

CSU students not ready to make nice - and they don't have to

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It sounds innocuous - but a federal magistrate says it's an unconstitutional restriction on speech when the policy is used to investigate or discipline students, such as the College Republicans whose members stomped on two flags bearing the name of Allah during an anti-terrorism rally at San Francisco State last year.

"It might be fine for the university to say, 'Hey, we hope you folks are civil to one another,' " U.S. Magistrate Wayne Brazil said last week at a hearing in his Oakland courtroom. "But it's not fine for the university to say, 'If you're not civil, whatever that means, we're going to punish you.' "

Brazil said he would issue a preliminary injunction barring the university from enforcing the civility standard in any disciplinary proceeding. He said the university can continue to enforce another rule disputed by the College Republicans - prohibiting intimidation or harassment - but can use the rule to punish students only for threatening someone's health or safety, and not merely for offensive statements or conduct.

The ruling, which has not yet been issued in writing, was a victory for conservative legal organizations that have filed suits around the nation challenging colleges' speech codes.

Most of those codes were adopted in the 1980s and '90s and prohibit what the schools described as hate speech - expressions that are abusive or demeaning to various racial, ethnic, sexual or religious groups. Opponents, who have often included the American Civil Liberties Union as well as religious conservatives, say the codes amount to censorship and an attempt to stifle debate.

In one case, a federal judge in Pennsylvania in 2003 struck down a college code that prohibited "acts of intolerance that demonstrate malicious intent." Another judge in 1989 overturned a University of Michigan code forbidding speech or conduct that "stigmatizes or victimizes an individual" based on race, religion, sexual orientation or other characteristics.

Similar provisions in Stanford University's code, outlawing words or symbols that convey "direct and visceral hatred or contempt" for people because of their status, were declared unconstitutional by a Santa Clara County Superior Court judge in 1995.

"Universities routinely use policies like (the California State University policy) to suppress Christian and conservative speech," said attorney David Hacker of the Alliance Defense Fund, a Christian nonprofit law firm that represents the San

Francisco State College Republicans. As a result of Brazil's ruling, he said, "all students are more free to express their ideas."

Christine Helwick, chief counsel for the state university system, said the university should be able to comply with the ruling by clarifying its policy.

"It was never our intent that a charge of incivility would constitute a basis of discipline," she said. "We will reform our code to make that clear. . . . Our code doesn't disallow unpopular speech."

At the anti-terrorism rally in October 2006, members of the College Republicans stepped on flags representing the militant organizations Hamas and Hezbollah, each with Allah written on them in Arabic. A student later complained that the organization had engaged in "actions of incivility" and had tried to incite violence and create a hostile environment.

School officials interviewed witnesses and referred the dispute to a panel of students, faculty and staff, which held a hearing in March and found no violations of university policy. But the College Republicans said in their lawsuit in July that the investigation, and the existence of a civility code that might be used against future demonstrations, chilled their freedom of expression.

University lawyers argued that the civility policy was merely a goal, not a disciplinary standard, and that students and organizations could be disciplined only for violating specific rules against harassment or intimidation.

But Brazil, at a hearing Oct. 31, noted that the student's complaint of incivility was one of the bases of the investigation and that the San Francisco State student handbook specified that campus organizations could be held responsible for members' violations of university policies.

The goals of a university include promoting "respectful and reasoned discourse," said Brazil, a former college professor. "But the First Amendment permits disrespectful and totally emotional discourse."

Hacker said the plaintiffs would proceed with the case to make sure that the policy is rewritten and that nothing unfavorable appears in the students' files. He said they also seek damages for violations of their rights.

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