



October 15, 2024

Ken Hush  
President's Office  
Emporia State University  
1 Kellogg Circle  
Campus Box 4001  
Emporia, Kansas 66801

*Sent via U.S. Mail and Electronic Mail (khush@emporia.edu)*

Dear President Hush:

FIRE<sup>1</sup> is concerned by Emporia State University's "Free Expression" policy, which states: "No free expression activities may occur inside any University building, arena, or stadium."<sup>2</sup> Maintaining this overbroad and vague policy unduly burdens student speech and contravenes ESU's obligation as a public university to abide by the First Amendment.<sup>3</sup> FIRE urges ESU to immediately revise this policy to ensure students can freely express themselves in a non-disruptive manner in all areas on campus.

Speech regulations are unconstitutionally overbroad when they sweep within their ambit not only speech they may legitimately regulate but also a substantial amount of protected expression.<sup>4</sup> Such a policy is impermissibly vague when it fails to give persons of ordinary intelligence the reasonable opportunity to know what is prohibited so they may act accordingly.<sup>5</sup> Here, the policy's failure to define "free expression activities" chills student

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<sup>1</sup> As you may recall from prior correspondence, the Foundation for Individual Rights and Expression defends freedom of expression, conscience, and other individual rights on America's university campuses. You can learn more about our mission at [thefire.org](http://thefire.org).

<sup>2</sup> *Free Expression*, Location, EMPORIA STATE UNIV. (approved Aug. 6, 2019), <https://sites.google.com/g.emporia.edu/student-handbook/free-expression> [<https://perma.cc/JE2R-Q35X>].

<sup>3</sup> *Healy v. James*, 408 U.S. 169, 180 (1972) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'" (internal citation omitted).

<sup>4</sup> *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973).

<sup>5</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

expression both by sweeping in a great deal of potential student speech ESU is legally bound to protect, and by failing to give students sufficient notice of what expression may be prohibited.

For example, if a student walked into a university building wearing a T-shirt with the phrase “Black Lives Matter”—or, instead, “Build the Wall”—would they be subject to sanction under this policy? Wearing such a shirt is certainly an expressive exercise. What about having a casual debate with a friend at a university football game about whether athletes should kneel for the National Anthem? What if a student were to write a poem while in the library, or sketch a picture while in the dining center? Untethered to any definition, this policy can be used to punish this kind of clearly protected expression.

While ESU has a legitimate interest in preventing “material and substantial interference” with institutional events or operations, this policy impermissibly bars *all* free expression in indoor areas, regardless of its disruptive effect, and is therefore unconstitutional.<sup>6</sup>

To meet its First Amendment obligations, ESU must promptly revise this policy by clarifying that only substantially disruptive speech in university buildings, arenas, and stadiums is prohibited. For example, the policy could say:

Activities and events in university buildings, arenas, and stadiums may not:

- Impede academic, administrative, or commercial operations;
- Obstruct building entrances or exits or otherwise impede vehicular or pedestrian traffic on campus; or
- Occupy reserved spaces, classrooms, offices, or other areas in a manner that materially and substantially disrupts or prohibits university academic, administrative, or business functions.

There are a variety of ways to permissibly regulate expressive activities in these areas, and FIRE would be happy to assist ESU in this endeavor free of charge in accordance with our charitable mission. We request a response to this letter no later than October 29, 2024.

Sincerely,



Haley Gluhanich  
Senior Program Officer, Campus Rights Advocacy

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<sup>6</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969) (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)). In university contexts, the protections *Tinker* established set the floor for student expressive rights—not the ceiling.