

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

STUDENTS FOR LIFE AT MIAMI
UNIVERSITY OF OHIO, HAMILTON, *et al.*,

Plaintiffs,

v.

THE TRUSTEES OF MIAMI UNIVERSITY
OF OHIO, *et al.*,

Defendants.

Case No. 1:17-cv-00804-TSB

THE HONORABLE TIMOTHY S. BLACK

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and between Students for Life at Miami University of Ohio, Hamilton, Ellen Wittman, Margaret Bruns, Morgan Smith, and Chloe Olberding (collectively, “Plaintiffs”) and the Trustees of Miami University of Ohio, Gregory P. Crawford, Cathy Bishop-Clark, Peter Haverkos, Mary Bausano, and Caitlin Borges (collectively, “Defendants”) to resolve the above captioned lawsuit.

Recitals

1. On November 29, 2017, Plaintiffs filed a Verified Complaint in the United States District Court for the Southern District of Ohio in a case styled *Students for Life of Miami University of Ohio, Hamilton, et al. v. Trustees of Miami University of Ohio, et al.*, Case No. 1:17-cv-00804 (hereinafter, the “Litigation”), seeking injunctive, declaratory, and monetary relief for the violation of its rights under the First and Fourteenth Amendments to the United States Constitution (including the unconstitutional conditions doctrine).
2. In their Verified Complaint, Plaintiffs challenged Defendants’ *Policy for Campus Exhibits, Right of Expression of Students Policy*, and provisions of the *Code of Student Conduct*, claiming that these speech codes subjected Miami University of Ohio students to a prior restraint, gave University officials unbridled discretion to restrict student expression, failed to protect students against content and viewpoint discrimination, placed unconstitutional conditions upon student speech, subjected students to vague and overbroad speech restrictions, and violated equal protection.
3. In the Litigation, Plaintiffs also challenged Defendants application of these policies when Plaintiffs sought to reserve the campus quad for a pro-life display on or about October 29–November 5, 2017, claiming that Defendants’ actions pursuant to these policies violated Plaintiffs’ constitutional rights guaranteed by the First and Fourteenth Amendments to the United States Constitution, including the unconstitutional conditions doctrine.
4. On November 30, 2017, the day after Plaintiffs filed their Complaint, Miami University of Ohio sent a letter to Plaintiffs’ counsel (attached as Exhibit 1 to

this Agreement) expressing surprise that officials at the Hamilton campus had told Plaintiffs that warning signs were required, declaring that such a requirement was contrary to the policies and values of Miami University of Ohio, making it clear that Plaintiffs were free to put up their display without warning signs or any other signage, and apologizing to Plaintiffs for the mistake that was made.

5. In order to avoid the expense, risk, and cost of further proceedings in this Litigation, and without any admission of liability in the claims asserted in the Litigation, Plaintiffs and Defendants desire to resolve the claims asserted in the Litigation in accordance with the terms and conditions set forth in this Agreement.

Agreement

Now therefore, Plaintiffs and Defendants agree as follows:

1. Pursuant to this Agreement, Defendants have agreed to do the following:
 - a. Miami University shall publish an announcement in its website that is accessible to its faculty, staff, and students announcing the settlement of the Litigation and shall, as part of that statement, state that the *Policy for Campus Exhibits* (i.e., Compl. Ex. 3) is not the policy of Miami University of Ohio (including its regional campuses) and will not be adopted as a policy.
 - b. Defendants shall revise the second paragraph of the *Right of Expression of Students Policy* (i.e., Compl. Ex. 4) to read (with the new language italicized):

The University has an equal and simultaneous obligation to protect the rights and freedoms of students who do not choose to participate in a demonstration, *but this obligation does not authorize the University to infringe upon the rights of students and student organizations to hold and express disparate beliefs.* Similarly, the University is obligated to protect its property and to prohibit interference with scheduled activities of students, University personnel, and guests on campus.
 - c. Defendants shall revise the definition of disorderly conduct in § 2.1.M of the *Code of Student Conduct* (i.e., Compl. Ex. 5) to strike the parenthetical that reads: “(e.g., causes alarm, annoyance, or nuisance).” As a result, this definition will now read:

Conduct which is disorderly, lewd, or indecent or which breaches the peace is prohibited. Disorderly or disruptive conduct which unreasonably interferes with university activities or with legitimate activities.
 - d. Defendants shall make the policy revisions set forth in Sections 1(b) and 1(c) of this Agreement during the next campus-wide policy revision process, meaning that these changes will be effective as of July 1, 2018.
 - e. Defendants shall pay a sum of \$200.00 to Students for Life of Miami University of Ohio, Hamilton in settlement of Plaintiffs’ claims for damages.
 - f. Defendants shall pay a sum of \$22,389.00 to Alliance Defending Freedom in

settlement of Plaintiffs' claims for attorneys' fees and costs.

2. Pursuant to this Agreement, Plaintiffs have agreed to do the following:
 - a. Once the terms set forth in Paragraphs 1(a), 1(e), and 1(f) are fulfilled, Plaintiffs will release and voluntarily dismiss without prejudice all claims that were raised or could have been raised in the Litigation that arose from, concerned, or were in any way related to the facts set forth in Plaintiffs' Verified Complaint.
 - b. Once the terms set forth in Paragraphs 1(b) and 1(c) of this Agreement are completed as outlined in Paragraph 1(d), Plaintiffs agree not to refile the Verified Complaint in this Litigation.
 - c. Plaintiffs shall file their notice of voluntary dismissal without prejudice within five business days of completion of the terms set forth in Paragraphs 1(a), 1(e), and 1(f) of this Agreement.
3. By entering into this Agreement, Defendants are not admitting liability or recognizing the validity of any of Plaintiffs' claims raised in the Verified Complaint. Likewise, by entering into this Agreement, Plaintiffs are neither admitting that their constitutional challenges lack merit nor certifying that Defendants' policies are constitutionally flawless. Rather, Plaintiffs and Defendants are entering into this Agreement solely to avoid the expense and inconvenience of further dispute and the Litigation.
4. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. The execution of this Agreement by signature transmitted by facsimile or other electronic means shall be as fully enforceable as an original signature.
5. All agreements, covenants, representations, and warranties, express or implied, oral and written, of the parties to this Agreement concerning the subject matter of this Agreement are contained herein. No other agreements, covenants, representations, or warranties, express or implied, oral or written, have been made by any party to any other party concerning this Agreement, and no party has any entered into this Agreement in reliance upon an agreement, covenant, representation, or warranty, express or implied, oral or written, that is not expressly stated in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties concerning the subject matter of this Agreement are merged herein. This is an integrated Agreement. This Agreement can only be amended in writing signed by all of the parties.
6. In the absence of a breach of this Agreement, this Agreement shall not be filed in court, but it may otherwise be published by the parties as they see fit.

FOR PLAINTIFFS

Ellen Wittman _____ Date 01/23/2018
ELLEN WITTMAN
President
Students for Life at Miami University of
Ohio, Hamilton

MARGARET BRUNS _____ Date _____

MORGAN SMITH _____ Date _____

CHLOE OLBERDING _____ Date _____

AGREED TO AS TO FORM AND CONTENT

DAVID A. CORTMAN _____ Date _____
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Attorneys for Plaintiffs

FOR PLAINTIFFS

ELLEN WITTMAN
President
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Date

Margaret M Bruns
MARGARET BRUNS
Date January 25, 2018

MORGAN SMITH
Date

CHLOE OLBERDING
Date

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FOR PLAINTIFFS

ELLEN WITTMAN
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Date

MARGARET BRUNS

Date

Morgan Smith
MORGAN SMITH

1/26/18
Date

CHLOE OLBERDING

Date

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ELLEN WITTMAN
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Date

MARGARET BRUNS

Date

MORGAN SMITH

Date

Chloe Olberding
CHLOE OLBERDING

01/25/2018

Date

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ELLEN WITTMAN
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Date

MARGARET BRUNS

Date

MORGAN SMITH

Date

CHLOE OLBERDING

Date

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DAVID A. CORTMAN
Georgia Bar No. 188810

Date

29 January 2018

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Attorneys for Plaintiffs

FOR DEFENDANTS

Mark E. Ridenour per authority 2-5-18
MARK E. RIDENOUR *Mark E. Ridenour* Date
Trustee of Miami University of Ohio on
behalf of the Board of Trustees

Gregory P. Crawford
GREGORY P. CRAWFORD Date
President of Miami University of Ohio

Cathy Bishop-Clark 2/5/18
CATHY BISHOP-CLARK Date
Interim Associate Provost and Dean
Miami University of Ohio, Hamilton

P. Haverkos 2/5/18
PETER HAVERKOS Date
Senior Assistant Dean for Student and
Academic Success
Miami University of Ohio, Hamilton

Mary Bausano 2.5.18
MARY BAUSANO Date
Assistant Dean for Student Success
Miami University of Ohio, Hamilton

Caitlin Borges 02/05/18
CAITLIN BORGES Date
Director of Student Activities and
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Miami University of Ohio, Hamilton

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MICHAEL DEWINE
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By: *Donald C. Brey* 2-8-18
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November 30, 2017

Mr. Travis C. Barham
Alliance Defending Freedom
1000 Hurricane Shoals Road NE, Suite D-1100
Lawrenceville, GA 30043

Re: Students for Life at Miami University of Ohio, Hamilton

Dear Mr. Barham,

I am surprised that staff at Miami University of Ohio, Hamilton appear to have told your clients that they cannot put up their “Cemetery of the Innocents” display without also posting warning signs around campus. Such a requirement is contrary to the policies and values of Miami University.

All Miami University students and student organizations have First Amendment rights to free speech. As a result, the University does not approve or disapprove of any student organization’s display based on content. Miami University does not require trigger warnings, and your clients should not have been told otherwise.

Our values dictate that we protect the rights of our students and student organizations to hold and express disparate beliefs and we encourage the discussion and learning that comes from sharing differences.

In short, your clients are welcome to put up their display and will not be required to post any warning signs – or any other type of signs – in order to exercise their right to do so. You or they should just let us know when they would like to put up the display.

Your clients and their sister organization on the University’s main campus have put up similar displays for years – without warning signs - as they had the right to do under Miami’s formally promulgated policies. No one at Miami University has authority to institute or interpret university policies to impose content based discrimination on the free speech rights of students.

I apologize on behalf of Miami University to your clients for the mistake that was made. I am also sorry that you went to the effort of drafting a 360 paragraph, 50 page complaint when this matter could have been resolved in a short phone call. We are committed to ensuring that this mistake does not happen again.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Robin Parker'.

Robin Parker
General Counsel