



April 22, 2022

Jonathan G.S. Koppell  
Office of the President  
Montclair State University  
1 Normal Avenue  
Montclair, New Jersey 07043

*Sent via U.S. Mail and Electronic Mail (askpresident@montclair.edu)*

Dear President Koppell:

The Foundation for Individual Rights in Education<sup>1</sup> is concerned by reports that Montclair State University (MSU) prohibits student resident assistants from “making statements to media outlets that would reflect negatively” on the university. This practice of prior restraint violates students’ fundamental First Amendment rights. We request that MSU ease these restrictions and make clear to RAs that they may speak with the press in their individual capacities.

A recent editorial in The Montclarion student newspaper reports that, according to the position’s job description, “RAs must refrain from making statements to media outlets that would reflect negatively on the Office of Residence Life or Montclair State University.”<sup>2</sup>

While the university may properly regulate RA speech *on behalf* of the Office of Residence Life and may prevent RAs from sharing information made confidential under the law, the university may not regulate students’ ability to speak with the media about their personal experiences as RAs, including general trends of sexual harassment or assault, their gripes with the Office of Residence Life or the university, or any other matter.

Individuals, including students, who take employment roles at public institutions do not “relinquish First Amendment rights to comment on matters of public interest by virtue of government employment.”<sup>3</sup> Instead, they retain their right to speak as citizens on matters of public concern.<sup>4</sup> Thus, MSU’s practice of prohibiting RAs from “reflect[ing] negatively” on the

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<sup>1</sup> FIRE is a nonpartisan nonprofit dedicated to defending freedom of the press, freedom of expression, and other essential liberties on America’s college campuses.

<sup>2</sup> Montclarion Staff, *Editorial: Are ResLife Employees Being Silenced?* (Mar. 31, 2022), <https://themontclarion.org/opinion/editorial-are-reslife-employees-being-silenced>.

<sup>3</sup> *Connick v. Myers*, 461 U.S. 138, 140 (1983).

<sup>4</sup> *Bradley v. James*, 479 F.3d 536, 538 (8th Cir. 2007).

university threatens the expressive rights of student employees. In addition to being an unconstitutional, viewpoint-based restriction on RAs' expression,<sup>5</sup> a court would likely also find it overbroad and void for vagueness.

First, the policy fails to define what speech could “reflect negatively” on the university. This definition likely renders the policy overbroad on its face. A statute or law regulating speech is unconstitutionally overbroad “if it sweeps within its ambit a substantial amount of protected speech along with that which it may legitimately regulate.”<sup>6</sup> MSU's policy ignores that a great deal of speech one may characterize as “reflect[ing] negatively” on the university is nonetheless entitled to First Amendment protection.

Second, and relatedly, the regulation is unconstitutionally vague because it “fails to give adequate notice to people of ordinary intelligence concerning the conduct it proscribes” or “invites arbitrary and discriminatory enforcement.”<sup>7</sup> The policy's failure to define speech that “reflect[s] negatively” on MSU in any way that reaches only an objective, narrow range of unprotected speech gives university administrators unfettered discretion to punish a wide range of student expression on the basis that it may make the university look bad. Yet even insulting,<sup>8</sup> outrageous,<sup>9</sup> or offensive expression remains protected by the First Amendment, as “in public debate we must tolerate insulting, and even outrageous, speech in order to provide adequate ‘breathing space’ to the freedoms protected by the First Amendment.”<sup>10</sup> Attempts to prohibit insults or harsh criticism fail to apprise anyone of what speech is or is not permitted.

RAs must be able to speak about their personal experiences regarding matters of public concern, including personal experiences related to their work as RAs, even if that speech would lead some to see MSU in a negative light. The university's interest in a positive public perception is not a valid basis to restrict students' constitutionally protected expression.<sup>11</sup>

Accordingly, we request that MSU rescind this restriction and publicly clarify that RAs may speak with the media in their personal capacities as private citizens on matters of public concern, even if the comments reflect negatively on the university, provided they do not reveal information that is made confidential by law. We also request that MSU provide

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<sup>5</sup> Viewpoint discrimination is “an egregious form” of censorship and antithetical to the freedom of speech. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (“The Court has held that viewpoint discrimination exists even when the government does not target a narrow view on a narrow subject and instead enacts a more general restriction—such as a ban on all ‘religious’ speech or on all ‘offensive’ speech.”).

<sup>6</sup> *Doe v. University of Michigan*, 721 F. Supp. 852, 864 (E.D. Mich. 1989).

<sup>7</sup> *Schwartzmiller v. Gardner*, 752 F.2d 1341, 1345 (9th Cir. 1984).

<sup>8</sup> See, e.g., *Sagan v. Apple Computer*, 874 F.Supp. 1072, 1075 (C.D. Cal. 1994) (poking fun at Carl Sagan by calling him a “Butt-Head Astronomer” was protected speech).

<sup>9</sup> *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 54 (1988) (holding parody advertisement depicting a minister in a “drunken incestuous rendezvous with his mother in an outhouse” was protected speech, and noting that the “political cartoon is a weapon of attack, of scorn and ridicule and satire . . . as welcome as a bee sting”).

<sup>10</sup> *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (cleaned up).

<sup>11</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good taste—on a university campus may not be shut off in the name alone of ‘conventions of decency.’”).

training to RAs regarding their First Amendment rights, including their right to speak with the media.

We appreciate your attention to our concerns and request a response to this letter by Friday, May 6, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "Sabrina Conza". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sabrina Conza  
Program Officer, Individual Rights Defense Program

Cc: Jeanine Stroh, Executive Director of Residence Life  
Mark J. Fleming, University Counsel