



# FIRE

Foundation for Individual  
Rights and Expression

October 23, 2023

Professor Henry Chung  
Department of Entomology  
Michigan State University  
288 Farm Lane  
East Lansing, Michigan 48824

*Sent via U.S. Mail and Electronic Mail (hwchung@msu.edu)*

Dear Mr. Chung:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned that some of Michigan State University Department of Entomology's Community Norms are unconstitutional because they compel speech and are viewpoint discriminatory in violation of the First Amendment. These Community Norms implicate students' and faculty members' most essential freedoms, including their rights to freedom of expression and conscience, and academic freedom. We thus urge the department to remove or substantially revise the relevant provisions, or at least clarify that they are aspirational, so that MSU can meet its binding First Amendment obligations.<sup>2</sup>

The MSU Entomology department says it "aims to create an environment that is welcoming, supportive, and encouraging in which our community can thrive and succeed."<sup>3</sup> To achieve this aim, however, the Community Norms command that MSU Entomologists "will," among other things, "commit ... to honest and civil communication," "[b]e inclusive and reduce barriers," "[v]alue and celebrate diversity of all people and cultures," "[a]cknowledge and address biases,"

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<sup>1</sup> For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at [thefire.org](http://thefire.org).

<sup>2</sup> *Healy v. James*, 408 U.S. 169, 180 (1972) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'" (internal citation omitted); *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

<sup>3</sup> *Entomology Community Norms*, MICH. STATE UNIV. COLL. OF AGRIC. & NAT. RES. DEP'T OF ENTOMOLOGY, <https://www.canr.msu.edu/ent/commitment-to-diversity-equity-and-inclusion/entomology-community-norms> [<http://perma.cc/LX8S-FFYT>].

“[e]ncourage department members to take implicit bias training,” “[a]ct honestly and professionally,” and “[t]reat others with dignity and respect.”<sup>4</sup>

We recognize that universities have a legitimate interest in promoting inclusive and enriching campus environments, including for students and faculty from backgrounds traditionally underrepresented in academia. However, the Community Norms function not only as an unconstitutional “civility” requirement,<sup>5</sup> but also as an instrument to compel speech, both of which violate the First Amendment.

As an initial matter, many of the Community Norms are unconstitutionally vague and overbroad and will chill a significant amount of protected expression. As they now read, the Norms are overbroad because they “sweep within [their] ambit a substantial amount of protected speech along with that which [they] may legitimately regulate”<sup>6</sup> and ignore that a great deal of speech one may characterize as uncivil, unprofessional, or disrespectful is nonetheless entitled to First Amendment protection. The Norms are also vague because they fail to give “a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that [they] may act accordingly.”<sup>7</sup> They fail, for instance, to give faculty notice of what speech or conduct may be sufficiently civil, professional, or respectful, and instead give the department unfettered discretion to punish a wide range of speech on the subjective determination that it fails to promote the department’s goals. It is not up to government entities to decide what speech is considered, for example, uncivil, unprofessional, or disrespectful.

Nor may government entities constitutionally compel speech or discriminate based on viewpoint. MSU may not force faculty or students to endorse prescribed ideas or promote values of diversity or inclusion they may not hold, nor may it compel speech by requiring faculty or students to “address biases” or “encourage” others to take voluntary trainings. When government entities wish to “disseminate an ideology, no matter how acceptable to some, such interest cannot outweigh an individual’s First Amendment right to avoid becoming the courier for such message.”<sup>8</sup> This principle applies with particular strength at public institutions of higher education, as free speech is the “lifeblood of academic freedom,”<sup>9</sup> an area “in which government should be extremely reticent to tread.”<sup>10</sup>

By requiring faculty and students to endorse a department-prescribed ideology of diversity, equity, and inclusion, MSU impinges on individuals’ scholarly autonomy and their freedom to

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<sup>4</sup> *Id.*

<sup>5</sup> Specifically, the Community Norms of “honest and civil communication,” acting “honestly and professionally,” and treating “others with dignity and respect.”

<sup>6</sup> *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 864 (E.D. Mich. 1989).

<sup>7</sup> *Schwartzmiller v. Gardner*, 752 F.2d 1341, 1345 (9th Cir. 1984).

<sup>8</sup> *Wooley v. Maryland*, 430 U.S. 705, 717 (1977); see also *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995) (government “may not compel affirmance of belief with which the speaker disagrees”).

<sup>9</sup> *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3rd Cir. 2008).

<sup>10</sup> *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

dissent, or even offer nuanced views, with regard to the prevailing consensus on these issues of public concern. We trust the department would readily recognize the problem with requiring faculty and students to salute the U.S. flag,<sup>11</sup> or compelling them to affirm the importance of “patriotism,” “racial colorblindness,” or “individualism.” Doing so requires faculty and students to assent to ideas that may differ from their own deeply held beliefs, as do some of the Community Norms.

The First Amendment’s invitation of wide open debate has led courts to invalidate civility requirements and other regulations that discriminate based on viewpoint.<sup>12</sup> Civility requirements have long received criticism as pernicious threats to the First Amendment,<sup>13</sup> as bars against “the kind of communication that is necessary ... to convey the full emotional power with which a speaker embraces her ideas,” and as deprivations of a speaker’s use of “the tools they most need to connect emotionally with their audience, to move their audience to share their passion.”<sup>14</sup>

Likewise, subjective civility norms imposed on faculty and students invite abuse to selectively punish those whose views administrators may disfavor. This runs counter to the Supreme Court’s recognition that it is precisely controversial or unpopular speech, on university campuses in particular, that needs First Amendment protection: “The mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”<sup>15</sup> This requires government officials, including university administrators, to provide substantial breathing room for speech others may find “unprofessional” or “uncivil.”<sup>16</sup>

The department may certainly shape and express its own aspirational values and *encourage* faculty and students to adopt certain ideologies or speak in a certain way, so long as that encouragement does not cross the line into implicit coercion. As such, FIRE urges the

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<sup>11</sup> The Supreme Court struck down a state’s power to impose such compulsions nearly 80 years ago, holding that a “compulsory flag salute and pledge requires affirmation of a belief[.]” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 633 (1943).

<sup>12</sup> *Coll. Republicans at S.F. State Univ. v. Reed*, 523 F.Supp.2d 1005, 1018–20 (N.D. Cal. 2007) (ordering a university to stop enforcing a policy requiring students to “be civil to one another” because it was overbroad and infringed on their expressive rights).

<sup>13</sup> See *On Collegiality as a Criterion for Faculty Evaluation*, AM. ASS’N OF UNIV. PROFESSORS, (2016), <https://www.aaup.org/file/AAUP%20Collegiality%20report.pdf>. (“[C]ollegiality may be confused with the expectation that a faculty member display “enthusiasm” or “dedication,” evince “a constructive attitude” that will “foster harmony” or display an excessive deference to administrative or faculty decisions where these may require reasoned discussion. Such expectations are flatly contrary to elementary principles of academic freedom, which protect a faculty member’s right to dissent from the judgments of colleagues and administrators.”).

<sup>14</sup> *Coll. Republicans*, 523 F.Supp.2d at 1018–20 (N.D. Cal. 2007).

<sup>15</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973). The Court has also refused to limit speech viewed as “hateful” or demeaning “on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground. *Matal v. Tam*, 582 U.S. 218, 246 (2017).

<sup>16</sup> See *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (public university violated First Amendment when it investigated a faculty member’s writings on race and intelligence, which administrators stated “ha[d] no place at [the college]” and constituted “conduct unbecoming of a member of the faculty”).

department to consider the impact the Community Norms will have on faculty and students whose views, pedagogical choices, or associations are out-of-step with those of the department. In any event, the department must meet its binding legal obligations and thus may not impose Community Norms that unconstitutionally implicate faculty and student speech.

We request a substantive response to this letter no later than close of business on November 6, 2023, confirming the Department of Entomology will either remove or revise the relevant provisions, or add a statement to the website making it clear the Community Norms are purely aspirational.

Sincerely,



Haley Gluhanich  
Program Officer, Campus Rights Advocacy

Cc: Hannah Burrack, Department of Entomology Chair  
Kelly Millenbah, College of Agriculture & Natural Resources Dean  
Teresa K. Woodruff, Michigan State University President