MEMORANDUM

13 May 2008

TO: Executive Committee of Academic Council

FROM: Frederick Fico, Professor, School of Journalism
       William Allen, Professor, Political Science

RE: Proposed Amendment to Anti-Discrimination Policy

We respectfully request ECAC to bring to the attention of Academic Council the attached proposed amendment to the MSU Anti-Discrimination Policy.

The language proposed here has been extensively discussed and approved in the School of Journalism and the Department of Political Science. Moreover, the ADP amendment has been endorsed and recommended by the College Advisory Committee of the College of Communication Arts and Sciences.

At the instigation of the College of Communication Arts and Sciences the language in the proposed amendment has been slightly modified from the language adopted by the Department of Political Science and the School of Journalism, but the changes are consistent with the discussion in the Department.

The initiators of this memorandum would be happy to meet with ECAC to elaborate upon the need for this change in policy in order to strengthen protection of faculty rights. Here, however, we include a few background notes in order that you may appreciate the context and the urgency of acting.

I. In the past academic year we have discovered that the ADP is too readily exploited by non-faculty, university administrators as a tool of harassment and intimidation directed at faculty and students alike in First-Amendment activities. A recently concluded “investigation” of alleged anti-discrimination violations in the form of a public presentation by an outside speaker addressing the issue of illegal immigration served mainly as a vehicle for such intimidation. The facts of that case reveal that the Office for Inclusion acts in a manner entirely inconsistent with the protection of faculty rights and the procedures of shared governance.

II. The specific use of the ADP in this case had the further debilitating effect of undermining faculty willingness to serve as Registered Student Organization advisors, inasmuch as the Office of Inclusion has lent credibility to the practice of imputing to faculty responsibility for student conduct real or
alleged. Given the difficulty MSU experiences in encouraging faculty to undertake this worthy though mainly unrewarded activity in the first place, it has been especially harmful to freight it with spurious assaults upon faculty reputations and free speech rights.

The recent case referenced above shows how MSU policies can be misused to harass students and faculty exercising protected First Amendment free speech rights. Although it may be tempting to blame overreaching administrators for such an abuse, the fundamental problem is in policies that lend themselves to obstructing public policy debate by punishing those who express politically diverse views.

When protesting students unsuccessfully attempted to disrupt and exclude the anti-illegal immigration speaker, they appealed to the Office for Inclusion, which judged that their claims deserved to be investigated. This investigation was launched despite the inclusion of a provision in the ADP itself that it was not meant to be used to “abridge ... free expression or other civil rights.” The investigation alleged civil rights by the student groups sponsoring the speaker and the faculty advisors of the student groups.

The investigation itself took six months, during which the student groups sponsoring the speaker and faculty advisors of the student groups had to expend time and energy in self-defense. This constituted a punishment and a reproach even though the probe concluded that the charges did not “rise” to a level at which a recommendation of discipline could be issued. Moreover, even while exonerating the students it announced officially and without qualification that the subject conduct was reprehensible.

A process by which a complaint about a speaker (and the speaker’s student sponsors) triggers an official investigation and public denunciation by university administrators is nothing less than a tool of intimidation, exploited by those who want to close down public policy debate. The Office for Inclusion had no warrant for investigating faculty advisors, and, in fact, knew that one of them was not even resident on campus at the time of the speech. Further, they knew from video evidence that the complaining students themselves were trying to intimidate and end public speech on campus. Nonetheless, the Office for Inclusion facilitated the protesting students’ goal of exclusion by launching the investigation.

For these and further reason we believe that it is of utmost importance for Academic Council to take up this matter at its earliest opportunity, particularly insofar as continuing reviews of faculty governance take place.

Thank you for your consideration.
Proposed Revision to MSU Anti-Discrimination Policy
Initial Approval in School of Journalism and Department of Political Science
Approval by College Advisory Committee, College of Communication Arts and Sciences
– May 9, 2008

These prohibitions are not intended to abridge University community members’ rights to free expression or other civil rights and are not applicable to public speeches by university community members or by the presenters legally invited to the University by student groups or other University personnel. Specifically, no disciplinary actions may be taken under the provisions of this policy against such speakers or speaker sponsors for protected First Amendment speech.