



Foundation for Individual Rights in Education

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November 11, 2011

President Don Betz
University of Central Oklahoma
Lillard Administration Building 112
100 North University Drive
Edmond, Oklahoma 73034

Sent via U.S. Mail and Facsimile (405-359-5841)

Dear President Betz:

As you can see from the list of our Directors and Board of Advisors, 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 about the threat to free speech posed by the University of Central Oklahoma's decision to prevent a pro-life student from wearing a sandwich board on campus to gain members for a new student organization called Students for Life.

This is our understanding of the facts. Please inform us if you believe we are in error.

On November 2, 2011, University of Central Oklahoma (UCO) student Sara Ottesen stood outdoors on UCO's campus wearing a sandwich board. The front of the board read, "Pro-Life? Pro-Mother? Join Students for Life!" The back read, "Abortion Harms Women + Kills Children." Ottesen was accompanied by non-student Tony Listi, her guest, who helped her collect the contact information of interested students who walked by.

After less than an hour, Ottesen and Listi were stopped by campus police. The police demanded that Ottesen and Listi cease their expressive activity because they lacked a permit. In a video recording of the incident, one police officer states that they had "disrupted the flow of student life" and that the university had a "right to know" that Ottesen and Listi were expressing themselves on campus. The police required Ottesen to relinquish the sandwich board to Listi, and Listi was taken to the police station and banned from the campus for six months. (On

November 10, Safety and Transportation Services Executive Director Jeffrey Harp notified Listi via phone and email that the ban had been revoked.)

As an initial matter, FIRE reminds you that as a public university, UCO is fully bound by the First Amendment and must abide by the rulings of the Supreme Court. The Court has long held that public universities occupy a special place in our nation's First Amendment jurisprudence and that "the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Healy v. James*, 408 U.S. 169, 180 (1972). Federal case law regarding freedom of expression does not support the transformation of public institutions of higher education into places where robust freedom of expression is the exception rather than the rule. While public universities may impose reasonable "time, place, and manner" restrictions on student expression, such restrictions must be "narrowly tailored" to serve substantial governmental interests. *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

To FIRE's knowledge, UCO does not maintain *any* policy requiring students to obtain permits before engaging in expressive activity of the kind in which Ottesen and Listi were engaging, despite the police officers' insistence that Ottesen and Listi produce a permit. The Supreme Court has made clear that "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without *narrow, objective, and definite standards* to guide the licensing authority, is unconstitutional." *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150–151 (1969) (emphasis added). The absence of any *policy* requiring permits for students and their guests engaged in this type of expressive activity, let alone any narrow, objective, and definite standards to guide UCO's decisions about the issuance of such permits, thus renders the police officers' activity unconstitutional and indefensible.

The *UCO Code of Student Conduct* prohibits the following student conduct:

Participation in an on-campus or off-campus demonstration which disrupts the normal operations of the University and infringes on the rights of other members of the University community; leading or inciting others to disrupt scheduled and normal activities within any campus building or area; intentional obstruction which unreasonably interferes with freedom of movement, either pedestrian or vehicular, on campus.

Ottesen and Listi's expression in no way constituted a disruption of the normal operations of UCO, nor did it infringe upon the rights of other members of the UCO community. It did not lead others to disrupt campus activities, nor did it obstruct or interfere with freedom of movement on campus. To be clear: Wearing a sandwich board and asking students to sign up for a new student organization are protected expressive activities in the public areas of UCO's campus. Indeed, this expression is key to the free flow of ideas on campus. Far from "disrupt[ing] the flow of student life," Ottesen was contributing to student life at UCO.

In light of the unconstitutional censorship by the campus police, FIRE asks that you immediately clarify the university's commitment to freedom of expression on campus, with specific recognition of the right of UCO students and their guests to engage in protected expressive activity on campus, such as the expression of Ottesen and Listi.

FIRE is committed to using all of its resources to reverse the unconstitutional limits on freedom of expression at the University of Central Oklahoma. We request a response by November 30, 2011.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kissel". The signature is fluid and cursive, with the first name "Adam" written in a larger, more prominent script than the last name "Kissel".

Adam Kissel

Vice President of Programs

cc:

Kathryn Gage, Vice President for Student Affairs, University of Central Oklahoma

Cole Stanley, Director of Student Life, University of Central Oklahoma

Jeffrey Harp, Executive Director, Safety and Transportation Services, University of Central Oklahoma