



FIDE

Foundation for Individual Rights in Education
301 Walnut Street, Suite 510 Philadelphia, Pennsylvania 19106

Greg Lukianoff
PRESIDENT

November 30, 2007

Robert L. Shibley
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President Ronald M. Zaccari
Office of the President
Valdosta State University

Samantha K. Harris
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

1500 N. Patterson Street
Valdosta, GA 31698-0180

Sent via U.S. Mail and Facsimile (229-333-7400)

Alan Charles Kors
CO-FOUNDER AND
CHAIRMAN, EMERITUS

Dear President Zaccari:

BOARD OF DIRECTORS

Harvey A. Silverglate
CO-FOUNDER AND
CHAIRMAN

FIDE is deeply concerned about the dramatic threat to freedom of speech and assembly presented by Valdosta State University's (VSU's) policies regulating campus free expression in campus areas. These policies, which regulate free speech on campus, have a chilling effect on freedom of expression and ignores students' bound to protect.

Barbara Bishop
William J. Hume
Joseph M. Maline
Marlene Mieske
Daphne Patai
Virginia Poerrel
James E. Wiggins

Maintained by the Division of Student Affairs' Student Conduct Office and published in VSU's Student Handbook, VSU's "Free Expression Area Guidelines" dictate acceptable behavior for "persons wishing to speak on campus." Specifically, the Free Expression Area Guidelines read:

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Persons wishing to speak on campus may use the Free Expression Area (FEA) after following the appropriate reservation process. The designated site for the Free Expression Area at Valdosta State University is the stage on the Palms Quadrangle on main campus; only one person or group may utilize the area at a time. The hours of NOON [sic] to 1PM and/or 5PM to 6PM are the designated times for its use.

First priority for the use of University Facilities will be given to student academic or administrative functions at the University. Community use of University facilities must have an educational or cultural purpose. To avoid conflicts in scheduling, reservations for the Free Expression Area should first be made through the Dean of Students Office, who will then contact the Events Services Office to determine if the

Free Expression Area is available. 48 hours advanced notice is required, and this notice will not be waived.

Provisions for use of the area:

1. There shall be no interference with the free flow of traffic nor the ingress and egress to buildings on the campus.
2. No interruption of the orderly conduct of University classes or other University activities.
3. No commercial solicitations, campus sales, or fund-raising activities shall be undertaken not sponsored by authorized students or the University.
4. The person who makes the reservation shall be responsible for seeing that the area is left clean and in good order.

VSU's Free Expression Area Guidelines are riddled with constitutional deficiencies; indeed, the policy is in direct conflict with VSU's legal and moral obligation as a public institution of higher learning to uphold the First Amendment.

First, VSU's requirement of advanced reservations for all "[p]ersons wishing to speak on campus" impermissibly burdens the exercise of free speech on campus. VSU's reservation policy reserves at least two days prior. The operation of such a reservation system is patently incompatible with the First Amendment rights of VSU students and faculty. Expressive activity often involves spontaneous responses to unfolding events; to require prior reservations for all campus speech is to suppress free and open discourse on campus.

Second, VSU cannot lawfully quarantine free expression to just one area of the school's 168-acre campus—specifically, a single stage located on the Palmis Quadrangle on VSU's Main Campus (VSU's second smallest campus). VSU's other two campuses, its largest, are situated on the school's North Campus—which, at 83 acres, is roughly the same size as the Main Campus—are simply out of luck.) Even if this stage comprised a full acre, it would still account for less than 1% of VSU's total campus. To impose such a stark restriction on the free expression of VSU's more than 11,000 students demonstrates a brazen contempt for the indisputable importance of free expression to a modern liberal education.

Third, VSU cannot constitutionally limit free expression on campus to a mere two hours per day. Enforcing such an arbitrary and restrictive prohibition makes a mockery of VSU's stated mission to expand the frontiers of current knowledge, and explore the practical applications of scientific and technical knowledge through excellence in scholarship and creative endeavors.

These restrictions can pass constitutional muster, as established by the Supreme Court in *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). There is nothing reasonable about transforming the vast majority of the university's property—indeed, public property—into a censorship area or about maintaining a system of onerous requirements by which students must abide in order to exercise their fundamental rights.

The VSU Free-Expression Reservation Form, which prospective speakers are required to submit, also raises significant constitutional concerns. The Form warns:

In order to maintain order and decorum on campus, and if in the professional judgment of the appropriate university officials, (e.g. the Office of the President, the Vice President for Student Affairs Office, the Dean of Students Office, and/or the Public Safety Department,) a speaker(s) is deemed to be creating a clear and present danger of material interference with the normal operation of the institution, then the speaker(s) will be asked to cease until further notice.

Conditioning the right to free speech upon the speaker's ability to maintain "order and decorum" is constitutionally intolerable. A student's right to free expression, however immoderate or provocative, must not be sacrificed upon the altar of order and decorum. VSU is creating an incentive for those who oppose the administration to corner the market on speech to the benefit of the least tolerant members of the community. Further, invoking "order and decorum" - exceedingly vague terms - to determine whether student speech may proceed forces potential speakers to guess about what expression may threaten such undefined and subjective principles, resulting in a chilling effect on student speech and rendering this section of the policy unconstitutionally vague.

Again, FIRE must stress that maintaining "free speech zones," as VSU's policy does here, is unconstitutional. The Supreme Court has held that the government cannot create a "free speech zone" on a public university campus. *Keyishian v. Board of Regents of the State of New York*, 385 U.S. 510 (1967). Any demand regarding campus free speech that would support the transformation of public institutions of higher education into places where constitutional protections are the exception rather than the rule. In fact, courts have determined that to be considered legal, time, place, and manner restrictions must be narrowly tailored to serve a substantial governmental interest. The generalized concern for order and decorum and establishment of "free speech zones" policies is neither substantial nor substantial enough to justify such restrictions.

FIRE has challenged the establishment of free speech zones at universities across the nation, including those at Colorado State University, West Virginia University, Seminole Community College in Florida, Citrus College in California, the University of North Carolina-Greensboro, Texas Tech University, and the University of Nevada-Reno. In all of these cases, the institutions either decided to open their campuses to expressive activities or were forced by a court to do so. For instance, in FIRE's case at Texas Tech, a federal court determined that Texas Tech's policy must be interpreted to allow free speech for students on "park areas, sidewalks, streets, or other common areas, irrespective of whether the University has designated these areas." *Roberts v. Haragan*, 346 F. Supp. 2d 855, 861 (N.D. Tex. 2004). VSU would be well-advised to take this decision into account in considering its own policies.

We offer the following guidelines to help institutions rewrite policies in keeping with the First Amendment and any reasonable principle of free expression:

1. The default position of any policy should be that free speech is the norm all over the campus. In general, policies should say what a university cannot do in case of an expression of a certain extent, what restrictions are permissible and when, and what policy would mirror the Bill of Rights.

2. Schools cannot restrict speech to a small portion of campus, nor to inaccessible or sparsely used or populated areas in the campus, speech must be generally accessible to the population at large—and especially to the target audience.

3. Schools should not have a "time, place, and manner" restriction on speech. Discretionary requirements for expressive or persuasive information requirements that allow the school substantial discretion to impose conditions on speech is allowable. Discretionary decisions need to be "content and viewpoint neutral," meaning that they only implicate factors like noise or interference with traffic flow, and nothing relating to the substance of the speech.

4. Speech activities should not be restricted by the school's "clean up" requirements. A school's general obligation to clean up after a demonstration or protest is a normal cost of operation for a university, but if a particular group has a demonstrated history of not cleaning up after itself, then service. Only in light of past failures should a group be saddled with such prior conditions.

5. Demonstrative activities should not be restricted in the name of aesthetics. It is reasonable to ask students to restore the campus area to its original condition after a large demonstration or leafleting (beyond normal wear and tear, which is a normal cost of operation for a university), but it is unreasonable to prohibit an expressive activity in advance for fear that it will make a mess or be unaesthetic. (This is related to No. 4 above.)

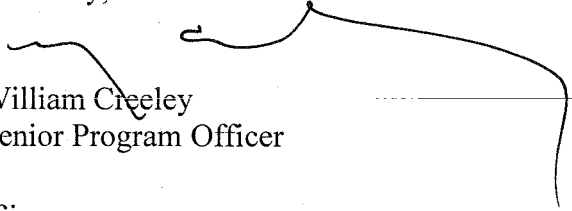
6. Virtually all universities already have the power, through existing rules, to prevent the type of disruptive conduct they might fear would take place. They can stop demonstrations that substantially impede the function of the university, block traffic flow, or prevent students from sleeping or studying. They can punish students who engage in vandalism or violence. The university also has increased power to regulate the presence of those speakers who have not been invited to campus and who are otherwise unaffiliated with the university. However, the university should not simply assume before the fact that student or faculty expression will be impermissibly disruptive. Rather, the university should accept its role as an ultimate free speech zone.

We urge VSU to immediately revise its illegal and immoral "free speech zone" policies in light of the constitutional concerns presented here. Please spare VSU the embarrassment of fighting against the Bill of Rights—a statement of both law and principle by which the university is legally and morally bound. As a public institution of higher learning, VSU has a duty to ensure that truly free expression is celebrated, honored, and broadened—not feared, restrained, and

hidden. Let your students exercise their basic legal, moral, and human rights; let them speak, assemble, and protest as their consciences dictate.

FIRE hopes to solve this matter swiftly and without further to name of course. "C" resources to abolish the unconstitutional limits on freedom of expression at VSU. We request a response on this matter by December 19, 2007.

Sincerely,



William Creeley
Senior Program Officer

cc:

Kurt J. Keppler, Vice President for Student Affairs, Valdosta State University
Louis Levy, Vice President for Academic Affairs, Valdosta State University
Laverne Lewis Gaskins, University Attorney, Valdosta State University