

BINGHAMTON UNIVERSITY. Please **CALL** Binghamton Housing Authority and the Social Work Department at the university to let them know what you think.

BHA: 607-723-9491

Binghamton University Social Work department: 607-777-5999 [*Emphasis in original.*]

While he is not mentioned by name, the flyer was evidently directed at David K. Tanenhaus, Executive Director of the BHA. About one week after posting the flyer, Massena received a notice dated September 2 and titled “Written Plan for Andre Massena” (enclosed). The plan, apparently written by professor Diane R. Wiener, informed him of “[s]pecific actions to be undertaken” and “the dates by which these actions must be completed.” He was required to withdraw immediately from all of his fall 2008 MSW courses and take “a two-semester leave of absence...in order to reflect upon his readiness to enter the field of social work as a professional practitioner, given his actions during late August, 2008, and the likely as well as possible consequences (both immediate and long-term) of his actions to various individuals, the Dept. of Social Work, Binghamton University, the Greater Binghamton community, and his own professional development.” The letter did not even guarantee his reinstatement in the program after the suspension; instead, Massena’s request to return would be contingent on “departmental approval.”

The involuntary leave of absence was only the beginning of the onerous requirements that the Department of Social Work demanded of Massena—requirements that could only be intended to reduce Massena to a posture of abject groveling. For instance, the plan required of Massena “[a] formal apology, in writing and/or verbally...to all parties concerned by September 30, 2008.” Massena was not allowed to apologize solely to Professor Tanenhaus; indeed, he was not even to be allowed to decide who else should receive apologies. Instead, the plan stated that “Dr. [Laura] Bronstein and Dr. Wiener will discuss this ‘list’ [of those needing apologies] with Mr. Massena to be sure it is comprehensive.”

However humiliating, disproportionate, and inappropriate, these punishments were seemingly insufficient for the Department of Social Work, which also decided to require Massena to actively work to minimize the impact that protests like his would have on the department's personnel. Massena was to "make every effort

The facts of this case are simply horrifying for several reasons.

First, Massena's flyer consisted solely of political speech, the protection of which was arguably the core motivation for the First Amendment to the United State Constitution. The Supreme Court has held that "speech concerning public affairs is more than self-expression; it is the essence of self-government," reflecting "our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964) (internal quotations omitted). Elsewhere, the Court has declared, "[T]here is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

Advocating strongly against a governmental organization and its leadership, such as the BHA and its executive director, is entirely protected political speech of specific concern to members of the BU community (especially the Department of Social Work) and the City of Binghamton. BU, a public university, cannot lawfully punish a student for embarrassing the BHA, its director, or the university as the result of such protected expression.

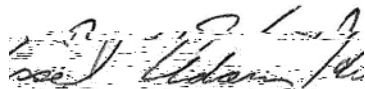
In addition, the First Amendment makes no exception for interpretations of "ethics" policies, including the National Association of Social Workers Code of Ethics, that restrict the right to core political speech, even if such speech roils a campus in controversy. While Massena's flyer

All of these requirements seriously and egregiously violate Massena's freedom of conscience. Further, these are unconstitutional punishments, for they force Massena to engage in public expression with which he disagrees. Along with the right to speak freely, the First Amendment protects speakers from being compelled to make statements against their will. No public institution of higher education may lawfully force students to make statements in which they do not believe. As Supreme Court Justice Robert Jackson wrote more than sixty years ago in *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), "[I]f 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." Consistent with its First Amendment obligations, BU may not compel Massena to issue the statements demanded here. Freedom of conscience is not merely a First Amendment right; it is central to respect for human freedom. That the Department of Social Work would show such severe and ongoing disrespect for Massena's freedom of conscience is utterly incompatible with its responsibility to the public trust.

Third, Chester's letter violates Massena's constitutional right of due process by failing to specify which posting policy Massena allegedly violated. Among other things, the policy in BU's 2008–

We request a response regarding these urgent matters prior to Massena's "meeting," currently scheduled for 4:00 PM on November 3, 2008.

Sincerely,



Adam Kissel
Director, Individual Rights Defense Program

cc:

Milton D. Chester, Director of Judicial Affairs, Binghamton University

Patricia W. Ingraham, Founding Dean, College of Community and Public Affairs, Binghamton University

Laura Bronstein, Chair, Department of Social Work, Binghamton University

Diane Wiener, Assistant Professor, Department of Social Work, Binghamton University

Josephine A.V. Allen, Professor, Department of Social Work, Binghamton University

Dennis Chapman, Assistant Professor, Department of Social Work, Binghamton University

Sunha Choi, Assistant Professor, Department of Social Work, Binghamton University

David Tanenhaus, Executive Director, Binghamton Housing Authority

Stanley Gluck, Field Instructor, Opportunities for Broome

Encl.