



August 18, 2017

A. Gabriel Esteban, PhD.
Office of the President
DePaul University
1 East Jackson Boulevard
Chicago, Illinois 60604

Sent via Electronic Mail (DePaulPresidentsOffice@depaul.edu)

Dear President Esteban:

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 very disappointed to be forced to write to DePaul University once again—our fourth letter in the last year—to express our serious concern about yet another failure by DePaul to uphold its promise to respect the expressive rights of its students. Dismayingly, each of our previous letters has been met with a dismissive and insubstantial response from DePaul's public relations staff, never squarely addressing our reason for concern: that DePaul, although not bound by the First Amendment, expressly commits to provide students freedom of expression, yet willfully refuses to adhere to this commitment. This deceitful practice is again evident from DePaul's refusal to permit students to use the phrase "Gay Lives Matter" in promoting an appearance by conservative author, reporter, and activist Jamie Kirchick.

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

I. Prior Review and Denial of TPUSA's "Gay Lives Matter" Posters

The DePaul chapter of Turning Point USA (TPUSA), a recognized student organization, hosted a speech by Kirchick on the evening of May 10, 2017. Kirchick was selected by the National Lesbian and Gay Journalists Association as its Journalist of the Year in 2007. Kirchick is known for, among other things, criticizing the Russian television network Russia Today—in an appearance on Russia Today—for the station's lack of coverage of "the anti-gay laws that have been passed in Russia and the increasing climate of violence and hostility towards gay people." Kirchick's speech to the DePaul TPUSA chapter asserted that gay rights are seriously imperiled in Islamic countries.

To promote Kirchick’s talk, TPUSA’s student leadership sought to use two sets of posters. One set included the pronouncement that “Gay Lives Matter.” On May 3, DePaul student Jason Plotzke, president of the DePaul chapter of TPUSA, emailed DePaul’s Director of Student Involvement, Amy Mynaugh, with copies of the posters for her approval. The following day, Mynaugh approved one poster, but refused to approve the poster with the “Gay Lives Matter” text. Although she would not approve the poster’s distribution, Mynaugh asked Plotzke to explain his “goal in using the branding from the Black Lives Matter movement to promote your event with James Kirchick.”

In a subsequent email to Plotzke, Mynaugh explained DePaul’s reasoning in denying approval of the poster:

This poster is not approved to be hung on campus. It doesn’t appear that Turning Point has any connection to the Black Lives Matter movement and this seems to simply be co-opting another movements [*sic*] approach. Using the same look/brand as BLM pits two marginalized groups against each other.

Notwithstanding DePaul’s micromanagement and censorship of its students’ political expression, the Kirchick event moved forward without incident.

II. DePaul’s Promises and Policies

DePaul’s promises and stated commitments to its students’ freedom of expression are well-documented in our prior correspondence, and need not be rehearsed in depth here.¹ The university’s practice and pattern of regulating students’ political speech demonstrates that DePaul’s commitments are, at best, illusory.

For example, DePaul’s practice of subjecting student posters to prior review for content is flatly inconsistent with any reasonable understanding of freedom of expression. The First Amendment sets the baseline for the rights a prospective student would reasonably expect to enjoy when DePaul promises that it will respect freedom of expression. When DePaul violates the basic principles undergirding the First Amendment, it 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.

DePaul has routinely responded to FIRE’s letters by blithely agreeing with us that the university is not lawfully bound by the First Amendment. This disingenuous, unresponsive reply ignores the question: DePaul promises its students freedom of expression, but what does that promise mean in practice? Given DePaul’s apparent insistence upon making a promise it

¹ See, e.g., *Speech and Expression*, DEPAUL UNIV., available at <https://www.depaul.edu/university-catalog/academic-handbooks/code-of-student-responsibility/general-information/Pages/speech-and-expression.aspx> (last visited Aug. 14, 2017) (“Inside and outside of the classroom, DePaul values inquiry and expression.”).

will not fulfill, the school should alert current and prospective students that it will censor their expression at its whim.

Because DePaul shields its policies from public scrutiny, placing its policies behind a password-protected website, it is not clear what policy requires DePaul students to seek administrators' approval before sharing promotional materials on campus. Whatever its form or letter, such a policy is almost certainly contrary to basic First Amendment principles, which abhor prior restraints on speech. The Supreme Court of the United States has deemed prior restraints on speech "the most serious and least tolerable infringement on" the freedoms shielded by the First Amendment. *Nebraska Press Association v. Stuart*, 427 U.S. 539, 559 (1976). The disparity between DePaul's promise of free expression and its insistence on prior review of speech is stark.

Similarly, it has been a bright-line rule of First Amendment jurisprudence for decades that speech may not be restricted because its audience might find the words offensive. *See, e.g., Matal v. Tam*, 582 U.S. ____ (June 19, 2017), No. 15-1293 (argument that "expressing ideas that offend" may be restricted "strikes at the heart of the First Amendment"); *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) ("[T]he 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.'"); *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (speech "may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at the prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.")

Refusing to allow students to distribute posters reading "Gay Lives Matter" on the basis that these three words, in the subjective view of a DePaul administrator, are offensive to the Black Lives Matter movement simply cannot be squared with a commitment to free expression.

This poorly-reasoned restraint on student speech also runs afoul of basic free speech values because it permits DePaul administrators to regulate speech which responds to or satirizes other political discussion. The ability to borrow from existing conversations to raise new questions is at the heart of satire, which is robustly protected by the First Amendment. *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 53–54 (1988) (in the context of public debate, speech motivated by "ill will" or "bad motive" remains protected, particularly in light of the need to protect satirical works). Would DePaul University deign to restrict students from borrowing President Trump's "Make America Great Again" slogan in order to criticize the president, or doing the same with President Obama's "Hope" or "Change We Need" slogans?

Again, for the sake of current and prospective students, we ask that DePaul either commit itself to honoring its promise of freedom of expression or make clear that students do not enjoy expressive rights upon matriculation.

We look forward to your response. If you fail to reply by September 1, 2017, we will assume that DePaul intends to continue making promises it has no intention to keep.

Sincerely,

A handwritten signature in blue ink, appearing to read 'AS', with a long horizontal flourish extending to the right.

Adam B. Steinbaugh
Senior Program Officer, Individual Rights Defense Program