



Foundation for Individual Rights in Education

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December 14, 2009

President Tony McLain
Office of the President
Administration Building 203
Lake Superior State University
650 West Easterday Avenue
Sault Sainte Marie, Michigan 49783

Sent via U.S. Mail and Facsimile (906-635-2111)

Dear President McLain:

As you can see from the list of our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE; www.thefire.org) 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, freedom of religion, due process, and, in this case, freedom of expression and academic freedom on America's college campuses.

FIRE is concerned about the ongoing violation of the First Amendment rights of Lake Superior State University (LSSU) Professor Richard Crandall, who has taught at LSSU since 1969. FIRE calls on you, the new president of LSSU, to restore vibrant debate to your campus. Please note that FIRE does not litigate and is not threatening legal action. While the law is on Professor Crandall's side, this is a question of moral and academic leadership.

For most of 40 years, Professor Crandall has posted materials on matters of public concern on his office door and nearby wall, similar to the standard practices of other faculty members at LSSU and nationwide. In recent years, however, LSSU has prohibited him (but not others) from posting such materials in violation of his First Amendment rights. The key problem here is that LSSU acted in response to complaints that the postings were "hateful" and "bigoted," with the result that Crandall was given an impermissibly broad command by Provost Bruce Harger to "[r]estrict the content of your discussions and displays to the subject you are teaching." This result is untenable because it permits the most easily offended people at LSSU to dictate what professors may or may not post—indeed, what they may or may not say—and because it represents a misunderstanding of one of the most fundamental functions of a university as a "marketplace of ideas."

FIRE first wrote to former LSSU President Betty J. Youngblood on July 23, 2007, expecting that she would understand that LSSU had severely overreached and would quickly correct this issue. Unfortunately, LSSU handed the matter to an outside law firm, Vercruyse Murray & Calzone, which in turn fundamentally misunderstood the university context. Although it is likely that *none* of Crandall's postings—for example, political cartoons that had already been published in newspapers—ever came close to satisfying even a *single* element of the applicable legal standard governing “hostile environment” harassment, the law firm supported LSSU's efforts to chill Crandall's political speech by characterizing his posts as such.

As a result, Crandall has no way of knowing whether even such innocent postings as “Land of the FREE Because of the BRAVE,” one of his banned postings, might generate a complaint and lead to punishment. Meanwhile, his colleagues' postings—for example, a posting that criticized “organized religious fanatics and clerical fascists” for the election of George W. Bush—include expressions of personal beliefs on matters of public concern that are not germane to the subjects those professors teach, and these remain unhindered.

I have enclosed a copy of Professor Crandall's case file (in hard copy only), including the banned postings and our correspondence. While you or I might not have chosen to post these materials, the First Amendment and the principles of academic freedom do not depend on subjective feelings or judgments, and these principles do not permit such overbroad limitations as those that have banned postings such as this one:



LSSU has entirely failed to explain whether and how any specific posting or group of postings by Crandall rises to the level of unprotected speech. A regulation is said to be unconstitutionally overbroad if, in addition to whatever else it may appropriately prohibit, it significantly restricts protected First Amendment expression. As the Supreme Court has stated, to avoid overbreadth, a

regulation or statute “must be carefully drawn or be authoritatively construed to punish only unprotected speech and not be susceptible of application to protected expression.” *Gooding v. Wilson*, 405 U.S. 518, 522 (1972). LSSU apparently is operating under the misguided rule that unspecified complaints are enough to lead LSSU officials to ban a wide swath of materials from display.

If LSSU’s restrictions on Crandall were to be enforced across campus, LSSU would never be a place of vigorous debate and inquiry. Professors and students alike would censor themselves in order to avoid being declared guilty of violating each others’ alleged right to never feel offended on campus.

You surely need no reminder that a university is quintessentially a “marketplace of ideas.” Please let me remind you, however, of the ringing endorsement of liberty in the U.S. Supreme Court’s decision in the landmark case of *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 641–42 (1943): “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”

FIRE has successfully defended faculty in similar situations on moral grounds. Last year, at Temple College, a public, two-year college in Texas, an English professor was ordered to remove from his office door the Friedrich Nietzsche quotation *Gott ist tot* (“God is dead”), on the incorrect ground that the line could constitute religious harassment. Within twenty-four hours of being contacted by FIRE (again, without any threat of litigation), the college restored the instructor’s rights. For LSSU to let a similar violation of Professor Crandall’s rights stand for more than two years is inexcusable and speaks ill of LSSU’s commitment to free expression.

The issue here involves a very common practice of faculty expression. President Youngblood missed the opportunity to support the freedom to express one’s views publicly. That opportunity is now in your hands. Let freedom flourish at LSSU. Do not let complaints of “offense” hold liberty hostage to the feelings of those who take umbrage when they meet challenges to their beliefs regarding “politics, nationalism, religion, or other matters of opinion.” Let your students and faculty know that vigorous debate is to be celebrated and honored, not censored and punished.

FIRE once again asks Lake Superior State University to abandon its threats against Professor Crandall’s protected expression. We urge you to respond personally so as to set a better standard for LSSU. We request a response to this letter by January 6, 2010.

Sincerely,



Adam Kissel

Director, Individual Rights Defense Program

Enclosures

cc:

Anthony P. Blose, Interim Provost and Vice President of Academic Affairs, Lake Superior State University

Gary L. Balfantz, Dean, College of Arts, Letters, and Social Sciences, Lake Superior State University

Leslie A. Dobbertin, Chair, School of Social Sciences, Lake Superior State University

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Kenn Filkins, Editor, *The Evening News*