



October 9, 2017

Shirley Ann Jackson
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Troy, New York 12180-3590

Sent via Overnight and Electronic Mail (jackson@rpi.edu)

URGENT

Dear President Jackson:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

We are concerned for the state of freedom of expression at Rensselaer Polytechnic Institute (RPI) in light of the institution's announcement that it will not permit students to peacefully demonstrate on campus during the weekend of October 12-14, 2017, because it coincides with homecoming activities.

Rensselaer's pre-planned restraint on student and faculty dissent during homecoming, expressly imposed in order to devote all resources to activities promoting the institution, is an unacceptable encroachment on the free speech and assembly rights that RPI promises to its students. Accordingly, FIRE asks that you adhere to your Student Bill of Rights by withdrawing the prohibition on student demonstrations during this period.

I. Facts

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

Students at RPI are engaged in a long-running dispute with the university's administration, and are concerned that the autonomous, student-operated Rensselaer Union is being undermined by actions of the administration.¹

In April of 2016, RPI denied a request by "Save the Union" advocates to hold a demonstration because the demonstration would occur during the same time as your biannual address. The students demonstrated anyway, causing no substantial disruption to campus activities.²

On September 28, 2017, RPI student Bryan Johns submitted an "Application to Hold a Peaceful Demonstration" pursuant to RPI policy. Johns requested use of "[a]reas surrounding EMPAC and the Folsom Library" on the afternoon and evening of October 13, 2017. The application included a campus map plotting the proposed location of the demonstration, as well as signs promoting the demonstration.

On October 4, RPI Assistant Vice President for Student Life and Dean of Students Travis T. Apgar denied the application in a letter to Johns, which reads, in relevant part:

October 13, 2017 is a date that has been planned for a number of events on campus related to Reunion/Homecoming and the launch of Rensselaer's Capital Campaign. Hundreds of guests and families will be on campus, moving between venues, including in and around EMPAC and the Folsom Library. In fact, you may recall that we announced many weeks ago that Folsom Library would be closed for one of the events on the very evening requested by your application. Rensselaer's Public Safety team will be fully occupied in providing security for these events in addition to their normal safety and security work. Given the potential for a demonstration to disrupt these events and to exceed our capacity for providing safety and security, we made a decision some time ago that we would not approve demonstration applications for the dates of October 12-14, 2017.

Apgar's letter concludes by offering to discuss alternative "days and times" to conduct the demonstration.

II. Analysis

While RPI is a private university and thus not legally bound by the First Amendment, it is both morally and contractually bound to honor the promises of freedom of expression it

¹ See generally the materials available on the "Save the Union" website, including the timeline of events, which demarcates 2008 as the beginning of the dispute, with the removal of student representatives from the RPI Board of Trustees Institute Finance Committee. SAVE THE UNION, THE SITUATION, <https://savetheunion.xyz/situation/> (last visited Oct. 9, 2017).

² Adam Steinbaugh, *Rensselaer Polytechnic Institute's Cynical Attempt to Shut Down Protest Fails Spectacularly*, FOUND. INDIV. RIGHTS IN ED., April 1, 2016, <https://www.thefire.org/rensselaer-polytechnic-institutes-cynical-attempt-to-shut-down-protest-fails-spectacularly/>.

has made to its students. When RPI promises that it will respect freedom of expression, the First Amendment sets the baseline for the rights a prospective student would reasonably expect to enjoy. By prohibiting, in advance, *any* demonstration during the time when alumni, donors, and other stakeholders are on campus, RPI has instituted a restriction that is not reasonably tailored to its needs. Doing so betrays any objective conception of what “freedom of expression” means—and, in so doing, violates the letter and spirit of its contractual agreements with its tuition-paying students.

RPI’s Student Bill of Rights, included in the institution’s Handbook of Student Rights and Responsibilities, provides that students are “citizen[s] of the nation at large, and [RPI] shall not impede or obstruct students in the exercise of their fundamental rights as citizens.”³ Accordingly, students “shall be free to organize and join” together to “promote their common interests,” and that groups “shall be free to examine and discuss all questions of interest to them and to express opinions publicly and privately.”⁴ Students are promised that they are “free to support causes by orderly means, including peaceful assembly, which do not disrupt the normal operation of” RPI.⁵

Per the Student Bill of Rights, RPI’s institutional limitations on student demonstrations are “designed to ensure that for such an event there is adequate preparation and security[.]”⁶ One such limitation is RPI’s requirement that students seek permission at least seven days in advance of planned demonstrations.⁷ The express rationale of this requirement is to “maintain the safety and to safeguard the interests of all members of the [RPI] community.”⁸ However, Apgar’s denial letter is predicated on “a decision some time ago that [RPI] would not approve demonstration applications” whatsoever during the homecoming weekend. That suggests that RPI’s motivation is not safety, but message—and that administrators are seeking to limit students’ ability to protest when their voices may be heard the loudest.

Moreover, fundamental principles of freedom of expression permit only “*reasonable* restrictions on the time, place, or manner” of speech, untethered to the content of the expression, and only so long as they “leave open ample alternative channels for communication[.]” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (emphasis added). Even assuming homecoming activities are a “normal operation” of RPI justifying some time, place, and manner restrictions, the blanket prohibition on *all* demonstrations deprives students of any access to their transitory audience.

Such a restriction is not narrowly tailored. Indeed, the Supreme Court has expressed skepticism that a regulation leaves open “ample alternative channels for communication”

³ Student Bill of Rights at 4, available at <http://www.rpi.edu/dept/doso/resources/main/2014-2016StudentHandbookrevOctober2015.pdf>.

⁴ *Id.* at 5-6.

⁵ *Id.* at 6.

⁶ *Id.*

⁷ *Id.* at 29.

⁸ *Id.*

when the speaker's ability to reach his or her intended audience is affected. *See Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 93 (1977). Several courts have similarly held that an alternative channel "is not ample if the speaker is not permitted to reach the intended audience." *Saieg v. City of Dearborn*, 641 F.3d 727, 740 (6th Cir. 2011); *Berger v. City of Seattle*, 569 F.3d 1029, 1049 (9th Cir. 2009); *see also Wisconsin Action Coal. v. Kenosha*, 767 F.2d 1248, 1258 (7th Cir. 1985) (holding that because the city did not present evidence showing another time period where a comparable number of adults are home, the plaintiffs could not be barred from soliciting during the hours in question).

RPI could potentially limit the length of the event, or work with student leaders to determine a location less likely to result in the possibility of disruption.

We are also cognizant that RPI is not endowed with limitless resources, and that it cannot devote the sum total of its resources to a particular student protest. But student speech must be a priority at RPI if its stated commitment to freedom of expression is sincere. RPI's administration cannot monopolize its resources only to benefit the administration's goals. RPI's blanket prohibition on demonstrations operates to shut student voices out of the conversation during homecoming weekend.

Were this an isolated incident, it would be an unacceptable restriction running contrary to RPI's laudable, expressed commitment to its students' freedom of expression. However, this is not the first time that RPI administrators have refused to grant students permission to demonstrate against administrators' decisions.⁹ This is a disconcerting pattern, inuring to the benefit of RPI's administration and the expense of its students.

III. Conclusion

FIRE urges Rensselaer Polytechnic Institute to reverse its blanket ban on student demonstrations during homecoming weekend and work with students to facilitate the maximum amount of student expression in accordance with the university's promises.

Because this matter is of some urgency, we request a response to this letter by the close of business on Monday, October 9, 2017.

Sincerely,



Adam Steinbaugh
Senior Program Officer, Individual Rights Defense Program
Foundation for Individual Rights in Education

⁹ Steinbaugh, *supra* note 2.