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University in Pa. sued over speech code

By Lou Marano

From the Life & Mind Desk

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WASHINGTON, April 23 (UPI) -- A Philadelphia-based campus watchdog group has sued a state school in central Pennsylvania because of its "unconstitutional" speech code, kicking off a campaign to eliminate such codes nationwide.

On Tuesday, attorneys for the Foundation for Individual Rights in Education filed a lawsuit in the U.S. District Court for the Middle District of Pennsylvania against Shippensburg University and its president, Anthony F. Ceddia, asserting that the undergraduate plaintiffs faced punishment up to expulsion for engaging in constitutionally protected expression.

Plaintiffs "John Doe," a junior majoring in earth science, and "Jane Doe," a senior majoring in political science, are identified in the suit as belonging to "at least one expressive student organization." FIRE's position is that the suit is a "facial challenge" to the school's policies because it asserts that the policies threaten so much protected speech that their very existence violates the First Amendment to the Constitution.

FIRE's president, University of Pennsylvania historian Alan Charles Kors, said the move is the first step in a campaign "to end the nightmare of campus censorship." Kors founded FIRE in 1999 with Boston civil rights attorney Harvey A. Silverglate.

Kors called such codes "a moral, educational, and legal scandal in American higher education. A nation that does not educate in liberty will not long preserve it and will not even know when it is lost."

Peter M. Gigliotti, Shippensburg's executive director of University Communications and Marketing, declined to discuss the specific points of FIRE's legal complaint with United Press International on Wednesday. He e-mailed an official statement, which said that although the university "strongly and vigorously" defends the right of free speech, it also is committed to the principle that discussion be conducted appropriately.

"We do have expectations that our students will conduct themselves in a civil manner that allows them to express their opinions without interfering with the rights of others," he wrote.

The complaint quotes from the university's "Racism and Cultural Diversity" policy set forth in its catalog, which warns of "the continuing presence of unconscious attitudes toward individuals which surface through the use of discriminatory semantics." Students are admonished against the use of "presumptive statements" that contribute to "historically preferred views of people."

In the preamble to Shippensburg's Code of Conduct, the university says it will "strive" to protect freedom of inquiry, speech, action and expression only if they are not "inflamatory, demeaning or harmful toward others." The preamble then prohibits "acts of intolerance directed toward other community members."

In the Code of Conduct's Community Regulations section, a "secondary right" to express personal beliefs is subordinated to a "primary right" to be "free from harassment, intimidation ... and emotional abuse."

Kors said: "Of course, the expression most in need of protection is precisely 'provocative' dissent from widely held views, even if those provoked see that as 'demeaning.'"

"Racism" as defined by Shippensburg is the "subordination" of another person communicated not only through words, but also through "attitudes." "Harassment" includes conduct that "annoys" or "alarms" a person or group.

Shippensburg's sexual harassment policy prohibits "innuendo," jokes about sex-specific traits, and "leering."

"Most stand-up comics -- whether feminists or male chauvinists -- wouldn't last a day at Shippensburg," Kors remarked.

The school also mandates, under threat of official punishment, that students display -- in their attitudes and behaviors -- a "commitment to racial tolerance, cultural diversity and social justice." FIRE called this requirement "a flagrant violation of freedom of conscience."

FIRE's Executive Director Thor L. Halvorsen said that during the next year the foundation would coordinate challenges to campus speech codes in each of the 12 federal appellate circuits.

Program Director Emmett M. Hogan told UPI that in May, FIRE would launch speechcodes.org, an online data base of the restrictions on free expression at public and private colleges and universities across the United States.

The lawsuit was filed by FIRE Legal Network attorneys David A. French and William Adair Bonner.

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