

## Appellate court rules Temple University's former speech code unconstitutional

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August 7, 2008

**PENNSYLVANIA** — The 3rd U.S. Circuit Court of Appeals upheld a [decision](#) Monday by a federal district court that Temple University's former anti-harassment code was unconstitutional.

Alliance Defense Fund attorneys for Christian DeJohn, a former Temple graduate student and sergeant in the Pennsylvania Army National Guard, filed the [lawsuit](#) in February 2006.

DeJohn's suit challenged the constitutionality of a sexual harassment policy that, in part, penalized "expressive, visual or physical conduct ... (that) has the purpose or effect of unreasonably interfering with an individual's work, educational performance or status, or ... has the purpose or effect of creating an intimidating, hostile or offensive environment." DeJohn claimed that because of the code, he felt unable to freely express his views about the role of women in the military.

DeJohn challenged the code as "vague and overbroad." While the case was pending, Temple changed its speech code in January 2007.

In April 2007 a federal judge barred the university from re-implementing its former code and awarded DeJohn \$1 in nominal damages. Temple appealed the ruling on two of the counts that favored DeJohn. Several free-speech organizations, including the Foundation for Individual Rights in Education and the Student Press Law Center, among others, filed a friend-of-the-court [brief](#) in support of DeJohn.

"The District Court properly decided that appellant's former policy was unconstitutional, and that the policy, if permitted to stand, would abridge Temple students' right to free speech and contribute to the nationwide problem of censorship on campus," the brief said.

Monday's ruling came after Temple argued its case in April. The Third Circuit agreed with the district court that the harassment policy was flawed because it outlawed speech based on the speaker's purpose or intent, even if the speech actually had no disruptive effect on school operations. The court also found that prohibiting speech merely because it is "hostile" or "offensive" risked outlawing legitimate political speech on topics of public concern.

"Discussion by adult students in a college classroom should not be restricted," Judge D. Brooks Smith said in the ruling.

Although the ruling only affects courts in the 3rd Circuit, William Creeley, director of legal and public advocacy for FIRE, urged other jurisdictions to consider it in their decisions. Too many courts have equated free speech rights on college campuses with high schools, and universities should allow a free marketplace for discussion, Creeley said.

"Hopefully, other courts across the country will take [Monday's] ruling as real guidepost for restoring First Amendment rights," Creeley said.

DeJohn also initially claimed that he was refused a graduate degree based on his political views. He said he received anti-war e-mails from Temple faculty while deployed in Bosnia during 2002, which led to political disputes with his graduate advisers.

University officials claimed there was no retaliatory motive for refusing to grant DeJohn a graduate degree.

"In short, his academic performance just wasn't good enough," Temple's attorney Joe H. Tucker Jr. told the First Amendment Center in April 2007. "It had nothing to do with his First Amendment rights and had everything to do with Temple professors' academic freedom to grade a student's poorly written, poorly constructed ... thesis."

The district court earlier dismissed those elements of DeJohn's case, deferring to the university's academic freedom to evaluate his performance as a student. Those claims were not part of the Third Circuit appeal.

*By Liz White, SPLC staff writer*

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