



March 22, 2012

Dr. Samuel L. Stanley, Jr.
The Office of the President
SUNY Stony Brook



Re: Accommodation of Religious Holiday Observances at Stony Brook

Dear Dr. Stanley:

By way of introduction, the American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion, including cases involving public schools.¹

As we understand, Stony Brook's administration recently decided to end its longstanding practice of closing school for most major Christian and Jewish holidays such as Good Friday, Rosh Hashanah, and Yom Kippur. This is an unnecessary, ill-advised change that demonstrates hostility to members of all religious faiths.

While Vice Provost for Undergraduate Education Charles Robbins has said that only a relatively small number of people are upset by this drastic change, over half of the university's 24,000 students are Christian or Jewish. As Rabbi Joseph Topek of Stony Brook's Interfaith Center has explained, "[s]tudents are going to have to go begging to their professors, saying 'I will not be able to come to class.' It creates an unlevelled playing field between students and

¹ See, e.g., *Pleasant Grove v. Summum*, 555 U.S. 460 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept counter-monuments when it has a war memorial or Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors have First Amendment rights); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (unanimously striking down a public airport's ban on First Amendment activities).



faculty members.”² One student told a local news station, “[y]ou really have to choose between my faith and my school work and I don’t want to be put in that position.”³ The chaplains from the university’s Interfaith Center expressed their united opposition to the change as Christians, Muslims, and Jews.

This was an unnecessary and unpopular change that ignored the university’s longstanding practices. Until this recent change, a committee that included student government leaders and members of the Interfaith Center met every five years to draft the academic calendar. The committee had already drafted a school calendar through the 2014-15 school year and was expected to consider *expanding the number of holidays* included when it next met in 2015.⁴ Contrary to this tradition, a few administrators met privately for a year and a half to discuss their desired changes to the calendar. The administration initially considered allowing faculty to *schedule weekend exams*, but later dropped the idea to appear to “compromise.”

Professor Norman Goodman said, “[o]ne consensus that everyone shares is that the process [by which] it was done was atrocious. . . . Respect for faculty and students and staff should be more important than the goal of efficiency.”⁵ *The Stony Brook Press* said, “the secretive process by which the committee drafted the new calendar stripped students and faculty of their right to weigh in on such an important matter.”⁶ The magazine has also stated, “[b]y drafting a calendar with significant changes that overrode the previously adopted calendar, the administration abused its power and assumed authority without seeking proper input about the impact it would have on faculty and students.”⁷

One of the most troubling aspects of the change is that, while it unnecessarily burdens thousands of students’ religious exercise, it has been characterized as a move to *promote* religious tolerance. Vice Provost Robbins has stated, “[o]ur goal is to increase the level of respect for everybody” through a calendar “with as much equal recognition and respect as possible for our diverse campus community.”⁸ In other words, by failing to accommodate anyone’s religious observances, the university sends a message of respect and tolerance to all religions. That is nonsense. Nothing could be further from the truth. “To hear some parents, students and faculty members tell it, Stony Brook University’s new academic calendar in September is withdrawing the ‘welcome’ mat to Jewish students. . . . Arthur Shertzer, president of United University Professions, . . . said he is mystified by the university’s actions. ‘The logic is that if we celebrate no one, we honor everyone,’ he said.”⁹ Rabbi Topek has also explained, “I think there will be a negative effect academically. . . . Those will end up being empty days

² John Fischer, *Changes to Stony Brook’s Academic Calendar Inevitable*, The Stony Brook Press, Feb. 21, 2012, <http://sbpress.com/2012/02/changes-to-stony-brooks-academic-calendar-inevitable/>.

³ CBS New York, *New Religious Holiday Policy At SUNY Stony Brook Causes Controversy*, Mar. 19, 2012, <http://newyork.cbslocal.com/2012/03/19/controversy-over-religious-holidays-at-suny-stony-brook/>.

⁴ Fischer, *supra* note 2; John Fischer, *Debate Continues Over New Calendar*, The Stony Brook Press, Mar. 6, 2012, <http://sbpress.com/2012/03/debate-continues-over-new-calendar/>.

⁵ Fischer, *Debate Continues*, *supra* note 4.

⁶ Opinion, *Calendar Wars: Administration Missteps and USG Cowardice*, The Stony Brook Press, Feb. 21, 2012, <http://sbpress.com/2012/02/calendar-wars-administration-missteps-and-usg-cowardice/>.

⁷ *Id.*

⁸ Fischer, *Changes*, *supra* note 2.

⁹ Stewart Ain, *Revised Stony Brook Calendar Draws Ire*, The Jewish Week, Mar. 13, 2012, http://www.thejewishweek.com/news/new_york/revised_stony_brook_calendar_draws_ire.

because a lot of students and faculty will not show up. It will damage Stony Brook's image in the community."¹⁰

I. Stony Brook's new policy demonstrates hostility toward religion and departs from the American tradition of the government accommodation of religious practices.

The recent calendar changes demonstrate an unwarranted hostility toward religious students and staff, especially considering that the initial proposal included scheduling exams on Saturdays and Sundays. Some of the comments made concerning the new calendar have suggested that public universities are legally forbidden, or at least discouraged, from accommodating student religious observances, but that is incorrect.

The Supreme Court has explained that "the Constitution . . . *affirmatively mandates accommodation*, not merely tolerance, of all religions, and forbids hostility toward any. . . . Anything less would require the 'callous indifference' we have said was never intended by the Establishment Clause."¹¹ The Court has noted that there is no "constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence."¹² "[H]ostility toward religion . . . has no place in our Establishment Clause traditions."¹³

In addition, the Court has noted that, "[w]hen the state . . . cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. . . . To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups."¹⁴ "Government policies of accommodation, acknowledgment, and support for religion are an accepted part of our political and cultural heritage."¹⁵ "[A]t the time the Bill of Rights was ratified, it was accepted that government should, when possible, accommodate religious practice."¹⁶ "[T]he government may (and sometimes must) accommodate religious practices . . . without violating the Establishment Clause."¹⁷

In this situation, the Constitution supports Stony Brook's past tradition of accommodating religious observances, which is consistent with the longstanding national tradition of adjusting public schedules to alleviate significant burdens upon religious exercise whenever possible. By all accounts, the past practice was quite successful in taking religious considerations into account while also furthering the administration's interests. By contrast, both the terms of the new calendar and the secretive, exclusionary process used to create it strongly signal a hostility to religious adherents. This hostility is neither required nor justified by the Constitution.

¹⁰ Fischer, *Changes*, *supra* note 2.

¹¹ *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (emphasis added).

¹² *Zorach v. Clauson*, 343 U.S. 306, 314 (1952).

¹³ *Van Orden v. Perry*, 545 U.S. 677, 704 (2005) (Breyer, J., concurring).

¹⁴ *Zorach*, 343 U.S. at 313-14.

¹⁵ *Allegheny County v. ACLU*, 492 U.S. 573, 657 (1989).

¹⁶ *City of Boerne v. Flores*, 521 U.S. 507, 557 (1997) (O'Connor, J., dissenting).

¹⁷ *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 334 (1987).

II. The new policy departs from New York City and Long Island practice as well as New York State’s tradition of religious accommodation.

Stony Brook’s recent academic calendar changes put the university at odds with many local public schools. Numerous SUNY university centers, CUNY schools, and local public school districts in New York City and on Long Island continue to maintain calendars that recognize the religious holidays at issue.¹⁸

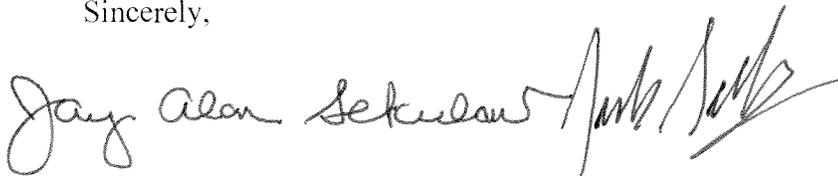
Also, New York State law encourages broad accommodation of student religious observances in public universities as well as at public elementary and secondary schools. For example, the code sections governing the State University of New York state that the State Education Department is required to “make a bona fide effort to schedule state mandated examinations on days other than days of religious observation.”¹⁹

In addition, state law says that “[a]ny student in an institution of higher education who is unable, because of his or her religious beliefs, to attend classes on a particular day or days shall, because of such absence on the particular day or days, be excused from any examination or any study or work requirements.”²⁰ Make up assignments and alternate exam times must be provided for students who miss classes due to religious observances. The law also says “it shall be the duty of the faculty and of the administrative officials of each institution of higher education to exercise the fullest measure of good faith. No adverse or prejudicial effects shall result to any student because of his or her availing himself or herself of the provisions of this section.”²¹ It is clear that the state legislature has signaled the importance of accommodating student religious observances whenever possible, not simply meeting the bare minimum legal requirements.

Conclusion

Stony Brook should reconsider and reject the proposed changes to the academic calendar. Refusing to accommodate religious observances now after many years of previously doing so strongly signals to current and prospective students and their families that Stony Brook’s once welcoming approach to students of faith has changed. It is not too late to correct what appears to be an ill-advised change in SUNY Stony Brook policy.

Sincerely,



Jay Alan Sekulow
Chief Counsel



Jordan Sekulow
Executive Director



Robert W. Ash
Senior Counsel

¹⁸ Ain, *supra* note 9; Rabbi Joseph Topek, Hillel at Stony Brook University, Feb. 23, 2012, <http://www.stonybrookhillel.org/index.php?src=blog>.

¹⁹ N.Y. Consol. Law. Serv. Educ. § 208-a.

²⁰ N.Y. Consol. Law. Serv. Educ. § 224-a.

²¹ *Id.*