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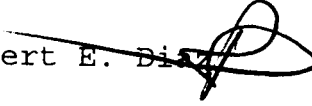
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Student Advisory Memorandum #1/95

February 21, 1995

Memorandum

To: College Presidents
From: Vice Chancellor Robert E. Diaz 
Re: Leafletting and Posting of Flyers by Students

A number of colleges have raised questions regarding the restrictions that can be imposed on leafletting and posting of flyers by students. This memorandum summarizes the law regarding this issue.¹

By way of background, the United States Supreme Court has held that the First Amendment right of freedom of speech extends to the campuses of public colleges and universities. The Supreme Court has stated that "the campus of a public university, at least for its students, possesses many characteristics of a public forum" -- that is, a public place so historically associated with the exercise of First Amendment rights that the right to speak freely in that area cannot be broadly or absolutely denied.² As such, a college may not restrict student speech based on its content or viewpoint unless there is a compelling state interest (a standard that courts have rarely found to be met). Of course, this rule

¹ This memorandum addresses only the rights of students to leaflet and post flyers on campus. The rights of those outside the college community to engage in such activities on college property depends on the college's policy and practice regarding the use of its property by outsiders. Questions about the use of campus property or facilities by outside individuals or organizations should be addressed to the Office of General Counsel.

² Widmar v. Vincent, 454 U.S. 263 (1981).

does not apply to the limited categories of speech, such as obscenity or defamatory speech, which are not protected by the First Amendment.

The distribution of leaflets is a form of speech protected by the First Amendment. In fact, leafletting has historically been afforded great protection under the First Amendment because it is an inexpensive and effective mode of communication.³ Accordingly, it would be unconstitutional for a college to prohibit students from distributing leaflets or other printed materials (including those written by outside organizations) on campus. Nor could a college prohibit students from posting materials on bulletin boards or in other areas designated for that purpose. A college could, however, establish content-neutral "time place and manner" restrictions regarding the distribution of leaflets or posting of flyers. Time, place and manner restrictions are valid so long as they serve a significant governmental interest and leave open alternative channels for communication.

For example, a rule limiting leafletting to specific areas of the campus (such as outdoor areas) would be a legitimate "time place and manner" restriction provided that a college could demonstrate that the rule served some significant college purpose (such as avoiding congestion) and did not overly interfere with the students' rights to communicate with their audience.⁴ One court upheld a rule requiring that leaflets identify the issuing person or organization. The facts of the case, however, clearly supported the need for such a rule. The rule was adopted as a result of incidents in which unpopular or inflammatory leaflets were fraudulently attributed to unpopular organizations.⁵ Another court upheld a rule restricting the time period and location in which students running for school office could hand out campaign literature on the ground that student elections were part of the educational process which was entitled to deference by the court.⁶

A rule requiring that leaflets or postings be approved by the college prior to being disseminated or posted would -- in the absence of specific guidelines for approval unrelated to content --

³ See Hays County Guardian v. Supple, 969 F.2d 111 (5th Cir. 1992).

⁴ See Hays County Guardian v. Supple, 969 F.2d 111 (5th Cir. 1992).

⁵ Spartacus Youth League v. Board of Trustees, 502 F. Supp. 789 (N.D. Ill. 1980). The court suggested that, in the absence of that justification, the rule would have been unconstitutional.

⁶ Alabama Student Party v. Student Government Association, 867 F.2d 1344 (11th Cir. 1989).

almost certainly be unconstitutional. In one case, a court held that the requirement that advance permission be obtained by student organizations who wished to sell literature violated the First Amendment. Although the court held that the college's stated purpose -- to regulate the use of limited campus facilities where such sales were permitted -- was a legitimate time, place and manner concern, it held that the regulation accomplished substantially more than that because it put the college in a position to arbitrarily deny permission without using any guidelines and without any recourse for disappointed organizations.⁷

A college that has a legitimate need to limit the distribution of leaflets or the posting of flyers due to space considerations (e.g. a limited number of bulletin boards, a limited area for distribution of literature at a college function), may adopt time, place and manner rules for allocating those resources. So long as the rules are content-neutral and narrowly tailored to address the problem, and uniformly applied, those rules would be constitutional. It is recommended that, should such rules be adopted, they be publicized to students in advance.

This office would be happy to assist any interested colleges in promulgating rules relating to the posting or distribution of leaflets on campus.

c: Cabinet
Chief Student Affairs Administrators
Legal Affairs Designees

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⁷ Spartacus Youth League v. Board of Trustees, 502 F. Supp. 789 (N.D. Ill. 1980).