



FIRE

Foundation for Individual
Rights and Expression

February 21, 2023

Reverend Peter M. Donohue
Office of the President
Villanova University
800 East Lancaster Avenue
Villanova, Pennsylvania 19085

URGENT

Sent via U.S. Mail and Electronic Mail (president@villanova.edu)

Dear Rev. Donohue:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by reports that Villanova University warned Elisa Carroll she could not distribute contraceptives off campus due to her status as a Villanova student. While a private, religious institution like Villanova may hold institutional stances on the propriety of contraceptives, it cannot, consistent with promises of free speech like those Villanova makes, police students' advocacy in support of their own views on such topics.

Carroll reports that at a February 7 meeting, Villanova Director of Student Involvement JJ Brown told her the university would prevent her from distributing condoms and dental dams on an off-campus sidewalk near Villanova's campus.² Carroll respects Villanova's stance on contraceptives, so she has taken her advocacy off campus. Nevertheless, according to Carroll, Brown told her that given the sidewalk's proximity to campus and because Carroll is a Villanova student, the university could prevent her from promoting any contraceptive advocacy organizations there, including by handing out contraceptives.

While Villanova is not a public institution obliged by the First Amendment to protect free expression, it independently promises students "freedom of inquiry" and that the university "encourages the open exchange of ideas on a variety of subjects, including those that are

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 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. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

controversial.”³ From these commitments, students like Carroll will reasonably assume they will not face punishment for speech protected by the First Amendment—the foremost legal standard concerning free expression.

The Supreme Court has repeatedly, consistently, and clearly held that expression may not be restricted on the basis that others find it objectionable. This core First Amendment principle is why the authorities cannot outlaw burning the American flag,⁴ punish the wearing of a jacket emblazoned with the words “Fuck the Draft,”⁵ penalize a parody ad depicting 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 In ruling that the First Amendment protects protesters holding insulting signs outside of soldiers’ funerals, the Court reiterated this fundamental principle, remarking that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”⁸

This principle applies with particular strength to universities, which by their nature are dedicated to open debate and discussion. Take, for example, a student newspaper’s front-page “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice” and use of a vulgar headline (“Motherfucker Acquitted”).⁹ These words and images—published at the height of the Vietnam War—were no doubt deeply offensive to many at a time of deep polarization and unrest. So, too, were “offensive and sophomoric” skits depicting women and minorities in derogatory stereotypes,¹⁰ “racially-charged emails” to a college listserv,¹¹ and student organizations the public viewed as “shocking and offensive.”¹² Yet, “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.’”¹³

While Villanova may not believe advocating contraceptive use aligns with its religious identity, it cannot prohibit students from doing so—particularly when they speak on their own behalf in public, off-campus spaces, outside the university’s jurisdiction.

³ *Academic Freedom and Freedom of Expression*, VILLANOVA UNIV., <https://www1.villanova.edu/villanova/provost/academic-freedom.html> [<https://perma.cc/HRB9-SU67>].

⁴ *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”).

⁵ *Cohen v. California*, 403 U.S. 15, 25 (1971).

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

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

⁸ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

⁹ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

¹⁰ *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 993 F.2d 386, 388–392 (4th Cir. 1993).

¹¹ *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 705 (9th Cir. 2009) (the First Amendment “embraces such a heated exchange of views,” especially when they “concern sensitive topics like race, where the risk of conflict and insult is high.”)

¹² *Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652, 661 (1st Cir. 1974).

¹³ *Papish*, 410 U.S. at 667–68 (1973).

This doesn't mean the university cannot disagree with or criticize the students' advocacy. The university, students, faculty, and the broader community have their own expressive rights to challenge speech they dislike. That criticism is "more speech," which is a far preferable alternative to censorship.¹⁴

We appreciate your attention to our concerns and request a substantive response to this letter no later than the close of business on Tuesday, March 7, 2023, confirming Villanova will not interfere with Carroll's—or any other student's—right to freely express their views.

Sincerely,



Sabrina Conza
Program Officer, Campus Rights Advocacy

Cc: JJ Brown, Villanova Director of Student Involvement

Encl.

¹⁴ *Whitney v. California*, 274 U.S. 357, 377 (1927).

Authorization and Waiver for Release of Personal Information

I, Elisa Carroll, born on [REDACTED], do hereby authorize villanova university (the "Institution") to release to the Foundation for Individual Rights and Expression ("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 and Expression, 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.

[REDACTED]
Student's Signature

2/20/2023
Date