

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PATRICIA SIMPSON AND ROBERT
WOJICK,

Plaintiffs,

v.

PAUL YU, IN HIS INDIVIDUAL CAPACITY AND AS
PRESIDENT OF THE STATE UNIVERSITY OF NEW

YORK COLLEGE AT BROCKPORT, ADRIENNTj 7.92 0 Td (N).76 0 Td (A)T.76 0 T3 (S)Tj 6 0 Td (

Introduction

1. This case arises from scas

6. At the same time defendants' regulations would penalize protected student speech, they also seek to unlawfully compel students to mouth the views of the college's administration on a variety of broad issue

17. Plaintiffs have refrained from speaking out on a variety of topics so as to avoid possible punitive action by the defendants. And, as described below, they have been directly threa

29. At all relevant times, Defendants were acting within the scope of their authority and under the color of state law.

30. At all relevant times, Defendants have acted pursuant to the official policies, practices and customs of SUNY Brockport, as set forth herein.

31. Defendants are being sued in their official capacities for prospective injunctive relief only. They are being sued for damages in their individual capacities only.

Jurisdiction and Venue

32. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1367, and 2201 and 42 U.S.C. §§ 1983 and 1988.

33. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b).

STATEMENT OF FACTS

A. SUNY Brockport Is a Public Institution Bound by the Federal And State Constitutions.

34. SUNY Brockport is an educational institution established under the laws of New York. As a public institution, SUNY Brockport is a part of the government of the State of New York. It is therefore bound to obey and abide by the Constitution of the State of New York and the United States Constitution.

35. Specifically, SUNY Brockport and its agents, including Defendants, are bound by the Free Speech Clause of the First and Fourteenth Amendments to the United States Constitution and Article I, Section 8 the New York State Constitution. These

provisions prohibit agents of the State from abridging the right of the citizens of New York - including students at SUNY Brockport - to the free expression of their views.

36. These rights afforded to the citizens of the United States and the State of New York are fundamental. They are not, and cannot be, diluted or restricted because they hinder the plans of college administrators to establish an “atmosphere” free of discomfort or controversy. Nor can these rights be diluted or restricted under the guise of prohibiting unlawful conduct that is distinct from speech, such as violence or true harassment.

37. Indeed, it is critical to the educational experience that students be allowed to exercise fully their rights of free speech and expression, including speech and expression with respect to controversial and “uncomfortable” topics of the day.

B. The SUNY Brockport Speech Code

38. In disregard of their legal obligations to their students and faculty, Defendants have implemented and enforced certain rules and regulations which constitute severe, unlawful restrictions on students’ freedom of speech.

39. SUNY Brockport regularly promulgates numerous rules and regulations governing and regulating most aspects of student conduct. These rules and regulations cover academics, residential life, and extra-curricular activities.

40. The rules and regulations governing SUNY Brockport students are set forth in several College publications:

The compendium of rules and regulations entitled “*Your Right to Know & Academic Policies Handbook*”;

SUNY Brockport Student Code of Social Conduct;
The SUNY Brockport Undergraduate Catalog;
The SUNY Brockport Graduate Catalog;
The Office of Affirmative Action Policies and Laws;
The SUNY Brockport Faculty/Staff Handbook, and;
Other written policies issued by the College.

41. Throughout these governing instruments are included rules and regulations that unlawfully restrict and abridge the fundamental right of SUNY Brockport students to free speech and expression. First, these rules and regulations include broad, undefined prohibitions on free expression. Second, the rules and regulations contain content- and viewpoint-based prohibitions on speech dealing with controversial topics, such as race or gender. Third, the rules and regulations compel students to espouse and articulate the views of the College on certain issues, regardless of whether they agree with those views. Each of the foregoing is a violation of students' fundamental rights.

42. Defendants threaten students with a wide range of disciplinary actions for violations of the SUNY Brockport Speech Code. Students may suffer punishment ranging from placement on "probationary status," to suspension from the College residence halls, to suspension or expulsion from the College.

43. Any of these punishments would deleteriously affect a student's academic record, including her prospects for admission to graduate schools and her prospects for future employment. Thus, Defendants effectively coerce students, including Plaintiffs, to limit or restrict the expression of their views.

i. General Limits On the Exercise of Free Speech

44. Throughout the rules and regulations governing the conduct of SUNY Brockport students and faculty are provisions providing for broad, ill-defined, or undefined restrictions on student's fundamental right of free speech and affirming the College's power to restrict or punish speech that is not deemed "responsible."

45. One egregious restriction appears in the College's so-called "Better Community Statement," (the "BCS").

46. The BCS was adopted by SUNY Brockport Faculty Senate in 1994. According to the SUNY Brockport Faculty/Staff Handbook, the Faculty Senate is charged with proposing to the Chief Administrative Officer of the College policies relating to academic and professional activities at the SUNY Brockport. According to the Faculty Bylaws, the Faculty Senate "shares, with other units of the College, responsibility to formulate, review, revise, and adopt for recommendation to the Chief Administrative Officer, policies" having to do with a wide range of issues concerning the co

individual rights are expressed only with responsible and careful regard for the feelings and sensitivities of others.” (emphasis provided).

53. Neither in the BCS nor elsewhere do Defendants explain how students are to assess the “feelings and sensitivities of others” prior to speaking, which other persons constitute the “others” whose sensitivities must be safeguarded, or what constitutes “responsible and careful regard” for those sensitivities.

54. Plaintiffs desire to speak on controversial issues of the day and to express what they believe are compelling arguments on those issues. They do not want to - and should not have to - curtail their expression out of fear that a staff person or faculty member may decide that it is not “responsible” or that it does not adequately cater to the “feelings and sensitivities” of others.

55. Having limited students’ speech to that which is deemed “responsible” and expressed with “careful regard” to others’ “sensitivities,” the BCS further sets forth a host of values and beliefs that students must hold. These presumably constitute “responsible” beliefs - approved of and mandated by SUNY Brockport - the expression of which would not violate the BCS.

56. The BCS affirms that students must “challenge and reject all forms of bigoted ^{all forms of} ~~bigot~~ ^{sit} ~~is~~.”

58. The BCS affirms that students must “celebrate our differences.”

59. The BCS affirms that Brockport students must “value an inclusive environment that is accepting of each other’s cultural, physical, cognitive, social and professional differences.”

60. The BCS requires that students “as members of smaller groups on campus, respect and affirm the transcendent values and principles of the overall College community.” Those values and principles, to which students are required to express their loyalty, are not defined.

61. In mandating the values that students must “celebrate” “affirm” uphold” “respect,” the BCS inherently censors speech critical of these values. For example, by mandating that students “celebrate” differences, the BCS inherently and inevitably precludes speech that would derogate such differences. By mandating that students

“respect and affirm the transcendent values” of the “overall College (a)Tj 5 28 0 Td (n)Tj 6 0 Td (d)Tj Td (h

the rights and interests of those students. The Faculty/Staff Handbook contains, among other provisions, sections governing the “Student Bill of Rights” and a policy on “Discriminatory Harassment,” each of which is discussed below.

64. The Handbook contains a chapter enti

68. In addition to imposing sweeping, undefined restrictions on free speech, SUNY Brockport policies also target for punishment speech on specific subjects that are likely to cause controversy or “discomfort,” issues such as gender and race. On these topics, student are permitted to speak freely only to the extent that their views coincide with those of the College. Such content-based and viewpoint-based restrictions are clearly unconstitutional.

a. **Protected Speech Banned As “Harassment”**

69. SUNY Brockport prohibits discrimination

73. In each iteration, however, “verbal conduct,” *i.e.*, speech, is included within the scope of the definition of illegal harassment.

74. Because SUNY Brockport is a public institution, and because its proscription against harassment extends to speech and not merely conduct, it is critical for its anti-harassment policies to make clear that speech protected by the Federal and State Constitutions are not restricted, and that the prohibition on harassing conduct is in accord with existing law.

75. SUNY Brockport’s policies provide no such assurances and have no such limits. On the contrary, the policies

78. For example, Chapter 285 of the Faculty/Staff Handbook, entitled “Discriminatory Harassment” defines “Racial harassment” as follows:

a statement, action, or series of statements or actions designed to designed to [sic] derogate a person or class of persons because of their ethnic heritage. Examples of racial or national origin harassment can include ethnic jokes, racial or ethnic slurs, or even physical assaults.

79. Nowhere in the Faculty/Staff Handbook’s definition is there any requirement that the harassing conduct be unwelcome, that it be both objectively and subjectively offensive, or that it be sufficiently “pervasive or severe” as to affect the terms and conditions of a complainant’s education. Indeed, on its face, the policy would ban a solitary joke or comment, a comment critical of a foreign country’s culture or custom, or a critical analysis of the history of a particular ethnic group. It would also ban virtually all parody, and a substantial amount of sharp argument.

80. Having defined “racial harassment” so broadly, the policy also makes clear that such conduct “will not be tolerated” and that “students found in violation of this policy shall be subject to the campus judicial system.”

81. Similarly, the College’s definition of sexual harassment diverges expressly from that established by law, and is intended to sweep in all manner of protected speech that causes “discomfort” to the listener. Although the definition of “sexual harassment” set forth in the Faculty/Staff Handbook more closely approximates that found in federal and state law, it nevertheless is deliberately drafted there and elsewhere more broadly and more vaguely, so as to encompass protected speech.

82. The College's sexual harassment policies also set forth "Examples of Inappropriate Behavior in an Anti-Discrimination and Anti-Harassment Environment." These examples clearly include constitutionally pr

94. For example, the policy sets forth a list of “Specific Examples of Prohibited Conduct.”

95. The policy forbids: “Making a suggestion or otherwise intimating that an act to injure persons or property is ‘appropriate.’” The policy does not require that the “suggestion” or “other intimation” be made with the intent to incite. Nor does it take into account the context in which such a suggestion might be made. On its face, the policy would prohibit and subject to punishment a wide range of protected speech.

96. Such suggestions or intimations might include, for example: (i) an academic debate of the morality of war; (ii) the need for violent revolution to overthrow the government; (iii) the appropriateness of assassinating terrorists or foreign leaders, or; (iv) the appropriateness of the death penalty in specific cases.

97. The policy also prohibits “verbal abuse” of any individual. “Verbal abuse” is not defined. Nor is there any requirement that the abuse be directly targeted at, or even articulated in the presence of, the “victim” of the “abuse.” Thus, the policy would, on its face, apply to an argument between students in which one or both sides employs arguments *ad hominem*, a speech harshly critical of President Yu, or any other speech that subjects an individual or individuals to unwelcome criticism. In the absence of any definition of, or limit on, “verbal abuse” no student can be assured that critical speech concerning an individual is compliant with the policy.

98. The policy also contains a list of “warning signs of violence” that would encompass much constitutionally protected expressive conduct. These “warning signs” include:

challenging rules or authority;
using an angry tone;
shouting;
making unreasonable demands;
angry looks or staring.

99. These so-called “warning signs” include purely expressive speech, which may be entirely unrelated to any violent conduct.

100. Such “warning signs” may expose a student or other person to immediate punitive action, even absent further speech or conduct, because the “zero tolerance” policy emphasizes the importance of rapid and immediate response to potential violations of the policy.

101. Nor does the policy provide any comfort to students or other covered parties that it is intended to be read narrowly. Indeed, that the policy is cast as one of “zero tolerance” indicates that it will be broadly enforced.

102. SUNY Brockport has every right to ban violence from campus. But it has no right under the Federal or State Constitutions to subject students and others to punishment for “using an angry tone” or “challenging authority.” Indeed, the College belittles and undermines the seriousness of real violence on campus by attempting to do so.

iii Compelled Speech and Belief

103. In addition to prohibiting a variety of protected speech, Defendants also purport to *compel* students to make statements and express views concerning “harassment” and other issues which mirror the administration’s views on these subjects.

104. SUNY Brockport’s policies on “discriminatory harassment” compel student speech.

105. Although different people of intelligence and goodwill may have different views as to the appropriateness of words and c

110. Students or other members of the “college community” may have different views of what constitutes “harassment.” For example, some members of the community may disapprove of sexual harassment, but may believe that a specific allegation of harassment may be false.

students “celebrate” differences of all kinds. This criterion of the policy cannot be satisfied absent some form of speech or expressive conduct.

115. The College does not allow that students may differ in their opinion as to what constitutes “bigotry.” and their reaction thereto. Students, including Plaintiffs, may wish to engage in critical inquiry of new and different viewpoints, rather than dismiss them with a label, followed by College-mandated “rejection.”

116. Nor does the policy allow that students may not wish to “celebrate” all of their differences. Students may believe that some differences are worthy of celebration, while holding that other differences are destructive or divisive and should be overcome. Still other students may view differences as marginal, unworthy of condemnation or celebration or, for that matter, attention.

117. The BCS deprives students of the right to hold and express these alternative viewpoints. In lieu of free and open debate, it substitutes mandatory “rejection” of certain values and mandatory “celebration” of others.

C. The Chilling of Plaintiffs’ Free Speech Rights.

118. Plaintiffs hold conservative views on many issues, which conflict with the prevailing ideology of the administration of SUNYITd (i)Tj 3.36 0p (d)Tj 6 0 Td (a)Tj 5.28 0 Td (t)Tj 3Td (

119. Plaintiffs fear that, unless they curtail the expression of their views, they would be subject to prosecution under the SUNY Brockport Speech Code. As a direct result of the SUNY Brockport Speech Code, Plaintiffs have censored themselves while on campus.

120. For example, Plaintiff Patricia Simpson has consciously refrained from expressing her views on matters concerning race and gender in various political science and communications classes in which she is enrolled. In one instance, Ms. Simpson censored her views on the proposed Equal Rights Amendment (ERA), in a discussion that occurred in her Political Rhetoric class, which is part of her course of study in communications.

121. Ms. Simpson, who opposes the enactment of the ERA, was aware of the broad applicability of SUNY Brockport rules against “bigotry” and prejudice. Out of concern that her position could be misconstrued as “bigotry” or otherwise supportive of discrimination, she refrained from expressing her views on this important subject.

122. Plaintiff Robert Wojick also has refrained from expressing his views or has mouthed opinions in which he does not believe out of fear of punitive action by the College or its agents. In one instance, Mr. Wojick refrained from speaking his views in a class on Comparative Development, a political science class that explores the differences in economic and social development in different societies. Mr. Wojick was aware of the broad proscription imposed by SUNY Brockport on “discriminatory” language and “bigotry.” Fearful that comments critical of foreign cultures or societies could be construed as a manifestation of prejudice or “bigotry,” Mr. Wojick censored himself and expressed views that were less likely to result in punitive action.

123. The chilling effect caused by the SUNY Brockport Speech Code has been intensified by direct threats of punitive action made against the Plaintiffs by agents of the College.

124. For example, in 2003, Plaintiffs' organization, the SUNY Brockport chapter of the College Republicans, staffed an information table on the SUNY Brockport campus. The table displayed literature which promoted the views of the SUNY Brockport College Republicans, and which sought to draw the attention of potentially interested community members. The table was set up at the Student Union building, a location where many SUNY Brockport students congregate throughout the day. Plaintiff Patricia Simpson was one of several students staffing the table.

125. The literature displayed on the table included a brochure that criticized the liberal bias in the media, and among celebrities in the field of entertainment. In the sometimes brash, humorous and parodic style of the group, the brochure displayed the photographs of several outspoken liberal celebrities and demanded, in jocular fashion, "Bring Back the Blacklist!"

126. The students staffing the table, including Ms. Simpson, were quickly confronted by an aggressive and angry member of the SUNY Brockport faculty

127. The faculty member demanded that one of the students staffing the table step away from the table and speak with her.

128. The faculty member asserted that the brochure referring to the blacklist was "horrible" and "offensive." The faculty member asked, in words or substance,

134. On information and belief, shortly after the distribution, a member of the faculty who disagreed with the message of the flyer contacted an officer in the SUNY Brockport Student Government, the organization which funds the College Republicans

135. Upon information and belief, the faculty member angrily asserted that the distribution of the flyers constituted unlawful “harassment” and an “invasion of privacy.” The faculty member demanded that the College Republicans be denied further funding and/or that the group be shut down.

136. As head of the College Republicans, Plaintiff Patricia Simpson quickly learned of the assertions and threats of the faculty member. Other members of the group, including Plaintiff Robert Wojick, learned of the faculty member’s assertions and threats shortly thereafter.

137. The foregoing incidents further emphasized for Plaintiffs that they face potential punitive action from the College if they should pursue speech or expressive conduct that should fall afoul of the College or its agents.

Case 1:15-cv-00010 Document 1-1 Filed 08/04/15 Page 10 of 10

140. These rules and regulations are uncons

(New York State Constitution, Article I, Sections 6 and 8)

147. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.
148. As set forth above, Defendants, Tj 3 0 Td (s)Tj 4.68 0 Td (,)Tj 3 0 Td ()Tj 3

162. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

163. An actual controversy has arise

Jury Demand

Plaintiffs demand a trial by jury on all issues so triable.

Dated: New York, New York
June __, 2004