

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

YOUNG AMERICANS FOR LIBERTY AT
KELLOGG COMMUNITY COLLEGE, *et al.*,

Plaintiffs,

v.

KELLOGG COMMUNITY COLLEGE, *et al.*.

Defendants.

Case No.: 1:17-cv-58-RJJ-RSK

THE HONORABLE ROBERT J. JONKER

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and between Young Americans for Liberty at Kellogg Community College, Michelle Gregoire, and Brandon Withers (collectively, “Plaintiffs”) and Kellogg Community College (“KCC”), the Trustees of KCC, Mark O’Connell, Kay Keck, Terah Zaremba, Drew Hutchinson, and Harold West (collectively, “Defendants”) to resolve the above-captioned lawsuit.

Recitals

1. On January 18, 2017, Plaintiffs filed Verified Complaint in the United States District Court for the Western District of Michigan in a case styled *Young Americans for Liberty at Kellogg Community College, et al. v. Kellogg Community College, et al.*, Case No. 1:17-cv-58-RJJ-RSK (hereinafter, the “Litigation”), seeking injunctive, declaratory, and monetary relief for alleged violations of their rights under the First and Fourteenth Amendments to the United States Constitution as a result of Kellogg Community College’s enforcement of the Solicitation Policy set forth in its Code of Conduct.
2. On or about August 16, 2017, KCC’s Board of Trustees adopted a new *Freedom of Expression Policy* that allegedly replaced Defendants’ *Solicitation Policy*.
3. In order to avoid the expense, risk, and inconvenience of further proceedings in this Litigation, and without any admission of liability upon 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. Defendants will amend their *Freedom of Expression Policy* to make the changes detailed in Exhibit 1 to this Agreement.

- b. Should Young Americans for Liberty at KCC apply for recognition as a student organization, Defendants agree to waive KCC's requirement that student organizations must have five members to obtain recognition. If all other requirements for student organizations are met, Defendants will grant Young Americans for Liberty at KCC provisional recognition as a student organization for twelve months. This twelve month period would begin as soon as Young Americans for Liberty satisfies KCC's other requirements for recognition.¹
 - c. Defendants will pay a sum of \$7,000.00 to Mrs. Michelle Gregoire in settlement of Plaintiffs' claims for damages.
 - d. Defendants will pay a sum of \$48,000.00 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. Plaintiffs will release Kellogg Community College, its past and present employees, trustees, officers, agents, insurers, attorneys, and other representatives of any kind ("Released Parties") from any and all claims or causes of action of any kind, known or unknown, arising prior to or through the date of Plaintiffs' execution of this Agreement, concerning 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. In addition, Plaintiffs state that they are currently unaware of any other claims they may have against Defendants in this lawsuit arising prior to or through the date of Plaintiffs' execution of this Agreement.
 - b. Plaintiffs will stipulate to an Order of Dismissal With Prejudice within ten business days of the completion of the terms set forth in Paragraph 1 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 not admitting that their constitutional challenges lack merit, not recognizing the validity of any defenses asserted by Defendants to their constitutional challenge, and not 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

¹ See Kellogg Cmty. Coll., *Student Clubs & Organizations*, available at <http://www.kellogg.edu/student-life/student-clubs-organizations/> (last visited Jan. 4, 2018).

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. This Agreement shall be construed in accordance with the laws of the State of Michigan.
7. Plaintiffs confirm that they have had an opportunity to consult with their attorneys, Alliance Defending Freedom, regarding this Agreement, that they have carefully read the terms of this Agreement and are fully aware of the Agreement's contents and legal effects, and that they execute this Agreement voluntarily and of their own free will.
8. Medicare Compliance: Plaintiff Gregoire has provided Allied World with complete, accurate, and up-to-date information regarding her Medicare eligibility status. Plaintiff Gregoire warrants that she is not Medicare eligible and that Medicare has not made any conditional payments for medical services or products received by her (pursuant to U.S.C. § 1395y(b) and the corresponding regulations) and related to the injuries giving rise to this Agreement. Further, Plaintiff warrants that if any conditional payments related to the injuries giving rise to this settlement are or have been made by Medicare, then within sixty (60) days of the execution of this Agreement, Plaintiff shall reimburse Medicare for such conditional payments as required by Medicare Secondary Payer law, including Medicare regulations at C.F.R. § 411.24(g) and (h). The Parties agree that all representations and warranties made herein shall survive settlement. This settlement is based upon a good faith determination of the parties to resolve a disputed claim. The parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. § 1395y(b). The parties resolved this matter in compliance with both state and federal law. The parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms.

READ BEFORE SIGNING

FOR PLAINTIFFS

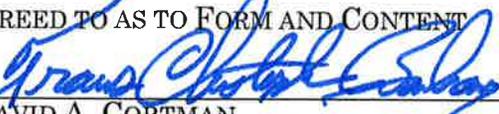


MICHELLE GREGOIRE
Young Americans for Liberty at KCC
Date 1/19/2018



BRANDON WITHERS
Date 1/19/2018

AGREED TO AS TO FORM AND CONTENT



DAVID A. CORTMAN
Date 22 January 2018

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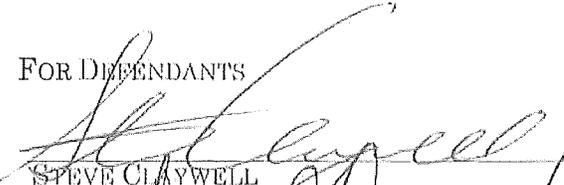
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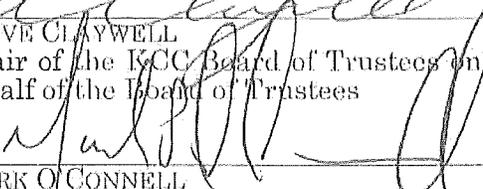
Attorneys for Plaintiffs

FOR DEFENDANTS


STEVE CLAYWELL
Chair of the KCC Board of Trustees on
behalf of the Board of Trustees

Date

1/17/18


MARK O'CONNELL
President of Kellogg Community College

Date

1/17/18

AGREED TO AS TO FORM AND CONTENT


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Date

1/18/18

Attorneys for Defendants

Freedom of Expression Policy

Kellogg Community College is a public institution of higher education whose authority is derived from the Michigan Constitution of 1963 and whose property and resources are primarily dedicated to academic, administrative and related functions. As an institution that highly regards the freedom of speech, freedom of expression and right to peaceably assemble, Kellogg Community College affords groups and individuals an invitation to exercise such freedoms on its grounds. The purpose of this policy is to facilitate expressive activities while ensuring that such activities do not interfere with College operations and the learning environment.

For anyone lawfully present on the College's campuses, the outdoor common and indoor common areas are designated as venues for free expression, including spontaneous expression, speeches, demonstrations and the distribution of information. Anyone who wishes to engage in commercial solicitation is required to reserve time and space for such activities following the terms of the College's Facility & Grounds Usage and Commercial Solicitation policies.

For purposes of this policy, the term "expressive activity" includes such activities as:

- Meetings and other group activities;
- Speeches, performances, demonstrations, parades, marches, rallies, vigils and other events;
- Distributions of informational materials, such as circulars, newspapers, leaflets and pamphlets;
- Any other expression, including spontaneous expression, protected by the First Amendment to the U.S. Constitution.

While Kellogg Community College maintains its authority to regulate the time, place and manner of expressive activities, it shall not consider or regulate the content or viewpoint of expressive activities when enforcing this policy, including by restricting students' expression based on concerns about other person(s)' negative reaction to that expression. When expressive activities occur, Kellogg Community College will work to ensure that such activities transpire without interference by the College, provided the learning environment is not substantially and materially disrupted and campus safety is not compromised by said expressive activities. If persons react negatively to expressive activities occurring on the campus of Kellogg Community College, the College will take necessary steps to ensure campus safety while allowing the expressive activity to continue, unless the College's operations are materially and substantially disrupted.

For purposes of this policy, the terms "outdoor common" and "indoor common" refer to such areas as:

- Lawns, sidewalks, benches and other outdoor areas that are not otherwise reserved for use;
- Student lounges and other indoor areas designated for social interactions that are not otherwise reserved for use.

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For purposes of this policy, the peaceful distribution of informational materials in the indoor and outdoor common areas does not, without more, represent a substantial or material disruption to the learning environment at the College.

Expressive activities, as defined by this policy, are allowed on Kellogg Community College campuses during the periods that College facilities are open to the general public.

No expressive activity at Kellogg Community College shall be permitted to:

- Violate or infringe upon the rights of others;
- Falsely defame an individual;
- Constitute a genuine threat or harassment;
- Invade privacy or confidentiality interests;
- Block access to campus buildings;
- Impede ingress or egress to the College or any College property, pedestrian pathway, parking lot, building, facility or event;
- Obstruct vehicular or pedestrian traffic;
- Include the use of audio amplification devices, unless specifically authorized by the College;
- Include the use of fire or pyrotechnics, unless specifically authorized by the College;
- Affix materials to College buildings, equipment, fences, trees or property, unless specifically authorized by the College.

Kellogg Community College does not assume any obligation or responsibility for the content of expressive activities or materials distributed. People engaging in expressive activities assume responsibility for damages to College property, for the cleanup of materials immediately following the conclusion of expressive activities and for remaining in compliance with applicable local, state and federal laws.