



Written by [Raven Clabough](#) on November 1, 2011

Sam Houston State Univ. Students Battle for Free Speech

Students at Sam Houston State University (SHSU) evidently learned the hard way that speech is no longer free, at least not on their campus. After receiving permission from the school, on September 22 four students groups — SHSU Lovers of Liberty, Bearkat Democrats, Sam Houston Democratic Socialists, and College Republicans — had erected a "free speech wall" in protest against SHSU's new social media policy.



The four groups also garnered 130 signatures on a petition indicating that "they never want the Social Media Policy and Procedures Manual" to go into effect.

According to the school's policy, the letters "SHSU" and all similar terms have been trademarked, and therefore any student organizations seeking to use those terms in their online identities must join a speech-restrictive "Official Community," which gives the university the authority to approve any member group's "official profile images/avatars" and to edit and/or delete its social media content. If a group refuses to adhere to this policy, it may not use the terms trademarked by SHSU.

On this wall students expressed a vast array of philosophies and dispositions — ranging from "Legalize Weed" and "My boyfriend is a liar!" to "If you make less than \$200,000, Republicans don't care about you." Only when Professor Joe Kirk discovered that "F*** Obama" had been written on the wall, did he take [action](#) against any of those posting messages.

The *Daily Caller* reports:

The professor, whom students identified as Joe Kirk [pictured above], demanded that the student groups sponsoring the wall — including Republicans, Democrats, libertarians and socialists — cover up only the Obama statement. They refused. He then told them that he would come back with a box cutter and cut it out of the wall himself, which he then did. You can see the [before and after pictures](#) at [thefire.org](#).

Student organizers responded by calling the campus police. The police questioned the students as well as the professor, and came to the following determination: Because the students wrote something that the professor found to be offensive, they engaged in "disorderly conduct" — which is a misdemeanor — and therefore must cover up all the expletives.

According to the Texas Penal Code, however, "A person commits an offense if he intentionally or



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knowingly: (1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace."

In protest against the orders to remove the expletives, the students chose instead to disassemble the entire structure. In the voluntary statement to police given by the students groups following the incident, they explained, "We decided if we were not really free to exercise our freedom of speech, then there was no point in having a free speech wall."

Morgan Freeman (not to be confused with the popular actor of the same name), president of SHSU Lovers of Liberty, remarked on the popularity of the wall prior to taking it down. "A ton of students came out to write on it," he noted. "We had a tremendously positive response from most of the students."

Instead, however, the university established what is known as a "heckler's veto" on campus, in that it permitted the reactions of those who see or hear an expression to dictate what might be said, therefore incentivizing violent or negative responses to free speech.

According to the *Daily Caller*, precedent should have worked in favor of the students:

Profanity has always had a unique power to bring consternation to those who hear it; legendary comedian George Carlin's "Seven Words You Can Never Say on Television" routine made him famous precisely because he was willing to use such words. But the landmark Supreme Court case of [Cohen v. California](#) (1971) made clear that the First Amendment protects shocking or offensive expression, including the use of expletives in the communication of core political speech. In *Cohen*, the Supreme Court overturned the conviction of a man for wearing a jacket emblazoned with the words "F*** the Draft" in a county courthouse, writing that "one man's vulgarity is another's lyric."

Ironically, however, it was not the F-word, per se, which upset the professor, as it was also in various other places on the wall. It was the fact that the vulgarity was directed at the President of the United States.

However, as noted in the *New York Times Co. v. Sullivan*, the U.S. Supreme Court determined that the First Amendment requires that "debate on public issues should be uninhibited, robust, and wide-open, and ... may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

Following the incident, students at the university approached the Foundation for Individual Rights in Education (FIRE) for assistance. FIRE President Greg Lukianoff commented, "This is an astounding example of the 'heckler's veto,' where one professor decided he could dictate what everyone else is allowed to say — and the campus police actually took his side. Furthermore, it's absurd to threaten students with criminal charges for other people's expression on a 'free speech wall.'"

FIRE [wrote](#) to SHSU President Dana Gibson in defense of the First Amendment on campus, reminding the president that the Supreme Court ruling in *Papish v. Board of Curators of the University of Missouri* states, "The mere dissemination of ideas — no matter how offensive to good taste — on a state university campus may not be shut off in the name alone of 'conventions of decency.'" As had the *Daily Caller*, FIRE also called upon the *Cohen v. California* case to prove its point.

Gibson responded by indicating that the incident was "under investigation." On October 4, SHSU public information officer Julia May commented that Professor Kirk "overreacted," but did not address the



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police claims of disorderly conduct or the threat of criminal charges against the students.

"The worst overreaction in this case came from the campus police, who not only demanded censorship of a 'free speech wall' but also have put students on notice that they could be criminally charged simply for offending others," FIRE vice president of programs Adam Kissel said. "Sam Houston State University must reassure students that it will defend their First Amendment rights against such a terrible misinterpretation of the law."

Each month FIRE features a university with a particularly egregious "speech code." FIRE named SHSU as "Speech Code of the Month" in October for its ban on "using abusive, indecent, profane or vulgar language."

While it is true that the principle of local sovereignty has traditionally caused constitutionalists and defenders of state and local rights to maintain that they have the right to defend their particular community standards of decency, the very *selective* way in which censorship has been applied in this case will be problematic to many. Staunch defenders of state sovereignty might also cite Article 1, Section 8 of the Texas State Constitution, which states: "Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press."



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