



## Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106  
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

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September 23, 2011

Dana L. Gibson  
President, Sam Houston State University  
The Office of the President  
Box 2027  
Huntsville, Texas 77341

*Sent via U.S. Mail and Facsimile (936-294-1465)*

Dear President Gibson:

As you can see from our list of Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, voluntary association, religious liberty, and freedom of speech on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the decision of a Sam Houston State University (SHSU) campus police officer to censor students' expression on a "free speech wall" on campus. The police had been called because a professor had used a box cutter to cut out the word "fuck" from a portion of the wall that had read "FUCK OBAMA." Instead of charging the faculty vandal, the police officer demanded that the wall's student organizers remove such profanity from the wall or else be charged with a crime.

This is our understanding of the facts; please correct us if you believe we are in error.

Yesterday, on September 22, 2011, four SHSU student organizations cosponsored the display of a "free speech wall" in order to protest against a new, controversial SHSU policy on social media. The four groups—SHSU Lovers of Liberty, Bearkat Democrats, Sam Houston Democratic Socialists, and College Republicans—stated on the Facebook page for the event, "Come exercise your freedom of speech by writing whatever you want on the wall and sign the petition to let the university know we never want this policy to go into effect!!" The students had received permission from SHSU to erect the wall.

Many students wrote a variety of political and other messages on the wall, including "don't hate against Gays ...," "If you make less than \$200,000 Republicans don't care about you," "God so loved the world He sent His one and

only son ...,” “Best thing I’ve ever seen at this raggedy school!!!,” “Life’s not a bitch, Life is a beautiful woman ...,” “Han Solo Shot First,” “My boyfriend is a liar!,” “Legalize Weed!!!,” “NAZI PUNKS FUCK OFF!!!,” and “FUCK OBAMA.” In response to “FUCK OBAMA,” others continued the conversation. One person wrote “BUSH” under “OBAMA.” Another added “you,” apparently to signify saying “fuck you” to the person who had written “FUCK OBAMA.”

According to a statement to police filed yesterday by SHSU Lovers of Liberty President Morgan Freeman, at about 1:30 pm SHSU Professor of Mathematics Joe E. Kirk demanded that the student organizers cover up the part of the wall that read “FUCK OBAMA.” Then, per Freeman’s statement to police, Kirk took action when the students refused to accede to his demand for censorship:

When we refused he told us he would bring a box cutter down and remove it himself. He left and returned a few minutes later and cut (with a box cutter) out the “fuck” part.

Photos of the wall show that Kirk did not cut out any of the other words from the wall, including any other instances of “fuck” or other profanity.

According to Freeman’s police report, the students then notified SHSU Lovers of Liberty faculty adviser Kenneth E. Hendrickson III about Kirk’s vandalism, who notified one of the SHSU deans, who in turn advised the students to call the police because Kirk had used a box cutter to vandalize the wall. The students did so. A SHSU Police Department officer interviewed the students and then Kirk. Following his interview with Kirk, the officer returned to the students and informed them that they must either cover up all of the profanity on the wall or take down the wall altogether. According to Freeman’s statement, the students refused to engage in censorship and therefore felt forced to take down the entire wall:

We decided if we were not really free to exercise our freedom of speech, then there was no point in having a free speech wall. So we removed the paper, and then disassembled the wall, packed it up and left.

Later that day, as reported by SHSU student newspaper *The Houstonian*, University Police Department Deputy Chief James Fitch stated that because Kirk was “offended by the use of the profanity,” its use “qualified it as disorderly conduct, a misdemeanor.”

Let us be clear: While the content in question—various uses of an expletive to make political and other points—might offend members of the campus community, it is unquestionably protected expression under the First Amendment. The principle of freedom of speech does not exist to protect only non-controversial speech; indeed, it exists precisely to protect speech that some members of a community may find controversial or “offensive.” The Supreme Court stated in *Texas v. Johnson*, 491 U.S. 397, 414 (1989) that “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” Similarly, the Court wrote in *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) that “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”

As a public university, SHSU cannot lawfully ban “four-letter words,” no matter how offensive some may find them. The landmark Supreme Court case *Cohen v. California*, 403 U.S. 15 (1971) made clear that the First Amendment protects shocking or offensive expression, including the use of expletives in the communication of core political speech. In *Cohen*, the Supreme Court overturned the conviction of a man for wearing a jacket emblazoned with the words “Fuck the Draft” in a county courthouse. The Court held that the message on Cohen’s jacket, however vulgar, was protected speech, writing that “one man’s vulgarity is another’s lyric.” Similarly, in *Papish*, the Court determined that a student newspaper article entitled “Motherfucker Acquitted” was constitutionally protected speech. Indeed, the Supreme Court has held that the Constitution protects many kinds of expression arguably much more offensive than what was printed on the free speech wall.

Further, editorial comments about political figures such as President Obama or President Bush—even when they include “offensive” language—are a mainstay of America’s long tradition of impassioned political dialogue. In *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964), the Supreme Court made clear that honoring the First Amendment requires that “[d]ebate on public issues should be uninhibited, robust, and wide-open, and ... may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” Similarly, in *Rankin v. McPherson*, 483 U.S. 378 (1987), the Court found that the First Amendment protected a deputy county constable’s expressed hope that if another attempt were to be made on President Reagan’s life, that it be successful. If such a statement constitutes protected speech, surely, then, the speech at issue on SHSU’s campus does as well.

No campus that claims to take seriously the free speech rights of students may censor them or their display because others on campus felt offended by fully protected speech. The fact that a single professor chose to respond with vandalism does not cause the speech to be unprotected as either “fighting words” or “disorderly conduct.” Such a standard would enact an impermissible “heckler’s veto” on SHSU’s campus, in which all a person need do to silence someone else’s speech is to act destructively or violently. The faculty vandal committed an offense, and the police officer should have acted to protect the First Amendment rights of SHSU’s own students, not to make unconstitutional demands because of one unreasonable person’s act.

We hope to see this matter resolved with respect for the principles of freedom of speech. This matter is urgent because the students involved and others are likely to want to continue protesting against the social media policy in the language they see fit. For this reason, please respond to us by Saturday, September 24, 2011. You may reach me via email at [adam@thefire.org](mailto:adam@thefire.org).

I look forward to hearing from you.

Sincerely,



Adam Kissel

Vice President of Programs

cc:

Kevin H. Morris, Chief and Director, University Police Department

James Fitch, Deputy Chief, University Police Department

John Yarabeck, Dean of Students

Kenneth E. Hendrickson III, Faculty Adviser, SHSU Lovers of Liberty

Morgan Freeman, President, SHSU Lovers of Liberty

Adam Robinson, Co-Chair, Sam Houston Democratic Socialists

Cristan Shamburger, President, Bearkat Democrats of SHSU

Trey Williams, SHSU College Republicans