



SPEECH FIRST

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Sent via Electronic Mail (chancellor@syr.edu)

Dear Chancellor Syverud,

Speech First is a nationwide membership organization of students, alumni, and other concerned citizens. Our organization is dedicated to preserving civil rights secured by law, including the freedom of speech guaranteed by the First Amendment. Speech First seeks to protect the rights of students and others at colleges and universities through litigation and other lawful means. For example, Speech First recently successfully challenged several policies of the University of Michigan that chilled student speech. *See Speech First, Inc. v. Schlissel*, 939 F.3d 756 (6th Cir. 2019).

As President of Speech First, I write to urge you to reform your policies to better protect student speech on your campus. As you are no doubt aware, Syracuse has been repeatedly criticized for actions it has taken regarding free speech. This is unfortunate. College campuses should be a marketplace of ideas where a wide swath of views can be heard by all.

Although there are many steps Syracuse could take to make its campus more welcoming for differing views, there are at least three policies in particular we ask you to review. First, Syracuse's Student Code of Conduct threatens students (including mere bystanders) with discipline based on subjective and vague terms such as "hate speech," "harassment," and "[b]ias-related" incidents. Second, Syracuse's "STOP Bias" and Residential Bias Prevention policies impose content-based restrictions on a wide swath of speech. Third, the University's Events Policy imposes a significant burden on the ability of students to organize events, particularly those with controversial speakers. Correcting these provisions now would further Syracuse's promise that it is, as it claims, an institution "committed to the principle

that freedom of discussion is essential to the search for truth and,” one that “consequently, welcomes and encourages the expression of dissent.”¹

I. Free Speech Is Critically Important on College Campuses.

As the Supreme Court has long recognized, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools [of higher education].” *Healy v. James*, 408 U.S. 169, 180 (1972). American universities are “peculiarly the marketplace of ideas,” training future leaders “through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.” *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967). “Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.” *Sweezy v. N.H. ex rel. Wyman*, 354 U.S. 234, 250 (1957).

To be sure, private universities like Syracuse are not treated the same as public universities under the First Amendment. But as the U.S. Department of Education recently recognized, “private institutions are often required by law to deliver what they have promised, including what they have promised about freedom of speech, including academic freedom, through their own policies.”² A private institution’s failure to adhere to its own institutional policies “can be a contractual breach but it can also be a tort or more.”³ More important, private universities—no less than public universities—have a critical role to play in protecting free speech. Private universities should do everything in their power to ensure that students are free to speak, to debate, and to listen on a campus that is free of institutional censorship.

II. Although Syracuse Claims to Protect Student Free Speech, Its Actions Do Not Match Its Commitments.

Syracuse has repeatedly stated that it is committed to freedom of speech and expression. For example, its “Campus Disruption Policy” states that “Syracuse University is committed to the principle that freedom of discussion is essential to the search for truth and, consequently, welcomes and encourages the expression of dissent.”⁴ And you have acknowledged that “each of our faculty members—and each

¹ See *Faculty Manual*, Syracuse University Office of the Provost, <https://bit.ly/3lK4ZmJ>.

² *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program*, U.S. Department of Education, 85 Fed. Reg. 3190-01, 3212-13 (Jan. 17, 2020).

³ *Id.*

⁴ See *Campus Disruption Policy*, Syracuse University, available at <https://bit.ly/2It0wqg>.

of our students—needs in the pursuit of knowledge to be able to say things and write things that can be troubling, provocative and at times makes many of the rest of us profoundly uncomfortable.”⁵

Despite holding itself out as an institution committed to free speech and expression, however, there have been many instances of Syracuse not following these ideals. Just last year, Syracuse rejected the application of Young Americans for Freedom, a conservative student group, to organize an official chapter at the University partly on the basis of the organization’s political viewpoints, including its belief in the superiority of the United States Constitution. It was only after intervention by outside groups that the University relented and accorded the group official recognition.⁶ Unfortunately, this is just one incident in a long line of violations of free speech on campus including the expulsion of a student for a Facebook comment, investigation of a student for a satirical blog post, and threats from campus police over “offensive” Halloween costumes.⁷ Indeed, just a month ago the University placed a professor on leave for joking about the Chinese Communist Party.⁸

In light of these incidents, it is no surprise that Syracuse has developed a reputation for imposing undue restrictions upon its students’ free speech. In a recent survey, RealClear Education found that “only 39 of 100 student respondents said that they felt comfortable sharing their viewpoints” and 61 out of 100 students affirmatively felt they could not share their opinions.⁹ Things are so bad that the Foundation for Individual Rights in Education (FIRE) has ranked Syracuse as one of the ten worst campuses for free speech in the nation.¹⁰

Like many institutions, Syracuse’s commitment to free expression is constantly on trial. For example, Syracuse’s student government recently passed a resolution urging the University to take “whatever measures are necessary” to prevent the school’s College Republicans from hosting conservative commentator Ben

⁵ See *Chancellor Kent Syverud Highlights Results, Discusses Civil Discourse and Free Speech with University Senate*, Syracuse University News (Sept. 19, 2019), <https://bit.ly/3nMtCkp>.

⁶ See *Syracuse University: Denial of Recognition of Young Americans for Freedom Chapter*, Foundation for Individual Rights in Education (2019), <https://bit.ly/2SOcVHg>.

⁷ See Zach Greenburg, *Syracuse Will Update Free Speech Policies After Israeli Filmmaker Disinvited, Reinvited*, Foundation for Individual Rights in Education (Sept. 7, 2016), <https://bit.ly/3jXpVpN>.

⁸ See *Joint Statement from Karin Ruhlandt, Dean of the College of Arts and Sciences, and John Liu, Interim Vice Chancellor and Provost*, Syracuse University News (Aug. 25, 2020), <https://bit.ly/3iQz428>.

⁹ See Cara Marcano, *Free Speech in Peril at Syracuse, Students and Alumni Say*, RealClear Education (Oct. 5, 2020), <https://bit.ly/34Tc8u9>.

¹⁰ See *FIRE names America’s 10 Worst Colleges for Free Speech: 2020*, Foundation for Individual Rights in Education (Jan. 29, 2020), <https://bit.ly/3jV6mOU>.

Shapiro.¹¹ It is more important now than ever that Syracuse reaffirm its commitment to freedom of speech on its campus by implementing real change in its policies that chill and outright outlaw that freedom.

III. Syracuse Should Revise Its Policies to Protect Student Speech.

Speech First has identified three steps that Syracuse should, at a minimum, take to demonstrate its commitment to free speech on campus.

A. Syracuse Should Amend its Student Code of Conduct and Reverse Its Recent Expansion to Bystanders.

Syracuse’s Code of Student Conduct prohibits “[a]ssistance, participation in, promotion of, or perpetuation of harassment, whether physical, digital, oral, written or video, including ... [b]ias-related incidents” such as “instances of hate speech.”¹² The Code further prohibits “[a]ssistance, participation in, promotion of, or perpetuation of conduct, whether physical, electronic, oral, written or video, which threatens the mental health, physical health, or safety of anyone.”¹³

The problem with vague speech codes like these are well known. Universities should not prohibit “the expression of an idea simply because society finds the idea offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). Nor should universities seek to shield their students from “the discomfort and unpleasantness that always accompany an unpopular viewpoint.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969). Harassment codes are regularly struck down by courts because they are so overbroad that they reach “a substantial amount of constitutionally protected speech,” *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1182 (6th Cir. 1995), and are so vague that they fail to provide “fair notice of the standard of conduct” to which a student will be held, *Leonardson v. City of E. Lansing*, 896 F.2d 190, 196 (6th Cir. 1990).

The School’s Chief Diversity and Inclusion Officer has created more confusion by threatening to punish “bias-motivated” violations “more severely” than other violations of the Code, presumably including cheating, plagiarism, and drug offenses.¹⁴ The possibilities for suppressing such speech are nearly limitless. Indeed,

¹¹ See Mira Berenbaum, *Student Association condemns visit from Ben Shapiro*, The Daily Orange (2020), <https://bit.ly/3jXL5Ee>.

¹² Code of Student Conduct, Syracuse University Office of Student Rights and Responsibilities (amd. July 1, 2020), <https://bit.ly/3lG7bvU>.

¹³ *Id.*

¹⁴ See *July 2020: Progress on Campus Commitments*, Syracuse University News (July 10, 2020), <https://bit.ly/30Z69Tx>.

as Young Americans for Freedom recently discovered, even speech extolling the virtues of the First Amendment itself may be prohibited as hateful.¹⁵

Making matters worse, the University recently expanded the Code of Conduct to allow even “bystanders and accomplices,” in person or on social media, to be held “accountable” for the “promotion of, or perpetuation of harassment,” which includes “[b]ias-related incidents” and “hate speech.”¹⁶ But the Code does not anywhere provide guidance to what constitutes the “promotion” or “perpetuation” of harassment.¹⁷

Syracuse should revise these policies to ensure that students are free to express themselves without fear of punishment.

B. Syracuse Should Amend Its “STOP Bias” and Residential Bias Prevention Policies.

Syracuse’s “STOP Bias” policy instructs students to report “bias related incident[s]” to offices of the University, including the “report a crime page” of the Department of Public Safety’s website.¹⁸ “Bias” is broadly defined to include any “expression of hostility against a person or property of another because of the targeted person’s age, creed, disability, ethnic or national origin, gender, gender identity, gender expression, marital status, political or social affiliation, race, religion, or sexual orientation.”¹⁹ Examples include, *inter alia*, “jokes based on a stereotype”; “[i]mitating someone with any kind of disability, or imitating someone’s cultural norm or practice”; or “[m]aking comments on social media about someone’s disability, ethnicity, race, national origin, gender, gender identity or expression, sexual orientation, religion, or political affiliations/beliefs.”²⁰ In a similar vein, Syracuse’s Residential Policies prohibit “[b]ias related behavior and/or harassment” including “negative verbal, written, visual, or physical conduct based on or motivated by an individual’s actual or perceived identities, that has the purpose *or effect of*: Undermining and detracting from or interfering with an individual’s education or work performance [or] [c]reating an intimidating, hostile, or offensive educational, work, or living environment.”²¹

¹⁵ See *supra* note 6.

¹⁶ See *supra* note 11.

¹⁷ See *supra* note 13.

¹⁸ See *STOP Bias*, Syracuse University, <https://bit.ly/3dnaPYL>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Student Living Expectations*, Syracuse University Student Living, <https://bit.ly/3dtb43Z> (emphasis added).

The Supreme Court has consistently recognized the “substantial and expansive threats to free expression posed by” regulations that restrict speech on the basis of its content. *United States v. Alvarez*, 567 U.S. 709, 717 (2012). Content-based regulations necessarily “restrict expression because of its message, its ideas, its subject matter, or its content.” *Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002). Such regulations are antithetical to “our profound national commitment to the free exchange of ideas,” *Harte-Hanks Commc’ns, Inc. v. Connaughton*, 491 U.S. 657, 686 (1989), and hinder the goal of an “uninhibited marketplace of ideas in which truth will ultimately prevail,” *McCullen v. Coakley*, 573 U.S. 464, 476 (2014).

These policies are precisely the type of content-based regulation that have no business on a college campus. They afford the university broad discretion to discipline student speech that is deemed “bias[ed],” “negative,” “intimidating, hostile, or offensive.”²² Examples of speech that could be chilled by such policies are easy to see. A student urging a tougher immigration policy, including building a wall along the southern border, may be interpreted as making “negative” statements on the basis of ethnicity and national origin. A student expressing his views on traditional marriage may be interpreted as making “offensive” statements on the basis of sexual orientation. A student advocating for one side or the other of the Israeli-Palestinian conflict may be interpreted as making “intimidating” statements on the basis of religion or national origin. As the incidents and statistics discussed above demonstrate, these are no abstract hypotheticals at Syracuse—they are actively chilling students’ ability to express ideas.

Virtually any opinion or political belief—as well as any use of humor, satire, or parody—will be perceived by *somebody* as “negative” or “offensive.” In order to determine what conduct will be considered “harassment” by the university, one “must make a subjective reference” based on the listener’s own perception of the speech. *Dambrot*, 55 F.3d at 1184. And, “[a]bsent any requirement akin to a showing of severity or pervasiveness—that is, a requirement that the conduct *objectively and subjectively* creates a hostile environment or substantially interferes with an individual’s work—the policy provides no shelter for core protected speech.” *DeJohn v. Temple Univ.*, 537 F.3d 301, 317-18 (3d Cir. 2008) (emphasis added). Syracuse must revise its “harassment” policy to ensure that students are free to express themselves without fear of punishment.

C. Syracuse Should Amend Its Events Policy.

Syracuse’s “Events on University Property” policy mandates that “[a]ll requests to hold events on the Syracuse University campus or on property controlled,

²² *Id.*; see also *supra* note 17.

operated, or owned by the University must be sponsored by a Syracuse University administrative or academic department or a recognized student organization.”²³ To hold an undefined category of “special events,” a group must “notify the Environmental Health and Safety Services Office three weeks prior to the event,” at which point the Office “will conduct a special event review that will encompass all aspects of the event including, but not limited to, proper insurance coverage, staffing, egress, occupant capacity, sanitation, fire prevention, proper electrical practices, and permits.”²⁴ Further, the University mandates that speakers “are expected to conform to the Code of Student Conduct,”²⁵ which includes the speech restrictions discussed above. Finally, the University “reserves the right to establish the location of an event, limit the duration, mandate levels of services to be present in the form of security, custodial, and other support staff, and establish other conditions with respect to the use of University property” and “reassign the event, if necessary, at its discretion.”²⁶

Students should have the right to demonstrate and speak freely without pre-approval from authorities. In particular, students should be “free to stimulate [their] audience with spontaneous and emotional appeals.” *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 928 (1982). Moreover, making student speech “contingent upon the uncontrolled will of an official, as by requiring a permit or license which may be granted or withheld in the discretion of such official,” presents the opportunity for censorship. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151 (1969).

Syracuse’s Events Policy contradict these basic principles of free speech. The Policy stifles political speech by preventing students from hosting events and speakers spontaneously in response to the news of the day. Requiring students to submit paperwork, obtain approval from authorities, and wait days before hosting events undeniably diminishes core political speech. In addition, by reserving to itself the discretion to deny an event, Syracuse maintains the right to deny requests based on the content of the event. And even when the requests are approved, Students are at the whim of administrators who may “reassign” events up to the last minute. Groups inevitably will be chilled by the substantial investment required to hold an event, especially those featuring controversial speakers.

* * *

Syracuse may believe it is doing students a service by preventing them from speech they deem biased or harassing. But that could not be further from the truth.

²³ See *Events on University Property*, Syracuse University (amd. Oct. 8, 2013), <https://bit.ly/34SAofT>.

²⁴ *Id.*

²⁵ *Id.*

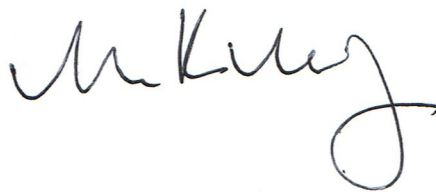
²⁶ *Id.*

Some “ideas and information are vital, some of slight worth,” but “the general rule is that the speaker and the audience” should “assess the value of the information presented.” *Edenfield v. Fane*, 507 U.S. 761, 767 (1993). Indeed, provocative speech can often be the *most* informative. As Chancellor Syverud recognized, “[i]n a real university, when you are seeking knowledge, you better be ready to be uncomfortable. And that’s because when you are genuinely seeking knowledge, you learn things you did not previously know, and sometimes you learn them from people you disagree with. And indeed, sometimes—indeed for me—what you learn is genuinely disruptive—and it can disrupt your whole world view.”²⁷ Or as Frederick Douglass put it, “[t]o suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker.” That sentiment is nowhere truer than on the campuses of American colleges and universities.

Syracuse has long claimed to promote free speech and expression on its campus. But, as its history and current policies show, the University has not lived up to those lofty ideals. Syracuse should amend its Student Code of Conduct, “STOP Bias” Policy, Residential Bias Prevention Policy, and Events Policy to show students, potential students, and alumni that their free speech rights will be protected on Syracuse’s campus.

Thank you for your consideration of these important issues. We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Neily". The signature is fluid and cursive, with a large loop at the end of the last name.

Nicole Neily
President & Founder
Speech First

²⁷ See *supra* note 5.