

November 11, 2010

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Kenneth Magee, Director  
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Via Email and U.S. Mail

Re: DPS Trespass Policy

Dear President Coleman and Chief Magee:

We write to you as representatives of the University of Michigan's undergraduate chapter of the American Civil Liberties Union about the Department of Public Safety's trespass policy and procedural order. DPS's management of Andrew Shirvell's inflammatory speech and behavior is alarming and demands review and eventual reform of the current trespass policy. As students at the University of Michigan, we understand and respect DPS' distinct and crucial responsibility to protect campus safety. However, the current policy must be amended in order to more specifically spell out under what circumstances a trespass warning may be issued. The current policy's subjectivity allows too much room for abuse and the suppression of free speech and assembly.

The DPS Policy and Procedural Order on Trespass (5.55) must be re-written in a more narrow fashion to protect students without interfering with the First Amendment's protection free speech and assembly. Current policy delegates the power to issue a trespass warning to DPS officers if, amongst other violations, an individual, "Disrupts the operations and lawful functions of the University or...demonstrates a risk of physical harm or injury to others or property." This policy allows officers excessive discretion in deciding what is or is not "disruptive". This vagueness unnecessarily creates room for a DPS officer to overstep his/her legal authority and restrict speech protected by the First Amendment. The policy also effectively dissuades individual free expression for fear of receiving a trespass warning.

If DPS is to ban an individual from campus for life and effectively eliminate his/her ability to protest on University grounds, it must be DPS's responsibility to provide a complete and legally admissible justification for this serious punishment. Additionally, if the individual banned from campus chooses to appeal the punishment, he/she must be able to do so in front of a board or administrator independent from DPS. Current policy

now states that an individual may appeal the warning “by appointment with the Director of the Department of Public Safety.” However, an appeal to the same body that issued the punishment is not protection enough for the individual. The appeals process must be reformed in order to give the individual a meaningful opportunity to challenge the merits of the punishment.

We, along with the rest of this campus, have been shocked and disturbed by Andrew Shirvell’s repugnant, anti-gay statements and signs. Discrimination against the LGBT community or any community must always be taken seriously and we, as a University community, must respond appropriately and with great thought. Nonetheless, the First Amendment intentionally and necessarily defends Shirvell’s offensive and appalling speech. Our Constitution gives a citizen the right to be a bigot and to freely express his bigotry.

The ban of objectionable speech is unconstitutional and not in the spirit of the University’s pursuit of academic freedom. It is true that if a court decides that an individual’s speech or conduct is a true threat, stalking, or harassment, the First Amendment no longer shields his or her speech. However, AnnArbor.com reported on October 28 that the Washtenaw County Prosecutor’s Office has declined to charge Shirvell with any criminal offense, writing that, “The only fair review of Mr. Shirvell’s statements is that they are offensive and mean-spirited.” Michigan Student Assembly President Chris Armstrong has also retracted his request to the Washtenaw County Court for a Personal Protection Order. Regardless of how offensive or mean-spirited Shirvell’s statements may be, DPS must not ban a person from campus solely for his speech.

We call on the University of Michigan and the Department of Public Safety to act quickly and thoughtfully to amend its Policy and Procedure Order on Trespass (5.55) in order to more explicitly protect the First Amendment rights to free speech and assembly. These fundamental rights deserve special protection in any community and especially our dynamic University community that is built on the free exchange of ideas. The new policy must include objective, narrow standards about when a trespass band can be issued, for how long, and for what parts of campus. Further, the new policy should establish an independent appeals process. We request the opportunity to review and comment on a draft of the proposed policy update. Additionally, while we acknowledge and applaud that the majority of the trespass warning read to Andrew Shirvell on Sept. 14 has been lifted, we call on the Department of Public Safety to remove the remaining restrictions on Shirvell’s constitutional right to free speech.

Thank you for your attention to this critical issue. We look forward to your response.

Very truly yours,

Mallory Jones and Bennett Stein, ACLU-UM Undergraduate Chapter

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