



FIRE

Foundation for Individual
Rights and Expression

November 7, 2022

Fr. Justin Daffron, S.J.
Office of the President
Loyola University New Orleans
6363 St. Charles Avenue
Campus Box 9
New Orleans, Louisiana 70118

Sent via U.S. Mail and Electronic Mail (interimpres@loyno.edu)

Dear Interim President Daffron:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by Loyola University New Orleans' recent treatment of a pro-choice student demonstrator on campus.

According to a report in *The Maroon*,² Loyola senior Elena Voisin was handing out flyers to promote a pro-choice march organized by the Louisiana Abortion Rights Action Committee.³ Ken Weber, Loyola Associate Director of Student Life in Ministry, instructed Voisin to stop handing out the flyers because promoting abortion was not in line with Loyola's Jesuit values.⁴ Voisin instead began verbally promoting the march to students passing by, at which point Loyola campus police instructed her to stop. According to Patricia Murrett, Loyola's associate director of public affairs, the officers were called in response to Voisin being loud and causing a disturbance on campus.⁵ According to *The Maroon*, the officers declined to file an incident report.⁶ *The Maroon* also quoted Rachel Hoorman, Loyola's Vice President of Marketing and

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² Our understanding of the pertinent facts is based on public information. We appreciate that you may have additional information to offer and invite you to share it with us.

³ Ava Acharya, *Student stopped from handing out fliers for pro-abortion protest*, MAROON (Sept. 30, 2022) <https://loyolamaroon.com/10035945/news/student-stopped-from-handing-out-fliers-for-pro-abortion-protest>. Our understanding of events is drawn from this reporting.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Communications, as saying Voisin required pre-approval, per Loyola’s solicitation policy prohibiting the distribution of flyers promoting outside organizations without prior approval.⁷

While Loyola may have its own stances on abortion aligned with its religious mission, the university makes affirmative promises of free expression that protect students’ rights to dissent from those views. Further, the vague and overbroad solicitation policy that the university cited in silencing the student chills protected expression on campus,⁸ as demonstrated by this incident. It is incumbent on Loyola to ensure its policies align with its promises of free expression and to enforce its policies consistent with those promises.

I. Loyola’s Rationale for Prohibiting Distribution of Flyers Contravenes Its Free Expression Policies

Loyola University affirmatively commits to uphold students’ freedom of expression, yet the administration’s order to Voisin to stop distributing the flyers runs contrary to these promises. While Loyola has the right to express views aligned with its own religious mission and values, it must also respect and uphold students’ expressive rights consistent with its institutional free speech promises.

A. Loyola Promises Students Freedom of Expression.

As a private university, Loyola is not bound by the First Amendment to uphold student expressive rights. It is, however, legally and morally bound to adhere to promises it voluntarily makes, including to respect students’ expressive rights. Loyola’s Student Code of Conduct states that “all student events and activities should align with the mission and goals of the University” but also makes robust promises that students enjoy expressive freedoms, regardless of viewpoint:⁹

In keeping with the University’s commitment to promoting free speech and expression, Loyola University New Orleans respects the right of all members of the academic community to explore, discuss, and express opinions, and debate issues publicly in a civil orderly, and safe manner. These forms of expression—**regardless of the content or viewpoints expressed**—are permitted on campus so long as they are orderly, lawful, do not disrupt or interfere with the regular operations or authorized activities of the University, are consistent with the mission and goals of the University and comply with the requirements of this policy and all other policies within the Student Code of Conduct, Faculty

⁷ *Advertising Guidelines (For flyers, windows, banners, DSC TV slides and chalking), Student Organization Handbook*, LOYOLA UNIV. NEW ORLEANS, https://studentaffairs.loyno.edu/sites/default/files/student_org_handbook_2021-2022__0.pdf [https://perma.cc/9T9P-SJQL].

⁸ *Id.*

⁹ *Student Rights and Freedoms, Student Code of Conduct 2022-2023*, LOYOLA UNIV. NEW ORLEANS, <https://studentaffairs.loyno.edu/sites/default/files/2022-08/student-code-of-conduct-complete-2022-2023.pdf> [https://perma.cc/NLG4-JDBD] (emphasis added).

Handbook, and Human Resources Manual. Expression that is indecent, grossly obscene, or discriminatory on matters such as race, sex, color, national or ethnic origin, age, religion, disability, marital status, sexual orientation, genetic information, military status, gender or gender identity, or any other legally protected classification is inconsistent with the University’s mission and will not be tolerated.

The Code of Conduct then adds:¹⁰

Student and student organizations are free to examine and discuss all questions of interest to them and to express opinions publicly and privately. Freedom of speech and freedom of assembly are principles which Loyola has traditionally upheld and reaffirms. **Implicit in these freedoms and with regard for the common purposes of the institution is the right to dissent and demonstrate in a peaceful and non-disruptive manner.**

Louisiana courts have held that the relationship between private universities and students is contractual in nature.¹¹ Thus, private institutions that make commitments to freedom of expression are morally and contractually bound to adhere to those commitments. Accordingly, any reasonable student would expect Loyola to keep the promises clearly stated in the university’s official written policies.

B. Confiscating the Flyers and Censoring Voisin Constitutes Viewpoint Discrimination.

Even though Loyola allows its students “the right to dissent and demonstrate in a peaceful and non-disruptive manner,” in accord with the right to free expression, the administration appears to have shut down Voisin’s peaceful distribution of flyers precisely because they contradicted the university’s position on abortion. This is impermissible viewpoint discrimination—which the Supreme Court has called “an egregious form” of censorship¹²— in violation of the university’s free expression policies.

That Voisin’s speech might have caused offense or controversy is irrelevant. The principle of freedom of speech does not exist only to protect non-controversial expression; it exists precisely to protect speech that some members of a community may find controversial or

¹⁰ *Id.* at Freedom of Expression & Inquiry (emphasis added).

¹¹ See, e.g., *Guidry v. Our Lady of the Lake Nurse Anesthesia Program Through Our Lady of the Lake Coll.* 170 So. 3d 209 (La. Ct. App. 2015) (“It is generally held across the jurisdictions of the United States that the basic legal relation between a student and a private university is contractual in nature.”); *Babcock v. New Orleans Baptist Theological Seminary*, 554 So. 2d 90 (La. Ct. App. 1989) (holding that students have a right to rely on the publications of an institution, and that those publications constitute some of the terms of the contract that exists between the student and the university).

¹² *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

offensive—including student dissent from the university’s own stances. As the Supreme Court explained:¹³

[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 prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.

In discussing matters of societal and political importance—such as abortion—one would be hard-pressed to find an opinion or position that is not controversial to someone. By blocking Voisin’s distribution of the flyers, Loyola restricted her right to contribute to free and open dialogue on campus. Loyola’s administration is not voiceless: It can add its own to the discussion of controversial topics. Rather than “authoritative selection” of which views are acceptable,¹⁴ “more speech” is the proper approach to engaging with dissenting speech on campus.¹⁵

And while institutions in our society aspire to civil discourse, Loyola may not impose “civility” mandates on students under threat of punishment. Such vague mandates pose considerable risk to expressive freedom because they rely on subjective evaluations about what speech is sufficiently “civil” or “inoffensive.” The Supreme Court has held “governmental officials”—the analog here being university administrators—“cannot make principled distinctions” between what speech is sufficiently inoffensive.¹⁶ Indeed, a primary “function of free speech . . . is to invite dispute,”¹⁷ and any conception of freedom of expression must necessarily protect “not only informed and responsible criticisms” but also “the freedom to speak foolishly and without moderation.”¹⁸

Loyola’s obligation to protect its students’ expressive rights means the university cannot use its police force to intimidate students into silence. Any student threatened by administrators and police for their speech—and Voisin told *The Maroon* that she was intimidated by the police presence—would be chilled from speaking on that issue, in that forum, in the future.

C. Loyola’s Solicitation Policy Is Overbroad and Chills Student Expression

If it wasn’t bad enough that Loyola initially gave a viewpoint-discriminatory rationale for confiscating Voisin’s flyers, the university later doubled down—or, worse, changed its story—by claiming to have acted under an overbroad solicitation policy in its Advertising Guidelines. That policy, which in itself contradicts the university’s free expression commitments, is ripe for abuse. It reads:¹⁹

¹³ *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

¹⁴ *Keyishian v. Bd. Of Regents*, 385 U.S. 589, 603 (1967).

¹⁵ *Whitney v. California*, 274 U.S. 357, 377 (1927).

¹⁶ *Cohen v. California*, 403 U.S. 15, 25 (1971).

¹⁷ *Terminiello*, 337 U.S. at 4.

¹⁸ *Baumgartner v. United States*, 322 U.S. 665, 673-74 (1944).

¹⁹ *Advertising Guidelines*, *supra* note 7.

Solicitation is defined as any activity that seeks to make contact with students, faculty and/or staff to collect information, sell items, or gain support. Solicitation applies to a wide range of activities that may include: advertising, selling, petitioning, campaigning, distributing flyers, product orientation, and surveying residents by telephone, mail, e-mail, or in person. All groups, whether on campus or off campus, must gain approval by Student Life and Ministry to solicit. The sponsoring entity is expected to understand and adhere to all established University policies.

The policy gives Loyola a loophole to control a broad range of student speech on campus by labeling it “solicitation.” In requiring on-campus student groups to submit such a wide range of expressive activities for pre-approval—even attempts to simply “gain support” or petition for a cause—Loyola erects against a wide array of students’ expressive conduct a significant prior restraint—which are “the most serious and least tolerable infringement” of free speech.²⁰ This is so for a number of reasons, not the least of these is that they prevent students from engaging in spontaneous expression, which is required to, for example, respond to newsworthy events, or stage counterprotests, while the events remain in the public’s attention.

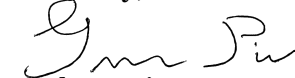
Loyola must significantly narrow this policy to properly define solicitation as activities conducted for the purpose of *commercial* gain, so that expressive activities protected under the university’s free speech policies are not subject to administrative prior approval.²¹

II. Conclusion

Loyola’s promise that its students enjoy expressive rights means it cannot target student viewpoints for censorship. Although Voisin does not appear to be facing investigation or discipline in this matter, the chilling effect on her speech is clear.

We therefore request a substantive response to this letter no later Monday, November 21, confirming Loyola will narrow its overbroad solicitation policy, revise any clearly viewpoint-based criteria, and publicly reaffirm that it will keep its explicit promises to respect students’ expressive rights, even when they dissent from institutional positions.

Sincerely,



Graham Piro

Program Officer, Campus Rights Advocacy

Cc: Patricia Murret, Associate Director of Public Affairs
 Rachel Hoorman, Vice President of Marketing and Communications
 Ken Weber, Associate Director of Student Life in Ministry

²⁰ *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976).

²¹ FIRE would be pleased to provide specific recommendations to the university to ensure this entire policy complies with First Amendment standards and the university’s own promises of free expression.