



## “Congress shall make no Law...”

By Deborah D. Thornton

### *The First Amendment to the U.S. Constitution:*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Having the right to Freedom of Speech, as codified in the First Amendment to the U.S. Constitution, is fundamental to being American. Yet on our college campuses, places where scholars would argue that freedom of speech should be most fully exercised, freedom of speech is often most limited.

The Foundation for Individual Rights in Education (FIRE), a non-profit, non-partisan organization, defends and sustains “individual rights at America’s colleges and universities.” The “core mission is to protect the unprotected and to educate the public and communities of concerned Americans about the threats to these rights on our campuses and about the means to preserve them.”<sup>1</sup> Their analysis of speech codes and free speech limitations at 390 colleges and universities nationwide shows that 67 percent have policies which “seriously infringe” on students’ free speech rights.<sup>2</sup>

FIRE has awarded all three of the Regent schools, the University of Iowa (U of I), Iowa State University (ISU), and the University of Northern Iowa (UNI), “Red-Light” characterizations for their policies limiting free speech on campus.<sup>3</sup>

A college earns a red-light ranking by having at least one policy that “both clearly and substantially restricts freedom of speech” by “unambiguously” infringing on “protected expression.”<sup>4</sup> Examples of areas where the Regent schools have earned “red” rankings include their harassment and Internet usage policies. Both ISU and the U of I have earned “yellow” rankings for their establishment and use of “Free Speech Zones.” The problem with official Free-Speech Zones is that by definition free speech is prohibited in all places on campus that are outside of the free speech zone.

However, the students at ISU in Ames are working aggressively to overturn this policy and to advocate for their free-speech rights on campus by circulating a petition calling for the elimination of the free-speech zones.<sup>5</sup> The students cite the four-part Supreme Court standard for restraint of free speech, including the requirements that the government “narrowly tailor” any limitations, prove the necessity of prior restraint, and that restrictions be both content and viewpoint neutral. The petition argues that this is not the case on the ISU campus because most limitations specifically apply to religious or political speech and that by establishing free-speech zones the administration is in effect broadly limiting speech.

On Thursday, April 7, students at ISU held the eighth annual “First Amendment Day” rally. It featured Pulitzer Prize-winning reporter, Joe Mahr, from the *Chicago Tribune*, speaking

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A Publication of: **Public Interest Institute at Iowa Wesleyan College**

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on “Watchdog Journalism in the 21st Century.” They planted a “Liberty Tree” in a ceremony attended by Provost Elizabeth Hoffman. There were also old-fashioned soapbox debates, where students spoke on public policy topics of interest to them, declaiming their opinions and debating with all comers.<sup>6</sup>

Adam Kissel, Vice President of Programs for FIRE, who spoke at First Amendment Day, said the response to free speech which one does not like or does not agree with is not the limiting of that speech, but “more speech, better speech.” Kissel advocated for increased public discourse on controversial topics and for all Americans, not just students, to read, research, and learn about topics that interest them. He further argued that in effect, more Americans need to grow backbones and defend themselves – not trust the government and speech codes against such things as “hate speech” and “harassment” speech. Interestingly, this was just the week before the free speech problems at the University of Iowa.

As examples of poorly crafted policies he noted that the ISU harassment policy prohibits repeated “unwelcome flirting” and inappropriate “put-downs” without clearly defining what might constitute these behaviors. The U of I prohibits “staring” as part of their sexual harassment policy, as well as “unwanted” statements about one’s clothing or personal life. In the area of internet policy, the prohibition of unwanted “junk” or advertising emails by ISU is considered a “yellow” light issue, while at UNI there are specific prohibitions against unwelcome communications such as chain letters, earning them a “red-light” designation. While many people find chain letters annoying – the free-speech response is not for the school or government to prohibit them, but for the receiver to tell the person to stop, put the sender’s e-mail address in their spam folder, and to not open them.

One issue on university campuses is that the student is generally under the control of the university on a 24/7 basis. The student eats, sleeps, studies, and works in a situation where these policies have the potential to impact their life at all times, both on campus and off.

According to Supreme Court Justice Robert Jackson in *West Virginia v. Barnette* (1943) the First Amendment ensures that “no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or force citizens to confess by word or act their faith therein.”

#### (Endnotes)

<sup>1</sup> Mission Statement, Foundation for Individual Rights in Education, <<http://thefire.org/about/mission/>> accessed on April 6, 2011.

<sup>2</sup> “Spotlight on Speech Codes 2011: The State of Free Speech on Our Nation’s Campuses,” Foundation for Individual Rights in Education, <<http://thefire.org/code/speechcodereport/>> accessed on April 11, 2011.

<sup>3</sup> “Spotlight: The Campus Freedom Resource,” Foundation for Individual Rights in Education, <<http://thefire.org/spotlight/states/IA.html>> accessed on April 11, 2011.

<sup>4</sup> “Using Fire’s Spotlight,” Foundation for Individual Rights in Education, <<http://thefire.org/index.php/article/5823.html#red>> accessed on April 6, 2011.

<sup>5</sup> ISU Journalism Circulates Petition on Free Speech Zones, First Amendment Day, Iowa State University, <<http://fad.jlmc.iastate.edu/2011/04/07/isu-chapter-of-spj-circulates-petition-on-speech-zones/>> accessed on April 11, 2011.

<sup>6</sup> “First Amendment Day 2011 Activities,” Greenlee School of Journalism and Communication, Iowa State University, <<http://www.jlmc.iastate.edu/event/2011/04/03/first-amendment-day-2011-activities>> accessed on April 11, 2011.

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