



Foundation for Individual Rights in Education

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November 13, 2006

President James F. Barker
Clemson University
Office of the President
201 Sikes Hall
Clemson, SC 29634

Sent via U.S. Mail and Facsimile (864-656-4676)

Dear President Barker:

As you can see from 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, freedom of religion, academic freedom, due process, and, in this case, freedom of speech and expression on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the unconstitutional policies restricting freedom of speech at Clemson University. Clemson designates only two "free speech areas" on campus and student groups exercising their right to congregate and protest outside of those areas are subject to punishment. Restricting free speech to only two areas of the Clemson campus severely chills freedom of expression. It also ignores both Clemson's own policies and students' expectation of freedom of speech, which Clemson, as a public institution, is bound by the First Amendment to protect.

This is our understanding of the facts. Please inform us if you believe we are in error. The Clemson Student Handbook's "Sales and Solicitations Policy" states that there are only two "free speech areas" on campus—the Cox Plaza and the Hendrix Plaza. Clemson's "Event Registration/Sales & Solicitations" guidelines define the Hendrix Plaza area as the lower plaza of the Hendrix Center, an isolated location with minimal visibility behind the Hendrix Student Center. The Cox Plaza is more centrally located, but is still set away from the main hub of campus, the library bridge area.

The “Event Registration” guidelines state that students or student groups planning to hold an event in either of the “free speech areas” must reserve the area 72 hours in advance of the planned event. Students must obtain an event registration form from either the University Union or the Hendrix Student Center and acquire signed approval by representatives of both the University Union and the location where the event is to be held. If the event is a “social event,” approval is also required from the Clemson University Police Department (CUPD). Students must make the signed form visible and readily available throughout the duration of the event.

On October 27, 2006, Andrew Davis, chairman of the Clemson Conservatives (CCs) student organization, began the registration process to protest a meeting of the Clemson Gay Straight Alliance (CGSA). Despite the existence of “free speech areas,” Davis reports that student protests often take place outside of those areas. Davis therefore registered the protest for October 30, from 5:45-6:45 PM, outside the Daniel Auditorium, where the CGSA was meeting. Davis obtained the event registration form and had it signed by both the University Union representative and the property manager of the Daniel Building. Davis sought final approval from the CUPD, per Clemson regulations, but Captain James Gowan denied the request on the grounds that the event was scheduled to take place outside of a free speech zone. After Director of the University Union and Student Center George Smith reiterated Gowan’s insistence that the protest be held inside one of the free speech zones, Davis elected to hold the event behind the Hendrix Student Center.

The CCs violated the event registration agreement by holding the protest at 6:00 PM on October 30 outside the Daniel Auditorium. Gowan and another police officer were present to videotape the protest. On November 9, Clemson’s Office of Judicial Conduct found the CCs guilty of holding a protest in a “non-designated area” and sentenced the CCs to an “admonition” and “censure.” Davis reports that Director of Student Conduct Alesia Smith warned him that if the CCs violated the “Sales and Solicitation Policy” again, the university would strip the group of recognition and “pursue [Davis] as an individual.”

Clemson’s “free speech areas” policy is unconstitutional, unfair, and succeeds only in making criminals of students who wish to speak freely. As a public institution, Clemson is legally obligated to uphold the First Amendment rights of its students and faculty. By requiring free speech activities to take place in “free speech zones,” Clemson has failed to uphold its obligation. The only possible defense of Clemson’s policy would be that it presents a “reasonable time, place and manner” restriction as allowed by cases like *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). However, there is nothing “reasonable” about transforming the vast majority of the university’s property—indeed, *public* property—into a “censorship area,” and in maintaining a system of onerous requirements by which students must abide in order to exercise their fundamental rights. Federal case law regarding freedom of expression simply does not support the transformation of public institutions of higher education into places where constitutional protections are the exception rather than the rule. Time and again, courts have determined that to be considered legal, “time, place, and manner” restrictions must be “narrowly tailored” to

serve substantial governmental interests. The generalized concern for order that underlies the establishment of “free speech zone” policies is neither specific enough nor substantial enough to justify such restrictions.

Moreover, Clemson’s strict regulations on speech violate the university’s own promises that students retain their constitutional right to free expression. The “Statement of Equity” contained in the “Sales and Solicitations Policy” states that “nothing in this policy or its regulations is intended to infringe upon any constitutional or other legal rights regarding freedom of speech.” Clemson’s “Bill of Rights and Responsibilities” promises that “students shall be free to examine and to discuss all questions of interest to them and to express opinions publicly and privately. They shall always be free to support any causes by lawful means” (section IV, Freedom of Inquiry and Expression, part A). Clemson’s “Sales and Solicitation Policy” runs afoul of both the First Amendment and Clemson’s own commitments to free speech by restricting speech and assembly to two small areas of its vast campus.

Davis also reports that the “Sales and Solicitation Policy” is enforced arbitrarily. Although the “Statement of Equity” promises that the “application of this policy and regulations will be neither arbitrary nor capricious, nor shall they be based on the political content of the solicitation,” Davis reports that on March of 2004, an anti-war protest was held on Bowman Field, outside the free speech zone. The selective enforcement of policies suggests viewpoint discrimination in the determination of who can speak and which messages can be heard.

FIRE has challenged the establishment of free speech zones at universities across the nation, including at West Virginia University, Seminole Community College in Florida, Citrus College in California, the University of North Carolina–Greensboro, Texas Tech University, and the University of Nevada–Reno. In all of these cases the institutions challenged have either decided to open their campuses to expressive activities or have been forced by a court to do so. For instance, in FIRE’s case at Texas Tech, a federal court determined that Texas Tech’s policy must be interpreted to allow free speech for students on “park areas, sidewalks, streets, or other similar common areas...irrespective of whether the University has so designated them or not.” See *Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex. 2004). Clemson would be well-advised to take this decision into account in considering its own policies.

FIRE requests that Clemson immediately revise its “Sales and Solicitation Policy” and open its entire campus to the free expression of Clemson students. We ask that the university remove the “censure” and “admonition” from the Clemson Conservatives’ record. Students at Clemson, a public university, should never fear punishment for exercising their most basic rights on the Clemson campus. We ask that Clemson affirm that free speech is to be celebrated, honored, and broadened—not feared, restrained, and hidden. Let your students exercise their basic legal, moral, and human rights; let them speak, assemble, and protest as their consciences dictate without fear of administrative reprisal.

FIRE hopes to solve this matter amicably and swiftly, but we are committed to using our resources to oppose the unconstitutional limits on freedom of expression at Clemson University. We request a response on this matter by November 27, 2006.

Sincerely,

Tara Sweeney
Senior Program Officer

cc:

Doris R. Helms, Vice President for Academic Affairs and Provost, Clemson University

Gail DiSabatino, Vice President for Student Affairs, Clemson University

Joy Smith, Associate Vice President and Dean of Students, Clemson University

Alesia A. Smith, Director of Student Conduct, Clemson University

William C. Price, Associate Director of Student Conduct, Clemson University

George M. Smith, Director of the University Union and Student Center, Clemson University

William L. Stanphill, Director of Campus Recreation, Clemson University

James Gowan, Interim Police Chief, Clemson University