



FREEDOM OF EXPRESSION

THE FIRE FOUNDATION

December 17, 2008

Chancellor Samuel Goldman
Office of the Chancellor
Southern Illinois University Carbondale
Carbondale, Illinois 62901-6899

Sent via Certified U.S. Mail

Re: Compliance with First Amendment

Dear Chancellor Goldman:

As you can see from our list of Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, due process, freedom of conscience, academic freedom, and freedom of speech on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

At present, FIRE rates Southern Illinois University Carbondale a "red light" institution on Spotlight: The Campus Freedom Resource, FIRE's database of speech restrictions at colleges and universities across the country. The "red light" rating indicates that, in our judgment, one or more of your policies unconstitutionally restricts freedom of speech, as defined by established legal precedent.

In light of Southern Illinois University Carbondale's rating, I write today to strongly recommend a thorough review of your institution's policies to verify compliance with the legal obligation to fulfill the First Amendment's guarantee of freedom of expression.

Recent rulings against university speech codes from the U.S. Court of Appeals for the Third Circuit and the U.S. District Court for the Northern District of California demonstrate that from coast to coast, the tide has turned against public colleges and universities that still insist on restricting the freedom of expression they are legally required to provide to students on campus. Indeed, these rulings should come as no surprise to public universities. That the First Amendment's protections fully extend to the public university campus is settled law, and federal and state courts have struck down unconstitutional

speech codes masquerading as harassment or civility policies at public universities across the country over the past twenty years.

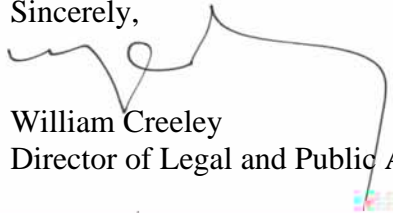
This past August, the U.S. Court of Appeals for the Third Circuit issued a ruling in *DeJohn v. Temple University*, 537 F.3d 301 (3d Cir. 2008) striking down Temple University's former sexual harassment policy as unconstitutional. In *DeJohn*, the Third Circuit held that Temple's policy—which prohibited “expressive, visual, or physical conduct of a sexual or gender-motivated nature” when “such conduct has the purpose or effect of unreasonably interfering with an individual's work, educational performance, or status; or... such conduct has the purpose or effect of creating an intimidating, hostile, or offensive environment”—was impermissibly overbroad because it potentially prohibited constitutionally protected expr

As if further clarification of the legal obligations of public colleges and universities regarding the First Amendment were needed, the Department of Education’s Office for Civil Rights made clear in a 2003 letter that “[n]o OCR regulation should be interpreted to impinge upon rights protected under the First Amendment to the U.S. Constitution or to require recipients to enact or enforce codes that punish the exercise of such rights.” Most recently, the United States Congress, voting in August 2008 to reauthorize the Higher Education Act with broad bipartisan support, included a “sense of Congress” resolution stating that “an institution of higher education should facilitate the free and open exchange of ideas”—the second time in a decade Congress has passed a resolution supporting the expressive rights of students at our nation’s colleges and universities. See Pub. L. No. 105–244.

Despite such a clear and sustained judicial, administrative, and legislative response to unconstitutional speech codes at our nation’s colleges and universities, however, FIRE

institution is in full compliance with the First Amendment, and I thank you for your attention to ensuring for your students the full exercise of their constitutional rights on campus.

Sincerely,

A handwritten signature in black ink, appearing to read "William Creeley". The signature is fluid and cursive, with a large loop at the end.

William Creeley
Director of Legal and Public Advocacy

cc:

Jerry D. Blakemore, General Counsel