

Governance

HIGHER EDUCATION NEWS FOR UNIVERSITY GOVERNORS AND TRUSTEES

FALL 2015

Preserving Individual Liberty on Campus

America's colleges and universities should be strongholds of debate, inquiry, and freedom of action and conscience. The development of critical minds demands that universities act as marketplaces of ideas—even unusual or unpopular ones. Such a marketplace can exist only where universities protect constitutional rights to speech, religion, and assembly on campus.

Protecting students' First Amendment rights promotes liberal learning by:

- Increasing intellectual diversity on campus.
- Fostering respectful dialogue between faculty, students, and administrators—regardless of their political and religious beliefs.
- Allowing students to question and test received wisdom and to put forward controversial and unpopular opinions without fear of academic consequences.

But universities often deny students and faculty their fundamental rights—and thus fail in their educational missions.

That's why we're dedicating this issue of *Governance* to First Amendment rights on North Carolina's campuses.

■ Jenna A. Robinson



"Chicago Principles": A Step to Retain and Restore Free Speech

Jane S. Shaw

At last there is a concrete way for a college or university to uphold free speech. That is to agree to the "Chicago Principles."

The principles are found in a statement issued by the University of Chicago early this year. The statement, or content modeled after it, has been adopted by a number of schools—including Purdue, Princeton, and Johns Hopkins. The faculty of American University and Winston-Salem State University in North Carolina have also endorsed it.

The "Chicago statement" stems from the fact that free speech—not only guaranteed by the Bill of Rights but also the hallmark of a marketplace of ideas—has been curtailed on many campuses, public and private. In the past few years schools have engaged in speech control with actions such as "disinviting" a speaker (Brandeis); firing a female professor for jokes that were deemed "sexual harassment" (Louisiana State University); and limiting free speech to tiny campus zones, with registration ten days beforehand required (University of Cincinnati)—to name a few.

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Courts have ruled many such restrictions as violations of the First Amendment (when conducted by public universities)—but they persist.

In July 2014, the University of Chicago's president created a Committee on Freedom of Expression, headed by University of Chicago law professor Geoffrey Stone. The committee was formed soon after a gay activist, Dan Savage, speaking at the school's Institute of Politics, used a term for transgendered person that a student found offensive. Students then petitioned the institute to "denounce and prohibit the use of transphobic slurs." Instead, the university created the committee.

The committee's statement, about two pages long, appeared last January. The statement emphasizes that "it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive."

It says that while the university "greatly values" civility, "concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community."

At the same time, the university does accept "narrow exceptions" to complete freedom of speech, and spells them out: speech that "violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the function of the University." The school can also "reasonably regulate the time, place, and manner of expression," the statement says.

The Foundation for Individual Rights in Education (FIRE), which fights for free speech through public exposure of violations and through court suits, has launched a campaign to persuade other schools to adopt language along the lines of the Chicago statement.

FIRE president Greg Lukianoff says that Chicago's statement "deserves to take a place alongside the

American Association of University Professors' famous 1915 'Declaration of Principles'"—and other famed defenses of free speech at universities over the past century. FIRE has even created a model template for such a statement of free speech principles. ■

FIRE Rates Universities on Free Speech

The Foundation for Individual Rights in Education (FIRE) examines university regulations and policies and rates them based on whether they restrict expression.

"Red light" institutions have at least one policy that both clearly and substantially restricts freedom of speech.

"Yellow light" institutions' policies restrict a more limited amount of protected expression or, by virtue of their vague wording, could too easily be used to restrict protected expression.

Universities receive a **"green light"** if their policies do not imperil free speech.

UNC System Institution Ratings



Appalachian State	Yellow
East Carolina	Red
Elizabeth City State	Yellow
Fayetteville State	Yellow
NC A&T	Yellow
NC Central	Red
NC State	Yellow
UNC Asheville	Yellow
UNC-Chapel Hill	Green
UNC Charlotte	Yellow
UNC Greensboro	Red
UNC Pembroke	Yellow
UNC Wilmington	Yellow
UNC School of the Arts	Red
Western Carolina	Yellow
Winston-Salem State	Red

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Three Steps Forward for Student Rights

Jenna A. Robinson

Freedom of expression in North Carolina increased this summer when UNC-Chapel Hill became a “green light” school—a sign that it is no longer inhibiting free speech. UNC-Chapel Hill eliminated all of its speech codes, earning the highest rating of the Foundation for Individual Rights in Education (FIRE).

With assistance from FIRE in revising its policies, UNC-Chapel Hill became the only “green light” school in North Carolina and the 21st in FIRE’s national database.

FIRE began working with the UNC-CH administration in April 2014, when the school had two “yellow light” speech codes remaining. UNC revised the first, which limited distribution of student flyers in residence halls. The university then eliminated its ban on speech that “disparages” another person.

While UNC-Chapel Hill is the only school in the system with a “green light” rating from FIRE, Winston-Salem State’s faculty recently voted to adopt the “Chicago Principles” for free speech (see “Chicago Principles”: A Step to Retain and Restore Free Speech). So far, no school in the system has fully adopted them.

Two other recent changes provide hope that constitutional expression will be protected on campuses in North Carolina.

Until recently, a lack of clear policies on the First Amendment rights of student groups could lead to legal woes for students in groups prevented from carrying out their legitimate missions. In 2003, for example, UNC-Chapel Hill attempted to prevent a Christian fraternity from choosing members based on belief—but was stopped by a federal judge’s injunction.

Both the North Carolina General Assembly and the UNC Board of Governors moved to correct the problem last year. Both bodies voted to protect the rights of



religious student groups by allowing them to restrict a group’s leadership to those students who agree with the group’s faith or mission. The UNC Board of Governors approved a policy protecting student groups at all 16 UNC institutions. Almost simultaneously, the General Assembly passed Senate Bill 719, sponsored by Senator Dan Soucek, which codified those protections in North Carolina law.

The General Assembly also protected students’ due process rights. Following a controversy at UNC Wilmington, legislators passed the Student and Administration Equality (SAE) Act, which allows UNC system students to hire lawyers when they face misconduct charges on campus. The student can have an attorney or “non-attorney advocate” in student conduct matters, according to the 2013 law. The law doesn’t apply to academic misconduct cases or if students choose to have their case heard by a student-led conduct board.

These changes represent important progress in North Carolina! But there is a long way to go. Eliminating speech codes at the remaining 15 universities and adopting the Chicago principles system-wide are the logical next steps to protect students’ rights. ■

Do You Agree?

“This institution will be based on the illimitable freedom of the human mind. For here we are not afraid to follow truth wherever it may lead, nor to tolerate any error so long as reason is left free to combat it.”

Thomas Jefferson,
on the founding of the University of Virginia

The goal of this newsletter from the Pope Center is to help university trustees and governors to be more effective leaders in higher education.

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