



Louisiana State University System

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July 13, 2009 (via e-mail [jtraigle@sterlingstudiosla.com](mailto:jtraigle@sterlingstudiosla.com))

Mr. Joseph Traigle  
Capital City Alliance  
7635 Jefferson Highway, Suite 133  
Baton Rouge, Louisiana 70809

Dear Mr. Traigle:

This is in reference to your letter sent by e-mail July 10, 2009, directed to Mr. Jim Roy, Chairman and the Board of Supervisors.

Let me first address your request to speak to the Board at its Thursday meeting. Public comment at board meetings is regulated by law and board regulations. Public comment is limited to items on the agenda. The agenda is already established and no item on the agenda relates to the matter upon which you request to make public comment.

Second, the lease enforcement issue you raise is a legal matter which has been reviewed since called to the University's attention. Viewed in the light most favorable to your assertions, the lease issue you raise is not a matter that properly belongs on a board agenda.

As you graciously acknowledge LSU has a clear internal policy against discrimination or harassment based upon sexual orientation. Policy Statement (PS) 01 addresses such prohibited conduct on the LSU A&M Campus, and Permanent Memorandum (PM) 55 addresses such prohibited conduct for the entire LSU System. As you well know, in our constitutional system based upon the rule of law and limited government, there are significant limits to what LSU, as an agency of government, can impose upon others. The prohibited conduct addressed in the policies relates to LSU employees and students (present and potential) over which the University has more direct responsibility and thus ability to control. Read fairly, the policies attempt to regulate *conduct* of those involved,

not solely speech. For example, the University lacks authority to take action against a faculty member or student for only making statements thought to be offensive (e.g. letter to the editor of a newspaper). Action against offensive speech can only be taken when it is an integral part of properly prohibited activity which constitutes proscribed conduct.

You suggest that because there is a 1974 land lease which granted the right to a religious organization to build a student center and church for the benefit of LSU students, staff and others (as then determined by LSU officials), LSU, as lessor, has not only the right, but obligation, to regulate or take adverse action against the lessee religious organization because of the religious and closely-related political views expressed by an employee in a letter.

You cite a provision of the lease which provides in relevant part, "...the University shall have the power and authority at all times to make such rules, regulations and requirements as it may see fit relative to the CONDUCT AND ACTIVITIES of people in said Student Center on the leased premises ..." (emphasis added). The provision by its plain language relates only to "conduct and activities of people in said Student Center." Thus, even if legally and constitutionally permissible, a letter expressing religious and political views to others could not reasonably be construed to come within that provision. Such simply is not "conduct and activity" (e.g. use of alcohol or gambling). It is pure speech by the most basic legal standard. Sometimes the distinction between speech and conduct is difficult to discern; that difficulty usually arises when determining whether conduct is protected speech, e.g. flag and draft card burning (both types of conduct, because of their communicative nature, treated as constitutionally protected speech). What you describe is speech, not conduct subject to government agency prohibition.

It is hard to envision a more graphic example of what is protected by the freedom of speech and religion clauses of the United States and Louisiana constitutions than the writing of a letter expressing religious beliefs to persons in the political process to attempt to influence that political process. Such speech may not be infringed upon by any agency of the state. I think, with further reflection, and knowing your reputation of dedication to law and public service, that you certainly would not want a university, which should be the ultimate bastion of free speech, to engage in such attempted restraint of a religious organization's communications.

None of this is to suggest that your reaction to the speech you find offensive is inappropriate or unreasonable. In our system, however, the antidote to offensive speech is more and contradictory speech to enlighten--not censorship. Of course, by bringing this matter to our attention and that of the media you have already exercised that right ably.

When offended by speech of others, I find helpful in maintaining perspective a statement by Justice Jackson made during the stressful times of a world war: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." (W. Va. State Board of Education v. Barnette (1943)).

If you wish to discuss these views, I will be happy to do so.

Yours truly,

A handwritten signature in cursive script that reads "P. Raymond Lamonica".

P. Raymond Lamonica  
General Counsel  
J.B. Nachman Professor of Law  
Louisiana State University System

Copy to:        Board of Supervisors  
                  President John Lombardi  
                  Chancellor Michael Martin