



SPEECH FIRST

Speech First Files Federal Lawsuit Challenging University of Michigan Speech Code and Bias Response Team

“Bias Response Teams are fundamentally un-American and have no place on college campuses. We have an epidemic on our hands in the higher education system—universities are establishing rules and protocols that create a dangerous environment in which free speech protections under the First Amendment no longer exist.”

– Nicole Neily, President and Founder of Speech First

Ann Arbor, Mich. — Speech First, a nonprofit membership association working to combat restrictions on free speech and other civil rights at colleges and universities across the United States, filed its first lawsuit yesterday against the University of Michigan—*Speech First v. Schlissel et. al* in the U.S. District Court for the Eastern District of Michigan—in an effort to help restore free speech and expression to America’s universities.

The University of Michigan has a disciplinary code that prohibits “harassment” and “bullying,” and increases the penalties if such actions are motivated by “bias.” As used, these concepts capture staggering amounts of protected speech and expression given that Michigan defines harassment as “unwanted negative attention perceived as intimidating, demeaning, or bothersome to an individual.” Worse still, Michigan has created a Bias Response Team that receives complaints of “bias” and “bias incidents” from offended students and is tasked with investigating and punishing those who commit offenses.

More than 150 reports of alleged “expressions of bias”—through posters, fliers, social media, whiteboards, verbal comments, classroom behavior, etc.—have been investigated by the university’s bias response team since April 2017. According to Michigan, “bias comes in many forms,” can be intentional or unintentional, and “can be a hurtful action based on who someone is as a person.” In the school’s words, “the most important indication of bias is your own feelings.” As a result, a student whose speech is seen by another student as hurtful to his or her feelings may receive a knock on the door from a team of school officials threatening to refer the student for discipline unless he or she submits to “restorative justice,” “individualized education,” or “unconscious bias training.”

In light of these policies, Speech First members enrolled at Michigan have abstained from speaking on topics including immigration, identity politics, and abortion because they fear their speech will be anonymously reported as offensive, biased, and/or hateful to university authorities through the bias response system. The complaint alleges that these hopelessly vague policies chill student speech and expression – a clear First Amendment violation.

Speech First asserts that the lack of clear and meaningful standards in both the school's speech code and bias response system present a serious risk that it will be enforced in an arbitrary or discriminatory manner and may be used to target speech based on a speaker's viewpoint. In addition, the subjective nature of both defining and enforcing "bias incidents" through the bias response team renders the program functionally unconstitutional.

"Speech codes like Michigan's flagrantly violate the First Amendment," said Speech First President Nicole Neily. "Moreover, a bias response system has no place in America, much less on a modern-day college campus. Because it's impossible to know what comments might be 'perceived' by others as offensive, students don't contribute to conversations and debates, ask questions, write papers, or invite speakers they might otherwise. This is not a real educational experience, and Michigan students deserve better."

Speech First has engaged Consovoy McCarthy Park PLLC to serve as litigation counsel. Speech First has asked the court to declare that Michigan's speech code is unconstitutional and to enjoin the bias response system.

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