the free exchange of divergent opinions, and the orderly expression of ideas are considered hallmarks of a university’s intellectual vitality and social awareness. This search for truth requires a free and open dialogue to exchange ideas and opinions. It also includes the freedom to express differing points of view, with the assumption that this exchange of ideas will promote clarity, mutual understanding, the tempering of harsh and extreme positions, the softening of hardened positions and, ultimately, the attainment of truth.

LUC’s requirement that SFL censor messages written on the free speech wall that are “grossly offensive” or “run contrary to [LUC’s] Catholic, Jesuit mission and heritage” simply cannot be reconciled with LUC’s strong commitments to free expression, nor with its acknowledgement that such freedom is fundamental to the mission of higher education. While LUC asserts broad discretion to regulate the content of student speech¹, it cannot lay claim to the “intellectual vitality” derived from the free exchange of ideas while simultaneously excluding speech that is offensive or in conflict with the university’s “mission.”

Indeed, the principle of freedom of speech does not exist to protect only non-controversial speech; it exists precisely to protect speech that some members of a community may find controversial or offensive. The Supreme Court stated in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) that speech “may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.” The Court reiterated this fundamental principle in *Snyder v. Phelps*, 131 S. Ct. 1207, 1220 (2011), proclaiming that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”

Again, LUC’s requirement that SFL censor messages on its free speech wall that are “indecent” or “grossly offensive” on the basis of an enumerated characteristic is

¹ LUC’s Free Expression and Demonstration Policy states that “regulations may be imposed at the discretion of the University and may be based on the time, place, manner, content, and/or viewpoint of the proposed demonstrations and exhibits.”

fundamentally at odds with the underlying purpose of the freedom of expression that LUC promises. How can the free exchange of ideas promote “the tempering of harsh and extreme positions ... and ultimately, the attainment of truth” when some of those ideas and positions are categorically excluded from public discussion? Moreover, what constitutes “indecent” or “grossly offensive” speech will necessarily differ from person to person. *See, e.g., Cohen v. California*, 403 U.S. 15, 25 (1972) (noting that “one man’s vulgarity is another’s lyric”). Students will understandably be confused as to what speech is permitted, particularly in light of the fact that LUC has previously allowed events such as productions of *The Vagina Monologues*² (a work undoubtedly perceived by some as indecent or obscene). The impossibility of any predictable, fair, and consistent application of this standard is further highlighted by LUC’s failure to provide any definition of the terms in its policies and by Mmeje’s refusal—or perhaps inability—to define their parameters in his meeting with LoCicero. Students uncertain of what speech is prohibited are ultimately likely to engage in self-censorship rather than risk discipline—an unacceptable result at an institution of higher education.

With respect to restrictions on speech that are offensive on the basis of protected characteristics, the Supreme Court’s definition of student-on-student (or peer) discriminatory harassment in *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), is instructive. In order for student behavior to constitute actionable harassment, it must be (1) unwelcome, (2) discriminatory on the basis of gender or another protected status, (3) directed at an individual, and (4) “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school.” *Id.* at 650. By definition, this includes only extreme and unusually repetitive behavior—conduct so serious that it would prevent a reasonable person from receiving his or her education. Nor do federal anti-harassment laws require the censorship of speech merely because some find it offensive. In a July 28, 2003, “Dear Colleague” letter sent to all college and university presidents, Assistant Secretary Gerald A. Reynolds of the Office for Civil Rights (OCR) of the U.S. Department of Education made clear that harassment “must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive.” If LUC wishes to adopt restrictions that adequately protect its campus community from harm while also ensuring that students enjoy the freedom to explore controversial ideas, it would be wise to follow the Supreme Court’s directive. By requiring censorship of merely offensive or indecent speech, LUC denies its students the opportunity to engage with ideas that they vehemently disagree with, develop critical thinking skills, and ultimately learn from one another.

Similarly, LUC’s requirement that SFL censor speech that “run[s] contrary to the University’s Catholic, Jesuit mission and heritage” is both impossibly vague and incompatible with LUC’s strong promises of free speech. LUC cannot reasonably expect SFL members to know precisely what the university administration deems contrary to LUC’s Catholic mission and heritage. Moreover, this requirement directly conflicts with

² Gillian McGhee, *Redefining the vagina: The Vagina Monologues wows Loyola students*, LOYOLA PHOENIX, Mar. 20, 2013, <http://www.loyolaphoenix.com/redefining-vagina-vagina-monologues-wows-loyola-students>.

university policy. LUC's Guidelines for Personal Expression expressly state that "[s]tudents and their guests need not subscribe to or promote the beliefs and values of the University in order to engage in the free exchange of ideas that occurs regularly at Loyola, as such exchange is a hallmark of the intellectual vitality and social awareness of the student body." Consistent with this principle, LUC has permitted students to host events—for example, the aforementioned production of the *Vagina Monologues*,³ or a 2009 symposium advocating same-sex marriage⁴—that directly conflict with Catholic positions on fundamental issues.⁵ Given LUC's explicit recognition that students may hold and express beliefs contrary to those of the university on important issues, and that discussion of those differences in belief ultimately advances "intellectual vitality" and the "search for truth," LUC cannot justify requiring SFL to censor speech on the grounds that it does not comport with the university's own views.

Finally, it is difficult to imagine how anything written on the free speech wall could violate LUC's Non-Discrimination Policy. By its terms, the policy applies only to the actions of LUC itself. The speech of individual students clearly does not constitute institutional speech, and therefore cannot violate the non-discrimination policy. Loyola's own policies recognize as much, stating that "[t]he views and opinions of speakers or event organizers and even the use of the University's facilities in no way imply endorsement by the University." For this reason, it is also inappropriate for LUC to impose responsibility on SFL for messages written on the free speech wall by other participants. SFL's facilitation of speech does not impute that speech to SFL, or imply its endorsement, any more than a speaker's use of LUC facilities imputes that speech to the university itself. To enforce policies otherwise would impose an unfair and unacceptable double standard.

We urge Loyola University Chicago to honor its strong and commendable commitments to free expression and intellectual vitality, and to immediately clarify to Loyola Students For Liberty, as well as the entire campus community, that speech will not be censored or punished simply because it is deeply upsetting or offensive to some, or because it does not comport with the teachings of the Catholic Church or Jesuit heritage.

³ In 2006, Providence College President Father Brian Shanley emphatically stated that "presentation of The Vagina Monologues is not appropriate for a school with our mission." See E-mail from Rev. Brian Shanley, President, Providence College to Providence College Community (Jan. 19, 2006), *available at* <http://www.projectsycamore.com/pages/shanley.php>.

⁴ Mary Schmich, *Same-sex marriage: At Loyola University, advocates of same-sex marriage find a voice*, CHICAGO TRIBUNE, Mar. 27, 2009, http://articles.chicagotribune.com/2009-03-27/news/0903260844_1_same-sex-marriage-gay-catholic-school.

⁵ That the 2009 symposium was contrary to LUC's "Catholic, Jesuit mission and heritage" is supported by the university's recent decision to prohibit same-sex weddings on campus grounds in the wake of Illinois' new same-sex marriage law.

Due to the urgency of this matter and the imminence of SFL's April 22–25 event, we request a response to this letter by no later than April 22, 2014.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ari Z. Cohn", with a stylized flourish at the end.

Ari Z. Cohn

Program Officer, Legal and Public Advocacy

cc:

Jane Neufeld, Dean of Students

Kenechukwu Mmeje, Associate Dean of Students