



Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

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September 1, 2010

President Frank G. Pogue
Grambling State University
Office of the President
403 Main Street
Grambling, Louisiana 71245

Sent via U.S. Mail and Facsimile (318-274-6172)

Dear President Pogue:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses.

FIRE is deeply concerned about the threat to freedom of expression posed by Grambling State University's (GSU's) prohibition of transmitting "campaign solicitations" through the university's e-mail system. This unconstitutional ban on political speech misrepresents state law and violates the First Amendment rights of GSU students.

This is our understanding of the facts. Please correct us if you believe we are in error.

On July 13, 2010, GSU's Office of Media Relations sent all GSU students an e-mail, which stated in relevant part:

Individuals who receive political campaign solicitations via university email are advised to delete these emails upon receipt. DO NOT FORWARD campaign solicitations using university email as this implies your support for the candidate and may be viewed as utilizing university resources for solicitation purposes, a violation of state policy.

This e-mail misrepresents state law. Article X, Section 9, of the Louisiana Constitution provides far more specific limitations on political activity than the broad ban announced by the Office of Media Relations. Further, state law does not limit the right of students to solicit one another for political contributions. Nor does state law prohibit faculty members who are not classified employees from soliciting one another for political contributions. Section 9 states:

§9. Prohibitions Against Political Activities

Section 9.(A) Party Membership; Elections. No member of a civil service commission and no officer or employee in the classified service shall participate or engage in political activity; be a candidate for nomination or election to public office except to seek election as the classified state employee serving on the State Civil Service Commission; or be a member of any national, state, or local committee of a political party or faction; make or solicit contributions for any political party, faction, or candidate; or take active part in the management of the affairs of a political party, faction, candidate, or any political campaign, except to exercise his right as a citizen to express his opinion privately, to serve as a commissioner or official watcher at the polls, and to cast his vote as he desires.

(B) Contributions. No person shall solicit contributions for political purposes from any classified employee or official or use or attempt to use his position in the state or city service to punish or coerce the political action of a classified employee.

(C) Political Activity Defined. As used in this Part, “political activity” means an effort to support or oppose the election of a candidate for political office or to support a particular political party in an election. The support of issues involving bonded indebtedness, tax referenda, or constitutional amendments shall not be prohibited.

Again, GSU’s inexact prohibition of student and faculty speech goes significantly beyond what is required by state law. In so doing, GSU unconstitutionally violates the right to free speech in the First Amendment to the United States Constitution, a right which GSU, a public university, is required to uphold.

That the First Amendment’s protections fully extend to public universities like GSU is settled law. See, e.g., *Keyishian v. Board of Regents*, 385 U.S. 589, 605-06 (1967) (“[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment”); *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969) (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate”); *Healy v. James*, 408 U.S. 169, 180 (1972) (citation omitted) (“[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’”); *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”).

The political speech that GSU seeks to regulate falls under the First Amendment’s guarantee of freedom of speech; indeed, the protection of such political speech was arguably the core motivation for the First Amendment. In particular, the Supreme Court has indicated that “speech concerning public affairs is more than self-expression; it is the essence of self-government,”

reflecting “our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964) (internal quotations omitted). Elsewhere, the Court has declared, “Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

Given these declarations, it is untenable for a public university such as GSU to deny its students and faculty members the right to engage in simple political speech like “political campaign solicitations” and even the right to keep copies of any such e-mails they might receive.

Still worse is GSU’s implicit restriction on using GSU e-mail in a way that “implies [one’s] support for [a] candidate.” Even a classified employee may, as the Louisiana Constitution states, “exercise his right as a citizen to express his opinion privately” via university e-mail. In almost all such cases, there is little chance that any reasonable person would assume that the sender is speaking on behalf of the university. The content of private e-mail, whether political in nature or not, reflects the personal opinions and views of that individual, not the university as an institution. Therefore, the university’s presumption in any case should lie heavily toward interpreting private e-mail as solely reflecting the views of that individual, and this presumption should only be overcome when the individual expressly states or represents that he or she is speaking on behalf of the institution. In those few cases where there might be an ambiguity on this point, the solution is to require the private individual to state that he or she is speaking privately and not for the institution—not to ban such expression entirely.

Thus, GSU’s suggestion that it is against state policy to imply one’s support for a candidate via GSU e-mail is likely to restrict a wide swath of protected political expression. Much speech and debate on significant matters of public interest will simply disappear from the campus, particularly now, in the final months leading to this year’s elections—the very time such expression is most urgent.

FIRE is committed to using all of its resources to uphold the First Amendment at GSU. GSU must inform its students and faculty members that they are free to engage in political speech via GSU e-mail and when using other GSU resources as private citizens. We enclose a copy of FIRE’s “Policy Statement on Political Activity on Campus,” which you might find useful as you clarify GSU’s policies. Our Policy Statement is intended as a short but practical guide to the political speech rights of university students and faculty, and we hope you find it relevant to remedying the current matter at GSU and to addressing related issues.

FIRE hopes to resolve this situation amicably and swiftly. We will continue to pursue this matter, however, until GSU reaffirms the First Amendment rights it is morally and legally obligated to uphold.

We request a response to this letter by September 15, 2010.

Sincerely,



Adam Kissel

Director, Individual Rights Defense Program

cc:

Stacey Duhon, Vice President for Student Affairs

Vanessa Littleton, Director of Public Relations

Matthew Ware, President, Faculty Senate

Lamar Hughes, President, Student Government Association

Encl.