



March 7, 2019

President Andrew Hugine
Alabama A&M University
P.O. Box 908
4900 Meridian Street
Normal, Alabama 35762

Sent via Certified Mail

Dear President Hugine:

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.

I write today to urge Alabama A&M University to review and revise its policies governing student and faculty expression in light of the recent settlement of a faculty First Amendment lawsuit against Chicago State University's (CSU's) Board of Trustees and administrators.

With FIRE's assistance, faculty members Phillip Beverly and Robert Bionaz filed a federal lawsuit in July 2014 challenging, among other actions, the constitutionality of CSU's computer usage policy. CSU leadership used this policy in a brazen attempt to silence Beverly and Bionaz's faculty blog, which had criticized the then-sitting CSU administration. The United States District Court for the Northern District of Illinois rejected CSU's motion to dismiss the professors' suit in a 2017 ruling, finding that the policy's prohibitions "appear to encompass a substantial amount of constitutionally protected expression."¹ The public university settled the lawsuit this past December, agreeing to reform its policies and pay \$650,000.

As the leader of a public institution that maintains a similarly problematic computer usage policy, I strongly encourage you to consider the deficiencies of your own school's policies and regulations on student and faculty expression, and to reform those speech codes before they are challenged in court.

¹ *Beverly v. Watson*, No. 14 C 4970, 2017 U.S. Dist. LEXIS 160330, at *23 (N.D. Ill. Sept. 29, 2017).

A preemptive review of your school’s policies can help bring those policies in line with binding legal precedent. According to well-settled law, the First Amendment applies fully to public college campuses.² Although public universities can (and should) prohibit faculty and students from engaging in unlawful speech and conduct while using university computer networks, policies intended to regulate such activity must fully protect freedom of expression. Accordingly, such policies must not prohibit speech merely because some find it subjectively offensive.

More specifically, public university policies regulating faculty or student use of computer networks must not be unconstitutionally overbroad. A policy regulating speech is unconstitutionally overbroad “if it sweeps within its ambit a substantial amount of protected speech along with that which it may legitimately regulate.” *Doe v. University of Michigan*, 721 F. Supp. 852, 864 (E.D. Mich. 1989), citing *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). Further, public university policies regulating faculty or student use of computer networks must not be unconstitutionally vague. A policy is unconstitutionally vague when it does not “give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *See Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

Additionally, speech cannot be prohibited simply because it offends some, most, or even all of its listeners. “It is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.” *Street v. New York*, 394 U.S. 576, 592 (1969).

Before the settlement of the lawsuit, CSU did not maintain policies that recognized these legal principles. In November 2013, the CSU administration began its attempts to censor Beverly and Bionaz’s blog, *CSU Faculty Voice*, which was often highly critical of the administration’s perceived corruption and incompetence. To facilitate this censorship of Beverly and Bionaz’s protected speech, the CSU administration utilized overbroad and vague policies.

CSU’s “Computer Usage Policy,” applicable to the electronic communications of both faculty and students, banned “any communication which tends to embarrass or humiliate any member of the community,” and further prohibited “lewd, obscene, defamatory, or harassing comments,” without defining any of the policy’s terms. The policy also directed faculty and students to “[r]espect the rights and sensibilities of others” and to “[r]espect the mission of the University in the larger community.” The university did not limit prohibited speech or

² *See, e.g., 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, [t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”)(quoting *Shelton v. Tucker*, 364 U. S. 479, 487 (1960)).

conduct to that which violates the law, such as “true threats” or hostile environment harassment,³ but instead rendered a wide range of protected speech punishable. The nebulous language of this policy wholly abandons the constitutional principles outlined above, and permitted the CSU administration to enforce the policy against expression they did not like or with which they did not agree.

The CSU settlement marks the thirteenth successful legal challenge for FIRE’s Stand Up for Speech Litigation Project, which aims to eliminate unconstitutional campus speech codes nationwide.⁴ Rather than run the risk of facing a similar legal challenge, I urge you to work with FIRE to revise each of your institution’s current speech codes to meet constitutional standards and protect student and faculty expression.

In addition, I urge you to actively promote engaged and thoughtful dialogue on campus. In order to encourage student and faculty expression at AAMU, I urge you to adopt an official policy statement committing your institution to upholding open inquiry, lively debate, and the core values of the First Amendment. The gold standard for this type of institutional statement is the “Report of the Committee on Freedom of Expression” at the University of Chicago (the “Chicago Statement”), a copy of which I have enclosed for your reference.

The Chicago Statement has been embraced and adopted by over fifty universities and faculty bodies nationwide.⁵ This eloquent and principled policy statement provides a roadmap for creating a campus climate that values free expression as the lifeblood of the university. “Because the University is committed to free and open inquiry in all matters,” the statement declares, “it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn.”⁶

³ *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999) (setting forth the legal standard for student-on-student (or peer) hostile environment harassment in the educational context).

⁴ For more information about these cases and FIRE’s Stand Up for Speech Litigation Project, please visit standupforspeech.com/resources.

⁵ The full list of institutions endorsing the Chicago Statement is available at thefire.org/chicago-statement-university-and-faculty-body-support.

⁶ The “Report of the Committee on Freedom of Expression” at the University of Chicago is available at provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf.

Thank you for your attention to this matter. You can reach me at 215-717-3473 or at azhar@thefire.org. I look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink that reads "Azhar Majeed". The signature is fluid and cursive, with the first name "Azhar" and the last name "Majeed" clearly distinguishable.

Azhar Majeed
Vice President of Policy Reform

Encl.
Spotlight Entry, AAMU