



November 11, 2015

Chancellor R. Bowen Loftin  
University of Missouri  
Office of the Chancellor  
105 Jesse Hall  
Columbia, Missouri 65211

*Sent via U.S. Mail and Electronic Mail ([loftinr@missouri.edu](mailto:loftinr@missouri.edu))*

Dear Chancellor Loftin:

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](http://thefire.org), will give you a greater sense of our identity and activities.

Like many observers around the country, FIRE has closely followed the demonstrations and other expressive activity of the Concerned Student 1950 movement and taken note of students' success in rallying their peers to push for systemic change at the University of Missouri. In that vein, FIRE writes to Mizzou today regarding our concern for freedom of expression—a fundamental value of higher education that has been crucial in securing the reforms sought by Mizzou students.

On November 10, the University of Missouri Police Department issued a campus-wide email asking “individuals who witness incidents of hateful and/or hurtful speech” to take a series of actions in response. These actions include calling the police “immediately” and providing “detailed description[s]” and photographs of the actors in question. The statement closed, “While cases of hateful and hurtful speech are not crimes, if the individual(s) identified are students, MU’s Office of Student Conduct can take disciplinary action.”

At a public university legally and morally bound to uphold the First Amendment rights of its students, the police department’s statement is deeply problematic. There is no question that a great deal of “hateful and/or hurtful speech” is protected by the First Amendment,

and that punishing students whose speech is determined to meet such a troublingly vague and subjective standard will violate students' constitutional rights.

That the First Amendment is fully binding on public universities like Mizzou is settled law. See *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.”); *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).

The Supreme Court of the United States has also repeatedly held, in rulings spanning decades, that speech may not be punished merely because some or even many may find it to be offensive or disrespectful. In its opinion in *Texas v. Johnson*, 491 U.S. 397, 414 (1989), upholding the rights of citizens to desecrate the American flag, the Court ruled, “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” In *Snyder v. Phelps*, 131 S. Ct. 1207, 1220 (2011), the Court vindicated the First Amendment rights of the Westboro Baptist Church to protest in the vicinity of military funerals, with Chief Justice John Roberts memorably writing for the majority:

Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.

What’s more, the University of Missouri itself is at the center of one of the Court’s most famous decisions applying this principle specifically to the public university campus. In *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973), the Court held that “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.’” That case memorably upheld the rights of journalism student Barbara Papish to distribute a newspaper featuring a cartoon depicting police officers raping the Statue of Liberty and the Goddess of Justice, as well as an article titled “Motherfucker Acquitted.”

Flag desecration, funeral protests, and cartoons of the kind distributed by Papish are without question considered “hateful” or “hurtful” by some, even by many. With passions running high at Mizzou in the midst of important discussions and debates on the topics of race, equality, and justice, it is quite likely, if not inevitable, that some exchanges were and will be considered hateful or hurtful. It is crucial that students be able to carry out such debates without fear that giving offense will result in being reported to the police and referred for discipline by the university. Indeed, the expectation that the right of students

to fully express themselves on the Mizzou campus will be respected is part of what has made the demonstrations of the last few weeks possible. Mizzou must not now turn its back on the very rights that have enabled so many students to find their voices and persuade other students to join in their cause.

FIRE asks that the University of Missouri issue a statement clarifying that it will not discipline students merely because their speech may be considered subjectively “hateful” or “hurtful,” and that it will fully uphold students’ First Amendment rights as required by the Constitution. Such a clarification will in no way interfere with the university’s ability to adjudicate unprotected expression, such as unlawful harassment and true threats. We hope that Mizzou will act promptly to undo the chilling effect that the police department’s warning has caused and that it will not hinder the important discussions being had, and still to be had, at the university at this important moment in its history.

We request a response to this letter by November 25, 2015.

Sincerely,



Peter Bonilla

Director, Individual Rights Defense Program

cc:

R. Douglas Schwandt, Chief, University of Missouri Police Department

Catherine C. Scroggs, Vice Chancellor for Student Affairs