



March 18, 2021

President David M. Dooley
University of Rhode Island
Office of the President
Green Hall
35 Campus Avenue
Kingston, Rhode Island 02881

Sent via Electronic Mail (davedooley@uri.edu)

Dear President Dooley:

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.

FIRE is concerned by a disciplinary threat issued by the University of Rhode Island's Transportation and Parking Services department to a student over the student's strongly worded objection to a parking ticket. The student's written citation appeal—while colorful—constitutes wholly protected expression under the First Amendment and is not subject to sanction.

As a public institution bound by the Constitution, URI must ensure employees know that they may not legally threaten students who merely exercise their free speech rights. Failing to ensure this constitutional mandate is followed risks unlawfully chilling student speech on campus.

I. Student Objects to Parking Fine, Is Threatened with Student Conduct Referral

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. Please find enclosed an executed privacy waiver authorizing URI to share information about this matter.

Timothy Hecker is an undergraduate student enrolled at URI. On February 23, he was issued a \$35 citation (Ticket No. 21A00583) by URI's Transportation and Parking Services department for parking in a non-designated lot.

Hecker had purchased a Fine Arts Lot day pass, which was active on the day he was ticketed. The two Fine Arts parking lots are located directly adjacent to one another. Hecker mistakenly believed his permit allowed him to park in either lot, both of which had a vast number of open parking spaces, but the Fine Arts parking pass did not permit him to park in both of the Fine Arts lots.

Feeling that the citation was untethered to any reasonable university regulation, Hecker appealed his ticket through the Transportation and Parking website. The online portal for appeals prompted him to provide an "Appeal Reason." Hecker wrote:

Are you kidding me? You tell me I need to buy a pass, I buy a pass. I bought a fine arts lot pass and you ticket me for being in the wrong lot?! Get lost guys, you'll have to pry the \$35 out of my cold dead hands you predatory, money hungry bastards. The parking regulations on campus are so draconian and convoluted that it's basically just a situation where students lose every time so you can profit. Go away.

Transportation and Parking denied Hecker's appeal, writing that his "choice of words in this appeal are [*sic*] inappropriate and not acceptable, and will be referred [*sic*] to student conduct if continued."

II. The First Amendment Bars URI from Punishing Hecker for Expressing Disagreement with University Policy

It is well-established that the First Amendment constrains public universities in penalizing student expression, including through threats of investigation or punishment. While Hecker's choice of words may have offended parking authorities, the language does not fall into any exception that would remove it from the protection of the First Amendment.

A. The First Amendment Applies to URI as a Public University

It has long been settled law that the First Amendment is binding on public universities like URI.¹ Accordingly, the decisions and actions of a public university—including the pursuit of disciplinary sanctions² and the maintenance of policies implicating student and faculty expression³—must be consistent with the First Amendment.

¹ *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).

² *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

³ *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

B. Hecker's Language is an Exercise of His First Amendment Right to Freedom of Speech

While a parking official was apparently offended by the wording of Hecker's appeal, the language's subjectively offensive nature does not render it unprotected under the First Amendment. Determining if speech is constitutionally protected involves "a legal, not moral, analysis."⁴

i. *The First Amendment protects offensive expression.*

The Supreme Court has repeatedly, consistently, and clearly held that expression may not be restricted merely because some or even many find it to be offensive or disrespectful. This core First Amendment principle is why the authorities cannot ban the burning of the American flag,⁵ penalize parody advertisements referencing a pastor losing his virginity to his mother in an outhouse,⁶ or disperse civil rights marchers out of fear that "muttering" and "grumbling" white onlookers might resort to violence.⁷

A Supreme Court decision addressing an unflattering portrayal of police officers at a public university is illustrative here. In 1969, a student newspaper published a vulgar headline ("Motherfucker Acquitted") and, on its front page, a "political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice."⁸ The Court held that the disciplinary sanctions against the editor, for distribution of "indecent" written material, were inconsistent with the First Amendment, as "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.'"⁹ If the First Amendment protects the on-campus distribution of a graphic, denigrating depiction of police officers, it certainly protects a student's strongly worded objection to the university's parking permit policy.

Indeed, while some ideas may be expressed through "relatively precise, detached explication," some words "are often chosen as much for their emotive as their cognitive force."¹⁰ Because "officials cannot make principled distinctions" between offensive or inoffensive speech, the First Amendment deprives government actors of that authority.¹¹

⁴ *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa 2019).

⁵ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the First Amendment, the "bedrock principle underlying" the holding being that government actors "may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable").

⁶ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

⁷ *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

⁸ *Papish*, 410 U.S. at 667–68; *Papish v. Bd. of Curators of Univ. of Mo.*, 464 F.2d 136, 140 (8th Cir. 1972).

⁹ *Papish*, 410 U.S. at 670–71.

¹⁰ *Id.* at 26.

¹¹ *Id.* at 25.

Hecker, accordingly, is within his rights to select strong language to voice his equally strong objections to the government activity within URI's Transportation and Parking department. URI may not deny him that right.

ii. The First Amendment protects written objections to traffic citations.

Profane and vulgar responses to traffic-related citations specifically—without more—are fully protected by the First Amendment. In 2015, a federal court sided with a man whose vulgar note on his speeding ticket payment form resulted in his unlawful arrest, amid concerns the message may have constituted a threat.¹² The man admitted to speeding through the town of Liberty, New York, and remitted the payment form with his credit card information to the Liberty Town Court. But he wasn't happy about being fined. On the payment form, the man scrawled out the word "Liberty" and replaced it with "Tyranny," and—in all caps and underlined—added: "Fuck your shitty town bitches."

In holding that the man's invective was fully protected by the First Amendment, the court explained that "though crude and offensive to some, [the message] did not convey an imminent threat and was made in the context of complaining about government activity."¹³

C. Hecker's Appeal Is an Exercise of His First Amendment Right to Petition

The First Amendment protects the right of citizens to criticize and engage with government officials, such as administrators at a public university. These activities, in addition to being protected by the First Amendment rights of free speech and free press, are also protected by the "cognate right" to petition the government for redress of grievances.¹⁴ This protection encompasses Hecker's right to express concerns or objections regarding the functions of a government entity—URI's Transportation and Parking department.¹⁵

D. Threatening a Referral to "Student Conduct" Over Protected Speech Violates the First Amendment

Whether a public official's actions violate the First Amendment does not turn on whether an investigation concludes in favor of the speaker or whether formal punishment is meted out. Instead, the First Amendment bars public officials from any action, in response to speech, that "would chill or silence a person of ordinary firmness from future First Amendment activities[.]"¹⁶ Even mere "retaliatory speech" suffices to meet this standard where it "intimat[es] that some form of punishment or adverse regulatory action" may follow,¹⁷ and the

¹² *Barboza v. D'Agata*, 151 F. Supp. 3d 363, 367 (S.D.N.Y. 2015).

¹³ *Id.* at 371.

¹⁴ *Thomas v. Collins*, 323 U.S. 516, 530 (1945).

¹⁵ *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 388 (2011). ("The right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives[.]")

¹⁶ *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).

¹⁷ *Greisan v. Hanken*, 925 F.3d 1097, 1114 (9th Cir. 2019).

“mere *threat* of harm can be an adverse action, regardless of whether it is carried out because the threat itself can have a chilling effect.”¹⁸

That standard is met here. Hecker was threatened with a referral for potential adjudication by “student conduct,” presumably referring to the Office of Community Standards, which oversees the Student Conduct process. An accusation that a student has violated the Student Code of Conduct carries the potential not only for formal and significant sanctions¹⁹—ranging from mandatory participation in educational programming, to monetary fines, to suspension, to dismissal—but also risks harming a student’s ability to pass background checks, obtain professional licenses, or enroll in postgraduate programs. These risks continue even if the adjudication concludes in the student’s favor. Moreover, the threat of an investigation sends the message that Hecker’s speech may be punished with one of these severe sanctions.²⁰

III. Conclusion

Hecker’s impassioned appeal of his parking ticket is clearly protected and not lawfully subject to a threat of formal government sanction. As a public institution bound by the First Amendment, URI must ensure its campus employees are trained to respect students’ constitutional rights. We therefore ask URI to confirm it will ensure students who exercise core civil liberties are not threatened for doing so.

We request receipt of a response to this letter no later than the close of business on Thursday, March 25, 2021.

Sincerely,



Alexandria Morey
Program Officer, Legal and Public Advocacy

Cc: Peter J. Harrington, Interim General Counsel

Encl.

¹⁸ *Brodheim v. Cry*, 584 F.3d 1262, 1970 (9th Cir. 2009) (emphasis in original).

¹⁹ STUDENT HANDBOOK, DIV. OF STUDENT AFFAIRS, UNIV. OF RHODE ISLAND, (updated 2019), *available at* <https://web.uri.edu/studentconduct/files/Student-Handbook-FINAL-08.22.2019.pdf>.

²⁰ *Speech First, Inc. v. Fenves*, No. 19-50529, 2020 U.S. App. LEXIS 34087, at *28–30 (5th Cir. Oct. 28, 2020).

Authorization and Waiver for Release of Personal Information


I, Timothy Eric Hecker, born on , do hereby authorize University of Rhode Island (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my current status, disciplinary records, or other student records maintained by the Institution, including records which are otherwise protected from disclosure under the Family Educational Rights and Privacy Act of 1974. I further authorize the Institution to engage FIRE's staff members in a full discussion of all matters pertaining to my status as a student, disciplinary records, records maintained by the Institution, or my relationship with the Institution, and, in so doing, to fully disclose all relevant information. The purpose of this waiver is to provide information concerning a dispute in which I am involved.

I have reached or passed 18 years of age or I am attending an institution of postsecondary education.

In waiving such protections, I am complying with the instructions to specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom disclosure may be made, as provided by 34 CFR 99.30(b)(3) under the authority of 20 U.S.C. § 1232g(b)(2)(A).

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:

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Student's Signature

3/17/2021

Date