



March 1, 2018

Jerry Matthews  
Director, Public Safety  
Rensselaer Polytechnic Institute  
SV 1st Fl.  
110 8th Street  
Troy, New York 12180-3590

*Sent via U.S. Mail and Electronic Mail (matthj3@rpi.edu)*

Dear Director Matthews:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE remains concerned for the state of freedom of expression at Rensselaer Polytechnic Institute following the actions of RPI Public Safety officers who ordered students to cease distributing expressive materials on a public sidewalk. This act is the latest in a pattern of targeted suppression of student and faculty critics of RPI policies and administrators.

### **I. Factual background**

The following is our understanding of the facts. If you believe we are in error, we invite you to provide facts and documentation material to this issue. For the sake of brevity, we will not rehearse the many well-documented threats to student speech at RPI,<sup>1</sup> and will instead focus on the instant matter.

On the evening of Saturday, February 24, 2018, two RPI students—Michael Gardner and Advait Narayan—stood on a public sidewalk adjacent to the Houston Field House, an arena housing RPI's hockey rink. The students sought to distribute, outside of a hockey game, buttons and literature in support of the "Renew Rensselaer" campaign, an effort spearheaded by alumni with views similar to those voiced by the student-driven "Save the Union" campaign.

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<sup>1</sup> See FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., *Rensselaer Polytechnic Institute: Prohibition on Homecoming Demonstrations*, <https://www.thefire.org/cases/rensselaer-polytechnic-institute-prohibition-on-homecoming-demonstrations> (collecting letters and coverage concerning RPI's relationship with 'Save the Union').

Concerned by the Institute's history of suppressing student expression, the students utilized maps provided by the City of Troy, New York, to determine that the sidewalks adjacent to the Houston Field House were publicly owned, and not the private property of the Institute. They confined their distribution of buttons and literature to a public sidewalk along Peoples Drive, some distance from any entrance to the building. They did not impede any foot traffic, as only about four people passed by every five minutes.

After one RPI Public Safety officer observed the students handing out buttons and literature, two officers approached the students and told them they could not distribute the buttons and literature in that area and would be required to leave. When the students objected to being told to vacate a public sidewalk, the officers informed them that the Institute had authority over the sidewalk during hockey games by virtue of "eminent domain."

The students were then required to leave the area and forced to relocate to the corner of Peoples Drive and Burdette Avenue, where they were less likely to reach attendees of the hockey game.

## **II. That is not how "eminent domain" works**

That RPI Public Safety officers directed students to cease distributing literature on a *public sidewalk* on the basis that RPI had acquired some lawful right to do so, under the guise of "eminent domain," is as preposterous as it is legally incomprehensible. Eminent domain is the practice of a *public* body condemning and seizing real property for a public purpose, not a private institution requisitioning public lands for its own purpose. *See, e.g., Kelo v. New London*, 545 U.S. 469, 496 (2005) (O'Connor, J., dissenting) (describing constitutional limitations on the exercise of eminent domain).

Perhaps the officers meant that RPI has been granted a permit, entered into a memorandum of understanding, or otherwise reached some agreement with the City of Troy authorizing RPI to exercise control over the sidewalk for some period of time. If RPI has a permit or other authority to extend its jurisdiction to public sidewalks, FIRE requests that you provide us with a copy of any such permit or agreement. Barring production of such a permit or agreement, FIRE and the public will be left to conclude that RPI intends to seize not only its students' fundamental rights, but also public lands, whenever faced with criticism.

## **III. RPI may not exercise what authority it has to the detriment of students' free speech**

Even if RPI *has* been granted some lawful right to control this public sidewalk, or if RPI owns the sidewalk outright, it may not exercise that right to the detriment of students' freedom of expression, which Rensselaer Polytechnic Institute expressly promises to them.

As we have reminded RPI three times in recent months, while RPI is a private institution and thus not legally bound by the First Amendment, it is both morally and contractually bound to honor the promises of freedom of expression it has made to its students. For example, RPI's Student Bill of Rights, included in the institution's Handbook of Student Rights and Responsibilities, provides that students are "citizen[s] of the nation at large, and [RPI] shall not impede or obstruct students in the exercise of their fundamental rights as citizens."<sup>2</sup> RPI's policies also expressly forbid the Institute from using "denial of access to facilities . . . by the Institute . . . as a means of censorship or suppression" of students' expressive activities.<sup>3</sup>

RPI security officers stopped these students from exercising their rights as citizens, and their rights as students at RPI, on a public sidewalk, which courts have long recognized as among the "quintessential" public forums for free speech." *Hill v. Colorado*, 530 U.S. 703, 715 (2000). "[S]treets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely." *Hudgens v. NLRB*, 424 U. S. 507, 515 (1976) (quoting *Food Employees v. Logan Valley Plaza*, 391 U. S. 308, 315 (1968)).

This is not to say that RPI is obliged to tolerate activity which, although expressive, amounts to disruptive conduct. For example, officials could require a student to cease distributing materials immediately in front of a doorway, blocking the flow of persons into a building. Yet fundamental principles of freedom of expression permit only "reasonable restrictions on the time, place, or manner" of speech, untethered to the content of the expression, and only so long as they "leave open ample alternative channels for communication." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (emphasis added). Further, courts are skeptical that "ample alternative channels for communication" exist when the speaker's ability to reach his or her intended audience is affected.<sup>4</sup>

That limited authority was not exercised here. There is no indication that there was significant pedestrian traffic into or out of the hockey arena, or that two students handing out flyers might impede anyone's access.

To the contrary, it appears that officers exercised authority they did not possess, for the cynical purpose of exercising authority, while referencing a legal term—"eminent domain"—that sounds authoritative but has no comprehensible relationship to their roles

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<sup>2</sup> 2014 – 2016 Rensselaer Handbook of Student Rights & Responsibilities, Rev. Oct. 2015, at 4, *available at* <http://www.rpi.edu/dept/doso/resources/main/2014-2016StudentHandbookrevOctober2015.pdf>.

<sup>3</sup> Handbook at 6.

<sup>4</sup> See *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 93 (1977). Several courts have similarly held that an alternative channel "is not ample if the speaker is not permitted to reach the intended audience." *Saieg v. City of Dearborn*, 641 F.3d 727, 740 (6th Cir. 2011); *Berger v. City of Seattle*, 569 F.3d 1029, 1049 (9th Cir. 2009); see also *Wisconsin Action Coal. v. Kenosha*, 767 F.2d 1248, 1258 (7th Cir. 1985) (holding that because the city did not present evidence showing another time period in which a comparable number of adults are home, the plaintiffs could not be barred from soliciting during the hours in question).

as private security officers. In doing so, they acted to deprive students of access to their intended audience. An institution of higher education, which traffics in the very exchange of ideas and views, should be able to expect more of its police, as should its students.

FIRE requests that RPI provide an accounting of its security officers' actions, including any relevant documents providing the Institute with jurisdiction or control over the public sidewalk in question, by no later than March 10, 2018.

Sincerely,



Adam Steinbaugh  
Senior Program Officer, Individual Rights Defense Program  
Foundation for Individual Rights in Education

cc:

Richie C. Hunter, Vice President, Strategic Communications and External Relations  
Craig A. Cook, General Counsel & Secretary of the Institute